COUNCIL AGENDA

October 6, 2014

6:00 P.M., Council Chambers

General Council Members	MAYOR	Zone Council Members
Mike Woolston	Michael L. Seibert	Gary Shaw
Morris Glaze (Mayor ProTem)		Melodee Colbert- Kean
Bill Scearce		Dr. Benjamin D. Rosenberg
Ryan Stanley		Michael Seibert
Miranda Lewis		

1. Call to Order
Invocation
Pledge of Allegiance

2. Roll Call

3. Presentations

1. Recognition to Emergency Management Director Keith Stammer by Southwest Missouri Fraternal Order of Police

2. Semi-Annual Insurance Update – Leslie Haase – Segal

4. Finalization of Consent Agenda

5. Reports and Communications

6. Citizen Requests and Petitions

7. Public Hearings
Public Hearing Procedures
1. COUNCIL BILL NO. 2014-270 - AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District M-2 and including in District C-3 property as described below and located at the southeast corner of Seventh Street and Schifferdecker Avenue in the City of Joplin, Jasper County, Missouri. (Requested by Casey's Market Company. Planning and Zoning recommended approval).

2. COUNCIL BILL NO. 2014-271 - AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-0 property as described below and located at 2808 South

Anyone wishing to address the Council should step to the Podium and state their name and address. If the matter is not a Public Hearing, a request to speak to the Council should be prepared prior to the meeting. Speaking time will be limited to five minutes.

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

Picher Avenue in the City of Joplin, Jasper County, Missouri. (Requested by Ozark Center. Planning and Zoning recommended approval).

3. RESOLUTION NO. 2014-018 - A RESOLUTION granting a Special Use Permit (Third Renewal) to USA Metal Recycling for the continued operation of a solid waste collection and processing facility for recycled materials located at 2000 West Seventh Street, in the City of Joplin, Jasper County, Missouri. (Requested by USA Metal Recycling. Planning and Zoning recommended approval for a Six-Month Special Use Permit)

8. Consent Agenda

1. Minutes of the September 15, 2014 Council Meeting

2. COUNCIL BILL NO. 2014-167 - AN ORDINANCE approving an agreement with James H. Rentfrow and Peggy I. Rentfrow to provide residential development sanitary sewer to property located at 3110 S. Catnip Lane, authorizing the City Manager to execute said agreement for and on behalf of the City.

3. COUNCIL BILL NO. 2014-272 - AN ORDINANCE Request to Review the Amended Final Plat for CVS FIRST ADDITION TO THE CITY OF JOPLIN located at the southeast corner of 32nd Street and Hearne's Boulevard in the City of Joplin, Newton County, Missouri. (Requested by Missouri CVS Pharmacy, LLC. Planning and Zoning recommended approval).

9. Resolutions

10. Ordinances – Emergency

1. COUNCIL BILL NO. 2014-173 -AN ORDINANCE approving a change order to Ace Pipe Cleaning Inc. for Five Hundred Thousand and No/100 Dollars ($500,000.00) for the Evaluation and Rehabilitation of Wastewater Collection System; and containing an emergency clause.

2. COUNCIL BILL NO. 2014-174 - AN ORDINANCE approving the contract between the City of Joplin, Missouri and Central States Bus Sales, Inc. in the amount of Two Hundred Thirty-Three Thousand Six Hundred Forty-Two Dollars ($233,642) for the purchase of (2) two medium duty low floor cut-a-way vehicles per the specifications of Bid #2014-19; and containing an emergency clause.

3. COUNCIL BILL NO. 2014-175 - 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, 2014, through October 31, 2015, in accordance with the rules of the U.S. Department of Transportation, Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) under 49 U.S.C. Section 5303 and 23 U.S. Code Sections 104(F) and 134 to conduct comprehensive and transportation planning programs, as the City of Joplin has been designated to conduct transportation planning programs for the Joplin Area Transportation Study Organization; authorizing the City Manager to execute said Agreement for the City; and containing an emergency clause.

4. COUNCIL BILL NO. 2014-176 - AN ORDINANCE approving the City of Joplin to enter into an Agreement with the Kansas City Southern Railroad for Easements and Right of Way for the 20th Street Grade Separation Project in the City of Joplin and authorizing the Director of Public Works of the City of Joplin to execute said Agreement; and containing an emergency clause.

5. COUNCIL BILL NO. 2014-177 - AN ORDINANCE approving the City of Joplin to enter into an Agreement with the Kansas City Southern Railroad for the 20th Street Grade Separation Project in the City of Joplin and authorizing the Director of Public Works of the City of Joplin to execute said Agreement; and containing an emergency clause.

6. COUNCIL BILL NO. 2014-178 - AN ORDINANCE authorizing the purchase of an Elgin Broom Badger Street Sweeper from the Missouri Highways and Transportation Commission, (MoDOT) bid list in the amount of Two Hundred and Four Thousand, Six Hundred and Twenty Dollars ($204,620.00), using funds set aside for Capital Improvement used for the Maintenance of the City of Joplin; and containing an emergency clause.

7. COUNCIL BILL NO. 2014-454 - AN ORDINANCE approving a Program Services Contract by and between the State of Missouri, Department of Health and Senior Services, and the City of Joplin, Missouri, for a term commencing October 1, 2014 and running through September 30, 2015, for the amount of Thirty-Two Thousand, Seven Hundred Twenty-Two Dollars and Sixty-Eight Cents ($32,722.68), to enable the Health Department to provide maternal and child health services to residents of Joplin, authorizing the Interim City Manager to execute the same by and on behalf of the City of Joplin, Missouri; and containing an emergency clause.

11. Ordinances – First Reading

1. COUNCIL BILL NO. 2014-023 - AN ORDINANCE amending Chapter 94, Zoning, of the Joplin City Code, by enacting a new Article IV., Department of Planning, Development and Neighborhood Services., Sec. 94-91. Director of planning, development and neighborhood services; and Sec. 94-92. Powers and Duties.

2. COUNCIL BILL NO. 2014-455 - AN ORDINANCE amending Chapter 62, Health and Sanitation, of the Code of Ordinances of the City of Joplin, Missouri, by repealing Section 62-111, Food code adopted., and Section 62-112, Amendments to food code., and enacting in lieu thereof, Sections 62-111, "Food Service Sanitation.", and 62-112, "Amendments to Food Service Sanitation.", providing generally for the adoption of the 2009 Food Code as written by the Food and Drug Administration as adopted by the State of Missouri Department of Health as the Missouri Food Code as published June 3, 2013 and providing certain amendments thereto.

12. Ordinances – Second Reading and Third Reading

13. Unfinished Business

14. New Business

1. Discussion and vote to charge the Finance Committee with looking at our purchasing procedures and other items council may charge them with

2. News from the PIO Officer

Notice posted at 4:30p.m. on this the 2nd day of October, 2014. (RSMo 610.020)

PRESENTATIONS:

- Recognition to Emergency Management Director Keith Stammer by Southwest Missouri Fraternal Order of Police

- Semi-Annual Insurance Update – Leslie Haase; Segal

PUBLIC HEARINGS

PUBLIC HEARING PROCEDURES

Persons wishing to testify before the Joplin City Council regarding an item on the Council Agenda, are requested to follow these rules:

1. Approach the podium and state your **name and address** clearly for the record.

2. 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.

3. 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.

4. 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.

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

Thank you for your consideration and understanding.

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014

Item: COUNCIL BILL NO. 2014-270
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

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

Public Works Director: Nicholas A. Heatherly NAH Date: 9/15/14
City Attorney: Peter C. Edwards PE Date: 9/18/14
Interim City Manager: Samuel L. Anselm Date: 9/18/2014
Board or Commission: Planning and Zoning Commission MOW Date: 9/8/2014

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "5 in favor, 2 absent"

SUMMARY/REQUEST:
Case 032-14: Southeast corner of West Seventh Street and South Schifferdecker Avenue – A request to rezone property from District M-2 (Heavy Industrial) to District C-3 (Commercial) for future commercial development – Casey's Marketing Company.

STAFF SUMMARY:
The proposed rezoning is for the development of a Casey's General Store.

Staff recommends approval of Case 032-14.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Kevin McClaflin, Morris & Shipley Engineers, appeared representing Casey's Marketing Company to rezone the property in this request. The site contains 1.4 acres at the southeast corner of Seventh Street and Schifferdecker Avenue. The site is currently zoned M-2 and is undeveloped. They propose rezoning the property to District C-3, which will allow the proposed use of a Casey's General Store, being a convenience store with fuel sales.

Mr. Eastman asked Mr. McClaflin if Casey's will be moving the power lines that go through the property, and he replied yes.

Mr. Ramsour asked how far back to the east the rail line is vacated. Mr. McClaflin replied that the large tract contains eight (8) acres, with Casey's using 1.4 acres. The rail line is vacated through most of that existing site.

Mr. Ramsour asked if there is no possibility that anyone would want to use that rail line again, and Mr. McClaflin understood it is abandoned.

Mr. Duncan asked about ingress and egress from Seventh Street. Mr. McClaflin replied the entrance would be 300 feet from the intersection. The Schifferdecker entrance will be about the same distance from the intersection and will be a proposed shared entrance with the property to the south.

PUBLIC COMMENT:
None.

REZONING APPLICATION FORM

RECEIVED 8-1-14

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.: 032-14
Filing Fee: $350.00
Date Advertised: 08-24-14
Date Notices Sent: 08-25-14
P&Z Date: 09-08-14
City Council Date: 10-06-14

APPLICANT: Casey's Marketing Company, Contact: Melani Samara PHONE: (515) 965.6521
ADDRESS: One S.E. Convenience Boulevard, Ankeny, IA ZIP: 50021
EMAIL: melani.samara@caseys.com
OWNER: STC, LLC, Contact: Brice Martin PHONE:
ADDRESS: P.O. Box 310, Joplin, MO 64802 ZIP: 64802
EMAIL:
LOCATION OF PROPERTY: S.E. Corner of W. 7th St. and S. Schifferdecker Ave.
LEGAL DESCRIPTION: See Exhibit "A" Attached

Present Zoning M-2 Industrial Requested Zoning: C-3 Acreage: 1.41 Acres
Present Use of Property: Vacant, Undeveloped
Proposed Use of Property: Casey's General Store, convenience store w/ fuel sales

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	Vacant Building, Walmart	C-3
South	Vacant, RSM Supply	M-2
East	Vacant and Railroad	M-2
West	Empire District Electric	M-2

CHARACTER OF THE NEIGHBORHOOD: Industrial with some commercial, golf course to the northwest, Walmart Super Center to the North east

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: Convenience store with fuel sales not allowed in M-2 zoning district

CONFORMANCE WITH COMPREHENSIVE PLAN:

1. Consistent with Development Policies? yes, convenience store is allowed in C-3 District
2. Consistent with Future Land Use Map? Have been told that Joplin Planning Dept. supports the proposed rezone request.

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

✓1. One copy of a legal description of the property proposed to be rezoned.

✓2. One copy of a statement describing the reasoning for the rezoning, the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.

✓3. Owner Affidavit, if applicant applying for the rezoning is not the owner of the property be rezoned

N.A.4. For Planned Developments the following must be submitted and reviewed before the rezoning can be advertised for public hearing:

___ Site Plan ___ Landscape Plan ___ Building Elevations

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: W. 7th Street, S. Schiffendecker
2. Classification of Street(s): Principal Arterial, Minor Arterial
   Arterial X Collector ___ Local ___
3. Right-of-Way Width: Varies: ±36' Centerline to R/W; Varies: ± 45' Centerline to R/W
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   Entrance drive locations will be coordinated with City of Joplin and MODOT

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

1. Appropriately Sized Lots? No platting required for this site.
2. Properly Sized Street Right-of-Way? City-wide No platting required
3. Drainage Easements? No, by separate document
4. Utility Easements:
   - Electricity? No, by separate document
   - Gas? No
   - Sewers? No
   - Water? No
5. Additional Comments: See attached letter

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

Appears to be a good location for a convenience store with fuel sales

SIGNATURE: Melani Samora - Agent DATE: 7-29-2014

BY: Melani Samora - Agent for Casey's Marketing Co.

TITLE: Assistant Admin - Real Estate/Store Development

Z&P Meeting: September 8, 2014
City Council Meeting: October 6, 2014

STAFF PLANNING REPORT
Rezoning

CASE 032-14:

A request to rezone from District M-2 (Heavy Industrial) to District C-3 (Commercial) for future commercial development.

APPLICANT: Casey's Marketing Company

LOCATION: Southeast corner of W. 7th Street and Schifferdecker Ave.

REQUESTED ZONING: C-3 (Commercial)

CORRIDOR: N/A

EXISTING CONDITIONS:

Zoning	Land Use	Property Size
M-2	Undeveloped	215' x 301' / 1.41 acres

SITE CONTEXT:

	North	East	South	West
Existing Zoning	C-3	M-2	M-2	M-2
Land Use	Vacant (parking lot)	Undeveloped	Undeveloped	Industrial

FUTURE LAND USE:

The 2012 Future Land Use Map designates this property as Industrial. However, other properties to the north have transitioned from Industrial to Commercial over the past 15 years due to the close proximity to 7th and Schifferdecker.

TRANSPORTATION:

Streets with access	Classification	Right-of-way width
W. 7th Street (Rte. 66)	Major Arterial	75'
S. Schifferdecker Ave.	Minor Arterial	80'

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

No. Accesses on the preliminary site plan meet access management requirements for entry drives at a signalized intersection.

UTILITIES: The property has utility connections.

FLOOD PLAIN: Zone X – Area of minimal flooding.

STAFF ANALYSIS:

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes.

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

This property is suitable for commercial development.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

The planned rezoning and development plans should not detrimentally affect nearby properties.

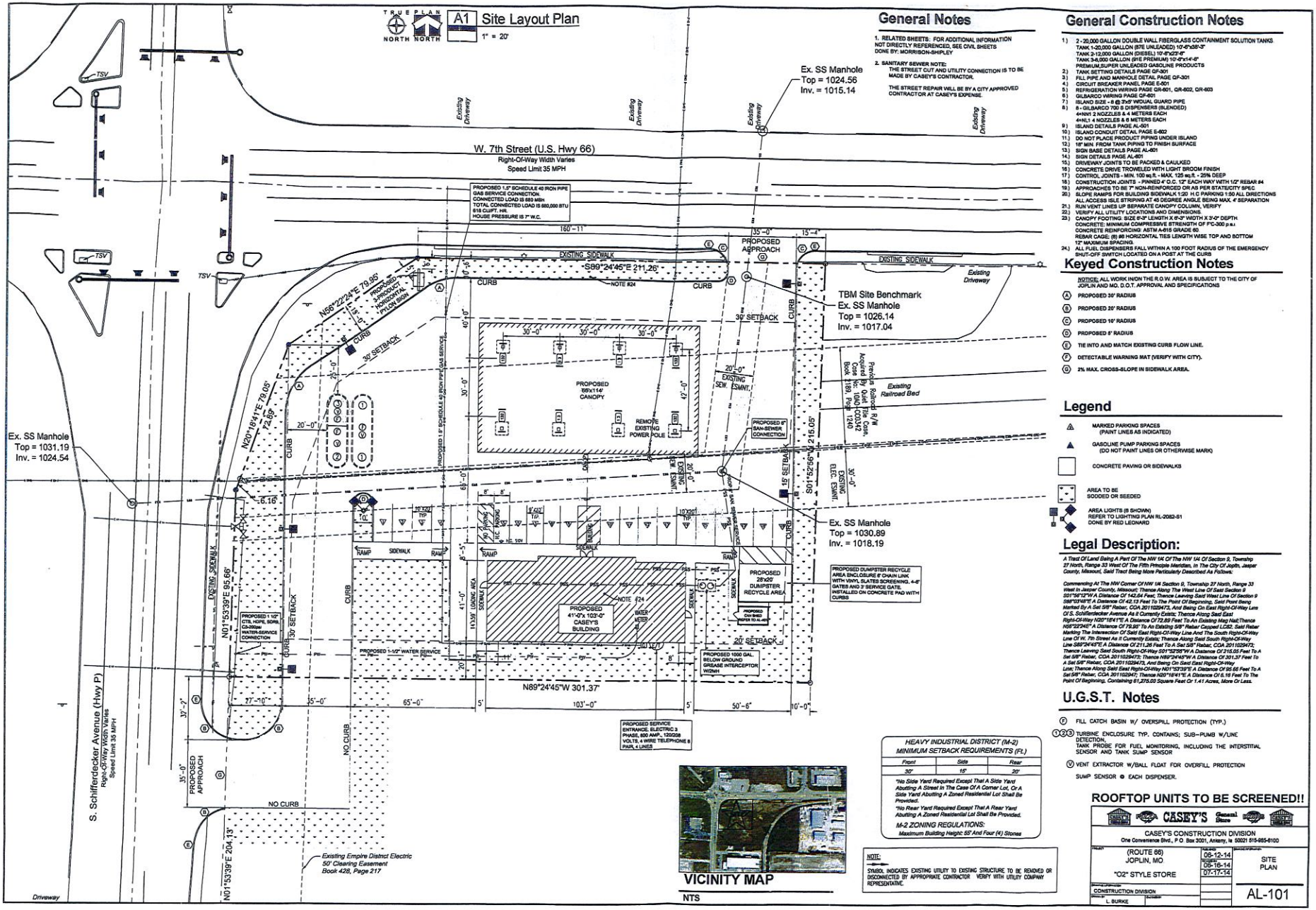
DISCUSSION

The proposed rezoning is for the development of a Casey's General Store.

Staff recommends approval of Case 032-14.

ENCLOSURES:

Preliminary site plan



General Notes

1. RELATED SHEETS: FOR ADDITIONAL INFORMATION NOT DIRECTLY REFERENCED, SEE CIVIL SHEETS DONE BY: MORRISON-SHIPLEY
2. SANITARY SEWER NOTE: THE STREET CUT AND UTILITY CONNECTION IS TO BE MADE BY CASEY'S CONTRACTOR.
   THE STREET REPAIR WILL BE BY A CITY APPROVED CONTRACTOR AT CASEY'S EXPENSE.

General Construction Notes

1) 2 - 20,000 GALLON DOUBLE WALL FIBERGLASS CONTAINMENT SOLUTION TANKS
   TANK 1-20,000 GALLON (87E UNLEADED) 10'-6"x38'-3"
   TANK 2-12,000 GALLON (DIESEL) 10'-6"x29'-6"
   TANK 3-6,000 GALLON (91E PREMIUM) 10'-6"x14'-6"
   PREMIUM,SUPER UNLEADED GASOLINE PRODUCTS
2) TANK SETTING DETAILS PAGE QF-301
3) FILL PIPE AND MANHOLE DETAIL PAGE QF-301
4) CIRCUIT BREAKER PANEL PAGE E-501
5) REFRIGERATION WIRING PAGE QR-601, QR-602, QR-603
6) GILBARCO WIRING PAGE QF-601
7) ISLAND SIZE - 8 @ 3'x9' W/DUAL GUARD PIPE
8) 8 - GILBARCO 700 S DISPENSERS (BLENDED)
   4=NNT 2 NOZZLES & 4 METERS EACH
   4=NL1 4 NOZZLES & 8 METERS EACH
9) ISLAND DETAILS PAGE AL-501
10) ISLAND CONDUIT DETAIL PAGE E-502
11) DO NOT PLACE PRODUCT PIPING UNDER ISLAND
12) 18" MIN. FROM TANK, PIPING TO FINISH SURFACE
13) SIGN BASE DETAILS PAGE AL-501
14) SIGN DETAILS PAGE AL-601
15) DRIVEWAY JOINTS TO BE PACKED & CAULKED
16) CONCRETE DRIVE TROWELED WITH LIGHT BROOM FINISH
17) CONTROL JOINTS - MIN. 100 sq.ft. - MAX. 125 sq.ft. - 25% DEEP
18) CONSTRUCTION JOINTS - PINNED 4' O.C. 12" EACH WAY WITH 1/2" REBAR #4
19) APPROACHES TO BE 7" NON-REINFORCED OR AS PER STATE/CITY SPEC
20) SLOPE RAMPS FOR BUILDING SIDEWALK 1:20 H.C PARKING 1:50 ALL DIRECTIONS
    ALL ACCESS ISLE STRIPING AT 45 DEGREE ANGLE BEING MAX. 4' SEPARATION
21) RUN VENT LINES UP SEPARATE CANOPY COLUMN, VERIFY
22) VERIFY ALL UTILITY LOCATIONS AND DIMENSIONS.
23) CANOPY FOOTING: SIZE 6'-3" LENGTH X 6'-3" WIDTH X 3'-0" DEPTH
    CONCRETE: MINIMUM COMPRESSIVE STRENGTH OF F'C-3000 p.s.i.
    CONCRETE REINFORCING: ASTM A-615 GRADE 60
    REBAR CAGE: (6) #6 HORIZONTAL TIES LENGTH WISE TOP AND BOTTOM
    12" MAXIMUM SPACING.
24) ALL FUEL DISPENSERS FALL WITHIN A 100 FOOT RADIUS OF THE EMERGENCY SHUT-OFF SWITCH LOCATED ON A POST AT THE CURB

Keyed Construction Notes

NOTICE: ALL WORK IN/ON THE R.O.W. AREA IS SUBJECT TO THE CITY OF JOPLIN AND MO. D.O.T. APPROVAL AND SPECIFICATIONS

- (A) PROPOSED 30' RADIUS
- (B) PROPOSED 20' RADIUS
- (C) PROPOSED 10' RADIUS
- (D) PROPOSED 5' RADIUS
- (E) TIE INTO AND MATCH EXISTING CURB FLOW LINE.
- (F) DETECTABLE WARNING MAT (VERIFY WITH CITY).
- (G) 2% MAX. CROSS-SLOPE IN SIDEWALK AREA.

Legend

- MARKED PARKING SPACES (PAINT LINES AS INDICATED)
- GASOLINE PUMP PARKING SPACES (DO NOT PAINT LINES OR OTHERWISE MARK)
- CONCRETE PAVING OR SIDEWALKS
- AREA TO BE SODDED OR SEEDED
- AREA LIGHTS (S SHOWN) REFER TO LIGHTING PLAN RL-2082-51 DONE BY RED LEONARD

Legal Description:

A Tract Of Land Being A Part Of The NW 1/4 Of The NW 1/4 Of Section 9, Township 27 North, Range 33 West Of The Fifth Principle Meridian, In The City Of Joplin, Jasper County, Missouri, Said Tract Being More Particularly Described As Follows:

Commencing At The NW Corner Of NW 1/4 Section 9, Township 27 North, Range 33 West In Jasper County, Missouri; Thence Along The West Line Of Said Section 9 S01°56'12"W A Distance Of 142.64 Feet; Thence Leaving Said West Line Of Section 9 S88°03'48"E A Distance Of 42.13 Feet To The Point Of Beginning, Said Point Being Marked By A Set 5/8" Rebar, COA 2011029473, And Being On East Right-Of-Way Line Of S. Schifferdecker Avenue As It Currently Exists; Thence Along Said East Right-Of-Way N20°18'41"E A Distance Of 72.69 Feet To An Existing Mag Nail;Thence N56°22'24"E A Distance Of 79.95' To An Existing 5/8" Rebar Capped LC&S, Said Rebar Marking The Intersection Of Said East Right-Of-Way Line And The South Right-Of-Way Line Of W. 7th Street As It Currently Exists; Thence Along Said South Right-Of-Way Line S89°24'45"E A Distance Of 211.26 Feet To A Set 5/8" Rebar, COA 2011029472; Thence Leaving Said South Right-Of-Way S01°52'56"W A Distance Of 215.05 Feet To A Set 5/8" Rebar, COA 2011029473; Thence N89°24'45"W A Distance Of 301.37 Feet To A Set 5/8" Rebar, COA 2011029470, And Being On Said East Right-Of-Way Line; Thence Along Said East Right-Of-Way N01°53'39"E A Distance Of 95.66 Feet To A Set 5/8" Rebar, COA 2011029471; Thence N20°18'41"E A Distance Of 6.16 Feet To The Point Of Beginning, Containing 61,275.00 Square Feet Or 1.41 Acres, More Or Less.

U.G.S.T. Notes

- (F) FILL CATCH BASIN W/ OVERSPILL PROTECTION (TYP.)
- (1)(2)(3) TURBINE ENCLOSURE TYP. CONTAINS; SUB-PUMP W/LINE DETECTION, TANK PROBE FOR FUEL MONITORING, INCLUDING THE INTERSTITIAL SENSOR AND TANK SUMP SENSOR
- (V) VENT EXTRACTOR W/BALL FLOAT FOR OVERFILL PROTECTION
  SUMP SENSOR @ EACH DISPENSER.

HEAVY INDUSTRIAL DISTRICT (M-2)
MINIMUM SETBACK REQUIREMENTS (Ft.)

Front	Side	Rear
30'	15'	20'

**No Side Yard Required Except That A Side Yard Abutting A Street In The Case Of A Corner Lot, Or A Side Yard Abutting A Zoned Residential Lot Shall Be Provided.*
**No Rear Yard Required Except That A Rear Yard Abutting A Zoned Residential Lot Shall Be Provided.*

M-2 ZONING REGULATIONS:
Maximum Building Height: 55' And Four (4) Stories

NOTE: SYMBOL INDICATES EXISTING UTILITY TO EXISTING STRUCTURE TO BE REMOVED OR DISCONNECTED BY APPROPRIATE CONTRACTOR VERIFY WITH UTILITY COMPANY REPRESENTATIVE.

VICINITY MAP
NTS

ROOFTOP UNITS TO BE SCREENED!!

CASEY'S General Store

CASEY'S CONSTRUCTION DIVISION
One Convenience Blvd., P.O. Box 3001, Ankeny, Ia 50021 515-965-6100

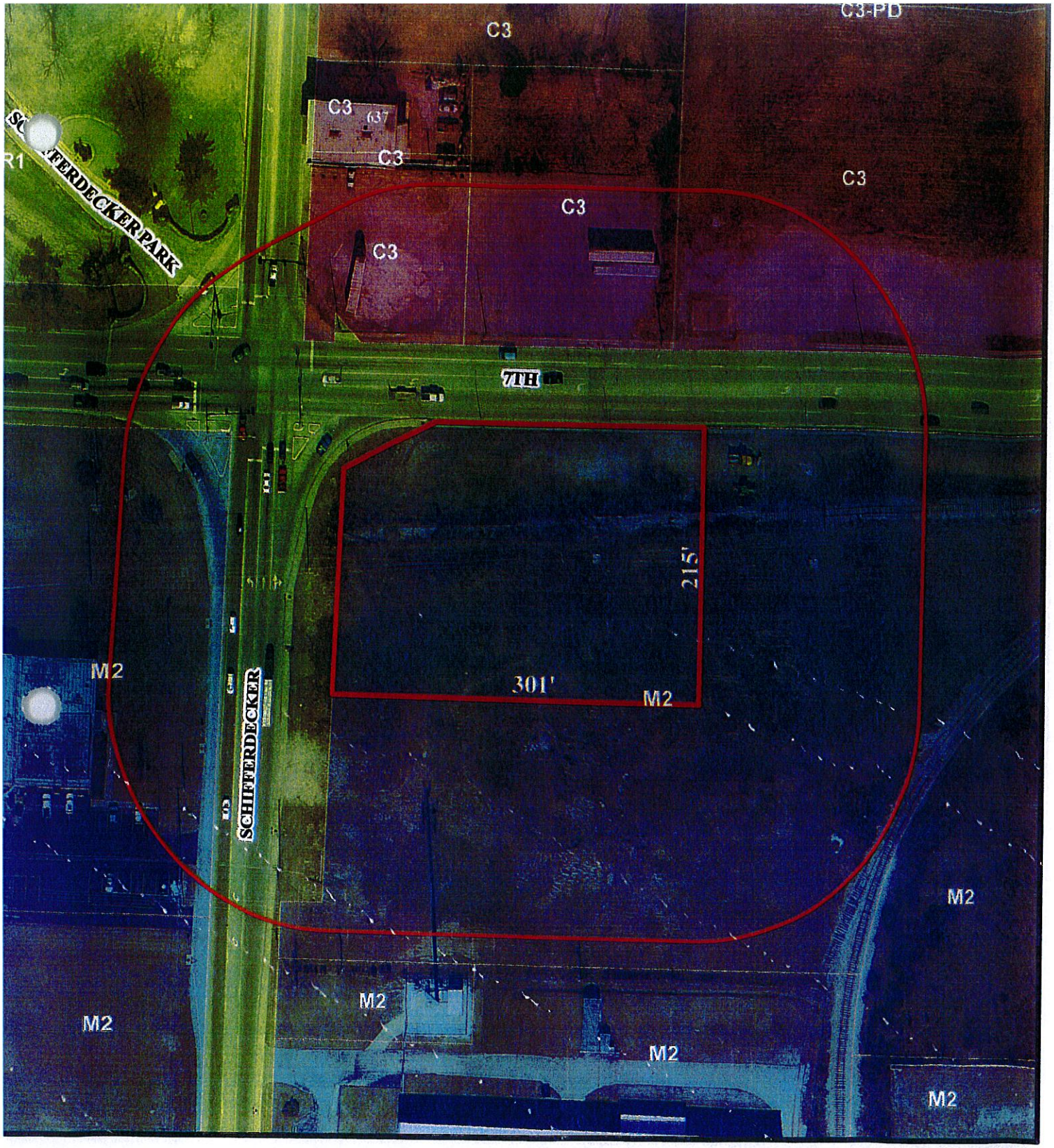
(ROUTE 66)
JOPLIN, MO
"O2" STYLE STORE

06-12-14
06-16-14
07-17-14

SITE PLAN

CONSTRUCTION DIVISION
L. BURKE

AL-101



Case 032-14: A request to rezone from District M-2 (Heavy Industrial) to District C-3 (C mercial) for future commercial development at the southeast corner of W. 7th St. and Schifferdecker Ave. - Casey's Marketing Company

N

Case 032-14: Southeast corner of West Seventh Street and South Schifferdecker Avenue – A request to rezone property from District M-2 (Heavy Industrial) to District C-3 (Commercial) for future commercial development – Casey's Marketing Company.

Mr. Eastman opened the public hearing for Case 032-14.

Mr. Kevin McClaflin, Morris & Shipley Engineers, appeared representing Casey's Marketing Company to rezone the property in this request. The site contains 1.4 acres at the southeast corner of Seventh Street and Schifferdecker Avenue. The site is currently zoned M-2 and is undeveloped. They propose rezoning the property to District C-3, which will allow the proposed use of a Casey's General Store, being a convenience store with fuel sales.

Mr. Eastman asked Mr. McClaflin if Casey's will be moving the power lines that go through the property, and he replied yes.

Mr. Ramsour asked how far back to the east the rail line is vacated. Mr. McClaflin replied that the large tract contains eight (8) acres, with Casey's using 1.4 acres. The rail line is vacated through most of that existing site.

Mr. Ramsour asked if there is no possibility that anyone would want to use that rail line again, and Mr. McClaflin understood it is abandoned.

Mr. Duncan asked about ingress and egress from Seventh Street. Mr. McClaflin replied the entrance would be 300 feet from the intersection. The Schifferdecker entrance will be about the same distance from the intersection and will be a proposed shared entrance with the property to the south.

Mr. Eastman asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 032-14.

MR. DUNCAN MOVED, SECONDED BY MR. SMITH, THAT CASE 032-14 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. CORTEZ, MR. DUNCAN, MR. EASTMAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE"; AND WITH MR. BROWN AND MR. DERMOTT BEING ABSENT (5 IN FAVOR, 2 ABSENT).

P & Z Case 032-14
Casey's Marketing Company
(P & Z Recommended Approval)

COUNCIL BILL NO. 2014-270 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District M-2 and including in District C-3 property as described below and located at the southeast corner of Seventh Street and Schifferdecker Avenue in the City of Joplin, Jasper County, Missouri.

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

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by removing the following described property from District M-2 and including same in District C-3:

A tract of land being a part of the NW 1/4 of the NW 1/4 of Section 9, Township 27 North, Range 33 West of the Fifth Principle Meridian, in the City of Joplin, Jasper County, Missouri, said tract being more particularly described as follows: Commencing at the NW Corner of NW 1/4 Section 9, Township 27 North, Range 33 West in Jasper County, Missouri; thence along the West line of said Section 9 South 01 degrees 56 minutes 12 seconds West a distance of 142.64 feet; thence leaving said West line of Section 9 South 88 degrees 03 minutes 48 seconds East a distance of 42.13 feet to the point of beginning, said point being marked by a set 5/8 inch rebar, COA 2011029473, and being on East right-of-way line of S. Schifferdecker Avenue as it currently exists; thence along said East right-of-way North 20 degrees 18 minutes 41 seconds East a distance of 72.89 feet to an existing mag nail; thence North 56 degrees 22 minutes 24 seconds East a distance of 79.95 feet to an existing 5/8 inch rebar capped LC62, said rebar marking the intersection of said East right-of-way line and the South right-of-way line of W. 7th Street as it currently exists; thence along said South right-of-way line South 89 degrees 24 minutes 45 seconds East a distance of 211.26 feet to a set 5/8 inch rebar, COA 2011029473; thence leaving said South right-of-way South 01 degrees 52 minutes 56 seconds West a distance of 215.05 feet to a set 5/8 inch rebar, COA 2011029473; thence North 89 degrees 24 minutes 45 seconds West a distance of 301.37 feet to a set rebar, COA 2011029473, and being on said East right-of-way line; thence along said East right-of-way North 01 degrees 53 minutes 39 seconds East a distance of 95.66 feet to a set 5/8 inch rebar, COA 201102947; thence North 20 degrees 18 minutes 41 seconds East a distance of 6.16 feet to the point of beginning, containing 61,275.00 square feet or 1.41 acres, more or less.

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

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2014.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014

Item: COUNCIL BILL NO. 2014-271
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

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

Public Works Director: Nicholas A. Heatherly NAH Date: 9/15/14
City Attorney: Peter C. Edwards PE Date: 9/18/14
Interim City Manager: Samuel L. Anselm SA Date: 9/18/14
Board or Commission: Planning and Zoning Commission MDW Date: 9/8/2014

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "5 in favor, 2 absent"

SUMMARY/REQUEST:
Case 033-14: 2808 South Picher Avenue – A request to rezone property from District R-1 (Single-Family Residential) to District C-O (Non-Retail) for future office development – Ozark Center.

STAFF SUMMARY:
The proposed rezoning is for the development of the Ozark Center Autism Center, an office and school. The previous use was grandfathered before the tornado as R-1. All surrounding properties are already zoned C-O.

Staff recommends approval of Case 033-14.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Tony Atkins appeared representing Ozark Center. This is a site they have chosen to replace a school for autistic children that was lost in the tornado.

Mr. Cortez asked if the building will be constructed on the footprint of the old New Directions building, and Mr. Atkins replied no. The new building will be slightly south of the previous building.

Mr. Eastman asked if a Special Use Permit was issued for the previous operation in the R-1 district. Mr. Wright thought the prior use was grandfathered, with the zoning being R-1 when everything was developed. All the surrounding uses transitioned to C-0, with Staff recommending approval of this request based on the future land use map.

PUBLIC COMMENT: None.

REZONING APPLICATION FORM

RECEIVED 8-7-14

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.: 033-14
Filing Fee: $350.00
Date Advertised: 08-24-14
Date Notices Sent: 08-25-14
P&Z Date: 09-08-14
City Council Date: 10-06-14

APPLICANT: Ozark Center, Tony Atkins PHONE: 347-7861
ADDRESS: PO Box 2526, Joplin, MO ZIP: 64804
EMAIL: TAAtkins@freemanhealth.com
OWNER: Same as Above PHONE:
ADDRESS: ZIP:
EMAIL:
LOCATION OF PROPERTY: SE Corner of 28th & Picher
LEGAL DESCRIPTION: SEE ATTACHED

Present Zoning R1 Requested Zoning: C-O (Non-Retail) Acreage: 3.0
Present Use of Property: Pre-tornado, drug and alcohol treatment and mental health facility
Proposed Use of Property: Ozark Center Autism Center

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	Old parking lot for St. John's	CO
South	Mercy Hospital	CO
East	Mercy Hospital	CO
West	Mercy Hospital	CO

CHARACTER OF THE NEIGHBORHOOD: Elementary School and Health Facilities

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: The City has requested we rezone to CO

CONFORMANCE WITH COMPREHENSIVE PLAN:

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

THE FOLLOWING MUST ACCOMPANY YOUR APPLICATION:

1. One copy of a legal description of the property proposed to be rezoned.
2. One copy of a statement describing the reasoning for the rezoning, the impact of the proposed change, including any traffic conditions that may result; any danger from fire hazards; how the proposed change may effect the character of the surrounding properties; and how the proposed change will benefit the City of Joplin.
3. Owner Affidavit, if applicant applying for the rezoning is not the owner of the property be rezoned
4. For Planned Developments the following must be submitted and reviewed before the rezoning can be advertised for public hearing:
   ___ Site Plan ___ Landscape Plan ___ Building Elevations

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: Picher Ave. (St. John's Blvd.)
2. Classification of Street(s):
   Arterial_____ Collector x Local _____
3. Right-of-Way Width: 60'
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   No

IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

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

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:

The proposed rezoning is the result of the tornado destroying the old building and the usage of the old development was grandfathered in under the R-1 zoning. The new development will have similar usage and requires ~~C-O zoning.~~

SIGNATURE: Mary Parrigon DATE: 8-5-14

BY: Mary Parrigon

TITLE: Chief Operating Officer

Z&P Meeting: September 8, 2014
City Council Meeting: October 6, 2014

STAFF PLANNING REPORT
Rezoning

CASE 033-14:

A request to rezone from District R-1 (Single-Family Residential) to District C-O (Non-Retail) for future office development.

APPLICANT: Ozark Center

LOCATION: 2808 S. Picher Avenue

REQUESTED ZONING: C-O (Non-Retail)

CORRIDOR: N/A

EXISTING CONDITIONS:

Zoning	Land Use	Property Size
C-O	Vacant (former office)	470' x 280' / 3.0 acres

SITE CONTEXT:

	North	East	South	West
Existing Zoning	C-O	C-O	C-O	C-O
Land Use	Vacant (former Mercy site)	Temporary Mercy site	Undeveloped	Irving Elementary School

FUTURE LAND USE:

The 2012 Future Land Use Map designates this property as Office/Institutional.

TRANSPORTATION:

Streets with access	Classification	Right-of-way width
S. Picher Ave. (St. John's Blvd.)	Local	50'

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

No.

UTILITIES: The property has utility connections.

FLOOD PLAIN: Zone X – Area of minimal flooding.

STAFF ANALYSIS:

CONSISTENT WITH DEVELOPMENT POLICIES OF THE COMPREHENSIVE PLAN?

Yes.

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

This property is suitable for office development.

THE EXTENT THAT THE ZONING CHANGE WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

The planned rezoning and development plans should not detrimentally affect nearby properties.

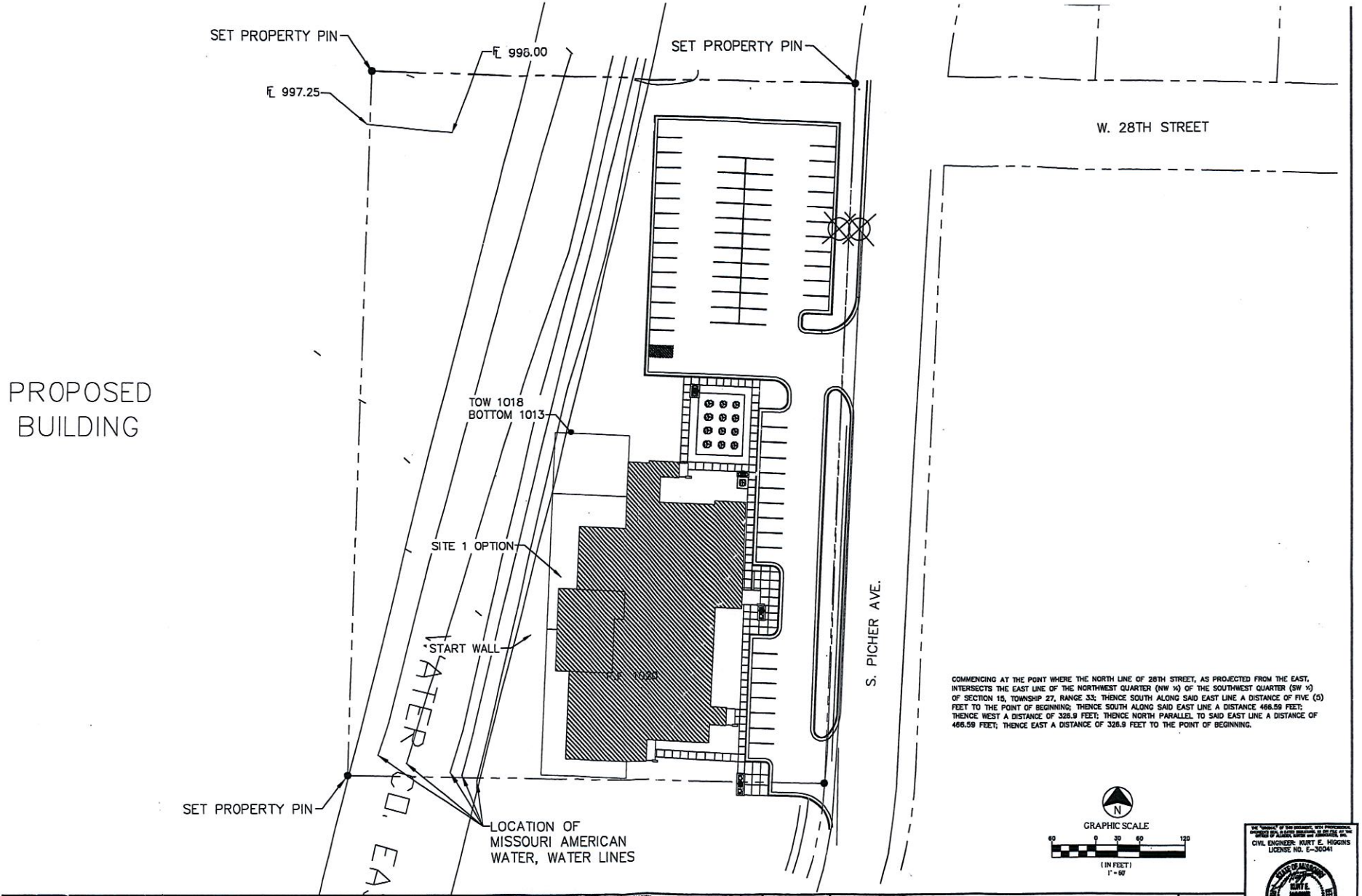
DISCUSSION

The proposed rezoning is for the development of the Ozark Center Autism Center, an office and school. The previous use was grandfathered before the tornado as R-1. All surrounding properties are already zoned C-O.

Staff recommends approval of Case 033-14.

ENCLOSURES:

Preliminary site plan



COMMENCING AT THE POINT WHERE THE NORTH LINE OF 28TH STREET, AS PROJECTED FROM THE EAST, INTERSECTS THE EAST LINE OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SECTION 15, TOWNSHIP 27, RANGE 33; THENCE SOUTH ALONG SAID EAST LINE A DISTANCE OF FIVE (5) FEET TO THE POINT OF BEGINNING; THENCE SOUTH ALONG SAID EAST LINE A DISTANCE 466.59 FEET; THENCE WEST A DISTANCE OF 326.9 FEET; THENCE NORTH PARALLEL TO SAID EAST LINE A DISTANCE OF 466.59 FEET; THENCE EAST A DISTANCE OF 326.9 FEET TO THE POINT OF BEGINNING.

CIVIL ENGINEER: KURT E. HIGGINS
LICENSE NO. E-30041

STATE OF MISSOURI
KURT E. HIGGINS
NUMBER E-30041
REGISTERED PROFESSIONAL ENGINEER

ALLGEIER, MARTIN and ASSOCIATES, INC.
CONSULTING ENGINEERS and SURVEYORS
7231 EAST 24th STREET, JOPLIN, MISSOURI 64804 (417) 680 - 7200

CERTIFICATE OF AUTHORITY KANSAS NO. E-47

DATE	REVISION

DWN. BY:	BRM
CKD. BY:	KEH
APPD. BY:	KEH
DATE:	AUG., 2014

PRELIMINARY SITE PLAN & LEGAL DESCRIPTION FOR LEFFEN AUTISM SCHOOL
OZARK CENTER NEW CONSTRUCTION
JOPLIN, MISSOURI

DWG. No. 1



Case 033-14: A request to rezone from District R-1 (Single-Family Residential) to District C (Non-Retail) for future non-retail office development at 2808 S. Picher Avenue. - Ozark Center, Tony Atkins

N

Case 033-14: 2808 South Picher Avenue – A request to rezone property from District R-1 (Single-Family Residential) to District C-O (Non-Retail) for future office development – Ozark Center.

Mr. Eastman opened the public hearing for Case 033-14.

Mr. Tony Atkins, 527 North Washington, Nevada, Missouri, appeared representing Ozark Center. This is a site they have chosen to replace a school for autistic children that was lost in the tornado.

Mr. Cortez asked if the building will be constructed on the footprint of the old New Directions building, and Mr. Atkins replied no. The new building will be slightly south of the previous building.

Mr. Eastman asked if a Special Use Permit was issued for the previous operation in the R-1 district. Mr. Wright thought the prior use was grandfathered, with the zoning being R-1 when everything was developed. All the surrounding uses transitioned to C-0, with Staff recommending approval of this request based on the future land use map.

Mr. Eastman asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 033-14.

MR. SMITH MOVED, SECONDED BY MR. RAMSOUR, THAT CASE 033-14 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. CORTEZ, MR. EASTMAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE"; WITH MR. DUNCAN ABSTAINING; AND WITH MR. BROWN AND MR. DERMOTT BEING ABSENT (4 IN FAVOR, 1 ABSTENTION, AND 2 ABSENT).

P & Z Case 033-14
Ozark Center
(P & Z Recommended Approval)

COUNCIL BILL NO. 2014-271 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-0 property as described below and located at 2808 South Picher Avenue in the City of Joplin, Jasper County, Missouri.

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

Section 1. Having referred the subject matter of this ordinance to the City Planning and Zoning Commission and having given at least fifteen days notice of time and place of hearing on same by publication in the Joplin Globe, Ordinance No. 2004-256 is hereby amended by removing the following described property from District R-1 and including same in District C-0:

Commencing at the point where the North line of 28th Street, as projected from the East, intersects the East line of the Northwest Quarter (NW 1/4) of the Southwest Quarter (SW 1/4) of Section 15, Township 27, Range 33; thence South along said East line a distance of five (5) feet to the point of beginning; thence South along said East line a distance of 466.59 feet; thence West a distance of 326.9 feet; thence North parallel to said East line a distance of 466.59 feet; thence East a distance of 326.9 feet to the point of beginning.

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

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 2014.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014

Item: RESOLUTION NO. 2014-018
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

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

Public Works Director: Nicholas A. Heatherly NAH Date: 9/15/14
City Attorney: Peter C. Edwards PE Date: 9/18/14
Interim City Manager: Samuel L. Anselm Date: 9/18/14
Board or Commission: Planning and Zoning Commission MOW Date: 9/8/2014

Recommended Action: Planning and Zoning Commission recommended approval for a six-month Special Use Permit by a vote of "5 in favor, 2 absent"

SUMMARY/REQUEST:
Case 034-14: 2000 West Seventh Street – A request for a Special Use Permit (Third Renewal) for the continued operation of a solid waste collection and processing facility for recycled materials – USA Metal Recycling.

STAFF SUMMARY:
The applicant is requesting to renew a Special Use Permit for a solid waste collection and processing facility for recycled materials. The first Special Use Permit was issued in July 2012 with 10 conditions, including the following requirements: an 8 foot tall privacy fence shall be erected along the property line adjacent to residentially zoned districts, and all road, driveways, parking lots, and loading/unloading areas shall be paved with approved concrete, asphalt, or double seal coat surface. At the time of the first renewal in July 2013, the 8 foot tall privacy fence had been completed, but the required paving had not been started. Staff records show that a pre-development meeting took place on March 28, 2013 to discuss the required paving and stormwater improvements. The City Council voted to renew the permit for 6 months to allow the applicant the opportunity to pave and install the necessary improvements to bring the property into compliance with the required conditions and to address the dust concerns cited by neighbors.

The applicant requested a 2nd renewal in January 2014. Paving of the back portion of the property had started in September 2013. As of January 2014, approximately 80 percent of the back portion had been paved, but stormwater improvements had yet to be made. The applicant deemed the back portion most important because it was the biggest generator of dust, and closest to the residential areas. No work had started on the front of the property, including the parking lot. The applicant stated that they started off later than anticipated because of delays with the site plan being completed by the engineering firm. The applicant thought that they would have the paving

and stormwater improvements to the back portion of the property completed in spring. A site visit on July 3, 2014 revealed that most of the paving had been completed, but stormwater improvements had still not been made.

A building permit application was submitted on April 11, 2014 for the second scale house and to complete the stormwater detention and paving of the remainder of the site. Stormwater comments were sent out on July 3, 2014 to the Engineer. Revised plans were submitted and approved by staff on July 18, 2014. Building permit #14-971 was issued on August 7, 2014 to the contractor.

Staff has received an update from the contractor on construction progress. As of September 3, 2014 they have several projects that they will begin the first week of September, including: detention pond on the east side of the property, completion of the second scale house, and paving of the parking areas. The contractor estimates that the paving will take approximately 30-45 days, depending on weather.

Since the last renewal staff has taken two complaints from one caller (4/30/2014 and 7/30/2014). Both calls were complaints about vibrations that the caller believed to be caused by USA Metal Recycling. Another caller (8/4/2014) complained about cars piled up above the 8 foot privacy fence. Staff made a site visit on 8/5/2014 to verify this complaint. It appeared that the pile of materials was being shifted around as part of the construction process. Staff confirmed that the piles had been removed at a site visit on 8/29/2014.

Once all paving and stormwater is complete, the applicant will begin the final phase of the development which includes refinishing an existing building along 7th Street to be the small materials drive-thru drop off site. The remaining buildings on 7th Street will be demolished and footprint paved. An additional building will be constructed on the west side of the site that will be used for recycling of electronic materials.

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

1. This Special Use Permit is issued to USA Metal Recycling for the use of a solid waste collection and processing facility for recycled materials only.
2. The permit shall be valid for (6) months renewable in March 2015.
3. Storage bins or trailers will be allowed to be stored on-site as an ancillary use, provided they are durable, covered, and meet the building setbacks for the zoning district.
4. Bins shall be screened.
5. An 8 foot tall privacy fence shall be erected and maintained along the property line adjacent to residentially zoned district.
6. Business hours to accept materials shall be Monday through Saturday, 8:00 a.m. until 5:00 p.m.
7. The operator shall provide contact information to adjacent property owners in order for residents to notify the operators of concerns.
8. Off-street parking shall be required.
9. All roads, driveways, parking lots, and loading/unloading areas shall be paved with an approved concrete, asphalt, or double seal coat surface.
10. Any other conditions set by the City Council of the City of Joplin.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Tom Smith, USA Metal Recycling, requested the renewal of their Special Use Permit. Their stormwater plan was finally approved by the City staff in July, 2014, so they can now meet all the conditions of their Special Use Permit. Pete Daniels with Red Line Contractors is proceeding with the stormwater work and stated the precast drainage collection boxes will be completed.

Mr. Smith stated that the storm boxes will be complete in about 12 to 14 days. As soon as those are complete, they will begin the excavation work for the drainage system.

Lee Smith asked about any complaints during the last couple of years. Tom Smith received a complaint during the last month from the Health Department. He typically sends letters to the adjoining neighbors and has received very few complaints, but just a couple of inquiries. Their operation had changed in error, with a neighbor smelling a gasoline odor. They immediately addressed the problem and redirected their employees to process the vehicles. They didn't spill anything and were 100 percent in compliance, but they responded back to the Health Department and to the individual who made the complaint.

Tom Smith mails quarterly letters to all the neighbors with a self-addressed stamped envelope that if they do have a problem, they can contact him directly so he can proactively address it. The neighbors have been receptive, and he has received some phones calls just asking questions, but he has received only the one complaint since he appeared before this commission the last time.

Lee Smith asked if all operations cease at 5:00 p.m., and Tom Smith replied that is correct. He hasn't received any noise complaints or problems with working late or beginning work early. They don't operate their large equipment after 12:00 noon on Saturday.

PUBLIC COMMENT:
Mr. Eastman had some photographs from a neighbor, with one complaint from Mr. Wininger, who expressed concern about his foundation shifting because of the operation.

Mr. Wright stated Mr. Wininger has complained about his foundation shifting during the last six months but thought it was hard to verify if it was caused by USA Metal Recycling or not.

SPECIAL USE PERMIT APPLICATION

RECEIVED 8-12-14

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.: 034-14
Filing Fee: $ 350.00
Date Advertised: 08-24-14
Date Notices Sent 08-25-14
Public Hearing Date: 09-08-14 / 10-06-14

APPLICANT: USA Metal Recycling PHONE: 479-661-5680

ADDRESS: 2000 W 7th Joplin MO ZIP: 64801

OWNER: Pacis LLC PHONE: 479-751-3000

ADDRESS: Post office Box 2175 Lowell AR ZIP: 72745

LOCATION OF PROPERTY: 2000 W 7th Street Joplin MO

LEGAL DESCRIPTION: Exhibit "A"

PRESENT ZONING CLASSIFICATION: Heavy Industrial ACREAGE: 15 +or-

PRESENT USE OF PROPERTY: Metal Recycling & Solid Waste

PROPOSED LAND USE ACTIVITY: Metal Recycling & Solid Waste

ADJACENT ZONING AND LAND USE:

	Land Use	Zoning
North	Industrial - Commercial	Commercial - Industrial
South	Industrial - Residential	Industrial - Residential
East	Industrial - Commercial	Heavy Industrial
West	Industrial - Commercial - Residential	Heavy Industrial / Residential

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

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

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

If Yes, what length of time? _____

SIGNATURE: Tom Sell DATE: 8-11-14

BY: USA Metal Recycling TITLE: COO

Attachments Required:

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

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

1. Hours of Operation. Open to the public 8:00AM - 5:00 PM
2. Days of Operation. Monday - Saturday closed Sunday
3. Number of Off-street Parking Spaces. 25-30
4. Signs (Generally signs are limited to one sign not larger that one (1) foot by two (2) feet set no more than six (6) feet off the ground and at least ten (10) feet inside the property line.) _____
5. Number of Assistants or employees. 8 - Currently proposed 12
6. Nature of the Business. Metal Recycling
7. Location of the Business. 2.000 West 7th Street 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.

Z&P Meeting: September 8, 2014
City Council Meeting: October 6, 2014

STAFF PLANNING REPORT
Special Use Permit

CASE 034-14:

A request for a Special Use Permit (3rd Renewal) for the continued operation of a solid waste collection and processing facility for recycled materials at 2000 W. 7th Street.

APPLICANT: USA Metal Recycling

LOCATION: 2000 W. 7th Street

REQUESTED USE: Solid waste collection and processing facility

CORRIDOR: N/A

EXISTING CONDITIONS:

Zoning	Land Use	Property Size
M-2 (Heavy Industrial)	Industrial	9.2 acres

SITE CONTEXT:

	North	East	South	West
Existing Zoning	M-2	M-2	R-1	R-2
Land Use	Industrial	Industrial	Single-Family	Single-Family

TRANSPORTATION:

Streets with access	Classification	Right-of-way width
W. 7th Street	Major Arterial	60'
Willard Avenue	Local	60'

IS OFF STREET PARKING PROVIDED?

The applicant has plans approved to pave the existing gravel parking area and provide 18 parking spaces. This work has not been completed as of September 2014, but the contractor has stated that work will begin in early September and be completed within 30-45 days.

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

No.

DISCUSSION:

The applicant is requesting to renew a Special Use Permit for a solid waste collection and processing facility for recycled materials. The first Special Use Permit was issued in July 2012 with 10 conditions, including the following requirements: an 8 foot tall privacy fence shall be erected along the property line adjacent to residentially zoned districts, and all road, driveways, parking lots, and loading/unloading areas shall be paved with approved concrete, asphalt, or double seal coat surface. At the time of the first renewal in July 2013, the 8 foot tall privacy fence had been completed, but the required paving had not been started. Staff records show that a pre-development meeting took place on March 28, 2013 to discuss the required paving and stormwater improvements. The City Council voted to renew the permit for 6 months to allow the applicant the opportunity to pave and install the necessary improvements to bring the property into compliance with the required conditions and to address the dust concerns cited by neighbors.

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Since the last renewal staff has taken two complaints from one caller (4/30/2014 and 7/30/2014). Both calls were complaints about vibrations that the caller believed to be caused by USA Metal Recycling. Another caller (8/4/2014) complained about cars piled up above the 8 foot privacy fence. Staff made a site visit on 8/5/2014 to verify this complaint. It appeared that the pile of materials was being shifted around as part of the construction process. Staff confirmed that the piles had been removed at a site visit on 8/29/2014.

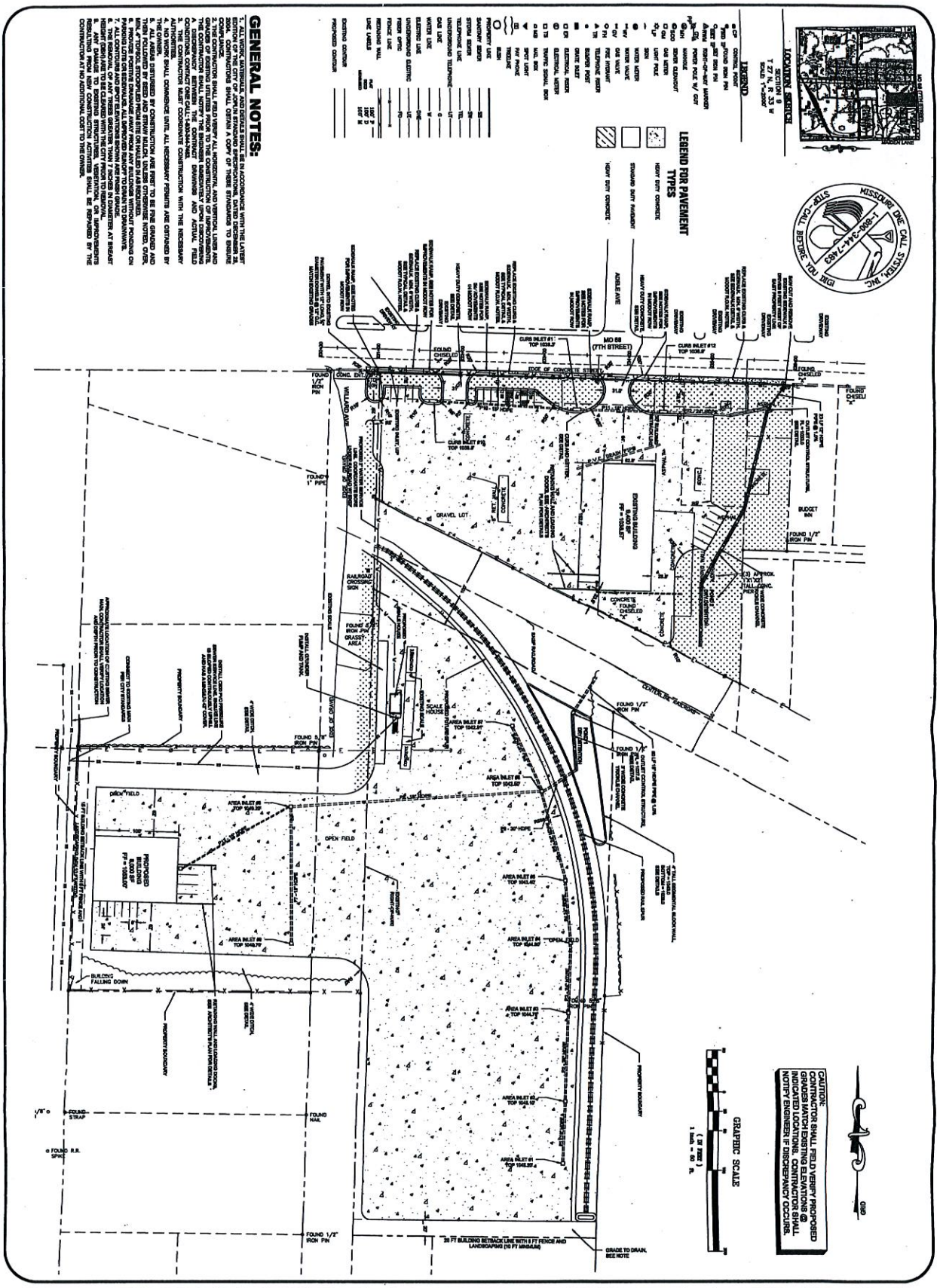
Once all paving and stormwater is complete, the applicant will begin the final phase of the development which includes refinishing an existing building along 7th Street to be the small materials drive-thru drop off site. The remaining buildings on 7th Street will be demolished and footprint paved. An additional building will be constructed on the west side of the site that will be used for recycling of electronic materials.

CONDITIONS FOR CONSIDERATION:

1. This Special Use Permit is issued to USA Metal Recycling for the use of a solid waste collection and processing facility for recycled materials only.
2. The permit shall be valid for (6) months renewable in March 2015.
3. Storage bins or trailers will be allowed to be stored on-site as an ancillary use, provided they are durable, covered, and meet the building setbacks for the zoning district.
4. Bins shall be screened.
5. An 8 foot tall privacy fence shall be erected and maintained along the property line adjacent to residentially zoned district.
6. Business hours to accept materials shall be Monday through Saturday, 8:00 a.m. until 5:00 p.m.
7. The operator shall provide contact information to adjacent property owners in order for residents to notify the operators of concerns.
8. Off-street parking shall be required.
9. All roads, driveways, parking lots, and loading/unloading areas shall be paved with an approved concrete, asphalt, or double seal coat surface.
10. Any other conditions set by the City Council of the City of Joplin.

ENCLOSURES:

Approved site plan



DRAWING NO.
JOP 100-3009
SHEET NUMBER
1
OF 6

GT MANAGEMENT, LLC
USA METAL RECYCLING

OVERALL SITE LAYOUT

JOPLIN, JASPER COUNTY, MISSOURI

REVISIONS			
NO.	DESCRIPTION	BY	DATE
1	7TH STREET REVISIONS	BDO	OCT
2	MODOT COMMENTS & ADDED SCALE HOUSE	BDO	4/2014

DRAWING INFO.	
DRAWN BY:	RICK NICHOLS
CHECK BY:	BRYAN OSBORN, PE
LICENSE NO.	PE-2008019582
DATE:	AUGUST 2013
FIELD BOOK:	
JOB NUMBER:	70051-12

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Case 034-14: A request for a Special Use Permit (3rd Renewal) for the continued operation of a solid waste collection and processing facility for recycled materials at 2000 W. 7th Street. - USA Metal Recycling

Case 034-14: 2000 West Seventh Street – A request for a Special Use Permit (Third Renewal) for the continued operation of a solid waste collection and processing facility for recycled materials – USA Metal Recycling.

Mr. Eastman opened the public hearing for Case 034-14.

Mr. Tom Smith, USA Metal Recycling, P.O. Box 2175, Lowell, Arkansas, appeared to request the renewal of their Special Use Permit. Their stormwater plan was finally approved by the City staff in July, 2014, so they can now meet all the conditions of their Special Use Permit. Pete Daniels with Red Line Contractors is proceeding with the stormwater work and stated the precast drainage collection boxes will be completed.

Mr. Smith stated that the storm boxes will be complete in about 12 to 14 days. As soon as those are complete, they will begin the excavation work for the drainage system.

Lee Smith asked about any complaints during the last couple of years. Tom Smith received a complaint during the last month from the Health Department. He typically sends letters to the adjoining neighbors and has received very few complaints, but just a couple of inquiries. Their operation had changed in error, with a neighbor smelling a gasoline odor. They immediately addressed the problem and redirected their employees to process the vehicles. They didn't spill anything and were 100 percent in compliance, but they responded back to the Health Department and to the individual who made the complaint.

Tom Smith mails quarterly letters to all the neighbors with a self-addressed stamped envelope that if they do have a problem, they can contact him directly so he can proactively address it. The neighbors have been receptive, and he has received some phones calls just asking questions, but he has received only the one complaint since he appeared before this commission the last time.

Lee Smith asked if all operations cease at 5:00 p.m., and Tom Smith replied that is correct. He hasn't received any noise complaints or problems with working late or beginning work early. They don't operate their large equipment after 12:00 noon on Saturday.

Mr. Eastman asked for comments from the commissioners and the audience, and none were received. He then closed the public hearing for Case 035-14. He has some photographs from a neighbor, with one complaint from Mr. Wininger, who expressed concern about his foundation shifting because of the operation.

Mr. Wright stated Mr. Wininger has complained about his foundation shifting during the last six months but thought it was hard to verify if it was caused by USA Metal Recycling or not.

MR. DUNCAN MOVED, SECONDED BY MR. CORTEZ, THAT CASE 034-14 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL FOR A SIX-MONTH SPECIAL USE PERMIT TO BE ISSUED TO USA METAL RECYCLING, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC HEARING. THE MOTION CARRIED, WITH MR. CORTEZ, MR. DUNCAN, MR. EASTMAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE"; AND WITH MR. BROWN AND MR. DERMOTT BEING ABSENT (5 IN FAVOR, 2 ABSENT).

Mr. Ramsour asked why this case is being forwarded to the City Council. Mr. Wright replied yes, since the City Council set the restrictions for the Special Use Permit the last time.

P & Z Case 034-14
USA Metal Recycling
(P & Z Recommended Approval
for a Six-Month Special Use Permit)

RESOLUTION NO. 2014-018

A RESOLUTION granting a Special Use Permit (Third Renewal) to USA Metal Recycling for the continued operation of a solid waste collection and processing facility for recycled materials located at 2000 West Seventh Street, in the City of Joplin, Jasper County, Missouri.

WHEREAS, the Planning and Zoning Commission at a Public Hearing held on September 8, 2014, recommended that a Special Use Permit be granted to USA Metal Recycling for the continued operation of a solid waste collection and processing facility for recycled materials located at 2000 West Seventh Street, in the City of Joplin, Jasper County, Missouri.

WHEREAS, a public hearing was held before the City Council on October 6, 2014, 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 USA Metal Recycling for the continued operation of a solid waste collection and processing facility in the City of Joplin, Missouri, on the following described real estate, to-wit:

All of Lots Numbered Five (5) and Six (6) and Twenty-three (23) in West Seventh Street Sub-division to the City of Joplin, Jasper County, Missouri, according to the recorded Plat thereof. AND All of Lot Numbered Twenty-four (24) in Highway Sub-division to the City of Joplin, Jasper County, Missouri, according to the recorded Plat thereof. AND All of Lots Numbered Twenty-four (24) and Twenty-five (25) in West Seventh Street Sub-division to the City of Joplin, Jasper County, Missouri, according to the recorded Plat thereof. AND All of Lots Numbered Twenty-six (26) and Twenty-seven (27) in West Seventh Street Sub-division to the City of Joplin, Jasper County, Missouri, according to the recorded Plat thereof. AND All of a tract of land described as beginning at a point 150 feet East of the Northeast corner of Lot Twenty-two (22) in West Seventh Street Sub-division to the City of Joplin, thence South parallel with the East line of said sub-division 150 feet, thence West 75 feet, thence North 150 feet parallel with the East line of said sub-division to the South line of Seventh Street, thence East 75 feet to point of beginning, being part of Miscellaneous Tract Eight (8) in Section 9, Township 27, Range 33, and a part of Miscellaneous Tract 14 in Section 4, Township 27, Range 33, in the City of Joplin, Jasper County, Missouri, according to the recorded Plat thereof. AND All of Lot Numbered Twenty-two (22) in the West Seventh Street Subdivision in the City of Joplin, Jasper County, Missouri, according to the recorded Plat thereof, also the following

described tract lying and being in a part of Miscellaneous Tract 8 in Section 9, Township 27, Range 33 and a part of Miscellaneous Tract 14 in Section 4, Township 27, Range 33, to wit: Beginning at the Northeast corner of Lot 22 in West 7th Street Subdivision to the City of Joplin, thence running East a distance of 150 feet on a line extending Eastward from the North line of said Lot 22, thence South on a straight line to the right-of-way of the St. Louis and San Francisco Railway Company's railroad, thence in a Northwesterly direction along the North line of said right-of-way to the East line of said Lot 22, thence North along said East side of said Lot 22 to the place of beginning, Except beginning at a point 150 feet East of the Northeast corner of Lot Twenty-two (22) in West Seventh Street Sub-division to the City of Joplin, thence South parallel with the East line of said sub-division 150 feet, thence West 75 feet, thence North 150 feet parallel with the East line of said sub-division to the South line of Seventh Street, thence East 75 feet to point of beginning.

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

1. This Special Use Permit is issued to USA Metal Recycling for the use of a solid waste collection and processing facility for recycled materials only.
2. The permit shall be valid for (6) months renewable in March, 2015.
3. Storage bins or trailers will be allowed to be stored on-site as an ancillary use, provided they are durable, covered, and meet the building setbacks for the zoning district.
4. Bins shall be screened.
5. An 8 foot tall privacy fence shall be erected and maintained along the property line adjacent to residentially zoned district.
6. Business hours to accept materials shall be Monday through Saturday, 8:00 a.m. until 5:00 p.m.
7. The operator shall provide contact information to adjacent property owners in order for residents to notify the operators of concerns.
8. Off-street parking shall be required.
9. All roads, driveways, parking lots, and loading/unloading areas shall be paved with an approved concrete, asphalt, or double seal coat surface.
10. Any other conditions set by the City Council of the City of Joplin.

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

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

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

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2014.

_____
Michael L. Seibert, Mayor

ATTEST: _____
Barbara L. Hogelin, City Clerk

CONSENT AGENDA

CITY OF JOPLIN

CITY COUNCIL MEETING

MINUTES September 15, 2014

CALL TO ORDER

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

ROLL CALL – Motion by Mr. Scearce, Second by Dr. Rosenberg to excuse Melodee Colbert-Kean. Motion carried 8-0. Also in attendance were Public Works Director Nick Heatherly and City Attorney Peter Edwards.

Mayor Seibert made a special welcome to Allen Shirley who was in the audience this evening and also serves on the Museum Board.

INVOCATION - read by City Clerk Barbara Hogelin

FLAG SALUTE – led by Mr. Glaze

PRESENTATIONS - Update on the Joe Becker Stadium renovations – Chris Cotten, Leslie Haase and Chad Greer made a presentation to council on the update for Joe Becker Stadium. After hearing upgrades that are to be included in the renovations to Joe Becker Council gave approval for the funding for these upgrades. Mrs. Haase said these funds would come from: Take $500,000 from the CVB account and $200,000-$250,000 from the Revolving Loan Fund.

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

REPORTS AND COMMUNICATIONS

CITIZEN REQUESTS AND PETITIONS

Phil Stinnett, 2206 E. 10th, Joplin, Missouri, requests to address Council concerning the Joplin Sports Authority. Mr. Stinnett had withdrawn his request previously.

Heather Sprinkle, 886 B N Tree top Lane. Joplin Missouri, 64801, requests to address Council regarding using Dover Hill as a Zombie spook trail in October. Ms. Sprinkle requested to use Dover Hill for the month of October for a Zombie Spook Trail. The Council approved with a vote of 6-2-1 to rent her city owned property, Dover Hill Park that she will have adequate insurance provided and she will pay her fee of $500.00 on Monday, October 6, 2014 after the end of the second day of her event.

The City Clerk told the Mayor another request had been presented to her office since the agenda had been printed by Mr. Charles Blauket, 924 Murphy, regarding noise on the railroad.

Motion by Mr. Scearce, Second by Mr. Stanley, that Mr. Charles Blauket, 925 Murphy be aloud to address Council. Motion carried, 8-0-1.

Mr. Charles Blauket, 925 Murphy addressed Council about the loud noise on the railroad. He said the engines sound their horns that can be heard for long distances that carries for several residential streets day and night disturbing sleep. He has contacted the railroad through an 800 number and said they told him you can establish a quiet zone through your council. This is what he wants to do. Initiate a quiet zone.

Mr. Glaze told him to call his office tomorrow and he'll give him the Missouri Northwest Arkansas Railroad General Manager's number. He said signals are expensive but I can get you with the General Manager tomorrow and we will see about what we can do. The Mayor thanked Mr. Blauket for coming.

PUBLIC HEARINGS

CONSENT AGENDA - Motion by Mr. Shaw, Second by Mr. Scearce, to approve the Consent Agenda. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

Minutes of the September 2, 2014 Council Meeting

COUNCIL BILL NO. 2014-166 - AN ORDINANCE authorizing an Application to the Missouri Department of Transportation for state funds to be used for operating assistance for the Metro Area PublicTransit System. Ordinance No. 2014-142

COUNCIL BILL NO. 2014-268 - AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-1-PD property as described below and located at 2615 East 20th Street in the City of Joplin, Jasper County, Missouri Motion by Mr. Woolston, Second by Mr. Stanley, to Pass Council Bill No. 2014-268 on First Reading and Advance to Second Reading. Ordinance No. 2014-143

COUNCIL BILL NO.2014-269 - AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from Districts C-0-PD, C-1, and C-1-PD, and including in District C-3 property as described below and located approximately between 24th and 26th Streets, Maiden Lane and McCoy Avenue in the City of Joplin, Jasper County, Missouri. Ordinance No. 2014-144

COUNCIL BILL NO. 2014-617 - AN ORDINANCE approving the application of Historic Murphysburg's, DickensFest; MSSU Diversity Committee's, Martin Luther King Day of Service; Spiva Center for the Art's, PhotoSpiva 2015; Active Lifestyles Events', Joplin Memorial Half; Rufus Racing's, Summer Roundup Triathlon Weekend; Wildcat Glades Conservation & Audubon Center's, Shoal Creek Water Festival; Joplin Disc Golf Club's, 10th Annual Four State Open; Four

State Trucks/Chrome Shop Mafia's, Guilty By Association, and MSSU Alumni Associations, MSSU Homecoming Celebration for utilization of FY2015 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. 2014-145

RESOLUTIONS

Mr. Shaw introduced Resolution No. 2014 -017. Motion by Mr. Shaw, Second by Ms. Colbert-Kean to Approve Resolution No. 2014-017. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Resolution was read as being RESOLUTION NO. 2014-017

A RESOLUTION authorizing the filing of a Second Partial Action Plan with the U.S Department of Housing and Urban Development as required for use of the City of Joplin's Community Development Block Grant Disaster Recovery (CDBG-DR) Program; and authorizing the City Manager to execute said Plan for and on behalf of the City of Joplin.

ORDINANCES-EMERGENCIES

Mr. Glaze introduced Council Bill No. 2014-024. Motion by Mr. Glaze, Second by Mr. Shaw to Adopt Council Bill No. 2014-024. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-146

AN ORDINANCE authorizing the City of Joplin to enter into an Agreement with Crossland Construction, Inc., to provide the design and construction of the Joe Becker Stadium project; authorizing the City Manager to execute said Agreement or Agreement in substantially similar form, for the City; and containing an emergency clause.

Mr. Stanley introduced Council Bill No. 2014-168. Motion by Mr. Stanley, Second by Mr. Shaw to Adopt Council Bill No. 2014-168. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-147

AN ORDINANCE approving a Solid Waste Service Agreement by and between the City of Joplin, Missouri, a Municipal Corporation, and Jordan Disposal, LLC for a term of one (1) full year, commencing on October 1, 2014 and ending on September 30, 2015 with the option of renewal upon mutual agreement for six (6) months; dealing generally with the collection, hauling and disposal of solid waste from specified city owned buildings and facilities plus the hauling of leaves/grass clippings/tree limbs/brush to a location to be determined; and authorizing the Interim City Manager to execute the same by and on behalf of the City of Joplin; and containing an emergency clause.

Mr. Scearce introduced Council Bill No. 2014-410. Motion by Mr. Scearce, Second by Mr. Shaw to Adopt Council Bill No. 2014-410. Voting in favor were Council Members: Glaze, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 7. Nays: 0. Absence: 1, Colbert-Kean. Abstention: 1, Lewis.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-148

AN ORDINANCE approving a Return of Property Agreement by and between the Joplin Redevelopment Corporation, City of Joplin, Missouri, Wallace Bajjali Development Partners and Mercy Health Systems for return of the title to the 8.78 + - acres located within the former Mercy Site ("Property") from the Joplin Redevelopment Corporation to Mercy, said Property being legally described in the attached Exhibit A, and authorizing the Interim City Manager to execute the Agreement and other appropriate documents as required therein, by and on behalf of the City of Joplin; and containing an emergency clause.

Mr. Woolston introduced Council Bill No. 2014-169. Motion by Mr. Woolston, Second by Mr. Scearce to adopt Council Bill No. 2014-169. Motion by Dr. Rosenberg to Amend Council Bill No. 2014-169 to exclude the wording 2D of signage, graphics to allow the city to modify the signs that are placed in the area and not have to have approval of Mercy on all signage. Motion died for a lack of a second.

Motion by Mr. Woolston, Second by Mr. Scearce to Adopt Council Bill No. 2014-169. Voting in favor were Council Members: Glaze, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 6. Nays: 1, Rosenberg, Absence: 1, Colbert-Kean, Abstention: 1, Lewis. Ordinance No. 2014-149

The Council Bill was declared Adopted and entitled Ordinance No. 2014-149

AN ORDINANCE approving a Donation Agreement by and between the City of Joplin, Missouri, and Mercy Health Systems of approximately 18 acres of real estate described in Exhibit A subject to certain deed restrictions, and authorizing the Interim City Manager to execute the Donation Agreement and other appropriate documents as required therein, by and on behalf of the City of Joplin; and containing an emergency clause.

Motion by Mr. Scearce, Second by Mr. Glaze that Resolution No. 2014-017 be brought back for discussion at this time. Voting in favor were Council Members: Glaze, Scearce, Seibert, Shaw, Stanley and Woolston. 6. Nays: 1, Rosenberg, Absence: 1, Colbert-Kean, Abstention: 1, Lewis.

Mr. Scearce introduced Resolution No. 2014-017. Motion by Mr. Scearce, Second by Mr. Woolston to Approve Resolution No. 2014-017. Voting in favor were Council Members: Glaze, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 6. Nays: 1, Rosenberg, Absence: 1, Colbert-Kean, Abstention: 1, Lewis.

The Resolution was declared Approved and entitled RESOLUTION NO. 2014-017

A RESOLUTION authorizing the filing of a Second Partial Action Plan with the U.S Department of Housing and Urban Development as required for use of the City of Joplin's Community Development Block Grant Disaster Recovery (CDBG-DR) Program; and authorizing the City Manager to execute said Plan for and on behalf of the City of Joplin. Motion by Mr. Scearce, Second by Mr. Woolston to Approve Resolution No. 2014-017. Voting in favor were Council Members: Glaze, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 6. Nays: 1, Rosenberg, Absence: 1, Colbert-Kean, Abstention: 1, Lewis.

Mr. Woolston introduced Council Bill No. 2014-411. Motion by Mr. Woolston, Second by Mr. Shaw to Adopt Council Bill No. 2014-411. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-150

AN ORDINANCE authorizing the City of Joplin to amend an Agreement with Deloitte Financial Advisory Services LLP (Deloitte FAS) in the amount not to exceed Six Hundred Twelve Thousand ($612,000.00) to compensate for activity delivery services incurred related to the 2011 Community Development Block Grant- Disaster Recovery fund, authorizing the City Manager to execute said Amendment for the City, and containing an emergency clause.

Mr. Woolston introduced Council Bill No. 2014-412. Motion by Mr. Woolston, Second by Mr. Stanley to Adopt Council Bill No. 2014-412. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-151

AN ORDINANCE authorizing the City of Joplin to amend an Agreement with Deloitte Financial Advisory Services LLP (Deloitte FAS) in the amount not to exceed Nine Hundred Seventy-four Thousand Nine Hundred Forty ($974,940.00) to provide for activity delivery tasks associated with the Joplin Homebuyer Assistance Program related to the 2011 Community Development Block Grant- Disaster Recovery fund, authorizing the City Manager to execute said Amendment for the City, and containing an emergency clause.

Mr. Stanley introduced Council Bill No. 2014-618. Motion by Mr. Stanley, Second by Mr. Glaze to Adopt Council Bill No. 2014-618. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-152

AN ORDINANCE approving an Agreement governing cooperation between the Missouri Highways and Transportation Commission and the City of Joplin, Missouri, to install and maintain Wayfinding signs in Jasper and Newton Counties, Missouri, and the City of Joplin, Missouri;

authorizing the City Manager to execute said Agreement or Agreement in substantially similar form for the City; and containing an emergency clause.

Mr. Glaze introduced Council Bill No. 2014-619. Motion by Mr. Glaze, Second by Mr. Stanley to Adopt Council Bill No. 2014-619. Voting in favor were Council Members:, Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-153

AN ORDINANCE authorization to accept a grant from the Missouri Highways and Transportation Commission, (MoDOT Aviation State Block Grant) Airport Improvement Program (AIP) for the Rehabilitation of Hangar Building "A" at the Joplin Regional Airport and containing an emergency clause.

ORDINANCES – FIRST READING

Mr. Stanley introduced Council Bill No. 2014-167. Motion by Mr. Stanley, Second by Mr. Scearce that Council Bill No. 2014-167 be Passed on First Reading and Advance to Second and Third Reading. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

The Council Bill was read as being COUNCIL BILL NO. 2014-167

AN ORDINANCE approving an agreement with James H. Rentfrow and Peggy I. Rentfrow to provide residential development sanitary sewer to property located at 3110 S. Catnip Lane, authorizing the City Manager to execute said agreement for and on behalf of the City.

ORDINANCES – SECOND READING AND THIRD READING

UNFINISHED BUSINESS

NEW BUSINESS

Declare excess surplus property for the annual auction.

Motion by Mr. Woolston, Second by Mr. Scearce to declare the surplus for the city of Joplin be sold. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

Request for Council's support for staff to apply for a 2015 CLG Grant

Motion by Mr. Woolston, Second by Mr. Scearce to approve the CLG Grant for the city. Voting in favor were Council Members: Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 8. Nays: 0. Absence: 1, Colbert-Kean.

Appointments and Reappointments to the Boards and Commissions: Motion by Mr. Woolston, Second by Mr. Scearce to approve the appointments and reappointments to the boards and commissions as follows: Board of Adjustments: John Briggs, Thomas Beisner; Richard Russell;

Alt. Patty Overman, Solid Waste Commission. Reappointments: Capital Improvements and Public Safety Sales Tax Oversight Committee, Chris Churchwell; Traffic Commission, Beverly Oakes.

News from the PIO Officer:
The Joplin Regional Airport Board will host an "Open House" on Wednesday, September 17 from 4 p.m. to 7 p.m. for those interested viewing in the Master Plan study conducted by the Airport. The Open House will be held at the General Aviation Terminal located at 5501 N Dennis Weaver Drive at the Joplin Airport. This will be a "come and go" type event with members of the Airport Board, Airport Staff, and the study planning engineer on hand to discuss or answer question concerning the study. This Master Plan Study was begun in the late fall of 2012.

This Saturday, September 20, 2014 you can drop off your tree limbs at North Schifferdecker Turkey Creek.

September 20, 2014 in Cunningham Park is a workday scheduled from 9-12 in the area of the butterfly garden – mulch day.

Budget Work Sessions next Monday and Tuesday, September 22 and 23. Monday at Memorial Hall, Tuesday here at City Hall on the 5th Floor. Both sessions begin at 5:45 pm.

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 as set forth in Section 610.021(3) RSMo, as amended, 2013. 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. Woolston, Second by Mr. Glaze to go into closed session. Motion carried, 8-0.

There being no further business the meeting adjourned at 6:48 p.m.

Respectfully submitted,
Barbara L Hogelin
Barbara L. Hogelin, MMC/MPCC, City Clerk

City of **JOPLIN** **City Council Agenda Item**

Requested Council Meeting Date: September 15, 2014
Council Bill No. 2014-167

Item: Sanitary Sewer Agreement for James H. Rentfrow and Peggy I. Rentfrow

Originating Department: PUBLIC WORKS – ENGINEERING

Attachments: 1) Location Map
2) Out-of-Town Agreement for Residential Sewer Service
3) Council Bill No. 2014-167

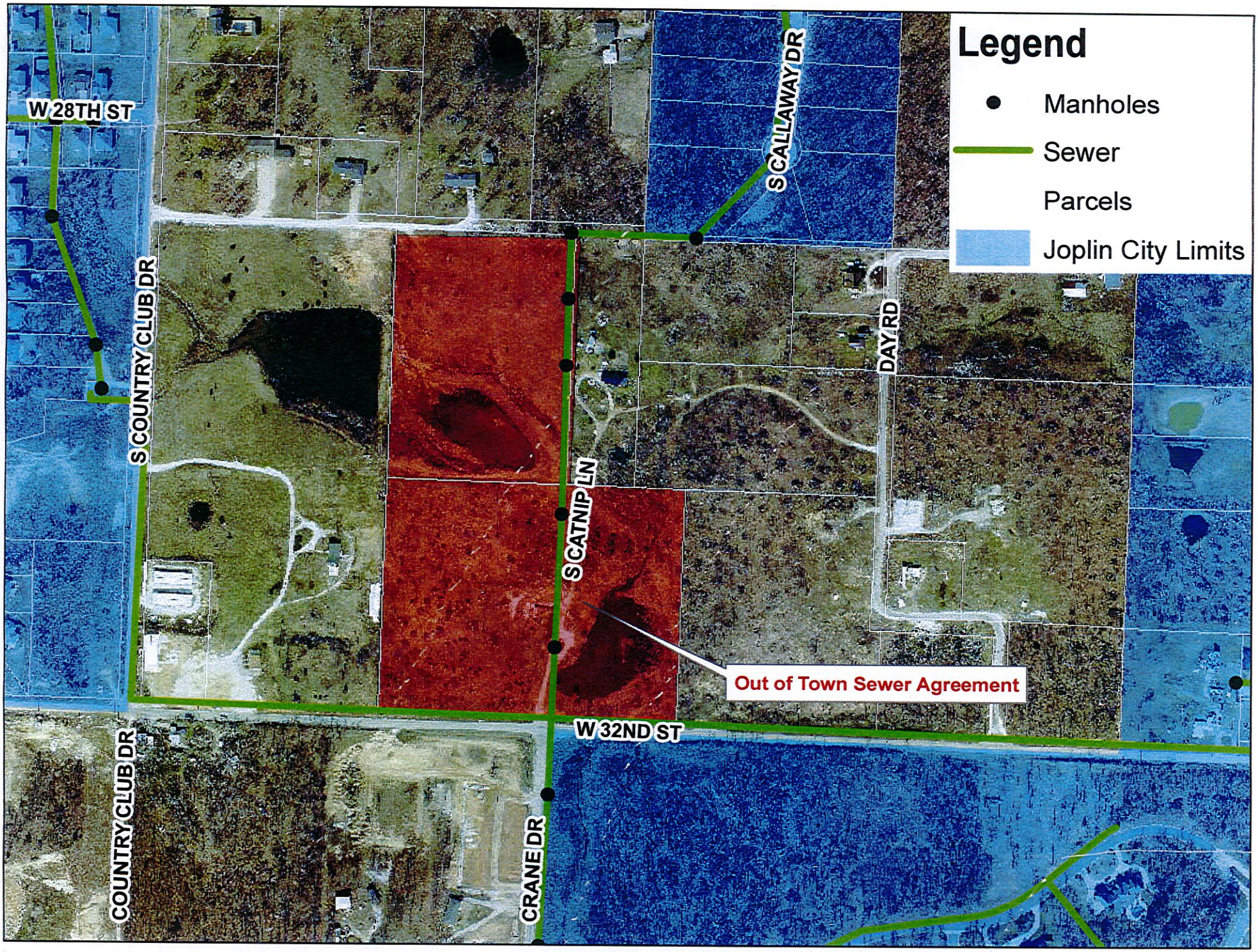
Engineering: Dan Johnson DJH	Date: 9-8-14
Department Head: Nicholas A. Heatherly	Date: 9/8/14
Finance Department: Leslie Haase LH	Date: 9-9-14
City Attorney: Peter C. Edwards PE	Date: 9/9/14
Interim City Manager: Samuel L. Anselm	Date: 9/9/14

Recommended Action: Approval of Agreement with James H. Rentfrow and Peggy I. Rentfrow to provide residential sanitary sewer service.

Background: James H. Rentfrow and Peggy I. Rentfrow own property located immediately outside the present corporate limits of Joplin and desire Joplin to treat the sewage from their property. Prior to the tornado destroying their home, they were connected to a private septic system. Now that they are re-building their home, they desire to have the City of Joplin accept the sewage through connecting to the existing sewer main which runs across their property. The City of Joplin has agreed to accept the sewage in exchange for payment of permit fees, connection fees and fees for the treatment and collection of the sewage.

Discussion: City Staff has created an Out-of-Town Sewer Agreement that will allow the requesting property owner to connect to the City's sewer collection system. The agreement also contains a clause that will allow the City to annex the subject property if and whenever it desires.

Recommendation: City Staff recommends approval of this Agreement with James H. Rentfrow and Peggy I. Rentfrow to provide residential sanitary sewer service.


Legend
Manholes
Sewer
Parcels
Joplin City Limits
W 28TH ST
S COUNTRY CLUB DR
S CALLAWAY DR
DAY RD
S CATNIP LN
Out of Town Sewer Agreement
W 32ND ST
COUNTRY CLUB DR
CRANE DR

AGREEMENT FOR RESIDENTIAL SEWER SERVICE

THIS AGREEMENT, made and entered into this _____ day of _____, 2014 by and between the City of Joplin, Missouri, a Municipal Corporation, hereinafter referred to as "Joplin", the grantor and James H. Rentfrow and Peggy I. Rentfrow hereinafter referred to as "Owners", the grantee 3110 S Catnip Ln, Joplin, MO 64804.(address)

WHEREAS, James H. Rentfrow and Peggy I. Rentfrow owns certain real estate located outside the present corporate limits of Joplin, said real estate herein after called "The Property" being described as Commencing at the Northeast corner of the Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) of the Southwest Quarter (SW ¼) of Section 17, Township 27, Range 33, thence South along the East line of said Southeast Quarter (SE1/4) of the Southwest Quarter (SW1/4) of the Southwest Quarter(SW1/4 a distance of 660 feet, thence East a distance of 132 feet, thence North on a line parallel to the East line of said Southeast Quarter (SE1/4) of the Southwest Quarter(SW1/4) of the Southwest Quarter (SW1/4) a distance of 660 feet, thence West a distance of 132 feet to the point of beginning, except that portion thereof along the South edge occupied by 32nd Street as the same now exists , Joplin, Newton County, Missouri, attached hereto and made a part hereof; and

WHEREAS, James H. Rentfrow and Peggy I. Rentfrow desires Joplin to treat the sewage of and from The Property upon the terms, conditions and considerations hereinafter set forth, the parties do hereby agree as follows:

1. Connection to Joplin Public Sewer Mains, James H. Rentfrow and Peggy I. Rentfrow shall at his/her own expense, cause his/her sewerage collection system on and from The Property to be connected to the Joplin Public Sewer System at such place or places as have been designated by the Joplin Director of Public Works.
2. Owner shall in all respects comply with Joplin City Code, as amended, in making this connection, and during the term of this Agreement.
3. Collection System. Owners shall provide their own sewerage collection system to be constructed by Owners in accordance with the following requirements:
    a. The plans and specifications of the owners collection system shall be approved by all appropriate agencies of Joplin;
    b. Joplin is to be given a drawing of the system as constructed;
    c. During the construction, there shall be inspection and supervision by the City of Joplin Building Department;
    d. The sewerage collection system shall comply in all respects with the Joplin City Code as amended;
4. Permit required: Inspection Fees, Connection Fees. Before any connection may be accomplished, there must first be secured from Joplin a permit for such connection, and said connection shall be inspected by Joplin.

5. Discharge Requirements. Owners must comply with residential sewerage use of the Joplin City Code, as amended.
6. Maintenance of the Owner's Collection System. Owners shall be responsible for all maintenance, repair and replacement of its collection system and shall hold Joplin harmless thereon.
7. Charges for Services. Joplin shall charge Owners for providing the sewerage treatment services as follows.
    a. Rates shall be in accordance with the Rate Table as described in Section 118-202 of the Joplin City Code.

b. Thereafter, the rate of charge shall be adjusted according to Paragraph 7 (c) below;

c. The charge by Joplin to Owner shall be adjusted annually by Joplin to reflect the increase or decrease of the cost to Joplin for which the original rate was computed based on 2004 report of Burns and McDonnell Rate Study or subsequent such reports. Such charge may also include an additional charge which shall represent:

    i. The user's share of deprecation of existing equipment and facilities; (Treatment plants, pumping and collection system lift stations)

    ii. The user's share of new facilities expense;

    iii. The user's share of the cost operation, maintenance, and costs of wastewater treatment;

    iv. The user's share of the purchase of replacement equipment as needed by EPA and MDNR Grant applications;

    v. The user's share for future expansion and growth of Joplin's system; and

    vi. The user's share of a contingency fund for unforeseen expenses, and those expenses actually incurred by Joplin, the operation of Joplin's system, unaccounted for herein.

The cost for service per family dwelling unit shall be established at the beginning of each calendar year. In the event that Joplin's cost study shows an increased cost for treatment of sewage, Joplin shall notify Owners by mailing a copy of said cost study to Owners, and the rate change beginning the following month shall be the cost determined by said cost study plus the additional charge hereinabove described. Not withstanding the provisions herein, at no time during this Agreement shall charges to Owner be less than the charges to residents or businesses in Joplin.

8. Payment Schedule. Owner shall make payments to Joplin within 30 days of billing.

9. Termination. Joplin may terminate this Agreement upon the failure of Owners to comply with the terms of this agreement or any amendments thereto or upon non-payment after sixty (60) days notice by Joplin to Owners.

10. Effective Date. This agreement shall be in full force and effect after passage of an appropriate ordinance by Joplin.

11. Annexation

a. To the extent allowed by law, City may annex Owners property into the City without further action of Owner, after Owners' property becomes contiguous to the corporate limits of the City in accordance with V.A.M.S. Section 71.012 as amended from time to time.

b. Owners irrevocably appoints the Director of Public Works of Joplin, Missouri herein "Director" as its attorney-in-fact for the sole purpose of presenting a verified petition requesting annexation of Owners property to the Council of Joplin, Missouri. The Director may exercise this power of attorney at any time after Owners' property becomes contiguous to the corporate limits of the City.

c. If requested by the Director, Owners shall, within such time as specified by the Director, submit a verified petition requesting annexation of Owners' property to the City Clerk for presentation to the City Council. The Director may request Owners to present an annexation petition at any time after Owners' property becomes contiguous to the corporate limits of the City. The provisions of this paragraph shall be enforceable by specific performance.

d. Owners agree not to take any action to oppose any annexation initiated by the City, which includes Owners' property. Owners agree not to take any action to oppose any annexation initiated by the City or by any property owners.

Indemnification. Owners shall indemnify and save Joplin Harmless from any and all claims, damages, suits, losses, judgments, costs, fines or expenses on account of injuries to or death of any and all persons whomsoever, and any or all loss or destruction or damage to property whomsoever belong, and from any regulatory agency's actions concerning the discharge effluent of Owners arising in any way out the construction, operation and maintenance of system.

12. Binding Effect. The benefits and burdens of this agreement are intended to attach and run with the land and shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, heirs and assigns. All persons claiming under the parties shall conform to and observe the provisions of this agreement. The parties hereto shall cause a memorandum of this agreement to be filed in the office of the County Recorder of the County in which the property lies.

IN WITNESS THEREOF, this Agreement is executed this _____ day of _____ , 20____.

CITY OF JOPLIN

_____

BY: Samuel L. Anselm
Interim City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

City Attorney

James H. Rentfrow

Peggy I. Rentfrow

STATE OF MISSOURI)
)ss
COUNTY OF JASPER

ACKNOWLEDGEMENTS BY INDIVIDUALS

On this _____ day of _____, 20_____, before me personally appeared James H. Rentfrow and Peggy I. Rentfrow in and who executed the foregoing instrument, who being by me duly sworn, acknowledged that they executed the same and their free act and deed and for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the county and State aforesaid, the day and year above written.

My term expires _____, 20_____.

_____
Notary Public

COUNCIL BILL NO. 2014-167 ORDINANCE NO.

AN ORDINANCE approving an agreement with James H. Rentfrow and Peggy I. Rentfrow to provide residential development sanitary sewer to property located at 3110 S. Catnip Lane, authorizing the City Manager to execute said agreement for and on behalf of the City.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That agreement with with James H. Rentfrow and Peggy I. Rentfrow to provide residential development sanitary sewer to property located at 3110 S Catnip Lane is hereby approved.

Section 2. That the City Manager is by authorized and directed to execute for and on behalf of the City the agreement described in Section 1 of this ordinance.

Passed by the Council of the City of Joplin, Missouri, this _____ day of _____, 2014, by a _____ vote.

ATTEST:

_____
Michael L. Siebert, Mayor

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

AGREEMENT FOR RESIDENTIAL SEWER SERVICE

THIS AGREEMENT, made and entered into this _____ day of _____, 2014 by and between the City of Joplin, Missouri, a Municipal Corporation, hereinafter referred to as "Joplin", the grantor and James H. Rentfrow and Peggy I. Rentfrow hereinafter referred to as "Owners", the grantee 3110 S Catnip Ln, Joplin, MO 64804.(address)

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WHEREAS, James H. Rentfrow and Peggy I. Rentfrow desires Joplin to treat the sewage of and from The Property upon the terms, conditions and considerations hereinafter set forth, the parties do hereby agree as follows:

1. Connection to Joplin Public Sewer Mains, James H. Rentfrow and Peggy I. Rentfrow shall at his/her own expense, cause his/her sewerage collection system on and from The Property to be connected to the Joplin Public Sewer System at such place or places as have been designated by the Joplin Director of Public Works.
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   i. The user's share of deprecation of existing equipment and facilities; (Treatment plants, pumping and collection system lift stations)

   ii. The user's share of new facilities expense;

   iii. The user's share of the cost operation, maintenance, and costs of wastewater treatment;

   iv. The user's share of the purchase of replacement equipment as needed by EPA and MDNR Grant applications;

   v. The user's share for future expansion and growth of Joplin's system; and

   vi. The user's share of a contingency fund for unforeseen expenses, and those expenses actually incurred by Joplin, the operation of Joplin's system, unaccounted for herein.

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12. Binding Effect. The benefits and burdens of this agreement are intended to attach and run with the land and shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, heirs and assigns. All persons claiming under the parties shall conform to and observe the provisions of this agreement. The parties hereto shall cause a memorandum of this agreement to be filed in the office of the County Recorder of the County in which the property lies.

IN WITNESS THEREOF, this Agreement is executed this _____ day of _____, 20____.

CITY OF JOPLIN

_____

BY: Samuel L. Anselm
Interim City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

City Attorney

James H. Rentfrow

Peggy I. Rentfrow

STATE OF MISSOURI)
)ss
COUNTY OF JASPER

ACKNOWLEDGEMENTS BY INDIVIDUALS

On this 10th day of September, 2014, before me personally appeared James H. Rentfrow and Peggy I. Rentfrow in and who executed the foregoing instrument, who being by me duly sworn, acknowledged that they executed the same and their free act and deed and for the consideration stated therein and no other.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the county and State aforesaid, the day and year above written.

My term expires Oct. 08, 2016.

LUCAS WOODRUFF
Notary Public - Notary Seal
STATE OF MISSOURI
JASPER County
My Commission Expires: Oct. 08, 2016
Commission # 12462396

Notary Public

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014

Item: COUNCIL BILL NO. 2014-272
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

Attachments: 1) Planning Report
2) Commission Minutes
3) Copy of Council Bill
4) Copy of Amended Final Plat

Public Works Director: Nicholas A. Heatherly NAH Date: 9/15/14
City Attorney: Peter C. Edwards PE Date: 9/18/14
Interim City Manager: Samuel L. Anselm SLA Date: 9/18/2014
Board or Commission: Planning and Zoning Commission MDW Date: 9/8/2014

Recommended Action: Planning and Zoning Commission recommended approval by a vote of "5 in favor, 2 absent"

SUMMARY/REQUEST:
Case 035-14: Southeast corner of 32nd Street and Hearnes Boulevard – A request for the review of an amended Final Plat for "CVS First Addition to the City of Joplin" – Missouri CVS Pharmacy, LLC.

STAFF SUMMARY:
The original final plat was approved in October, 2013 with the purpose of consolidating existing lots in the Freeman Grove 6th Addition and Collins Subdivision. The applicant had vacated street and utility easements for Old Main Street prior to platting this property. The applicant requested to make a few minor changes to the original final plat, including changes to the owner's dedication statement, the removal of a private utility easement that is not needed on a public plat, and updates to formatting to make the plat more acceptable for final recording.

Staff recommends approval of Case 035-14.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Matt Pitts requested the review of the amended final plat for "CVS First Addition to the City of Joplin." The final plat was previously approved, with CVS needing to make some changes regarding some wording issues and the replacement of the existing utility easements with a private easement just to those specific utilities to clean up the site a little bit. Private easements with the private utilities allow CVS and the utility companies to work more together regarding what can or cannot be done.

Mr. Duncan asked where the easement was changed, and Mr. Pitts replied through the center of the site. A 10-foot easement ran down Old Main Street for the AT&T duct line that is currently located there. Instead of having a public easement where anybody could put in anything, it would remain an easement strictly for AT&T so they can keep their equipment there and maintain it. That easement will also contain Empire District Electric's underground service line to CVS itself.

Mr. Ramsour asked when CVS Pharmacy is opening for business, and Mr. Pitts replied in a couple of weeks.

PUBLIC COMMENT:
None.

RECEIVED 9-3-14

Submit by Email | Print Form

CITY OF JOPLIN, MISSOURI

FINAL PLAT CHECKLIST

CASE ~~Subdivision~~ No.: 035-14
Date Filed: 9-3-14
Date of Meeting: 9-8-14
Fee: No Fee for Final Plat

Return Form To:
Municipal Planner
321 East 4th Street
P.O. Box 1355
Joplin, Missouri 64802
417-624-0820 Ext. 511
FAX 417-625-4738

I. Name of Subdivision: CVS First Addition to the City of Joplin

II. Name of Owner: Missouri CVS Pharmacy L.L.C., a Missouri limited liability company

III. Name of Subdivider: Missouri CVS Pharmacy L.L.C., a Missouri limited liability company

IV. Name of Person who prepared the Plat: Earl T Beckwith, PLS 2013-000039

V. Date of Hearing: Planning Commission 09/08

VI. Location of Property by Streets: Southeast Corner of 32nd St. & Main Joplin, MO

VII. Present Zoning of Property C-3

VIII. Present Uses of Property CVS Pharmacy

IX. No. of Acres in Total Tract 1.95 No. of Lots 1

Instructions:

The following checklist is to be completed by the Municipal Planner 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 may accompany this checklist.

X. Does the Final Plat show the following information?	Yes	No
A. Name of the subdivision.	☑	☐
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.	☑	☐

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. ☑ ☐

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. ☑ ☐

E. Lots numbered clearly. Blocks numbered or lettered clearly in the center of the block. ☑ ☐

F. Exact locations, widths and names of all streets and alleys to be dedicated. ☑ ☐

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. ☑ ☐

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. ☑ ☐

I. Building setback lines on the front and side streets with dimensions. ☑ ☐

J. Name and address of the registered land surveyor preparing the plat. ☑ ☐

K. Scale of plat, 1" = 100' or larger, date or preparation and north point. ☑ ☐

L. Statement dedicating all easements, streets, alleys, and all other areas not previously dedicated. ☑ ☐

XI. Was the original on mylar, tracing cloth, or similar material, and were 10 copies submitted? ☑ ☐

XII. Have all acknowledgments been signed?

A. Owner or owners and all mortgager.	☑	☐
B. Dedications or reservations.	☑	☐
C. Surveyor preparing plat.	☑	☐

XII. Has certification been submitted stating that all taxes and special assessments due and payable have been paid? ☐ ☐ N/A

XIII. Deed Restrictions:

A. Are any deed restrictions planned for subdivision?	☐	☑
B. If so, has a copy been submitted?	☐	☐ N/A

XIV. How has installation of the following improvement been guaranteed?

	Construction	Bond	Petition(%)
Streets			
Water			
Sewer			
Sidewalks			
Other, as required			
1.			
2.			
3.			

N/A

XV. Are additional comments attached? ☐ ☑

Z&P Meeting: September 8, 2014
City Council Meeting: October 6, 2014

STAFF PLANNING REPORT
Final Plat

CASE 035-14:

Final Plat review for "CVS First Addition to the City of Joplin."

NAME OF SUBDIVISION: CVS First Addition to the City of Joplin

LOCATION: Southeast corner of 32nd & Hearnes Blvd.

APPLICANT: Missouri CVS Pharmacy L.L.C.

PRESENT ZONING: C-3 PD (Commercial – Planned Development)

PRESENT LAND USE: Commercial/Retail

SITE CONTEXT:

	North	East	South	West
Existing Zoning	C-3	C-3	C-3, C-O	C-3
Land Use	Post Office	Commercial	Commercial, Single-Family	Commercial

SUBDIVISION:

Number of lots	Smallest lot	Largest lot	Average lot size
1	N/A	N/A	1.95 acres

TRANSPORTATION:

Streets with access	Classification	Right-of-way width
E. 32nd Street	Major Arterial	85'
S. Hearnes Blvd.	Major Arterial	80'
Old Main Street	Local	60'

DEDICATED STREET(S):

Dedicated street(s)	Width of street(s)
None	N/A

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

No.

UTILITIES: The property has utility connections.

FLOOD PLAIN: Zone X – Area of minimal flooding.

STAFF ANALYSIS:

DOES THE PROPOSED SUBDIVISION COMPLY WITH THE CITY'S SUBDIVISION REGULATIONS?

Yes.

DISCUSSION

The original final plat was approved in October 2013 with the purpose of consolidating existing lots in the Freeman Grove 6th Addition and Collins Subdivision. The applicant had vacated street and utility easements for Old Main Street prior to platting this property. The applicant requested to make a few minor changes to the original final plat, including changes to the owner's dedication statement, the removal of a private utility easement that is not needed on a public plat, and updates to formatting to make the plat more acceptable for final recording.

Staff recommends approval of Case 035-14.

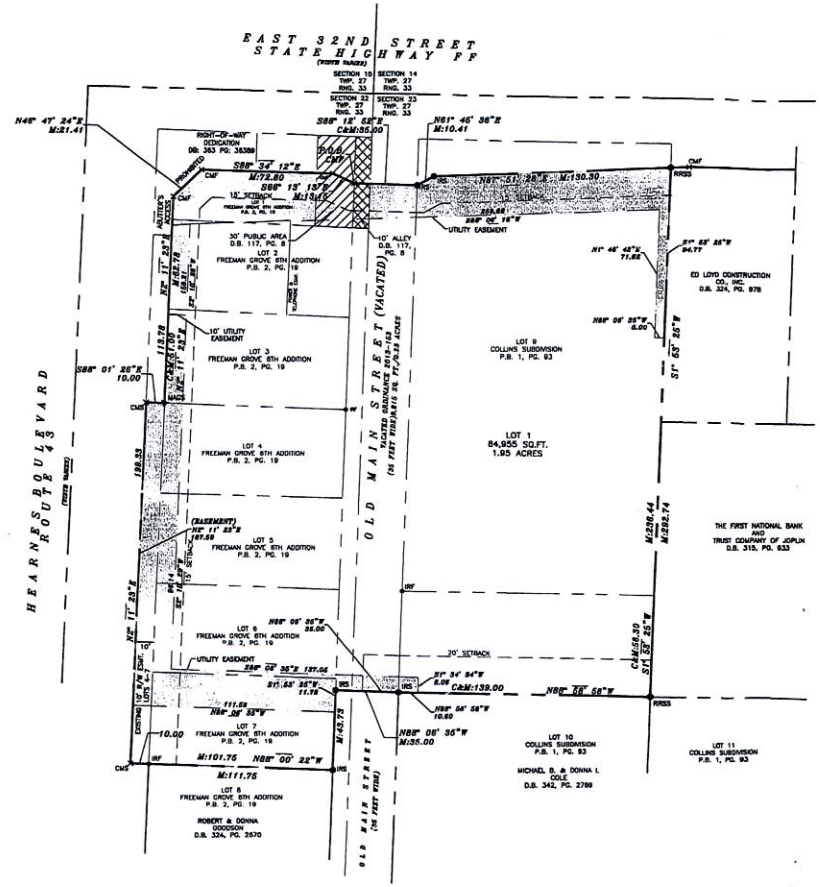
ENCLOSURES:

Amended Final Plat

FINAL PLAT OF THE CVS FIRST ADDITION TO THE CITY OF JOPLIN







SURVEYOR'S NOTES:

A. PROPERTY ZONED C-3 PD, THE FOLLOWING PROVISION OF THE ZONING ORDINANCE APPLY TO THIS PROPERTY

1. FRONT YARD SETBACK: *15 FEET*
   REAR YARD SETBACK: *NONE UNLESS ABUTTING R-1 TO O-3 INCLUSIVE, THEN 60' MIN. IN O-3; 10' SIDE YARD SETBACK: NONE UNLESS ABUTTING R-1 TO O-3 INCLUSIVE, THEN SAME AS ABUTTING ZONING ("0' FOR ONE STORY BUILDINGS AND 10' FOR TWO STORY BUILDINGS IN C-O); 15' MIN. SHALL BE PROVIDED ON THE STREET SIDE OF A CORNER LOT (C-3).*
2. MAXIMUM HEIGHT: *2 STORIES OR 45 FEET (C-3).*
   MINIMUM BUILDING COVERAGE: *NONE.*
   MAXIMUM IMPERVIOUS COVERAGE: *NONE.*
3. MINIMUM LOT SIZE: *10,000 SQ. FT.*
   MINIMUM FRONTAGE: *TO BE DETERMINED PRIOR TO FINAL PLAT APPROVAL.*
4. ON SITE PARKING REQUIREMENTS: *FOR RETAIL STORES AND SHOPS 1 SPACE PER 200 SQ. FT. OF FLOOR AREA.*
5. OTHER (AS NEEDED TO OBTAIN 3.A ENDORSEMENT FROM TITLE COMPANY FOR IMPROVEMENTS TO BE BUILT

B. THE PROPERTY SHOWN ON THE SURVEY HAS ACCESS TO AND FROM A DEDICATED PUBLIC ROAD CONTIGUOUS TO THE PROPERTY, WHICH ACCESS BETWEEN THE PROPERTY AND SAID ROADWAY AS SHOWN UPON SAID SURVEY EXISTS WITHOUT RESTRICTION AND IS SUFFICIENT TO MEET REASONABLE NEEDS OF THE CURRENT OR PROPOSED USE, AS THE CASE MAY BE, OF THE PROPERTY AND ALL APPLICABLE REQUIREMENTS OF PUBLIC AUTHORITIES.

C. WATER SUPPLY, SANITARY WATER, SANITARY SEWER, STORM DRAINAGE, ELECTRICITY, GAS AND OTHER UTILITIES ARE AVAILABLE IN ADEQUATE QUANTITIES AT THE LOT LINES OF THE PROPERTY AT THE LOCATIONS INDICATED ON THE FOREGOING SURVEY, AND THE BUILDING IMPROVEMENTS ARE CONNECTED AND TIED INTO THE SAME.

DESCRIPTION

SITUATED IN THE NE ¼ OF THE NE ¼ OF SECTION 22 AND THE NW ¼ OF THE NW ¼ OF SECTION 23 IN TOWNSHIP 27 N, RANGE 33 W IN THE CITY OF JOPLIN, COUNTY OF NEWTON AND STATE OF MISSOURI AND IS KNOWN AS BEING A PART OF LOT 9 AND A PORTION OF A 25 FOOT WIDE RIGHT-OF-WAY FOR SOUTH MAIN STREET IN COLLINS-SUBDIVISION AS SHOWN BY PLAT RECORDED IN PLAT BOOK 1, PAGE 93 IN THE NEWTON COUNTY RECORDER'S OFFICE, FURTHER KNOWN AS BEING A PART OF LOTS 1* AND 2 THROUGH 7 AND A PORTION OF A 10 FOOT WIDE RIGHT-OF-WAY FOR SOUTH MAIN STREET IN FREEMAN'S GROVE, SIXTH ADDITION AS SHOWN BY PLAT RECORDED IN PLAT BOOK 2, PAGE 19 IN THE NEWTON COUNTY RECORDER'S OFFICE, (*SAID PLAT ALSO SHOWS MISCELLANEOUS TRACT 1, WHICH APPEARS AS LOT 1 BUT IS NOT INCLUDED AS A PART OF THE DESCRIPTION OF FREEMAN'S GROVE, SIXTH ADDITION) AND IS FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A CHISELED "X" FOUND AT A NORTHEASTERLY CORNER OF LAND CONVEYED TO DARLIS L. AND DOROTHY M. BELL BY DEED RECORDED IN DEED BOOK 333, PAGE 2041 IN THE NEWTON COUNTY RECORDER'S OFFICE, SAID CORNER LYING AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY OF EAST 32ND STREET (WIDTH VARIES) AND WITH THE WESTERLY RIGHT-OF-WAY OF OLD MAIN STREET (35 FEET WIDE), SAID CORNER LYING 8.07 FEET WEST AND 50.00 FEET SOUTH OF THE CORNER COMMON TO SECTIONS 14, 15, 22 AND 23 IN SAID TOWNSHIP AND RANGE;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY ALSO BEING THE NORTHERLY TERMINUS OF OLD MAIN STREET SOUTH 89°15'58" EAST A DISTANCE OF 35.00 FEET TO A CAPPED ⅝" IRON REBAR SET; THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY NORTH 81°45'35" EAST A DISTANCE OF 10.41 FEET TO A CAPPED ⅝" IRON REBAR SET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 87°51'28" EAST A DISTANCE OF 130.30 FEET TO A RAILROAD SPIKE SET IN THE WESTERLY LINE OF LOT 8 IN SAID COLLINS SUBDIVISION; THENCE ALONG SAID WESTERLY LINE SOUTH 01°53'25" WEST A DISTANCE OF 282.74 FEET TO A RAIL ROAD SPIKE SET AT THE NORTHEASTERLY CORNER OF LOT 10 IN SAID COLLINS SUBDIVISION; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 10 NORTH 88°08'26" WEST A DISTANCE OF 138.00 FEET TO A CAPPED 5/8" IRON REBAR SET IN THE EASTERLY RIGHT-OF-WAY OF SAID OLD MAIN STREET; THENCE NORTH 88°08'35" WEST A DISTANCE OF 35.00 FEET TO A CAPPED 5/8" IRON REBAR SET IN THE EASTERLY LINE OF SAID LOT 7 IN FREEMAN'S GROVE SIXTH ADDITION; THENCE ALONG SAID EASTERLY LINE SOUTH 01°53'25" WEST A DISTANCE OF 43.73 FEET TO THE NORTHEASTERLY CORNER OF LOT 6 IN SAID FREEMAN'S GROVE SIXTH ADDITION; THENCE NORTH 88°00'22" WEST A DISTANCE OF 111.75 FEET TO THE OLD EASTERLY RIGHT-OF-WAY OF HEARNES BOULEVARD (WIDTH VARIES); THENCE ALONG SAID EASTERLY RIGHT-OF-WAY NORTH 02°11'23" EAST A DISTANCE OF 198.33 FEET TO A CAPPED 5/8" IRON REBAR SET; THENCE SOUTH 88°01'26" EAST A DISTANCE OF 10.00 FEET TO THE NEW EASTERLY RIGHT-OF-WAY OF SAID HEARNES BOULEVARD; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 02°11'23" EAST A DISTANCE OF 113.78 FEET TO A CHISEL MARK FOUND; THENCE NORTH 46°47'24" EAST A DISTANCE OF 21.41 FEET TO A CHISEL MARK FOUND IN SAID SOUTHERLY RIGHT-OF-WAY OF 32ND STREET; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY SOUTH 89°34'12" EAST A DISTANCE OF 72.80 FEET TO A CHISEL MARK FOUND; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY SOUTH 89°13'15" EAST A DISTANCE OF 13.10 FEET TO THE PLACE OF BEGINNING CONTAINING 84,955 SQ. FT. OR 1.95 ACRES OF LAND.

FLOOD INFORMATION

THE SUBJECT PROPERTY IS LOCATED IN SPECIAL FLOOD HAZARD AREA ZONE "X" (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS PER FLOOD LINES ESTABLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY AS SHOWN ON FLOOD INSURANCE RATE MAP NUMBER 29097C0267E, DATED: NOVEMBER 2, 2012

OWNER'S DEDICATION

MISSOURI CVS PHARMACY, L.L.C. A MISSOURI LIMITED LIABILITY COMPANY, THE SOLE OWNER OF THE TRACT OF REAL ESTATE SHOWN ON THIS PLAT, HAVE CAUSED SAID REAL ESTATE TO BE CONSOLIDATED, SAID TRACT SHALL BE HEREIN AFTER KNOWN AS THE CVS FIRST ADDITION TO THE CITY OF JOPLIN, NEWTON COUNTY, MISSOURI, SAID ADDITION BEING A PART OF THE NORTHEAST QUARTER OF SECTION 22, AND THE NORTHWEST QUARTER OF SECTION 23, TOWNSHIP 27 NORTH, RANGE 33 WEST OF THE 5TH P.M., NEWTON COUNTY, MISSOURI AND CONSISTING OF 1 LOT.

THE OWNER HEREBY GRANTS AND DEDICATES, FOR THE BENEFIT OF PUBLIC OR PRIVATE UTILITY SERVICE PROVIDERS WHO PROVIDE PUBLIC UTILITY SERVICES TO THE TRACT SHOWN HEREON AND TO THE GENERAL PUBLIC IN THE SERVICE AREA SURROUNDING SAID TRACT, INCLUDING, BUT NOT LIMITED TO, THE EMPIRE DISTRICT ELECTRIC COMPANY, AT&T, CABLE ONE, MISSOURI GAS ENERGY, MISSOURI-AMERICAN WATER COMPANY, THE CITY OF JOPLIN, AND EACH OF THEIR SUCCESSORS (COLLECTIVELY, "GRANTEES"), A NON-EXCLUSIVE PUBLIC UTILITY EASEMENT IN THOSE AREAS SHOWN AND DESIGNATED AS "UTILITY EASEMENT" ON THIS PLAT ("THE "EASEMENT AREAS") FOR THE INSTALLATION, CONSTRUCTION, REPAIR, REPLACEMENTS, INSPECTION, OPERATION, AND MAINTENANCE OF PUBLIC UTILITY LINES AND RELATED STRUCTURES, EQUIPMENT, AND APPURTENANCES ("FACILITIES"). THE GRANTEES SHALL EXERCISE ANY RIGHTS GRANTED HEREIN WITH BEST EFFORTS TO AVOID OR MINIMIZE ANY INTERFERENCE WITH THE OPERATION AND USE OF THE OWNER'S LAND AND OF ANY BUILDINGS AND IMPROVEMENTS THEREON. UPON COMPLETION OF ANY WORK, GRANTEES SHALL RESTORE ANY PAVED SURFACES OR OTHER IMPROVEMENTS ON THE SURFACE OF THE EASEMENT AREA, REPAIR ANY DAMAGE TO THE PROPERTY, AND OTHERWISE RETURN THE PROPERTY, TO SUBSTANTIALLY THE SAME CONDITION AS EXISTED PRIOR TO SUCH WORK.

BY: _____ DATE: _____
CHERYL A. GREEN, ESQ., ASSISTANT SECRETARY

CVS LEGAL APPROVAL
THOMAS BHATTULL, ESQ.
KINCKLEY, ALLEN & SNYDER LLP

ACKNOWLEDGMENT OF NOTARY:
STATE OF RHODE ISLAND)
COUNTY OF PROVIDENCE)

I, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR SAID COUNTY IN SAID STATE, HEREBY CERTIFY THAT CHERYL A. GREEN, ESQ. WHOSE NAME IS SIGNED TO THE FOREGOING INSTRUMENT AS ASSISTANT SECRETARY OF MISSOURI CVS PHARMACY, L.L.C. A MISSOURI LIMITED LIABILITY COMPANY, AND WHO IS KNOWN TO ME, ACKNOWLEDGED BEFORE ME ON THIS DAY THAT, BEING INFORMED OF THE CONTENTS OF SAID INSTRUMENT, SHE EXECUTED THE SAME VOLUNTARILY ON BEHALF OF MISSOURI CVS PHARMACY, L.L.C. A MISSOURI LIMITED LIABILITY COMPANY ON THE DAY THE SAME BEARS DATE.

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS THE _____ DAY OF _____, 2014.

NOTARY PUBLIC

AFFIX SEAL

MY COMMISSION EXPIRES: _____

CERTIFICATE OF APPROVAL

THIS PLAT OF THE CVS FIRST ADDITION TO THE CITY OF JOPLIN HAS BEEN SUBMITTED TO AND APPROVED BY THE JOPLIN PLANNING AND ZONING COMMISSION THIS ____ DAY OF _____, 20____.

CHAIRMAN

THIS PLAT OF THE CVS FIRST ADDITION TO THE CITY OF JOPLIN, INCLUDING EASEMENTS ACCEPTED BY THIS 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.

CITY CLERK | CITY ENGINEER | MAYOR

NOTE
APPROVAL OF THIS PLAT DOES NOT OBLIGATE THE CITY FOR ANY CONSTRUCTION OR MAINTENANCE COST FOR THE STREETS OR ANY EXPENSE CONNECTED WITH THE DEVELOPMENT OF THE SUBDIVISION.

STATE OF MISSOURI
COUNTY OF NEWTON
I, _____, RECORDER OF DEEDS OF SAID COUNTY, DO HEREBY CERTIFY THAT THE WITHIN INSTRUMENT OF WRITING WAS, ON THE _____ DAY OF _____, 20____, AT _____ O'CLOCK AND _____ MINUTES _____.M., DULY FILED FOR RECORD IN THIS OFFICE, AND IS RECORDED IN THE RECORDS OF THIS OFFICE IN PLAT BOOK _____ AT PAGE _____.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND AFFIXED BY SEAL AT _____, MISSOURI, ON THE DAY AND YEAR AFORESAID

_____, RECORDER
BY _____, DEPUTY

SURVEYOR'S CERTIFICATE

I, EARL T. BECKWITH, A REGISTERED LAND SURVEYOR LICENSED IN THE STATE OF MISSOURI, DO HEREBY CERTIFY THAT THE ANNEXED PLAT IS REPRESENTATIVE OF THE WORK DONE IN THE FIELD FOR PLATTING AND STAKING.

IN WITNESS WHEREOF I HAVE SET MY HAND AND SEAL THIS 21 DAY OF August 20 14

Earl T Beckwith

EARL T BECKWITH, PLS 2013-000038

ACCURACY STANDARD: TYPE URBAN

THIS SURVEY HAS BEEN PERFORMED BASED ON KNOWLEDGE AND INFORMATION IN ACCORDANCE WITH COMMONLY ACCEPTED PROCEDURES CONSISTENT WITH THE CURRENT MISSOURI MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS, AND IS NOT A GUARANTEE OR WARRANTY EITHER EXPRESSED OR IMPLIED. DECLARATION IS MADE TO ORIGINAL PURCHASER OF THE SURVEY. IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS AND MAY NOT BE USED IN CONNECTION WITH A "SURVEY AFFIDAVIT" OR SIMILAR DOCUMENT, STATEMENT OR MECHANISM TO OBTAIN TITLE INSURANCE FOR ANY SUBSEQUENT OR FUTURE GRANTEES.

SYMBOLS LEGEND
- CMS — CHISEL MARK SET
- IRF — IRON REBAR FOUND
- IRS — 5/8" CAPPED IRON REBAR SET
- RRSF — RAIL ROAD SPIKE FOUND
- MAGS — MAG NAIL SET
- UTILITY EASEMENT

LINE LEGEND
- PROPERTY LINE
- SETBACK LINE
- EASEMENT LINE

DEVELOPER AND OWNER
CVS 10180 MO, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY
ONE CVS DRIVE WOONSOCKET, RI 02895

ENGINEER/ SURVEYOR
CARLSON CONSULTING ENGINEERS, INC.
7068 LEDGESTONE CONNORS
BARTLETT, TENNESSEE, 38133
JOSEPH PARSLEY – P.E.
EARL T. BECKWITH – R.L.S.

ZONING INFORMATION
C-3 PD
SITE TO BE USED AS RETAIL PHARMACY

CORNER MONUMENTS
AT ALL UNMARKED PROPERTY CORNERS 5/8" IRON REBAR WITH STAMPED ALUMINUM CAP/CHISELLED "X"/RAILROAD SPIKE

SOURCE DOCUMENTS
PLAT BOOK 2, PAGE 19
PLAT BOOK 1, PAGE 93
DEED BOOK 323, PAGE 2041

BASIS OF BEARING
MISSOURI STATE PLANE COORDINATE SYSTEM OF 1983
WEST ZONE

REVISIONS		
NO.	DATE	DESCRIPTION

EARL T BECKWITH- LAND SURVEYOR
MO. #2013000038

SCALE: 1" = 30'
DATE: 8/29/2014

DRAWING FILE: JOPLIN
DRAWN BY: ETB/JSL

JOB No.: CVS-JOPLIN
SHEET 1 OF 1

FINAL PLAT OF THE CVS FIRST ADDITION TO THE CITY OF JOPLIN

IN SECTIONS 22 & 23, TWP. 27, RNG. 33, NEWTON COUNTY, MISSOURI

CARLSON CONSULTING ENGINEERS, INC.
CARLSON CONSULTING ENGINEERS, INC.
MO. STATE CERTIFICATE OF AUTHORITY #LS-2013000968
7068 LEDGESTONE CONNORS
BARTLETT, TENNESSEE 38133
PH. (901) 384-0404 • FX. (901) 384-0710



0 60 120 240 360 480 Feet

Case 035-14: A request for a Final Plat review for "CVS First Addition to the City of Jo[illegible]" located at the southeast corner of 32nd & Hearnes Blvd. - Missouri CVS Pharmacy, LLC

N

Case 035-14: Southeast corner of 32nd Street and Hearnes Boulevard – A request for the review of an amended Final Plat for "CVS First Addition to the City of Joplin" – Missouri CVS Pharmacy, LLC.

Mr. Eastman opened the public comment period for Case 035-14.

Mr. Matt Pitts, 578 South Rembert Street, Memphis, Tennessee, appeared to request the review of the amended final plat for "CVS First Addition to the City of Joplin." The final plat was previously approved, with CVS needing to make some changes regarding some wording issues and the replacement of the existing utility easements with a private easement just to those specific utilities to clean up the site a little bit. Private easements with the private utilities allow CVS and the utility companies to work more together regarding what can or cannot be done.

Mr. Duncan asked where the easement was changed, and Mr. Pitts replied through the center of the site. A 10-foot easement ran down Old Main Street for the AT&T duct line that is currently located there. Instead of having a public easement where anybody could put in anything, it would remain an easement strictly for AT&T so they can keep their equipment there and maintain it. That easement will also contain Empire District Electric's underground service line to CVS itself.

Mr. Ramsour asked when CVS Pharmacy is opening for business, and Mr. Pitts replied in a couple of weeks.

Mr. Eastman did not see anyone else in the audience and assumed there was no opposition to this request. He closed the public comment period for Case 035-14.

MR. SMITH MOVED, SECONDED BY MR. CORTEZ, THAT THE AMENDED FINAL PLAT AS PRESENTED IN CASE 035-14 BE FORWARDED TO THE CITY COUNCIL WITH RECOMMENDATION FOR APPROVAL, BASED UPON THE COMMENTS RECEIVED IN THE PLANNING REPORT AND DURING THE PUBLIC COMMENT PERIOD. THE MOTION CARRIED, WITH MR. CORTEZ, MR. DUNCAN, MR. EASTMAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE"; AND WITH MR. BROWN AND MR. DERMOTT BEING ABSENT (5 IN FAVOR, 2 ABSENT).

P & Z Case 035-14
Missouri CVS Pharmacy, LLC
(P & Z Recommended Approval)

COUNCIL BILL NO. 2014-272 **ORDINANCE NO.**

AN ORDINANCE Request to Review the Amended Final Plat for CVS FIRST ADDITION TO THE CITY OF JOPLIN located at the southeast corner of 32nd Street and Hearnes Boulevard in the City of Joplin, Newton County, Missouri.

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

Section 1. That the grades in the Amended Final Plat for CVS FIRST ADDITION TO THE CITY OF JOPLIN in the City of Joplin, Newton County, Missouri, be and the same are herby fixed and established as follows:

Using the bench mark located at the Northeast Corner of Second and Main Streets, in the City of Joplin, Missouri, as adopted as the standard form which grades and elevations are to be measured in said City of Joplin, and by Ordinance No. 77-67 which readopted Section 49.33 of the 1957 CODE OF JOPLIN, MISSOURI, as a datum, and assuming the elevation of said point to be represented by the figure "100", the grades and elevations of the streets and alleys in the Amended Plat of CVS FIRST ADDITION TO THE CITY OF JOPLIN, described as follows:

SITUATED IN THE NE 1/4 OF THE NE 1/4 OF SECTION 22 AND THE NW 1/4 OF THE NW 1/4 OF SECTION 23 IN TOWNSHIP 27 N, RANGE 33 W IN THE CITY OF JOPLIN, COUNTY OF NEWTON AND STATE OF MISSOURI AND IS KNOWN AS BEING A PART OF LOT 9 AND A PORTION OF A 25 FOOT WIDE RIGHT-OF-WAY FOR SOUTH MAIN STREET IN COLLINS-SUBDIVISION AS SHOWN BY PLAT RECORDED IN PLAT BOOK 1, PAGE 93 IN THE NEWTON COUNTY RECORDER'S OFFICE, FURTHER KNOWN AS BEING A PART OF LOTS 1* AND 2 THROUGH 7 AND A PORTION OF A 10 FOOT WIDE RIGHT-OF-WAY FOR SOUTH MAIN STREET IN FREEMAN'S GROVE, SIXTH ADDITION AS SHOWN BY PLAT RECORDED IN PLAT BOOK 2, PAGE 19 IN THE NEWTON COUNTY RECORDER'S OFFICE, (*SAID PLAT ALSO SHOWS MISCELLANEOUS TRACT 1, WHICH APPEARS AS LOT 1 BUT IS NOT INCLUDED AS A PART OF THE DESCRIPTION OF FREEMAN'S GROVE, SIXTH ADDITION) AND IS FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A CHISELED "X" FOUND AT A NORTHEASTERLY CORNER OF LAND CONVEYED TO DARIUS L. AND DOROTHY H. BELL BY DEED RECORDED IN DEED BOOK 323, PAGE 2041 IN THE NEWTON COUNTY RECORDER'S OFFICE, SAID CORNER LYING AT THE INTERSECTION OF THE SOUTHERLY RIGHT-OF-WAY OF EAST 32ND STREET (WIDTH VARIES) AND WITH THE WESTERLY RIGHT-OF-WAY OF OLD MAIN STREET (35 FEET WIDE), SAID CORNER LYING 9.07 FEET WEST AND 50.00 FEET SOUTH OF THE

CORNER COMMON TO SECTIONS 14, 15, 22 AND 23 IN SAID TOWNSHIP AND RANGE;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY ALSO BEING THE NORTHERLY TERMINUS OF OLD MAIN STREET SOUTH 88°12'52" EAST A DISTANCE OF 35.00 FEET TO A CAPPED 5/8" IRON REBAR SET; THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY NORTH 61°45'36" EAST A DISTANCE OF 10.41 FEET TO A CAPPED 5/8" IRON REBAR SET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 87°51'28" EAST A DISTANCE OF 130.30 FEET TO A RAILROAD SPIKE SET IN THE WESTERLY LINE OF LOT 8 IN SAID COLLINS SUBDIVISION; THENCE ALONG SAID WESTERLY LINE SOUTH 01°53'25" WEST A DISTANCE OF 292.74 FEET TO A RAIL ROAD SPIKE SET AT THE NORTHEASTERLY CORNER OF LOT 10 IN SAID COLLINS SUBDIVISION; THENCE ALONG THE NORTHERLY LINE OF SAID LOT 10 NORTH 88°58'58" WEST A DISTANCE OF 139.00 FEET TO A CAPPED 5/8" IRON REBAR SET IN THE EASTERLY RIGHT-OF-WAY OF SAID OLD MAIN STREET; THENCE NORTH 88°06'35" WEST A DISTANCE OF 35.00 FEET TO A CAPPED 5/8" IRON REBAR SET IN THE EASTERLY LINE OF SAID LOT 7 IN FREEMAN'S GROVE SIXTH ADDITION; THENCE ALONG SAID EASTERLY LINE SOUTH 01°53'25" WEST A DISTANCE OF 43.73 FEET TO THE NORTHEASTERLY CORNER OF LOT 8 IN SAID FREEMAN'S GROVE SIXTH ADDITION; THENCE NORTH 88°00'22" WEST A DISTANCE OF 111.75 FEET TO THE OLD EASTERLY RIGHT-OF-WAY OF HEARNES BOULEVARD (WIDTH VARIES); THENCE ALONG SAID EASTERLY RIGHT-OF-WAY NORTH 02°11'23" EAST A DISTANCE OF 199.33 FEET TO A CAPPED 5/8" IRON REBAR SET; THENCE SOUTH 88°01'26" EAST A DISTANCE OF 10.00 FEET TO THE NEW EASTERLY RIGHT-OF-WAY OF SAID HEARNES BOULEVARD; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 02°11'23" EAST A DISTANCE OF 113.78 FEET TO A CHISEL MARK FOUND; THENCE NORTH 46°47'24" EAST A DISTANCE OF 21.41 FEET TO A CHISEL MARK FOUND IN SAID SOUTHERLY RIGHT-OF-WAY OF 32ND STREET; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY SOUTH 88°34'12" EAST A DISTANCE OF 72.80 FEET TO A CHISEL MARK FOUND; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY SOUTH 66°13'13" EAST A DISTANCE OF 13.15 FEET TO THE PLACE OF BEGINNING CONTAINING 84,955 SQ. FT. OR 1.95 ACRES OF LAND.

Section 2. That said plat, have been filed, showing that the lots have been staked out and platted and the street 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, Newton County, Missouri, according to the Statutes of the State of Missouri.

Section 3. That the City Clerk 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 _____, 2014.

ATTEST:

_____
Michael L. Seibert, Mayor

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

ORDINANCES

EMERGENCY

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014
Council Bill No. 2014-173

Item: Change Order for the Evaluation and Rehabilitation of Wastewater Collection System – 2014 Rehab Project

Originating Department: Public Works – Engineering
Attachments: 1) Council Bill No. 2014- 173
2) Project Map

Engineering Department: Dan Johnson DJ	Date: 9-30-14
Department Head: Nicholas A. Heatherly NAH	Date: 9/30/14
Finance Department: Leslie Haase LH	Date: 10-1-14
City Attorney: Peter C. Edwards PE	Date: 9/30/14
Interim City Manager: Samuel L. Anselm	Date: 9/30/14

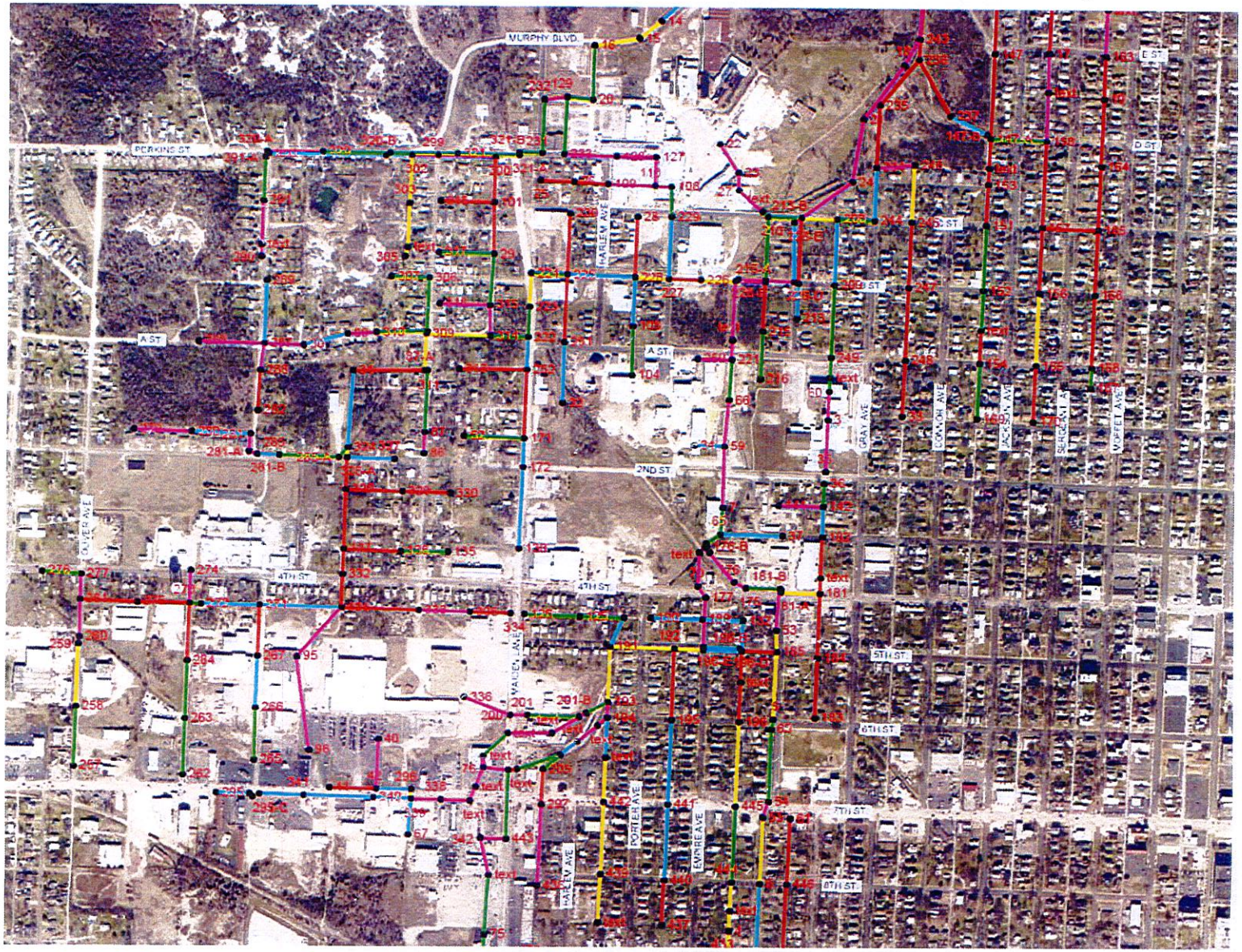
Recommended Action: Approval of a change order with Ace Pipe Cleaning Inc. in the amount of $500,000.00 for the Evaluation and Rehabilitation of Wastewater Collection System - 2014 Rehab Project.

Background: In September of 2013 City staff advertised to bid a sanitary sewer rehabilitation project that required unit prices from the contractors that would be utilized by the City staff to issue purchase orders for a period of up to three years. The use of unit prices for many different sewer cleaning, evaluating, rehabilitation, and reconstruction items allows the City staff the ability to repair or rehabilitate nearly anything that may be encountered within the sewer system. This unique project approach allows flexibility for staff to direct the contractor to evaluate large portions of the sewer system then to create a rehab/reconstruction plan using the evaluation data. Next the Staff uses the unit bid prices and the rehab/reconstruction plan to create a change order to the original contract.

Discussion: In accordance with the City of Joplin's Procurement policies, a Notice to Contractors that solicited bids for the project was published in the Joplin Globe. The low bid for the project was provided by Ace Pipe Cleaning, Inc. in the amount of $393,685.00 in unit prices which were applied to a project that totaled $600,000.00 in November of 2013. With this additional $500,000.00 Change Order, the total contract amount with Ace Pipe Cleaning, Inc. will be $1.1 million.

Recommendation: It is recommended the council approve the change order in the amount of $500,000 for the Evaluation and Rehabilitation of Wastewater Collection System - 2014 Rehab Project.

Council Bill No. 2014-173 - Change Order for the Evaluation and Rehabilitation of Wastewater Collection System – 2014 Rehab Project



Project Map: Sampling of the Prioritized Lone Elm Sewer Lines

COUNCIL BILL NO. 2014-173 ORDINANCE NO.

AN ORDINANCE approving a change order to Ace Pipe Cleaning Inc. for Five Hundred Thousand and No/100 Dollars ($500,000.00) for the Evaluation and Rehabilitation of Wastewater Collection System and containing an emergency clause.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. Approval of a change order to Ace Pipe Cleaning Inc. for Five Hundred Thousand and No/100 Dollars ($500,000.00) in the City of Joplin, Jasper County.

Section 2. Upon the final approval and acceptance of the contractor's work under said contracts in writing by the Director of Public Works and their certification to that effect to the Director of Finance, said contractors shall be paid the sum due there under from Sanitary Sewer Fund No. 415-4542-540-8675.

Section 2. That the Director of Public Works is hereby authorized to enter into contract on behalf of the City of Joplin with Ace Pipe Cleaning Inc..

Section 3. This ordinance is an emergency within the meaning of Section 2.12 (6) in that said ordinance provides for public improvements and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin. Specifically, this ordinance approves construction to begin immediately in the optimal construction time during the calendar year, and appropriations for this contract have been approved by the 2013-2014 budget.

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

_____, 2014 by a _____ vote.

ATTEST:

_____
Michael L. Siebert Mayor

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

I hereby certify that a sufficient amount is available in the Sewer Maintenance Fund No. 415-4542-540-8675 to pay the amount called for in said Agreement.

_____
Leslie Haase, Director of Finance

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014

Item: COUNCIL BILL NO. 2014-174
Originating Department: PUBLIC WORKS - MAPS

Attachments: 1) Vehicle Specifications & Design Drawings
2) Formal Bid Tabulation Sheet
3) Copy of Ordinance

Department Head:	Nicholas A. Heatherly	Date: 9/10/14
Interim City Manager:	Samuel L. Anselm	Date: 9/18/14
City Attorney:	Peter C. Edwards	Date: 9/18/14
Finance Department:	Leslie Haase	Date: 9-18-14

Background: The City of Joplin has operated the Metro Area PublicTransit System (MAPS) since 1998 and the Sunshine Lamp Trolley since 2007. MAPS provides curb-to-curb public transit to residents of the MPO area and the Sunshine Lamp Trolley provides deviated fixed route service within the City of Joplin. MAPS and the Sunshine Lamp Trolley are funded by a combination of rider fares, donations, and the financial participation of other major communities in the MPO. Additionally, the Federal Transit Administration reimburses the City for capital and operational expenses at 80% and 50% respectively.

Discussion: Staff conducted a formal bid opening on July 8, 2014 for the purchase of (2) two medium duty, low floor, cutaway transit vehicles with ADA entrance ramps for use by the Sunshine Lamp Trolley. Four bids were received. One bid did not meet bid specifications and one bid was rejected because the parent company of the vehicle manufacturer was excluded from bidding on federal contracts. Central States Bus Sales, Inc. was selected as the winning bidder. Central States submitted the second lowest priced bid in the amount of $116,821 per unit for an Arboc Spirit of Mobility. The lowest priced bid was submitted by Master's Transportation in the amount of $109,967 per unit for a Goshen Coach Mainstream. Since the bid opening, Goshen discontinued its production of low floor vehicles. Total contract price is $233,642 and 80% of this cost will be reimbursed by the Federal Transit Administration. The funds for this purchase were allocated in the 2014 budget.

Recommendation: Staff recommends authorizing the Public Works Director to enter into an agreement with Central States Bus Sales, Inc. for the purchase of (2) two medium duty vehicles per the specifications of Bid #2014-19.

Staff recommends this Council Bill be passed on an emergency basis.

CITY

OF

JOPLIN, MISSOURI

REQUEST FOR BID PACKAGE

2014-19

for

(2) MID-SIZED, LOW FLOOR, CUTAWAY TYPE TRANSIT VEHICLES W/ ADA ENTRY RAMP

PUBLIC WORKS DEPARTMENT
602 S. MAIN ST.
JOPLIN, MO 64801

(417) 625-4793

REQUEST FOR BIDS

The City of Joplin, Missouri will accept sealed bids until 10:00 A.M., Tuesday, July 8, 2014 at the Public Works offices located at 602 S. Main Street, Joplin, Missouri, 64801 for the following:

(2) MID-SIZED, LOW FLOOR, CUTAWAY TYPE TRANSIT VEHICLES W/ ADA ENTRY RAMP

Specifications and bid forms are available from Robert Lolley, Transit Coordinator at 417-625-4793. Any bids received after the specified deadline will be returned to the vendor.

The City reserves the right to evaluate all bids, to reject any or all bids and solicit again at a later date. The City may waive any irregularities in the bid or negotiate variances from specifications, and make awards that are in the best interests of the City. The City will have final decision in all matters regarding acceptance of bids and issuance of awards.

The City encourages minority and female owned businesses to submit bids on all City purchases.

Nicholas A. Heatherly,
Director of Public Works

Publication Date: Friday May 30, 2014.

INSTRUCTIONS FOR BIDS

The City of Joplin, Missouri bids to PURCHASE the following:

(2) MID-SIZED, LOW FLOOR, CUTAWAY TYPE TRANSIT VEHICLES W/ ADA ENTRY RAMP

All Bids shall have firm-fixed F.O.B. Joplin; Missouri, 64801 price and shall be honored for a minimum of ninety (90) days following the bid opening.

All bids shall be exclusive of Federal, State, and City taxes.

It is the intent of the specifications included with this proposal document to generally describe the item(s) desired in sufficient detail as to secure bids on comparable items. All parts not specifically mentioned which are necessary in order for the item(s) to perform, as intended shall be included. The strength, quality of workmanship, and material shall be in accordance with the best trade practices.

Specification variances, manufacturer's literature and additional information should be included with the bid. Any bid not meeting this requirement may be considered non-responsive.

Any protest or grievance must be issued in writing and delivered to the office of the Director of Finance within ten (10) days following the bid opening. Any protest filed after this time period has elapsed will not be considered.

The City encourages selection of products manufactured, assembled and/or produced in the United States, as long as the quality and price are comparable with other items bid.

Once the bids are reviewed and evaluated, the successful vendor will be notified, in writing, and will receive an authorized City of Joplin purchase order. Verbal acknowledgments will not be considered as official notification and will not obligate the City in any way. Delivery or performance should not be completed without the receipt of an authorized purchase order.

MARK PROPOSAL ENVELOPES: "BID 2014-19 PURCHASE OF MID-SIZED, LOW FLOOR CUTAWAY TYPE VEHICLES 10:00 A.M. JULY 8, 2014"

Questions concerning the specifications and bidding procedures should be directed to Robert Lolley, Transportation Coordinator at 417-625-4793, or mailed to Public Works Offices at 602 S. Main St, Joplin, MO, 64801.

Notice of Certifications

FTA Clauses (Exhibit B)
Purchases $100,000 or greater

The following certifications and assurances are a part of this Request for Bid and must be certified and submitted in order for this bid to be considered responsive.

By signing and submitting this bid, the prospective lower tier participant is providing the signed certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, The City of Joplin may pursue available remedies, including suspension and/or debarment.

The prospective lower tier participant shall provide immediate written notice to The City of Joplin if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact The City of Joplin for assistance in obtaining a copy of those regulations.

The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by The City of Joplin.

The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all

remedies available to the Federal Government, The City of Joplin may pursue available remedies including suspension and/or debarment.

"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction"

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its "principals" [as defined at 49 C.F.R. 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

Energy Conservation- The contractor 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.

Access to Records- The Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

Fraud and False or Fraudulent Statements or Related Acts- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Upon execution of the underlying contract, the Contractor certifies or affirms 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 or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable,

the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate. (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. 5307, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate. (3) The Contractor agrees to include the above tow clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Federal Changes- Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (6) dated October, 1999) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

Civil Rights Requirements- (1) Nondiscrimination-In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and Federal transit law at 49 U.S.C. 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. (2) Equal Employment Opportunity-The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex-In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. 2000e, and Federal transit laws at 49 U.S.C. 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Opportunity," 42 U.S.C. 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their

race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Age-In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 623 and Federal transit law at 49 U.S.C. 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Disabilities-In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

Incorporation of Federal Transit Administration (FTA) Terms- The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City of Joplin requests which would cause City of Joplin to be in violation of the FTA terms and conditions.

No Obligation by the Federal Government:

(1) The City of Joplin and the contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City of Joplin, contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
(2) Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Termination Provisions:

(1) If contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the City of Joplin may, by written notice to contractor, terminate the rights to proceed with the work (or the separable part of the work) that has been delayed. In this event, the City of Joplin may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The contractor and its sureties shall be liable for any damage to the City of Joplin resulting from contractor's failure or refusal to complete the work within the specified time, whether or not contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the City of Joplin in completing the work.

(2) Contractor's right to proceed shall not be terminated nor contractor charged with damages under this clause if:

   (A) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of contractor. Examples of such cause include (i)Acts of God or of the public enemy, (ii) Acts of the City of Joplin in either its governmental or contractual capacity, (iii) Acts of another Contractor in the performance of a contract with the City of Joplin, (iv) strikes, (v) freight embargoes, (vi) unusually severe weather, or (vii) delays of subcontractors or suppliers on any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both contractor and the subcontractors or suppliers; and

   (B) Contractor, promptly following the beginning of any delay (unless extended by the City of Joplin), notifies the City of Joplin orally and followed up in writing in the causes of delay. If, in the judgment of the City of Joplin, the findings of fact warrant such action, the time for completion the work shall be extended. The findings of the Director of Public Works shall be final and conclusive

(3) The rights and remedies of the City of Joplin in this clause are in addition to any other rights and remedies provided by law or under this agreement.

(4) The City of Joplin, by written notice, may terminate this contract in whole or in part, when it is in the City's interest. If this contract is terminated, the City of Joplin shall be liable only for payment under the payment provisions of the contract for services rendered before the effective date of termination. If reasons beyond the control of the City of Joplin (such as reduction in funding appropriation) so dictate, the City of Joplin may cancel this contract for convenience upon thirty (30) days written notice to contractor. Upon such termination, any materials, supplies or equipment for which the City of Joplin pays will be delivered to the City of Joplin. Additionally, the City of Joplin retains the right to cancel the contract for convenience in the event that contractor or

its agents behave in any manner detrimental for the security of the City of Joplin personnel or property. In the event of any such termination for convenience, the City of Joplin shall pay to contractor reasonable expense of termination including costs associated with the early termination of any leases and employee termination expenses.

(5) Contractor may terminate this agreement in the event that the City of Joplin fails to pay the agreed compensation, outlined elsewhere in this agreement. In the event that contractor determines that termination is necessary, Contractor shall provide the City of Joplin with written notice of their intentions thirty (30) days prior to termination.

Contract Work Hours and Safety Standards Act- (1) Overtime requirements-No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages- In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, I in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages-The City of Joplin shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy and liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts- The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include

these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) Payrolls and basic records- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site or the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in the section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the programs.
Clean Air- (1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

Privacy Act- (1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. (2) The Contractor also agrees to include these requirements in each subcontract to administer and system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Clean Water- (1) The Contractor 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. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. (2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

_____Signature of Contractor's Authorized Official

_____Name and Title of Authorized Official

_____Date

Buy America Certification

Buy America - The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (below) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.

Date _____

Signature_____

Company Name_____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name

_____

Title _____

Certification Regarding Lobbying

The undersigned (Contractor) certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions (as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L 104-65, to be codified at 2 U.S.C. 1601, et seq.)

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and nor more than $100,000 for each such failure. Note: Pursuant to 31 U.S.C. 1352©(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or emend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, et seq., apply to this certification and disclosure, if an.

_____Signature of Contractor's Authorized Official

_____Name and Title of Authorized Official

_____Date.

(2) MID-SIZED, LOW FLOOR, CUTAWAY TYPE TRANSIT VEHICLES W/ ADA ENTRY RAMP

1. The intent of these general specifications is to describe a low floor type vehicle that will be manufactured, structured and assembled in accordance with applicable ADA, NHTSA, and FMVSS requirements, including FMVSS 220 Rollover Protection, using the best quality materials, components and workmanship in accordance with sound engineering principles and manufacturing practices to provide safe and reliable all season highway and city transportation for ambulatory and non-ambulatory adult passengers within the City of Joplin, Missouri.

2. Chassis types - Cutaway Vans, Commercial Cutaways or R.V. Cutaways, 2014 or 2015 model year, General Motors 14,200 lbs. GVWR, Ford Super Duty 14,500 GVWR or approved equal. (60% minimum domestic content, final assembly process in USA)

These vehicles shall be tested at an approved minimum of (7-year/200,000 mile) at the FTA's Altoona Bus testing and Research Center and the testing report is to be submitted with the bid. These vehicles will also meet all current Federal Motor Carrier regulations at time of manufacture.

The City of Joplin reserves the right to conduct in-plant inspections.

3. Body Exterior, Construction - The materials used and the assembly method of the roof, side panels, and floor will be the manufacturer's standard construction, uniformly connected, lapped and sealed providing a weather and dust proof body. Drip rails shall be installed above all doors to prevent water leakage into bus. Drip rails will be 3/4" or more in width. Each vehicle will be thoroughly water tested before delivery. Maximum exterior width when measured from outside body edges will NOT exceed 102" (not including flares). Decals and all forms of dealer advertising will not be allowed.

Vehicle shall be warranted against any paint rust-through for minimum of 3-years from the date of delivery.

Vehicle will have a complete application of undercoating that will not interfere with OEM requirements.

4. Body Interior Construction - The inner construction must provide equal protection to passengers regardless of where they are seated. Interior height shall be minimum of 78".

The inner frame, at the floor, front and rear ends shall be heavy steel construction that will provide solid support for inner crash shield and exterior panels. The frame shall be securely anchored to adequately spaced steel floor cross members.

The entire structure must provide maximum resistance to impact and collision and meet or exceed the rollover protection requirement of all federal regulations. (FMVSS 220).

Headliner - Shall be full length for driver and passenger area. This headliner shall have longitudinal and cross member supports where needed to prevent flexing and vibrations.

Side and End Panels - To be complete on all doors, sidewalls and rear end. The vehicle exterior and interior shall meet or exceed the State and National recommendations. It shall conform to Federal Motor Vehicle Safety Standards and meet all static load test requirements. All materials used in the interior of the vehicle shall meet or exceed all aspects of FMVSS 302.

Floor and Floor Covering - The entire floor, except driver's area, shall be made level from end to end and side to side with marine grade plywood a minimum of 3/4" thick securely installed by glue, screws or a combination of methods that will assure a permanent fitted floor. The plywood floor shall be covered with a minimum of 2.2 mm thick, vinyl transit type floor covering. All seams are to be heat welded. Heat welding only applies when mating of similar surfaces. There will also be an aluminum polyethylene or galvanized, belly pan located under the floor to prevent moisture entrance. Fiberglass re-enforced plywood is also acceptable.

The entranceway and aisle will be non-skid type 49 CFR Part 38.25(a) and under the seats it will be smooth with anti-skid properties. The driver area may be either smooth or anti-skid type. All floor coverings will meet ADA requirements 49 CFR 38.25. Flooring in Securement area will meet ADA requirement 49 CFR 38.25(a) for slip resistance (anti-skid throughout).

There will also be a standee line in aisleway that meets all Federal Motor Carrier Safety Regulations 49 CFR 393.90.

All exposed edges around the wall, doors and entranceways shall be trimmed with a molding securely attached or quality waterproof seal.

Insulation - The interior dash firewall, lower panels, doors, floor, sidewalls, roof headliner and etc. shall be insulated.

Grabrail, Grabhandle, Guardrails and Stanchions - A floor to ceiling stanchion shall be installed near the aisle and immediately left of the entrance door. This stanchion shall be connected to the vehicle right side by a guardrail approximately 30" above the floor.

A floor to ceiling stanchion shall be installed in close proximity to the rear, right side of the driver's seat. This stanchion shall be connected to the vehicle's left hand side wall by a guardrail approximately 30" above the floor. The stanchion

and guardrail shall not impair the driver's seat adjustment. Two stanchions with modesty panels behind the driver's seat are also acceptable.

A solid material modesty panel shall be provided with the entry door stanchion and guardrail (right hand front seat).Spacing of these guardrails and panels must provide adequate passenger knee room.

Two grabrails or handles a minimum of 18" in length shall be installed in the entranceway of the vehicle. The left side grabrail will be mounted to the entrance door frame on the lower end and to the floor to ceiling stanchion on the upper side. The right side grabrail will be mounted to the door frame on the lower end ad then securely mounted to either a floor to ceiling stanchion or mounted to steel on the upper windshield frame. There will also be two overhead grabrails mounted securely above the passenger aisleway that provide continuous support from front to back except for a gap at the rear doorway 49 CFR 38.29(c).

All stanchions, guardrails, and grabrails will be mounted to the floor or ceiling with at least four screws, or with at least two screws that are attached to steel mounted backing plates. Interior handrails and stanchions should not interfere with the path of travel of a common wheelchair from the accessible entrance to the securement areas. 49 CFR Part 38.29(a).

Handrails and stanchions shall be provided in the entrance area and through the fare collection area to assist persons with disabilities as they enter and pay a fare. Some portion of this handrail/stanchion system must be able to be grasped from outside the vehicle to assist persons as they start to board. Handrails shall have a cross-sectional diameter of 1 ¼ to 1 ½ inches, shall provide a minimum of 1 ½ inches of "knuckle clearance," and shall have eased edges with corner radii of not less than 1/8 inch. A horizontal assist shall be provided across the front of the vehicle to allow a person to lean against the assist while paying a fare. 49 CFR Part 38.29(b).

Vertical stanchions immediately behind the driver shall either terminate at the lower edge of the aisle-facing seats or be "dog-legged" so that the floor attachment does not impede or interfere with wheelchair footrests 49 CFR Part 38.29(e).

Seating - See Exhibit A. The arrangements shall provide seating as listed and as shown on exhibit A.

The driver's seat shall be a power adjustable (vertical and horizontal) high-back bucket type with full depth foam padded seat cushion and backrest covered with a high-quality level 3 cloth material. There will be an armrest on the right hand side and the back shall be adjustable. The pedestal shall not extend into the aisle or vestibule beyond the wheel housing, to the maximum extent practicable to allow wheel chairs to pass without restriction 49 CFR Part 38.29(e).

The conventional type two-passenger seats shall be a minimum width of 35" and spaced on a minimum of 29" centers. No exceptions will be allowed in seat spacing or width.

All two-passenger seats shall be a minimum depth of 16", the backrests shall be a minimum thickness of 2". All seats frames will be completely painted or powder coated.

All two-passenger seat cushions and backrests shall be covered with a minimum level 3 grade vinyl materials. Seat cushions and backrests shall have full depth foam padding. The seat cushion padding shall have a density (4" minimum) sufficient to support occupants without bottoming. Low-back style seats manufactured by the Freedman, C. E. White Seating Company, or American Seating (or approved equal) will be preferred type. All seats will meet or exceed the requirements of FMVSS 210. Please include testing certification with your bid.

All passenger seats will have folding armrests on the aisle sides.

The walk-through aisle between right and left hand seats shall be a minimum of 14".

The driver and all passenger seats shall have best quality seat belts and retractors properly located and easily accessible. The driver's seat belts shall have minimum usable extension of 60" measured from the seat cushion to the buckle.
The passenger seat belts will have to be designed to encircle the largest of individuals (minimum usable extensions of 60"). All seating positions will have 60" seat belts with retractors (no traveling retractors). Include three (3) 12" seat belt extensions (minimum) that will connect to at least two of the belts styles installed on ambulatory seating.

All fold-a-way seats mounted over the wheelchair securement areas must be designated as priority seats for persons with disabilities. Signs identifying these as priority seats must be provided. Characters on these signs shall have a width to height ratio between 3:5 and 1:1 and a stroke width to height ratio between 1:5 and 1:10. Minimum character height (using a capital X) shall be 5/8 inch. Wide spacing shall be used (generally the space between letters shall be 1/16 the height of upper case letters). Letters must contrast with the sign's background color 49 CFR Part 38.27(a) & 49 CFR Part 38.27(c).

Fold-A-Way Type Seat Requirements:
Fold-A-Way type seats shall meet all dimensional, structural and testing requirements of the standard seat specification.
All seats shall be forward facing for ambulatory passengers and fold against the wall when wheelchair space is required. Any hardware used to attach these seats to the floor shall be recessed to prevent stumbling and tripping.
In the folded position, the seat may extend into the bus no further than 12"

installed at 90 degree to maximize space for wheelchair loading and positioning.
A full 30" x 48" free securement area must be maintained.
In the down, fixed position, the seat may not extend into the aisle more than 38" to preserve aisle space.
Fold-A-Way type seats shall be Braun Series 5, Freedman 3 step Fold Away, C. E. White model 35, American E-Z fold, or approved equal.

The vehicle will have two integrated child seats that will safely accommodate children between 20 and 60 lbs. These seats will be of a fixed two-passenger design and will be located at the rear of the vehicle. Freedman ICS, American ICS or approved equal will be acceptable. Child seats will be placed toward the rear of the vehicle, but not on the back row.

The vehicle will have at least two seating positions that meet the FMVSS 225 latch system requirement for child safety seats. They may be located on either fixed seats, or folding seats and must be designated safety seat locations. The preferred location of these positions will be on the aisle side of two-passenger seats. All FMVSS 225 seating positions will have a non-retractable 60" lap belt.

4. Windshield, Door Glass and Window Glass - Safety plate windshield and window glass all around.

The windshield shall be fixed glass.

Passenger side windows shall be provided throughout the passenger area. These windows will be a horizontal opening type that easily open and close. These windows shall meet all the latest federal regulations for retention and release. Kick-out type windows will be hinged at the top. All windows that are considered as emergency exits will be clearly marked. A full-length drip molding of at least 3/4" will be installed over each passenger window opening.
The driver position, on buses with right hand front entrance door only, shall have a window that can be opened for ventilation at the left side.

The dual right hand passenger entrance doors shall have full-length windows that will allow the driver to judge curb location.

The emergency rear door shall have an upper and lower fixed glass.

There will be glass on each side of the emergency door, approximately 24" X 24" or 7" X 30".

The windshield, driver position side window, and rear emergency window glass will be tinted. The passenger entrance door glass will be tinted in the upper and lower part.

All passenger area side window glass will be tinted. An approximate tinting of 28%-30% light transfer is acceptable.

All sliding side windows will have inside latches for security.

All windows, doors, and windshield will be installed to keep water and dust leakage to an absolute minimum. Proper sealing during installation is essential.

5. Doors
Front - Two doors LH and RH acceptable.
Driver Entrance LH - This door shall be the chassis manufacturer's standard front side door with tinted drop glass armrest and lock. This door may be modified if necessary.

Entrance RH - Main service door may be either forward folding, in-out or out-out opening type. This door shall provide no stoop entry headroom with a minimum of 78.5" entrance height from the top of the door opening to the top of access ramp. The door should provide a clear opening of 40.5" minimum between door leafs in the opened position (38" between entry grab handles). The top of the door entrance shall be fully enclosed and protected from weather and other elements. It shall have protective padding to prevent head injury when entering or exiting.

All vehicles will have an electrically operated door. The electric door will also be forward folding, in out or out-out opening type. This door will be operated by a switch from the driver's areas. There will also be a key activated switch on the right exterior of the bus so the door can be opened from the outside (RH fender mount). The door and control arms will be located above the door area.

An entryway light shall be provided and automatically operated by door control.

The entire door shall be weather stripped to provide a water and airtight seal. The door edge seals will be the over-lapping type to provide maximum sealing ability. Door sweeps or flaps are to be installed on lower edge. The door openings shall be structurally reinforced to have the same structural integrity as the body.

Rear Emergency Door- This door shall be outward opening type, clearly marked as an exit. The dimensions of this door will be approximately 32" wide and 50" high. This door shall have an open door warning buzzer and will be sealed to minimize dust and moisture entry. A red light will be installed to meet Federal Motor Carrier Safety regulations 49 CFR 393.92.

This door opening shall have protective padding to prevent head injury when exiting.

The rear emergency door must have an inside latch and release mechanism and outside handle. This door shall have factory installed position hold and check arm. All doors will meet ADA requirements 49 CFR 38.25. Vehicles will have a warning buzzer that

indicates a locked rear emergency door. Emergency door will have an inside lock. This warning device will meet all FMVSS requirements.

Door Lock System-The bus shall have a security door lock system for all doors.

6. Wheelchair Accommodations

Space and body structural provisions shall be provided to accommodate a front door wheelchair-loading ramp. The wheelchair ramp system shall be installed as an integral subassembly, which would facilitate the removal and reinstallation of the wheelchair ramp system as a unit. Ramp shall meet or exceed all requirements of Americans with Disability Act.

A ramp system shall provide ingress and egress quickly, safely, comfortably, and in a forward direction for passenger in a wheelchair from street level or curb. When the system is not in use, the passageway shall appear normal, and no portion of the stepwell shall move when the coach is accelerating, decelerating, or when the doors open. The controls shall be simple to operate with no complex phasing operations required. The ramp system, control layout, and location must allow a driver to observe the complete ingress and egress of passengers while operating the ramp controls.

The wheelchair ramp shall meet applicable ADA and NHTSH regulations, plus FMVSS 403 and 404. The wheelchair ramp controls shall be interlocked with the vehicle transmission to ensure that the vehicle cannot be moved when the ramp is deployed. The ramp shall be installed in the main passenger entry doorway and shall be capable of supplying a 1:6 sloped entrance when deployed. American Disabilities Act (ADA) regulations shall supercede all requirements included in these specifications. The ramp must support a load in excess of eight hundred (800) pounds. A manual override system shall permit unloading and storing the device in the event of a primary power failure.

The bus shall be equipped with four (3) forward facing wheelchair securement locations located as close to the accessible entrance as possible.49 CFR Part 38.23(d)(2). A sign must be provided which indicates that the securement area is to be used by persons who use wheelchairs and mobility aids. Characters on these signs shall have a width to height ratio between 3:5 and 1:1 and a stroke width to height ratio between 1:5 and 1:10. Minimum character height (using a capital X) shall be 5/8 inch. Wide spacing shall be used (generally the space between letters shall be 1/16 the height of upper case letters). Letters must contrast with the sign's background color 49 CFR Part 38.27(a) & 49 CFR Part 38.27(c).

A clear floor area of 30 inches wide by 48 inches long must be provided for each securement area. This can include an area up to 6 inches under a seat as long as there is a vertical clearance of at least 9 inches. If flip-seats are utilized, they cannot obstruct the required floor area. The required floor area can overlap the access path (the path of travel from the accessible entrance to the securement area 49 CFR Part 38.23(d)(2).

The securement system must accommodate all common, wheelchairs and mobility aids (any mobility aid not exceeding 30 inches in width and 48 inches in length and weighting no more than 600 pounds when occupied) and be operable by someone with average dexterity that is familiar with the system 49 CFR Part 38.23(d)(3). Securement systems must keep mobility aids from moving no more than 2 inches in any direction 49 CFR Part 38.23(d)(5). A seat belt and shoulder harness must be provided for each securement position. The seat belt and shoulder harness must be separate from the securement system for the mobility aid 49 CFR Part 38.23(d)(7).

7. Retractable Wheelchair Securement System

Each wheelchair tie down securement area shall be equipped with a minimum of four (4) wheelchair restraint securement belts designed to meet all ADA requirements and 30-mph/20g-force impact.
The wheelchair securement tie down belts shall be retractable into a protected steel housing and eliminate the need for belt cleaning and storage. The belt housing and mechanical retractor shall be designed for a minimum of five (5) year life. Belts will incorporate a S-hook design to secure belts to the mobility aid. Include four (4) 16" "quick straps", or approved equal for each securement location.
The location of the rear belts shall be positioned to allow the driver to secure the wheelchair frame between the rear wheelchair wheels. The retractable belts shall feature positive locking mechanisms. The belts shall be equipped with a release tab to release tension on the belts when unfastening the wheelchair and to take up the excess belt when securing the wheelchair.
The retractable belts shall feature positive locking mechanisms. Once the front belts have been attached to the wheelchair frame, a tension knob attached to the belt housing shall be applied to bring the wheelchair passenger and chair into a state of securement. All belts shall be designed for a minimum life of five (5) years. Sure-Lok Titan or Q Straint Deluxe tie-downs are an "approved equal".

The wheelchair occupant restraints shall be FMVSS Type II (combination lap and shoulder belt) with an adjustable height shoulder belt featuring a single-point release buckle for quick release at hip point. This system will also be fully retractable. Include one 20" lap belt extension for each wheelchair position.

All equipment shall comply with all applicable federal standards.
The restraint system shall be so designed, configured and installed as to accommodate the greatest possible variety of wheelchair designs and sizes. There will be wall-mounted pouches for storing all belts and Securement devices.
Use of the restraint system under normal conditions shall not cause any damage to the mobility aid.

The (2) after and the (2) forward restraints shall be securely anchored to the vehicle seating components or to anchor floor points and all belts shall be retracted back into their cases for storage, organization, and cleanliness when not in use. Distance between the two anchor points shall be 48" minimum.
All belts and belt anchor points shall be strong enough to comply with FMVSS 210 and FMVSS 222.
All belts shall feature positive locking mechanisms to ensure passenger security.
All wheelchair tie down belts shall have adjustable tensioners.
Easy to secure and release torso pads which encompass both the wheelchair and occupant shall be included for each wheelchair position. All securement devices and lift area designs will meet ADA requirement 49 CFR 38.23.

8. Air Conditioning, Heating, Defrosting and Cooling - Front and Rear

Heating and Defrosting - The high out-put heating system shall consist of front units to provide heat in the driver's, the entranceway and surrounding area. Underseat units shall provide for passenger comfort in the rear compartment.

They shall be floor mounted and provide a minimum of 45,000 BTU's. Rear unit will be floor or wall mounted and mounted near the center of the passenger rear compartment. The rear heater is to have a two-speed fan switch (off, low, high). Mounting will not interfere with any wheelchair or occupant securement devices.

An integral defrosting and defogging system shall keep the windshield and all windows free of frost and condensation.

The system shall be supplied with hot water from the vehicle engine. Shut-off valves shall be provided and easily accessed from under the hood or body and be clearly labeled.

A description of the system and the BTU output will be included with all bids. All controls shall be installed in a panel easily accessible to the driver.

Cooling - The system shall be powered by the vehicle engine and have a rated total output capacity of approximately 65,000 BTU's. All system components (body and chassis) will be compatible with R-134A Refrigerant. All bolts used in mounting and securement of both compressors will be a grade 5 or higher. Hoses, fittings and clamps will be constructed to meet or exceed SAE specification J2064-Type D. The construction of the clamps will be of stainless steel and will be of a quick click design (or approved equal) to ensure coupling integrity all aftermarket hoses will be nylon lined.
Free blow cool air distribution shall be mounted overhead of the passenger seats. Adjustable air outlets to control and direct the flow of cooled air shall be installed for the comfort of passengers. The rear-cooling unit shall have a capacity of at least 53,000 BTU's. This rear-cooling unit will have a 3-speed fan control switch (off, low, medium, and high). Unit will be roof mounted and located of the very

rear of the passenger compartment. Air circulation ducts will also be provided to give passengers in very rear of bus full comfort.
Chassis manufacturer's optional front air conditioning will be included. Approximately 12,000 BTU's.
This system will provide cooling in the front of the bus and have adjustable outlets for the driver to control and direct the flow of air.
The skirt-mounted condenser will be protected from debris thrown from tires by rustproof shields. There will be two, one located at the front and one located at the rear of the condenser.
All controls for fan speed and temperature shall be installed in a panel easily accessible to the driver.

For increased circulation in the driver area, a two-speed fan with a minimum diameter of 6" shall be mounted on the sidewall panel in the driver area so that it does interfere with driver operations. The three-position control switch will be located on the dash panel.

Roof Ventilator/Emergency Exit-A dual purpose manually operated roof hatch ventilator/emergency exit shall be installed in the roof of the vehicle at approximately the center of the passenger compartment. The hatch shall be 23" X 23" minimum and shall be installed so that when it is open and the vehicle is in motion, fresh air will be provided inside the vehicle. The hatch shall be a Transpec, Inc. Model 1000 regular profile Dual Purpose Safety Vent, Transpec Model 1075 low profile or an approved equal. Econo Model not acceptable.

Heating and Cooling Certification - The supplier must certify that the heating and cooling system he proposes to use will be adequate for passenger and driver comfort based on interior dimensions and anticipated passenger load.

Ignition Cutoff - An automatic ignition body circuit cutoff for heaters, defroster, and air conditioning shall be provided.

9. Chassis and Body - Requirements and Performance
The chassis, fully loaded and equipped body, must provide proper weight distribution. The front and rear weights must not exceed the chassis manufacturer' gross axle weight rating.

Front Section, Exterior - Shall have manufacturer's standard grill; grill frame, lamp moldings, etc.

Front Section, Interior - Shall have all items regularly furnished as standard by the manufacturer.

Lights and Signals

Exterior - High and low beam headlights, parking, tail, stop, backup, front and side marker lights or reflectors, license plate, hazard warning flashers and directional signals. There will also be a reverse or back-up alarm.

Stop, tail, and turn lights will be LED design.

Lighting of at least 1 foot-candle shall be provided outside all doorways to illuminate the street surface for an area up to 3 feet perpendicular to the bottom edge of entrance. Lighting shall be located below window level and shall be shielded to protect the eyes of entering and exiting passengers 49 CFR Part 38.31©.

Interior - Instrument panel, front and rear overhead lights, and all doors. Overhead lighting activated by a dash mounted switch, shall provide lighting intensity at a reading level. All door lights and RH front door stepwell shall illuminate automatically when doors are open. All vehicles shall have lighting/signage as required by ADA requirement 49 CFR Part 38.27 and red emergency exit lights that meet FMCSR 49 CFR 383.92.

There will be two red strobe type lights mounted on the upper rear end cap of the vehicle (not roof mounted). They will be 6" in diameter minimum and will be activated only by a dash-mounted switch with a pilot light to indicate activation.

Lighting of at least 2 foot-candles, measured on the floor shall be provided in the shall be provided in the entrance way immediately adjacent to the driver. Lighting shall activate when the door is opened 49 CFR Part 38.31(a). Other step well and doorways shall have similar lighting at all times 49 CFR Part 38.31(b).

All interior lights shall be adequately recessed so as to not be a hazard to occupants. Interior light fixtures shall be operable with or without engine running. All interior and exterior lighting will meet ADA requirement 49 CFR 38.27.

All interior wiring shall be insulated and covered.

Instrument Panel and Instruments - Standard panel with gauge instrumentation for fuel, engine temperature, oil pressure, alternator, speedometer and odometer. All switches installed by body manufacturer will be a full metal, heavy-duty type. (push pull or rocker)

Horns - Dual electric.

Mirrors, Rearview - Interior, adequate size to provide the driver a full view of the passenger area (approximate 6" x 12", 8" convex is acceptable).

Mirrors, Rearview Exterior (RH & LH) One piece or two-piece - Power adjustable heated type, approximate size 7" x 10". The mirrors must be mounted so as not to obstruct the driver's front or side vision. Separate convex mirrors of 5" in diameter will also be installed (RH and LH). Also include an 8" convex mirror mounted on the left-rear corner of vehicle to allow for a view directly behind bus. All bolts will be grade 5 or higher. Mirrors will not vibrate during operation. OEM mounting is acceptable.

Windshield Wiper and Washer - Electric, two-speed with intermittent wipe and mist feature.

Tilt Steering Wheel and Cruise Control - Include in your bid price.

Sun Visor - For driver.

Storage Compartment – For personal items and/or valuables, a key-lockable storage compartment will be located immediately above the driver.

Public Address System & AM-FM CD Radio with clock

An AM-FM/CD and public address system shall be installed in each vehicle. The system shall consist of at least four (4) interior speakers and one (1) exterior speaker with protective screen located on the curb side of the vehicle near the passenger entrance door and flush mounted. The four (4) internal speakers shall be mounted so that announcements can be heard equally throughout the vehicle. The microphone shall be conveniently located near the driver.

Destination Signs

The vehicle is to be equipped with TwinVision Mobilite all LED front and curb side electronic destination signs. The front destination sign shall have twelve (12) alphanumeric characters (minimum), each a minimum of nine and one-half (9 1/2) inches high and four and one-half (4 1/2) inches wide. Each display shall be a minimum of three-fourth (3/4) inches high and one-half (1/2) inches wide. The length of the display area shall be a minimum of sixty-seven (67) inches.

The curb side destination sign shall be located on the right side near the front door and capable of displaying the same information as presented on the front sign (12 alphanumeric characters). The character height to be a minimum of 2.7 inches high.

Emergency Exits

At least two windows on each side of coach to be designed as an emergency exit and to be permanently labeled with adequate operating instructions. Emergency exits to meet all FMVSS and all other state and local standards. Additional exits will be provided to meet all FMVSS.

Engine - Gasoline 6.0L V-8 or 6.8L V-10, providing
necessary horsepower and torque at governed R.P.M. for road speed and grade ability. The engine shall have a full flow replaceable or spin on type oil filter.

The air filter shall be a dry type. The engine shall be equipped with oil cooler.
Ford Chassis to include Super Duty service package.

Suspension- Synchronized Air-Ride suspension system with 4-Point Pneumatic Height Control Valves. System includes full kneeling capability and an interlock safety system that will not allow vehicle to move while in "kneeled" position. In knelled position, ramp entry step is less than 10" from ground. Kneeling function will be controlled by the driver from a switch located in the driver area. Systems that automatically kneel when the entry doors open are not allowed.

Cooling System - Heavy duty or maximum cooling radiator with overflow recovery reservoir and permanent type anti-freeze installed to protect the vehicle to at least 20 degrees below zero.

Transmission - Automatic, 4-speed or 5-speed with an electronic shift control, auxiliary exterior oil cooler and overdrive. Transmission shift lever will be interlocked with starting motor to prevent engagement of starter in any gear position other than neutral or park.

Alternator(s) - Minimum of 225 Amps cold. All mounting bolts will be grade 5 or higher. (May require dual alternators)

Batteries (2) - HD with adequate CCA and reserve capacity (Minimum 625 CCA) each for operating chassis and wheelchair ramp components. One battery will be relocated so access can be gained through a door on the passenger side of the bus. Battery will be mounted on a slide out-tray to allow easy access. This tray will be sealed to prevent road debris from entering. Include an emergency battery disconnect switch located in the driver's area running board.

Steering - Power.

Brakes - HD power, four-wheel front and rear disc system.

Axle, Front - Minimum of 4,300 lbs. capacity.
Axle, Rear - Minimum of 8,600 lbs. capacity, ratio 4.10/1 or 4.56/1. Include Mor Ryde, Roll Guard or approved equal.

Drive Shaft Guard(s) – One for each section. (FMCSR 393.89)

Springs, Front - Heavy-duty coil or leaf with a front stabilizer bar.
Springs, Rear - Heavy duty, leaf type, with stabilizer bar.

Shock Absorbers- Heavy duty, front and rear.

Fuel Tank or Tanks - Minimum capacity 55 gallons with outside fill spout.

Tires and Wheels - The tires and wheels will conform to the tire and rim association standards. They will be factory installed by truck manufacturing assembly. Acceptable tire makes will be those listed as being available in the tire section of manufacturer's Truck Data Book on specification date.

Mud Flaps - For both front and rear wheels.

Running Board – Vehicle will be equipped with one 12" wide by 36" long aluminum running board mounted at the driver's door location. It will be a minimum of 1/8" thick and will have a diamond embossed or other anti-slip design on the footing area. This running board will be securely mounted with at least 3 braces that will be made of galvanized steel to resist rust. A non-skid expanded metal will be installed on the entire step surface to prevent slipping. Diamond embossed only will not be acceptable. Running board design will allow for ample water drainage.

Tires - Tires will be a major brand, (not Firestone) factory installed, metric sized, and meeting manufacturer's specifications and GVW requirements. Seven (front, dual rear and spare), approximate size LT 225/75R 16E, 10 PR, blackwall tubeless or tube type highway tread. Spare tire and wheel will be furnished. Spare tire is to be permanently mounted under vehicle. All tires including spare to meet or exceed GVW requirements, and be of radial design. A jack (rated for vehicle GVW) and all tire changing tools will be included with vehicle. All tire changing tools will be securely mounted anywhere in the passenger compartment, as long as it does not impede operation or safety. The jack and tire tools may be chassis supplied OEM. Tires will be mounted so air pressure can be easily checked on all tires. Tire valve stem extenders will be installed so operators can check tire pressure on both rear duals with gauge while kneeling by rear tires.

Wheels - seven (7) disc with size and capacity to match load-carrying requirements of tire to vehicle. Stainless steel wheel covers will be provided.

Bumpers - Front and rear. The rear bumper ends will be positioned close to the body to minimize catching fixed objects as the bus moves forward in turns.

Undercoating - The entire body under structure shall be covered with a heavy, long lasting undercoating material. Automotive quality undercoating will not be acceptable. This undercoating will meet FMVSS 302 for flammability.

Safety Equipment - New unit to have all the latest standard safety equipment required by laws and regulations.

Emergency Equipment - A fire extinguisher certified for this type vehicle (minimum 5 lb. 10-BC type) and a 16-unit first aid kit with contents recommended for this type and capacity vehicle shall be provided. Three reflective bi-directional triangles with 3 LED warning lights (Tri-Alert or approved equal) shall also be provided. These emergency items sha ll be securely mounted in the driver area and easily accessible. Also include an assortment of spare fuses used in chassis and body components along with an emergency seat belt cutter.
Each vehicle will have a blood borne disease kit including the following items:
A. Latex gloves
B. CPR mask
C. Goggles
D. Apron
E. Disinfectant wipes
F. Absorbent and scoop
G. I.D. tag and red plastic bag
All first aid and blood-borne disease kits will be packaged in a durable hard plastic or metal case.

10. **To be furnished with each vehicle at time of delivery**
A. (2) copies of the operator's manual for the basic chassis and other systems.
B. (2) copies of the parts book and maintenance manual for add on equipment used in modification.
C. Documentation of front end alignment or alignment check
D. MSO and title application will be provided at delivery.
E. An as built schematic of any installed wiring must be furnished with each vehicle at the time of delivery
F. A documented leak-free water test performed prior to delivery.
G. A schematic of any installed wiring shall be furnished.

11. Color
Exterior - To be standard single color selected at the time purchase orders are issued.

Interior - The interior trim, upholstery, seat belts, visors, and etc., will be selected at the time purchase orders are issued.

12. Advertisements- Decals and all other forms of dealer advertisements will not be allowed.

13. Exceptions to specifications must be clearly noted and included with your bid for consideration.

14. All hardware to attach folding seats to the floor shall be recessed to prevent tripping and stumbling.

15. Floor Plan Descriptions
Exhibit A - this plan consists of (6) stationary two-passenger forward facing seats and (5) folding two-passenger forward facing seats allowing for a total ambulatory capacity for 22 adults. The floor plan allows total ambulatory capacity for 12 adults and (3) wheelchair positions when folding two-passenger seats are retracted.

If there is a conflict between the written specification and the floor plan diagram, the written narrative controls. The floor plan diagram controls the design.
NOTE - All folding or fold-a-way seats will be two passengers.

16. Bidder will supply a vehicle that meets all Federal Motor Carrier safety Regulations.

17. Vehicle will be warranted against rust through for three years from date of delivery to end user and warranted bumper to bumper including parts, labor, and travel time for a period of one year from date of delivery to end user.

Summary of Required Documents

The following shall be furnished and included with your bid:

1. Signed Certification Forms (Exhibit B, General, Buy America, & Lobbying)
2. Domestic Content Notification:
   A) An itemized list of domestic produced parts or components used in the manufacturing of the vehicle including:
   B) The estimated cost of each item listed.
   C) The estimated total percent of domestic components used in manufacturing of the vehicle.
   D) Final Assembly point and activities at that location
3. Printed product literature of the vehicle and all ancillary equipment
4. Completed City of Joplin Bid Form
5. Drawing of the proposed floor plan
6. Vehicle Warranty Certification. Also, a complete list of companies or individuals and their addresses who stock repair parts in the agency's area that will perform the services.
7. Federal Motor Vehicle Safety Standards (FMVSS) Certification
8. A copy of the Altoona testing report in accordance with 49 CFR 655.
9. A copy of deviation from specifications sheet Exhibit "B" (if proposing an alternative to specifications).
10. A copy of the manufacturer or converter license, whichever applies.
11. A copy of the Transit Vehicle Manufacturer's DBE certification letter sent by the manufacturer to the Federal Transit Administration.
12. A detailed written description of the vehicle, requested drawings, and modifications of the equipment they propose to furnish.
13. A detailed drawing of vehicle exterior or photos of similar vehicle.
14. A guarantee that the chassis manufacturer's warranty will be in effect at the time of delivery and acceptance. (36 months, 36,000 mile minimum)
15. A copy of the warranty on the body air conditioning, heating, wheelchair ramp, and alternator. Warranty terms on these components to be a minimum of 2 years, or 24,000 miles.
16. A certification that all priority seating signs that meet ADA requirement 49 CFR 38.27.
17. A FMVSS 210 Seat Certification.
18. Descriptive literature and detailed specifications for ADA system, air-conditioning, heating and defrosting systems.
19. Completed Unauthorized Aliens Workers Act Affidavit of Compliance.

CITY OF JOPLIN

BID FORM

LOW FLOOR MID-SIZED DUTY CUT-A-WAY VEHICLE PER SPECS:

Manufacturer: _____

Model: _____Year:_____

BID PRICE/DELIVERED

$_____

F.O.B. JOPLIN, MISSOURI (35' TROLLEY PER SPECS.)

COMPLETION TIME AFTER RECEIPT OF PURCHASE ORDER: _____DAYS

COMPANY_____

ADDRESS_____

_____

SIGNATURE_____

TELEPHONE_____

EMAIL_____

MBE_____WBE_____

MARK BID ENVELOPE: "RFP # 2014-19 PURCHASE OF MID-SIZED, LOW FLOOR, CUTAWAY TYPE TRANSIT VEHICLES- 10:30 A.M. JULY 8, 2014."

Exhibit "C"

FORM FOR PROPOSAL DEVIATIONS

The following form shall be completed for each condition, exception, reservation or understanding (i.e., Deviations) from bid specifications in the proposal.

Deviations # _____ Offeror :_____

Solicitation Ref: _____ Page:_____ Section:_____

Complete Description of Deviations: _____
_____
_____
_____
_____

Rationale (Pros & Cons): _____
_____
_____
_____
_____

Unauthorized Aliens Workers Act

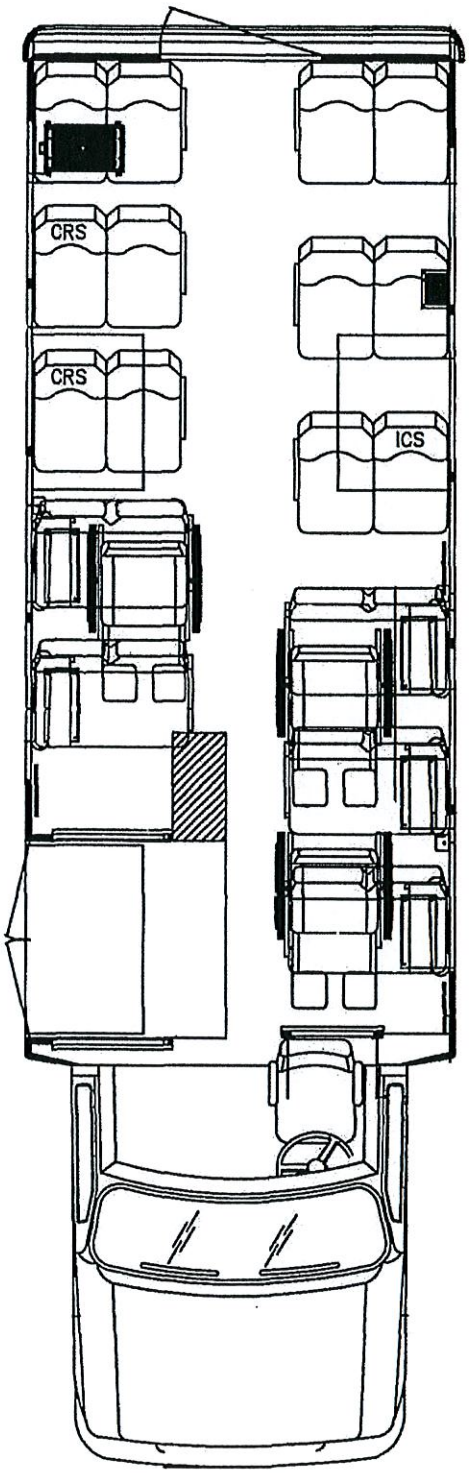
The successful bidder will have to sign an agreement that they are enrolled and participating a Federal Work Authorization Program ("FWAP") that ensures that all of its employees or agents or subcontractors have the legal right to work in the United States, as defined in 8 U.S.C. 1324a(h)(3) and RSMo § 285.525-285.555, and that it will maintain this compliance for the entire duration of its contract with the City of Joplin, and will provide an Affidavit of Compliance to the City stating the same.

AFFIDAVIT OF COMPLIANCE
(Missouri Unauthorized Alien Workers Act)

My name is _____ (name) _____ and I am the _____ (Title) _____ of _____ (Company Name) _____. I hereby represent, affirm and certify to the City of Joplin that my company does not knowingly employ any person who is an unauthorized alien in connection with contracted services with the City. I further affirm that my company is actively enrolled and participating in a federal work authorization program with respect to all employees working in connection with the contract services provided to the City.

_____

Affiant


CRS
CRS
ICS

CITY OF JOPLIN, MO FORMAL BID TABULATION FORM

BID #2014-19 BID ITEM DESCRIPTION: MEDIUM DUTY LOW FLOOR CUT-A-WAY

BID OPENING DEADLINE: 7/8/2014 DEPARTMENT: MAPS

REQUISITION NUMBER: TIME OPENED: 10:00 AM

OPENED BY: Robert Lolley WITNESSED BY:

VENDOR NAME	CONTACT NAME	PHONE NUMBER	DEBARRED/ SUSPENDED	BID AMOUNT	BASE PRODUCT	Delivery Time
CENTRAL STATES	CHARLIE REITZ	800-825-8273	NO	$110,235.00	CHAMPION	Didn't meet 22 passenger specification Vehicle bid was 18 passenger
CENTRAL STATES	CHARLIE REITZ	800-825-8273	NO	$116,821.00	ARBOC	
MASTERS TRANSPORTATION	BOB TUCKER	800-783-3613	YES	$103,947.00	GLAVAL BUS	
MASTERS TRANSPORTATION	BOB TUCKER	800-783-3613	NO	$109,967.00	GOSHEN	Discontinued production of low floor vehicles

COUNCIL BILL NO. 2014-174 ORDINANCE NO.

AN ORDINANCE approving the contract between the City of Joplin, Missouri and Central States Bus Sales, Inc. in the amount of Two Hundred Thirty-Three Thousand Six Hundred Forty-Two Dollars ($233,642) for the purchase of (2) two medium duty low floor cut-a-way vehicles per the specifications of Bid #2014-19; and containing an emergency clause.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That the contract be awarded to Central States Bus Sales, Inc. in the amount of Two Hundred Thirty-Three Thousand Six Hundred Forty-Two Dollars ($233,642) for the purchase of (2) two medium duty low floor cut-a-way vehicles.

Section 2. Upon the final delivery and acceptance of the vehicles per the specifications of Bid #2014-19, the contractor shall be paid from Account Number 140-5002-530-8210 Project GSTP01.

Section 3. That the Director of Public Works is hereby authorized to enter into a contract on behalf of the City of Joplin with said contractor.

Section 4. This ordinance is an emergency within the meaning of Section 2.12 (6) in that said ordinance provides for public improvements and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin.

Passed by the Council of the City of Joplin, Missouri, this _____ day of _____, 2014, by a _____ vote.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

I hereby certify that a sufficient amount is available in the Account Number 140-5002-530-8210 Project GSTP01 to pay the amount specified in this ordinance.

_____
Leslie Haase, Director of Finance

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014

Item: Council Bill 2014-175 - Agreement with Missouri Department of Transportation
Originating Department: Planning and Community Development

Attachments: 1) Copy of Agreement
2) Copy of UPWP 2015
3) Copy of Council Bill 2014-175

P & CD Director: Troy Bolander T.B.	Date: 9-29-14
Public Works Director: Nick A. Heatherly	Date: 9/29/14
Finance Department: Leslie Haase	Date: 9-30-14
City Attorney: Peter C. Edwards PE	Date: 9/30/14
Interim City Manager: Sam L. Anselm	Date: 9/30/14

Recommended Action: Approval of Contract Agreement between the City of Joplin and Missouri Department of Transportation for Federal Transportation Planning Assistance.

SUMMARY:

This is an annual agreement between the Missouri Department of Transportation and the City of Joplin for Federal Transportation Planning Assistance. The purpose of this agreement is to allow the Joplin Metropolitan Planning Organization (whereas the City of Joplin is the designated recipient of the assistance) to receive monetary support to complete transportation planning duties and projects that are eligible for federal financial assistance.

The City will receive an 80% reimbursement of expenses. This year's expenses will total no more than Four hundred and seventeen thousand nine hundred and seventy-eight dollars ($417,978). The reimbursement consists of Two hundred and eighty thousand and forty-nine dollars ($280,049) in Federal Consolidated Planning Grant Funds and Fifty-four thousand and three hundred and thirty-four dollars ($54,334) in FTA Section 5307 funding. The City will pay 20% of the project costs incurred to a maximum of Eighty-three thousand five hundred and ninety-five dollars ($83,595) 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 Planning & Community Development Director, Planning & Community Development Planner and other staff in the Engineering department. The remainder of the assistance will be used to help finance eligible planning projects.

Major projects included in this year's work program include:

- Update of aerial photography in the Metropolitan Planning Area (MPA) which covers Joplin, surrounding communities, and parts of southwest Jasper County and northwest Newton County.
- Update of the current Zoning Code that will implement the 2012 Comprehensive Plan.

- Update of the Long-Range Transportation Plan (LRTP) for the Metropolitan Planning Area (MPA). The LRTP is a twenty year master plan for the region's transportation system.

Attached is the 2015 Unified Planning Work Program (UPWP) that provides more detail on the planning projects being conducted during the next fiscal year. The Joplin Area Transportation Study Organization (JATSO) Policy Board voted to adopt the UPWP at their September 18, 2014 meeting. JATSO is the designated MPO held with the responsibility of providing transportation policy and overseeing the federal transportation planning process for the Joplin region.

RECOMMENDATION:

Staff recommends approval of this annual agreement with the Missouri Department of Transportation, so the MPO can carry out their transportation planning activities.

CCO Form: TP01-F
Approved: 06/94 (GWS)
Revised: 05/14 (BDG)
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
TRANSPORTATION PLANNING CONSOLIDATED GRANT AGREEMENT
(Joplin Region)

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Joplin, Missouri (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 the above named funds to accomplish metropolitan transportation planning in the Joplin urbanized area; and

WHEREAS, the Joplin Area Transportation Study Organization (hereinafter, "MPO") 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

WHEREAS, the MPO has designated the Grantee to conduct transportation planning and receive and expend the above named funds on its behalf; and

WHEREAS, the MPO and 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 MPO, the Grantee, and the United States Department of Transportation, 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 OMB Circular A-102, "*Grants and Cooperative Agreements with State and Local Governments.*" 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, 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.

(A) 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.

(B) The Commission will receive reimbursement from the Grantee for computer work performed by the Commission for the urbanized area as authorized by the Grantee. This should in no way restrict the Grantee from utilizing other computer services available elsewhere.

(8) PROJECT TIME PERIOD: Work under this Agreement shall begin November 1, 2014, and extend to October 31, 2015. 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 $280,049 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 chief 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 OMB Circular A-87, "*Cost Principles for State, Local and Indian Tribal Governments*."

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 OMB Circular A-87, 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.

(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 OMB Circular Number A-133, "*Audits of States, Local Governments, and Non-Profit Organizations.*" 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 OMB Circular Number A-133, if the Grantee obtains less than $750,000, the Grantee may be exempt from OMB A-133 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 Agency shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the Agency's contractor and subcontractor on the herein project. The Agency 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) The Grantee will require any contractor procured by the Grantee to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities ($500,000 per claimant and $3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) 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, creed, sex, national origin or ancestry 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, creed, sex or national origin or ancestry 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 FTA. 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 FTA and the appropriate 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 FTA.

(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 FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the most recent issued FTA 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 FTA and the appropriate United States Environmental Protection Agency (hereinafter, "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 FTA. 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 FTA 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 FTA under authority of 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 FTA. 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 49 CFR Part 18 and Missouri statutes.

(B) Purchases costing less than $5,000 are not subject to 49 CFR Part 18 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 and written approval is obtained from the Commission's chief engineer 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 an amended scope of services between the Commission and the Grantee.

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.

(32) 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.

(33) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

(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 this ____ day of _____, 20____.

Executed by the Commission this ____ day of _____, 20____.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

_____

Title _____

ATTEST:

_____
Secretary to the Commission

Approved as to Form:

_____
Commission Counsel

CITY OF JOPLIN, MISSOURI

By _____

Title _____

ATTEST:

By _____

Title _____

Approved as to Form:

By _____

Title _____

Ordinance Number:_____

JOPLIN AREA TRANSPORTATION STUDY ORGANIZATION

FISCAL YEAR 2015
UNIFIED PLANNING WORK PROGRAM
NOVEMBER 1, 2014 TO OCTOBER 31, 2015

City of Joplin
Department of Public Works
Division of Planning & Community Development
602 Main Street
Joplin, Missouri 64804
(417) 624-0820

Approved by JATSO Policy Board: 9-18-2014

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List of Acronyms

CART	Citizens Advisory Recovery Team
CPG	Consolidated Planning Grant
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
FY	Fiscal Year
GIS	Geographic Information Systems
HSTCC	Harry S. Truman Coordinating Council
JATSO	Joplin Area Transportation Study Organization
MAP-21	Moving Ahead for Progress in the 21st Century
MAPS	Metropolitan Area Public Transit System
MoDOT	Missouri Department of Transportation
MOU	Memorandum of Understanding
MPO	Metropolitan Planning Organization
O & D	Origin & Destination Study
PIP	Public Involvement Plan
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users
TIP	Transportation Improvement Program
UPWP	Unified Planning Work Program

Introduction

Purpose

The Joplin area transportation planning process is an on-going work effort that constitutes a branch of planning work activities developed by the Joplin Area Transportation Study Organization (JATSO) staff. The purpose is to analyze and evaluate various types of data (such as demographic, socio-economic, land use and scientific) in order to provide a rational basis for making short-range and long-range decisions about transportation needs in the Joplin metropolitan area. The planning process identifies present and future needs, and develops plans, policies, and projects to carry out objectives identified in the long-range transportation plan.

The Joplin area continues to make strides in redeveloping the area's transportation network while planning for future growth. During FY 2014, all five TIGER projects were under construction, with three of the five expected to be completed by the end of calendar year 2014. The area continues to anticipate land use changes associated with the relocation of Mercy Hospital. Interchange and intersection improvements were completed for the I-44 and Hearnes Boulevard/Main Street interchange and the 50th Street intersection in FY 2014. Several other improvements were completed in FY 2014 that create a more efficient and multi-modal transportation system, including: roundabout at Rte. 171 and Rte. 43 (Stone's Corner) in Airport Drive, extension of bike and pedestrian trail along Joplin Creek between 4th Street and 20th Street, and prioritization of all modes of transportation through public input.

The transportation planning process is required by federal regulations as a prerequisite to the receipt of federal capital and operating assistance. The end result from this continuing, cooperative, and comprehensive process will include plans and programs that match and enhance the comprehensively planned development of the metropolitan area. In addition, the planning process and requirements mandated by the enacted by the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU) and Moving Ahead for Progress in the 21st Century (MAP-21) which took effect October 1, 2012 will be addressed as part of the Joplin Area Transportation Study Organization's (JATSO) planning activities.

Organization

On May 20, 1983, Governor Christopher Bond of Missouri signed the letter of approval designating the JATSO as the Metropolitan Planning Organization (MPO) for the Joplin metropolitan area under Title 23 of the U.S. Code.

The MPO has designated the City of Joplin as the contracting agent for service agreements involving federal planning funds from the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). The Harry S. Truman Coordinating Council, the local regional planning commission, represents the smaller villages and unincorporated area on the JATSO Policy Board. The JATSO organization consists of six members from the City of Joplin, and one member from each of the following: Harry S. Truman Coordinating Council, City of Webb City, City of Carl Junction, MoDOT Southwest District, Newton County, and Jasper County.

The organization and responsibilities of the various agencies involved in the transportation planning process are defined in this Unified Planning Work Program (UPWP), the Memorandum of Understanding, and the JATSO bylaws.

Funding for the UPWP

Funding for the UPWP comes from three sources: the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the City of Joplin. FHWA Planning and FTA Section 5303 funds are combined into one category, called a Consolidated Planning Grant (CPG), and provide 80 percent of the UPWP funds. The Federal planning funds require a 20 percent local match. This local match is provided by the City of Joplin general revenue funding source.

Planning Factors

The Federal transportation planning requirements require the metropolitan transportation planning process to be continuous, cooperative, and comprehensive; and that the JATSO UPWP provide for consideration and implementation of projects, strategies and services that will address the following eight factors:

1. Support the economic vitality of the Joplin metropolitan area, especially by enabling global competitiveness, productivity and efficiency;

2. Increase the safety of the transportation system for motorized and non-motorized users;

3. Increase the security of the transportation system for motorized and non-motorized users;

4. Increase the accessibility and mobility of people and freight;

5. Protect and enhance the environment, promote energy conservation, improve the quality of life and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

6. Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

7. Promote efficient system management and operation; and

8. Emphasize the preservation of the existing transportation system.

Eligible Items

There are a number of activities that are considered eligible for transportation planning funds. These include street inventories, map preparation, aerial photography and photogrammetry, traffic volume studies, land use studies, and other studies that support the transportation planning process. Other eligible activities include systems

development and project planning, economic and fiscal studies related to streets, project evaluation studies, and compilation of reference statistics.

Public Involvement Plan

The purpose for the Public Involvement Plan (PIP) adopted in 2009 is to involve the public in the planning process, since the purpose of regional planning is to meet public mobility needs.

The PIP outlines a process for the public comments on the LRTP, TIP, UPWP, Title VI/ Environmental Justice and at public meetings. The PIP states that all changes to documents and plans that require board approval, except for the PIP itself, shall have a news release issued and be posted to the JATSO webpage seven (7) days prior to any action by the governing board for the purposes of public comment. The PIP shall have a 45-day public comment period. A paper copy of the PIP can be acquired at Joplin City Hall, Metropolitan Area Publictransit System (MAPS) office and vehicles, Webb City City Hall, Carl Junction City Hall, and Harry S. Truman Coordinating Council offices. An electronic copy of the PIP can be obtained at the JATSO website (http://joplinmo.org/index.aspx?NID=738). Other information pertaining to Title VI (Civil Rights Act of 1964), Limited English Proficiency (LEP) Plan, and American with Disabilities Act contact information can also be found at this website.

FY 2015 Program Goals

The annual transportation planning program begins on November 1, 2014 and continues through October 31, 2015. 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 2015, JATSO goals are:

- Improve transportation through better cooperation and communication from JATSO, MoDOT, and ONEDOT. (All Tasks)
- Increase participation in JATSO by holding meetings, giving presentations, and increasing advertising. JATSO will continually notify the public on the City of Joplin's website to keep the public informed on transportation plans, projects, and issues within their area. (Tasks 1, 2, 4, 5, 6, and 8)
- Update the 2014-2017 TIP as needed and develop the 2016-2019 TIP. (Task 1)
- Update the LRTP. (Task 8)

TASK 1. Transportation Improvement Program (TIP)

Objective: JATSO staff will develop a fiscally constrained area-wide listing of transportation improvement projects inside the Joplin metropolitan planning area for a four-year period that is consistent with JATSO's long-range transportation plan.

Current Status: The JATSO FY 2014-2017 TIP was approved in September 2013 (FY 2013) and was updated throughout FY 2014 with amendments. The FY 2014-2017 TIP will continue to be amended as needed through FY 2015.

Tasks Completed in FY 2014:

- Staff amended the JATSO FY 2014-2017 TIP to include 44 updated or new projects.
- Staff maintained and monitored the projects in the JATSO FY 2014-2017 TIP
- Developed and approved the FY-end 2014-2017 TIP update
- Developed the FY 2014 annual listing of obligated projects

Work Items:

- *Administration* – 70% ($9,646)
  - Monitor and maintain the FY 2014-2017 TIP
  - Develop and approve the FY 2016-2019 TIP
  - Prepare the FY 2015 Annual Listing of Obligated Projects
- *Outreach* – 30% ($4,134)
  - Conduct Public Meetings

Public Participation:

- Prior to adopting a TIP a public meeting will be held by the Policy Board. A news release will be issued and posting to the JATSO webpage will be done seven (7) days in advance of the public meeting. The public is encouraged to formulate comments regarding the TIP document.

End Products:

- Update JATSO FY 2014-2017 TIP with amendments as needed
- Develop JATSO FY 2016-2019 TIP for approval in fourth quarter FY 2015
- Prepare the FY 2015 Annual Listing of Obligated Projects
- Develop and execute JATSO/MoDOT Annual Self Certification

Schedule for Completion:

- Activities will be on-going from November 1, 2014 through October 31, 2015.

Budget:

Total Cost	Federal Funds (80%)	Local Funds (20%)
$ 13,780	$ 11,024 (CPG Funds)	$ 2,756 (City of Joplin)

TASK 2. Unified Planning Work Program (UPWP) Administration & Operations

Objective: JATSO staff will maintain the approved UPWP for the current FY 2015 and develop the FY 2016 UPWP.

Current Status: This task is on-going with activities occurring on a day-to-day or on-demand basis.

Tasks Completed in FY 2014:

- Staff carried out projects in the FY 2014 UPWP, including:
  - Staff prepared and transmitted quarterly reports to MoDOT
  - Developed the FY 2015 UPWP
  - Conducted six public meetings
  - Prioritized list of road, bike, pedestrian, transit, aviation, and rail needs approved in April 2014 by Policy Board.
  - Created and provided informational handouts at all public meetings

Work Items:

- Administration – 30% - ($ 18,216)
  - Monitor and maintain the FY 2015 UPWP ($ 3,097)
  - Prepare and transmit quarterly progress reports to MoDOT ($ 6,193)
  - Prepare the FY 2016 UPWP ($ 6,558)
  - Document all MPO activities ($ 2,368)
- General Transportation Planning – 45% - ($ 27,325)
  - Participate in MoDOT district and statewide planning activities ($ 6,831)
  - Prepare minor amendments to the Long-Range Transportation Plan as needed ($ 4,099)
  - Maintain inventory of transportation needs and priorities ($ 6,558)
  - Conduct JATSO Policy Board meetings ($ 2,733)
  - Ongoing coordination of JATSO activities with disaster recovery planning efforts ($ 5,738)
  - Staff professional development ($ 1,372)
- Outreach – 25% - ($ 15,180)
  - Conduct public meetings ($ 9,108)
  - Create informational hand-outs for public use ($ 3,795)
  - Ongoing outreach to JATSO member agencies ($ 1,518)
  - Ensure agencies receiving federal transportation funds maintain accurate financial records ($ 759)

Public Participation:

- Prior to adopting a Unified Planning Work Program a public meeting will be held by the Policy Board. A news release will be issued and posting to the JATSO webpage will be

done seven (7) days in advance of the public meeting. The public is encouraged to formulate comments regarding the UPWP document.

End Products:

- Four (4) FY 2015 quarterly progress reports to MoDOT
- The JATSO FY 2016 UPWP completed in September 2015
- Maintain and update prioritized list of needs in the JATSO area as needed
- Minor Long-Range Transportation Plan amendments if needed
- Create information hand-outs for public use as needed

Schedule for Completion:

- Activities will be on-going from November 1, 2014 through October 31, 2015.

Budget:

Total Cost	Federal Funds (80%)	Local Funds (20%)
$ 60,721	$ 48,577 (CPG Funds)	$ 12,144 (City of Joplin)

TASK 3. Geographic Information Systems (GIS)

Objective: JATSO staff will work with the City of Joplin, the Harry S. Truman Coordinating Council, and other local governments and agencies to update and create databases and collect and input data into the JATSO's GIS.

Current Status: The City of Joplin updates zoning maps within the Joplin corporate boundaries. Census information, other socio-economic data, and additional transportation data of the Joplin area is inserted into GIS databases as it becomes available.

Tasks Completed in FY 2014:

- Staff maintained and updated street, trail, subdivision, zoning, sewer, flood plain, and ownership GIS layers.

Work Items:

- Administration – 100% - ($ 27,560)
    - Maintain and update GIS layers used by JATSO, the Metro Area Public Transit System (MAPS), the Harry S. Truman Coordinating Council and local governments and agencies.

End Products:

- Maintained GIS layers
- Updated street, subdivision, zoning, and property ownership layers.
- Updated aerial photography and contour, flood plain, census, environmental and traffic count layers as needed.
- Updated data and maps to reflect change in transit/multi-modal facilities

Schedule for Completion:

- Activities will be on-going from November 1, 2014 through October 31, 2015.

Budget:

Total Cost	Federal Funds (80%)	Local Funds (20%)
$ 27,560	$ 22,048 (CPG Funds)	$ 5,512 (City of Joplin)

TASK 4. Transit Planning

Objective:

- JATSO staff will provide program and administrative support for the Metropolitan Area Public Transit System (MAPS) and the Sunshine Lamp Trolley system.
- JATSO staff will complete long and short-range transit planning responsibilities.

Current Status:

- JATSO continues to assist MAPS with program support and administration.

Tasks Completed in FY 2014:

- Staff monitored the MAPS and collected data and information.
- Staff monitored the Sunshine Lamp Trolley system.
- Staff evaluated and determined the feasibility of expanding trolley service to the southwest Joplin area, including the new Mercy Hospital site. The new trolley route is expected to begin service in spring 2015.

Work Items:

- *Administration – 100%* - ($67,917)
    - The MAPS transit coordinator collects and records transit data and information and reports the data findings to local, state and federal government agencies. ($15,281)
    - The MAPS transit coordinator and JATSO staff use data and information to complete short and long-range planning responsibilities. ($16,979)
    - Transit coordinator monitors and analyzes Sunshine Lamp Trolley system. ($15,281)
    - Planning for the development of a transfer station and update trolley routes. ($20,376)

End Products:

- Transit coordinator carries out the daily operations of MAPS.
- Transit coordinator provides MoDOT and FTA with necessary transit data and documentation.
- Preliminary plans for the location of a transfer station and proposed route adjustments.

Schedule for Completion:

- Activities will be on-going from November 1, 2014 through October 31, 2015.

Budget:

Total Cost	Federal (80%)	Local Funds (20%)
$67,917	$ 54,334 (FTA Sec. 5307)	$ 13,583 (City of Joplin)

TASK 5. Programs, Software & Hardware

Objective: To maintain an interactive GIS website for the Joplin MPO.

Current Status: Midland GIS Solutions continues to host the GIS website for the purposes of managing information. The website changed during FY 2014 to (https://joplin.integritygis.com/). Staff is currently working towards incorporating additional information for any MPO local public or state agency that chooses to participate. The MPO's main website is included on the City of Joplin's website, (http://joplinmo.org/index.aspx?nid=738). The site contains information about JATSO, meeting agendas, minutes, and notices, and work products.

Tasks Completed in FY 2014:

- JATSO staff maintained an interactive website that includes zoning, street, subdivision, and parcel information. News releases and agendas were posted to the City of Joplin's main webpage.

Work Items:

- *Maintaining the GIS website* – 90% - ($7,200)
- *Staff computer upgrades* – 10% - ($800)

End Products:

- Maintain an interactive GIS website that includes zoning, street, subdivision, parcel, and any other pertinent information.
- Maintain JATSO's website and make regular updates to keep the public informed.
- Upgrades to staff computer.

Schedule for Completion:

- Activities will be on-going from November 1, 2014 through October 31, 2015.

Budget:

Total Cost	Federal Funds (80%)	Local Funds (20%)
$ 8,000	$ 6,400 (CPG Funds)	$ 1,600 (City of Joplin)

TASK 6. Comprehensive Plan Update (Phase II)

Objective: Update the current Joplin Area Comprehensive Plan (Phase II)

Current Status: The existing land use code for the Disaster Recovery Area does not encourage or permit the types of sustainable redevelopment identified in the Comprehensive Plan.

Tasks Completed in FY 2014:

- JATSO staff worked on developing an RFQ.

Work Items: The 2012 Comprehensive Plan was adopted in July 2012. The updated plan addresses sustainable redevelopment in the Disaster Recovery Area, especially along the 20th Street Corridor. However, the goals and recommendations in the Comprehensive Plan cannot be achieved without a land use code update for the Disaster Recovery Area. Coordinating land use and transportation planning is an important component of sustainable development, a topic that received support from Joplin area residents in the Citizens Advisory Recovery Team (CART) plan. Area residents understand the impact that land use decisions have on their transportation decisions and needs.

The Comprehensive Plan, Long-Range Transportation Plan (LRTP), and CART all include recommendations for access management, sidewalks, and bicycle, trail and transit connections. The three aforementioned plans along with a land use code update work together to promote effective land use and transportation decisions in the Disaster Recovery Area.

The LRTP, adopted in 2010, has a total of nine (9) goals, four (4) of which directly relate to land use. The following goals can be found in the LRTP:

- Goal I: Provide for the development of a transportation system that is supported by and complements land development and enhances community development.
- Goal IV: Provide for a balanced transportation system that provides a choice of travel modes for different individuals and activities.
- Goal VIII: Maintain low environmental impact from the transportation system within the metro area.
- Goal IX: Develop a future transportation system that encourages energy conservation.

The LRTP recognizes the importance of connecting transportation and land use to provide an effective, sustainable, and multi-modal transportation system. An updated land use code for the Disaster Recovery Area will allow the impacted area to redevelop as a model for sustainable development.

End Products: JATSO will develop a Request for Qualifications (RFQ) and form a consultant selection committee to review the RFQs received. The committee will recommend a qualified consultant to perform the land use code update to achieve sustainable redevelopment. An updated land use code that will help staff and the public make informed development decisions and achieve goals identified in the 2012 Comprehensive Plan.

Public Participation:

- Public Participation is one of the most important elements when developing a land use code. JATSO will hold numerous stakeholder, focus group, and public meetings for the update.

Schedule for Completion:

- Staff will advertise an RFQ, interview qualified consultants, and select a consultant in the first quarter of FY 2015. The selected consultant with staff assistance will conduct multiple public participation events and present drafts for public comment throughout FY 2015. A final draft will be reviewed and approved by the Policy Board by the end of FY 2015.

Budget:

Total Cost	Federal Funds (80%)	Local Funds (20%)
$ 60,000	$ 48,000 (CPG Funds)	$ 12,000 (City of Joplin)

TASK 7. Aerial Photography update

Objective: Update the current aerial photographs of the Newton County portion of the Joplin metropolitan area.

Current Status: The last update for Newton County aerial photographs was in 2009.

Work Items:

- Aerial photographs – 100%
    - Staff will hire a consultant to update aerial photographs of the Newton County portion of the JATSO area.

End Products: A complete and up-to-date set of aerial photographs will assist in making the most accurate transportation and land use planning decisions in the JATSO area.

Schedule for Completion:

- Staff will hire a consultant in first quarter of FY 2015. Anticipated flyover in winter or early spring of 2015 with aerial photographs available soon after.

Budget:

Total Cost	Federal Funds (80%)	Local Funds (20%)
$ 100,000	$ 80,000 (CPG Funds)	$ 20,000 (City of Joplin)

TASK 8. Long Range Transportation Plan update

Objective: The development of an updated 20 year transportation plan that includes both long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand in the Joplin metropolitan planning area..

Current Status: Developing a transportation plan is a required activity for Metropolitan Planning Organizations, per 23 CFR 322.450. The LRTP is required to be updated every five years, with the last update being in 2010. A minor update was completed in 2013 for areas south of I-44 impacted by the relocation of Mercy Hospital and new commercial development opportunities.

Work Items: JATSO staff will develop and advertise a request for proposals for qualified consultants to update the LRTP in the first quarter of FY 2015. Staff will form a selection committee to interview and select a qualified consultant to complete the LRTP update. The qualified consultant will draft the LRTP update working with staff, stakeholders, and the public. The JATSO Policy Board will approve the LRTP update. ($80,000)

End Products: A 20 year long range transportation that meets the requirements of 23 CFR 450.322 and includes both long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand in the Joplin metropolitan planning area..

Public Participation:

- Staff and the selected consultant will work towards providing opportunities for public comment from stakeholders and the general public throughout the process of developing the LRTP update.
- Prior to adopting the LRTP or a modification to the document, a public meeting will be held by the Policy Board. A notice will be sent seven (7) days in advance notifying the public of a meeting regarding the update of the LRTP. The public is encouraged to comment on the LRTP.

Schedule for Completion:

- The selection consultant will be required to complete the LRTP by the end of FY 2015.

Budget:

Total Cost	Federal Funds (80%)	Local Funds (20%)
$ 80,000	$ 64,000 (CPG Funds)	$ 16,000 (City of Joplin)

TASK FUNDING SUMMARY

Task	FHWA PL & FTA Section 5303 (CPG) Total Cost	FTA Section 5307	Local City of Joplin	Total Funds
1. Transportation Improvement Program	$11,024	$0	$2,756	$13,780
2. Unified Planning Work Program – Administration & Operations	$48,577	$0	$12,144	$60,721
3. Geographic Information Systems	$22,048	$0	$5,512	$27,560
4. Transit Planning	$0	$54,334	$13,583	$67,917
5. Programs, Software, & Hardware	$6,400	$0	$1,600	$8,000
6. Comprehensive Plan Update (Phase II)	$48,000	$0	$12,000	$60,000
7. Aerial Photography Update	$80,000	$0	$20,000	$100,000
8. Long Range Transportation Plan Update	$64,000	$0	$16,000	$80,000
TOTAL	**$280,049**	**$54,334**	**$83,595**	**$417,978**

FHWA PL & FTA Section 5303 Funds (Consolidated Planning Grant) = $280,049
Local Match (20% of Consolidated Funds-FHWA PL Funds and FTA Section 5303 Funds) = $70,012
FTA Section 5307 Share = $54,334
Local Match (20% of Total Task Cost using FTA Section 5307 Funds) = $13,583

CPG balance from prior FYs UPWP:	$930,270
FY 2014 CPG allocation:	$186,503
FY 2015 CPG allocation (estimate):	$186,186
Programmed FY 2014 CPG funds left over after 3rd Quarter:	$126,086
Total estimated CPG funds available for FY 2015:	**$1,116,456**
CPG funds programmed for FY 2015:	$280,049
Remaining un-programmed CPG funds balance:	**$836,407**

The total amount of the Consolidated Planning Grant (CPG) and FTA Section 5307 budgeted for FY 2015 is estimated at $280,049 and $54,334. JATSO is budgeting $83,595 in local match for planning tasks in FY 2015, resulting in an overall program budget of $417,978 (includes FTA Sec. 5307). The JATSO has approximately $836,407 of un-programmed CPG funds, which will be used for future projects and transportation studies.

JATSO greatly appreciates the advice and technical assistance provided by MoDOT, FHWA, and FTA in the course of conducting local planning activities. JATSO recognizes that planning

is a multi-faceted activity, requiring knowledge of a variety of subjects. The dedication and cooperative spirit displayed by these agencies is greatly appreciated.

The preparation of this UPWP is financed in part by FTA and FHWA Consolidated Planning Grant funds that are administered by MoDOT.

JATSO Organizational Chart

Staff is located at the City of Joplin offices and are dedicated to JATSO activities.

Full-time staff:
Robert Lolley, Transit Coordinator (1.0 FTE)
Matt Wright, Planning & Comm. Dev. Planner (1.0 FTE)

Part-time staff:
Troy Bolander, Planning & Comm. Dev. Director (0.5 FTE)
Lindsay Dunn, Planning & Comm. Dev. Clerk (0.5 FTE)
John Gilligan, GIS Coordinator (0.5 FTE)

JATSO Policy Board Voting Members:

City of Carl Junction
Steve Lawver, City Administrator

City of Joplin
Troy Bolander, Planning & Comm. Dev. Director *Vice Chairman
Nick Heatherly, Public Works Director *Chairman
Lynden Lawson, Asst. Public Works Director, Operations
Robert Lolley, Transit Coordinator
Steve Stockam, Airport Manager
Matt Wright, Planning & Comm. Dev. Planner

City of Webb City
Carl Francis, Interim City Administrator

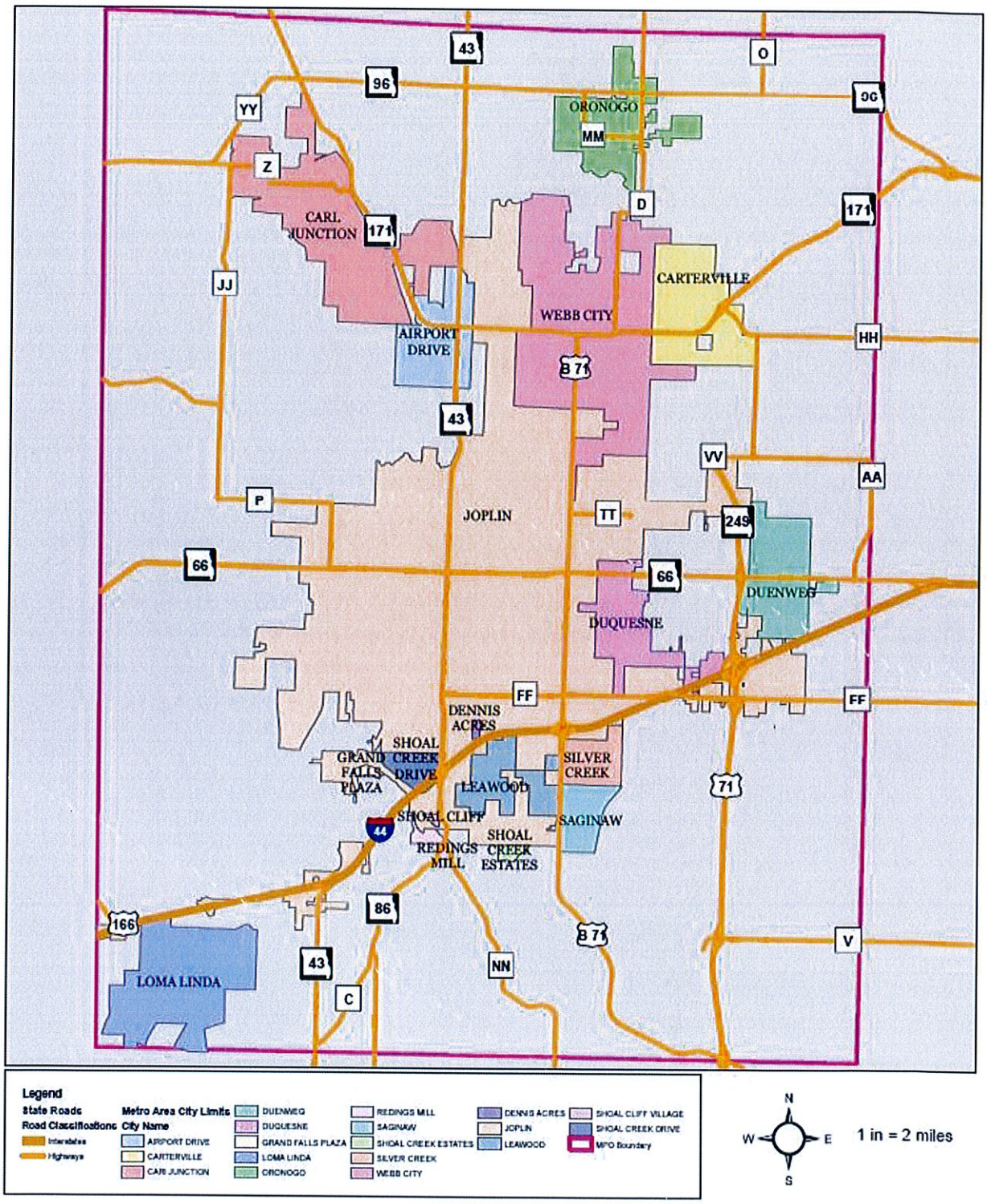
Harry S. Truman Coordinating Council
Harry Rogers, Director
Jason Ray, Transportation Planner (alternate)

Jasper County
Darieus Adams, County Commissioner

Missouri Department of Transportation (SW District)
Becky Baltz, District Engineer
Frank Miller, Senior Transportation Planner (alternate)
Dan Salisbury, Asst. District Engineer (alternate)

Newton County
Marilyn Ruestman, County Commissioner

JATSO Metropolitan Planning Area (MPA) Boundary Map



COUNCIL BILL NO. 2014-175 **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, 2014, through October 31, 2015, in accordance with the rules of the U.S. Department of Transportation, Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) under 49 U.S.C. Section 5303 and 23 U.S. Code Sections 104(F) and 134 to conduct comprehensive and transportation planning programs, as the City of Joplin has been designated to conduct transportation planning programs for the Joplin Area Transportation Study Organization; authorizing the City Manager to execute said Agreement for the City, and containing an emergency clause

BE IT ORDAINED BY THE CITY OF JOPLIN, MISSOURI, AS FOLLOWS:

Section 1. That the City enters into an Agreement with the State of Missouri, acting by and through the State Highway and Transportation Commission of Missouri, which will provide Two hundred and eighty thousand and forty-nine dollars ($280,049) in consolidated planning funds under 23 U.S.C. Section 104(f) and 49 U.S.C. Section 5303, to complete comprehensive and transportation planning programs, a copy of said Agreement being attached hereto and made a part hereof by reference.

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

Section 3. This Ordinance is an emergency within the meaning of Section 2.12 (6) in that said ordinance provides for public improvements and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin. This CPG Agreement must be submitted to, reviewed, and passed by the Missouri Highway and Transportation Commission on or before October 31, 2014 for financial assistance to be made available to the City of Joplin, Missouri on November 1, 2014.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this ___ day of _____, 2014, by a vote of_____.

_____
Michael L. Siebert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014
Council Bill No. 2014-176

Item: Agreement with Kansas City Southern Railroad for Easements and Right of Way for the 20th Street Grade Separation Project

Originating Department: Public Works – Engineering

Attachments: 1) Agreement
2) Council Bill 2014-176
3) Location Map

Engineering Department: Dave Hunt DWH	Date: 9-29-14
Department Head: Nicholas A. Heatherly	Date: 9/29/14
Finance Department: Leslie Haase	Date: 9-30-14
City Attorney: Peter C. Edwards PE	Date: 9/30/14
Interim City Manager: Samuel L. Anselm	Date: 9/30/14

Recommended Action: Approval of Agreement for Easements and Right of Way with Kansas City Southern Railroad for the 20th Street Grade Separation Project.

Background: On February 19, 2013, City Council approved the construction of a viaduct for the grade separation at 20th Street and DOT crossing number 330 057L maintained by Kansas City Southern Railway. The design will take into consideration pedestrian and bicycle amenities. The purchase of right of way and easements is necessary for the construction of this project.

Funding for the construction of this project is part of a Twelve Million Dollars ($12,000,000) TIGER Grant award through the U.S. Department of Transportation Federal Highway Administration.

Discussion: Kansas City Southern Railroad and the City will enter into an agreement for the acquisition of Right of Way and Permanent Easements for the construction of a railroad grade separation structure and connecting roadway. The agreement includes compensation to Kansas City Southern Railroad in the amount of Forty eight thousand one hundred and fifty dollars ($48,150) as determined by professional appraisal.

Recommendation: Staff recommends this Council Bill be passed on an Emergency basis.

COUNCIL BILL NO. 2014-176 **ORDINANCE NO.**

AN ORDINANCE approving the City of Joplin to enter into an Agreement with the Kansas City Southern Railroad for Easements and Right of Way for the 20th Street Grade Separation Project in the City of Joplin and authorizing the Director of Public Works of the City of Joplin to execute said Agreement; and containing an emergency clause.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That the City enter into an Agreement with Kansas City Southern Railroad for Easements and Right of Way for the 20th Street Grade Separation Project in the City of Joplin, a true and accurate copy of said agreement being attached hereto and incorporated herein and the same is hereby approved.

Section 2. That the Director of Public Works of the City of Joplin, Missouri, is hereby authorized to execute said Agreement for and on behalf of the City of Joplin.

Section 3. That the City of Joplin declares that this Ordinance relating to a public improvement, is an emergency within the meaning of Section 2.12 (6) of the HOME RULE CHARTER of the City of Joplin, and as such, shall be in full force and effect immediately from and after its adoption and approval. Specifically, this council bill needs to be approved so that the right of way acquisition can be finalized allowing the street widening project to begin on schedule.

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

_____, 2014, by a _____ vote.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

RIGHT OF WAY CONVEYANCE
FOR STREET PURPOSES

THIS INDENTURE, made this _____day of _____, 2014, by and between **THE KANSAS CITY SOUTHERN RAILWAY COMPANY,** party of the first part (GRANTOR), and **CITY OF JOPLIN**, a Municipal Corporation, of the County of Jasper, in the State of Missouri, party of the second part (GRANTEE).

Mailing Address of Grantee: 602 S. Main Street, Joplin, Missouri 64801

WITNESSETH, that the said party of the first part in consideration of the sum of FORTY EIGHT THOUSAND ONE HUNDRED FIFTY DOLLARS and 00/100 ($48,150.00) and other good and valuable consideration, to them paid by said party of the second part, the receipt of which is hereby acknowledged, does by these presents GRANT, BARGAIN, and SELL, CONVEY and CONFIRM unto the said party of the second part, its successors and assigns, the following described real estate and interests in real estate, in the County of Jasper, State of Missouri, to-wit:

New Right of Way

ALL THAT PART OF THE SOUTHWEST QUARTER (SW1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 11 AND THE NORTHWEST QUARTER (NW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 33 WEST, IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11; THENCE S88°55'35"E, 795.84 FEET ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE N02°01'01"E, 29.89 FEET TO A POINT ON THE CURRENT NORTH RIGHT-OF-WAY LINE OF 2OTH STREET, SAID POINT BEING THE SOUTHWEST CORNER OF LOT NUMBERED TWO HUNDRED FIVE (205) IN CAMPBELL'S SIXTH ADDITION TO THE CITY OF JOPLIN; THENCE S88°47'06"E, 97.77 FEET ALONG SAID NORTH RIGHT-OF-WAY OF 20TH STREET TO THE POINT OF BEGINNING, BEING ON THE WEST RIGHT-OF-WAY LINE OF THE KANSAS CITY SOUTHERN RAILROAD;
THENCE CONTINUING S88°47'06"E, 70.07 FEET ALONG SAID NORTH RIGHT-OF-WAY OF 20TH STREET;
THENCE DEPARTING SAID NORTH RIGHT-OF-WAY LINE, ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 5794.58 FEET, A CHORD BEARING AND DISTANCE OF N29°50'12"W 44.94 FEET, AN ARC DISTANCE OF 44.94 FEET;
THENCE S88°47'06"E, 8.39 FEET;
THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 5787.37 FEET, A CHORD BEARING AND DISTANCE OF S30°20'00"E 136.65 FEET, AN ARC DISTANCE OF 136.66 FEET;
THENCE N89°14'09"W, 78.87 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SAID RAILROAD;
THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 5854.58 FEET, A CHORD BEARING AND DISTANCE OF N30°09'12"W 92.03 FEET, AN ARC DISTANCE OF 92.03 FEET TO THE POINT OF BEGINNING.

SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.

CONTAINING 6500 SQUARE FEET MORE OR LESS.

Permanent Construction Easement

ALL THAT PART OF THE SOUTHWEST QUARTER (SW1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION 11 AND THE NORTHWEST QUARTER (NW1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION 14, TOWNSHIP 27 NORTH, RANGE 33 WEST, IN THE CITY OF JOPLIN, JASPER COUNTY, MISSOURI MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 11; THENCE S88°55'35"E, 795.84 FEET ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER; THENCE N02°01'01"E, 29.89 FEET TO A POINT ON THE CURRENT NORTH RIGHT-OF-WAY LINE OF 2OTH STREET, SAID POINT BEING THE SOUTHWEST CORNER OF LOT NUMBERED TWO HUNDRED FIVE (205) IN CAMPBELL'S SIXTH ADDITION TO THE CITY OF JOPLIN; THENCE S88°47'06"E, 97.77 FEET ALONG SAID NORTH RIGHT-OF-WAY OF 20TH STREET, TO THE WEST RIGHT-OF-WAY LINE OF THE KANSAS CITY SOUTHERN RAILROAD;
THENCE CONTINUING S88°47'06"E, 70.07 FEET ALONG SAID NORTH RIGHT-OF-WAY OF 20TH STREET;
THENCE DEPARTING SAID NORTH RIGHT-OF-WAY LINE, ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 5794.58 FEET AND A CHORD BEARING AND DISTANCE OF N29°50'12"W 44.94 FEET, AN ARC DISTANCE OF 44.94 FEET;
THENCE S88°47'06"E, 8.39 FEET TO THE POINT OF BEGINNING;
THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 5787.37 FEET, A CHORD BEARING AND DISTANCE OF S30°20'00"E 136.65 FEET, AN ARC DISTANCE OF 136.66 FEET;
THENCE N89°14'09"W, 78.87 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SAID RAILROAD;
THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 5854.58 FEET, A CHORD BEARING AND DISTANCE OF S30°51'44"E 52.85 FEET, AN ARC DISTANCE OF 52.85 FEET;
THENCE S89°53'53"E, 176.26 FEET TO THE EAST RIGHT-OF-WAY LINE OF SAID RAILROAD;
THENCE ALONG SAID RIGHT-OF-WAY LINE, BEING A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 5704.58 FEET, A CHORD BEARING AND DISTANCE OF N31°05'49"W 187.46 FEET, AN ARC DISTANCE OF 187.47 FEET;
THENCE N88°47'06"W, 96.72 FEET TO THE POINT OF BEGINNING.
SUBJECT TO ANY EASEMENTS OR RESTRICTIONS OF RECORD.
CONTAINING 19100 SQUARE FEET MORE OR LESS.

IN TESTIMONY WHEREOF, I, Steven G. Lewis, being a Professional Land Surveyor in State of Missouri, do hereby certify to the accuracy of the legal description contained herein, and have affixed my official seal to the foregoing instrument.

Steven G. Lewis, LS-2514 Date (sealed)

TO HAVE AND TO HOLD the same for the purpose of constructing and maintaining a city street according to the plans of the CITY OF JOPLIN or for the purposes above set out, together with all and singular the rights, privileges, appurtenances, and immunities thereto belonging, or in anywise appertaining, unto the said party of the second part, and unto its successors and assigns, forever.

IN WITNESS WHEREOF, the said party of the first part has executed the above day and year first above written.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

_____

STATE OF _____)
) ss
COUNTY OF_____)

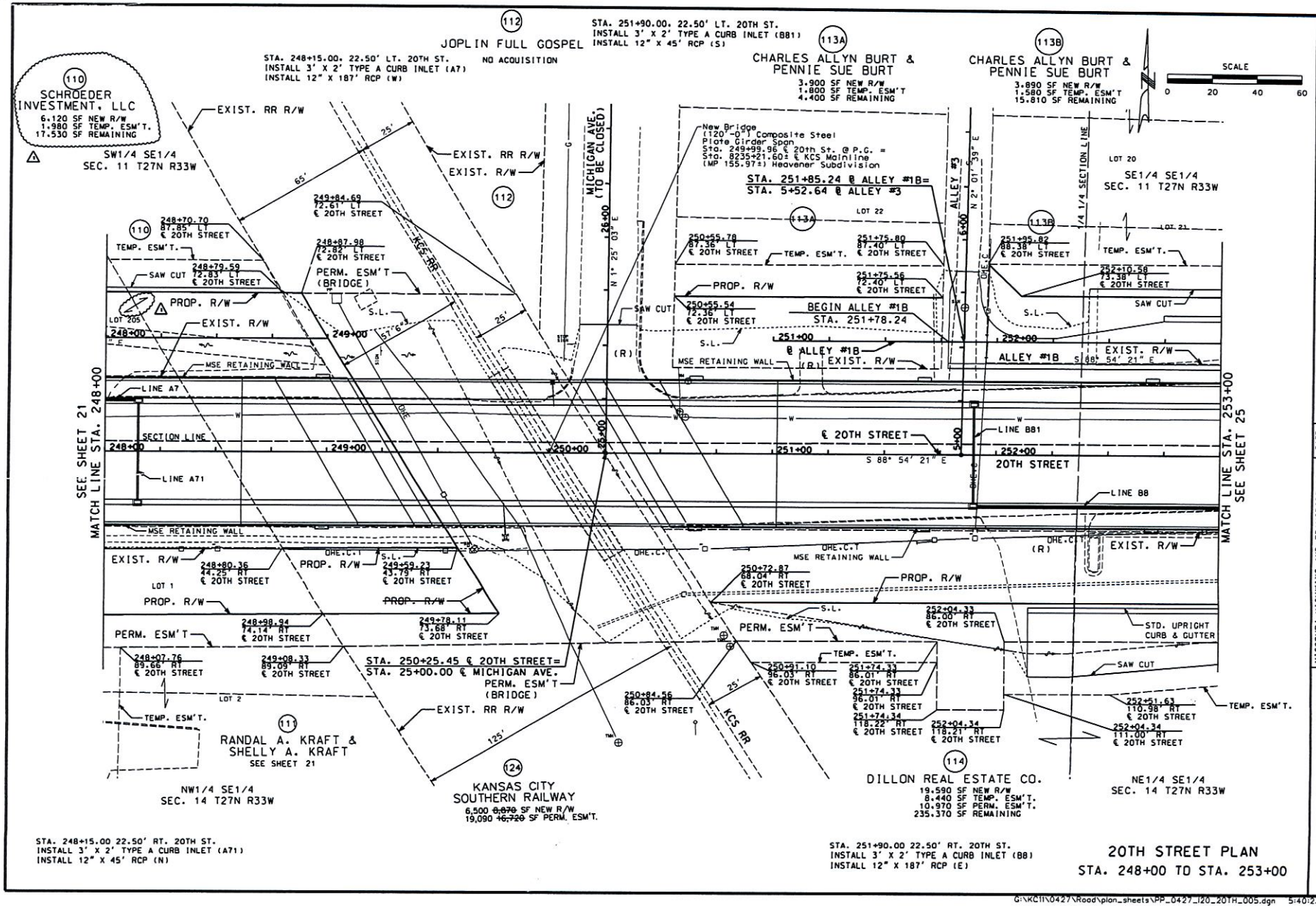
ACKNOWLEDGEMENT BY CORPORATION

On this_____ ____day of_____, 2014, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he is the _____of The Kansas City Southern Railway Company., a _____ corporation and said instrument was signed on behalf of said company for the consideration stated therein, and said _____, acknowledged said instrument to be free the act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year above written.

My term expires _____, 20_____.

_____
Notary Public


(112) JOPLIN FULL GOSPEL
STA. 248+15.00, 22.50' LT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (A7)
INSTALL 12" X 187' RCP (W)
NO ACQUISITION
STA. 251+90.00, 22.50' LT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (B8)
INSTALL 12" X 45' RCP (S)
(110) SCHROEDER INVESTMENT, LLC
6,120 SF NEW R/W
1,980 SF TEMP. ESM'T.
17,530 SF REMAINING
(113A) CHARLES ALLYN BURT & PENNIE SUE BURT
3,900 SF NEW R/W
1,800 SF TEMP. ESM'T
4,400 SF REMAINING
(113B) CHARLES ALLYN BURT & PENNIE SUE BURT
3,890 SF NEW R/W
1,580 SF TEMP. ESM'T
15,810 SF REMAINING
SCALE 0 20 40 60
SW1/4 SE1/4 SEC. 11 T27N R33W
SE1/4 SE1/4 SEC. 11 T27N R33W
EXIST. RR R/W
EXIST. R/W
MICHIGAN AVE. (TO BE CLOSED)
New Bridge (120'-0") Composite Steel Plate Girder Span
Sta. 249+99.96 ℄ 20th St. @ P.G. =
Sta. 8235+21.60± ℄ KCS Mainline
(MP 155.97±) Heavener Subdivision
STA. 251+85.24 @ ALLEY #1B=
STA. 5+52.64 @ ALLEY #3
ALLEY #3
ALLEY #1B
BEGIN ALLEY #1B STA. 251+78.24
@ ALLEY #1B
S 88° 54' 21" E
℄ 20TH STREET
20TH STREET
PERM. ESM'T (BRIDGE)
PROP. R/W
TEMP. ESM'T.
SAW CUT
MSE RETAINING WALL
LINE A7
LINE A71
LINE B8
LINE B81
SECTION LINE
LOT 205
LOT 1
LOT 2
LOT 20
LOT 21
LOT 22
1/4 SECTION LINE
SEE SHEET 21 MATCH LINE STA. 248+00
MATCH LINE STA. 253+00 SEE SHEET 25
STA. 250+25.45 ℄ 20TH STREET= STA. 25+00.00 ℄ MICHIGAN AVE.
STD. UPRIGHT CURB & GUTTER
KCS RR
(111) RANDAL A. KRAFT & SHELLY A. KRAFT
SEE SHEET 21
NW1/4 SE1/4 SEC. 14 T27N R33W
(124) KANSAS CITY SOUTHERN RAILWAY
6,500 8,070 SF NEW R/W
19,090 16,720 SF PERM. ESM'T.
(114) DILLON REAL ESTATE CO.
19,590 SF NEW R/W
8,440 SF TEMP. ESM'T.
10,970 SF PERM. ESM'T.
235,370 SF REMAINING
NE1/4 SE1/4 SEC. 14 T27N R33W
STA. 248+15.00 22.50' RT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (A71)
INSTALL 12" X 45' RCP (N)
STA. 251+90.00 22.50' RT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (B8)
INSTALL 12" X 187' RCP (E)
20TH STREET PLAN
STA. 248+00 TO STA. 253+00
DATE PREPARED 7/23/2014
ROUTE N/A
STATE MO
DISTRICT SW
SHEET NO. 23
COUNTY JASPER
JOB NO. TDG-3200(718)
CONTRACT ID.
PROJECT NO.
BRIDGE NO.
DESCRIPTION
DATE
REV.
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
105 WEST CAPITOL
JEFFERSON CITY, MO 65102
1-888-ASK-MODOT (1-888-275-6636)
TRANSYSTEMS CORP.
2400 PERSHING ROAD
SUITE 400
KANSAS CITY, MO 64108
PHONE: (816)329-8600
FAX: (816)329-8601
MO STATE CERTIFICATE OF AUTHORITY # 273
ENGINEERING
G:\KC11\0427\Road\plan_sheets\PP_0427_120_20TH_005.dgn 5:40:23 PM 7/23/2014

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014
Council Bill No. 2014-177

Item: City of Joplin, Kansas City Southern Railroad (KCS), and Missouri Highways and Transportation Commission Agreement for the 20th Street Overpass TDG-3200(718) Project 4

Originating Department: Public Works – Engineering

Attachments: 1) Location Map
2) Agreement
3) Council Bill No. 2014-177

Engineering Department: Dave Hunt	Date:
Department Head: Nicholas A. Heatherly NAH	Date: 9/30/14
City Attorney: Peter C. Edwards PE	Date: 9/30/14.
Finance Department: Leslie Haase LH	Date: 10-1-14
Interim City Manager: Samuel L. Anselm SLA	Date: 9/30/14

Recommended Action: Approval of Agreement for a Grade Separation with the Kansas City Southern Railway Company and Missouri Highways and Transportation Commission.

Background: The 20th Street Overpass Project, located on 20th Street between Indiana and Vermont and crossing over the Kansas City Southern Railroad, is funded by the TIGER discressinary grant and the 2004 3/8 cent Capital Improvement Sales Tax.

Discussion: The agreement is to establish responsibilities of each party with respect to the Overpass Project, along with the consequent elimination of existing at-grade crossing. $400,000 will be provided by the Missouri Highways and Transportation Commission and $392,520 by the Kansas City Southern Railroad.

Recommendation: It is recommended the proposed agreement with the Missouri Highways and Traffic Commission and Kansas City Southern Railroad (KCS) for the 20th Street Overpass Project TDG-3200(718) Project 4. Be approved on an emergency basis.

COUNCIL BILL NO. 2014-177 **ORDINANCE NO.**

AN ORDINANCE approving the City of Joplin to enter into an Agreement with the Kansas City Southern Railroad for the 20th Street Grade Separation Project in the City of Joplin and authorizing the Director of Public Works of the City of Joplin to execute said Agreement; and containing an emergency clause.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That the City enter into an Agreement with Kansas City Southern Railroad for the 20th Street Grade Separation Project in the City of Joplin, a true and accurate copy of said agreement being attached hereto and incorporated herein and the same is hereby approved.

Section 2. That the Director of Public Works of the City of Joplin, Missouri, is hereby authorized to execute said Agreement for and on behalf of the City of Joplin.

Section 3. This ordinance is an emergency within the means of Section 2.12 (6) in that said ordinance provides for public improvements and is considered an emergency by the Council and as such shall become effective immediately upon this passage as provided by the Home Rule Charter for the City of Joplin. Specifically, this ordinance approves construction to begin immediately in the optimal construction time during the calendar year, and appropriations for this contract have been approved by the 2013-2014 budget.

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

_____, 2014, by a _____ vote.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

CCO FORM: RR5
Approved: 4/91 (TP)
Revised: 11/04 (BDG)
Modified:

20th Street
Jasper County, City of Joplin
Job No. TDG-3200(718)
DOT # 330 057L

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
GRADE SEPARATION AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), The Kansas City Southern Railway Company (hereinafter, "KCS" or "Railroad"), and the City of Joplin (hereinafter, "City") which are referred to hereinafter individually as a "party" and collectively as the "parties".

WHEREAS, the City proposes to eliminate the existing 20TH Street at-grade rail crossing, on the Heavener Subdivision, MP K155.97 and railroad station 8235+21.6, designated as DOT # 330-057L in Jasper County, Joplin, Missouri, a project designated by the City as Job No. TDG-3200(718); and

WHEREAS, the subject project will construct a grade separated crossing at 20th Street over the Railroad necessitating a new crossing of a public roadway and the Railroad's track (a crossing to be designated as DOT # 330 057L), and that all parties endeavor to create a grade separated crossing, hereinafter called the "Project"; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations in this Agreement, the parties agree as follows:

(1) PURPOSE OF AGREEMENT: The purpose of this Agreement is to establish the responsibilities of each party with respect to the Project. This Project is a Federal-aid highway project - FY 2012 TIGER Discretionary Grant for the City of Joplin, Missouri – Joplin Transportation and Disaster Recovery Initiative Agreement and of this Agreement (TDG-3200(718) (hereinafter, "Funding Agreement").

(2) LOCATION: 20th Street, a City arterial, extends generally in an east-west direction within the County. The 20th Street grade separation will occur between Indiana Avenue, a north-south arterial to the west and New Hampshire Avenue, a north-south residential street to the east. Currently, 20th Street has an at-grade crossing with the Railroad. Upon completion, 20th Street will bridge over the Railroad.

(3) SCOPE OF WORK: The scope of work included in the Project consists of the City's preparation of all detailed right of way plans, incorporated herein by reference and attached hereto as **Exhibit A.** The City shall also prepare detailed construction plans, incorporated herein by reference and attached as **Exhibit B** and supporting documents; the City's construction of a new bridge and appurtenant highway facilities to carry 20th Street over the Railroad track; the Railroad's adjustment of its facilities as necessary to accommodate the work of the Project including but not limited to the

Railroad's removal of active grade crossing warning devices and crossing surface at the closed crossing; and all related activities that are reasonably necessary to complete the Project in accordance with the terms of this Agreement.

(4) PROJECT FUNDING:

(A) The Commission shall pay to the City the lump sum of Four Hundred Thousand Dollars ($400,000.00), using State and Federal grade crossing safety funds made available to the Commission pursuant to 23 United States Code (U.S.C.) Section 130. This payment shall become due and payable immediately after the new bridge is opened to public highway traffic and has been completed in accordance with this Agreement.

(B) The Project will result in the elimination of the existing highway-railroad grade crossing, DOT #330-057L in Jasper County, Joplin, Missouri (Railroad Milepost K155.97 on Heavener Subdivision), where active warning devices are employed, in accordance with Title 23, Code of Federal Regulations (CFR), Subchapter G, Part 646, Subpart B, issued by the Federal Highway Administration. The Railroad shall be required to financially participate in five percent (5%) of the cost of a certain portion of the highway-overpass segment of the Project as indicated in **Exhibit C,** which is incorporated herein by reference and attached hereto. The Railroad shall pay to the City the lump sum of **$392,520.96,** using the Railroad's own funds. The parties all agree that said lump sum payment fully satisfies Railroad's cost participation obligation under the cited regulation. This payment shall become due and payable by the Railroad immediately after this agreement is executed.

(C) Except as otherwise provided in subsections (4)(A) and (4)(B) of this Agreement, the City shall be responsible for the payment of all the remaining costs of this Project, in accordance with the applicable provisions of the FY 2012 TIGER Discretionary Grant for the City of Joplin, Missouri – Joplin Transportation and Disaster Recovery Initiative Agreement and of this Agreement (TDG-3200(718)).

(5) PROPERTY RIGHTS. By separate document, the City shall acquire from the Railroad the temporary or permanent easements to the extent necessary for the City to construct the bridge and any appurtenant highway facilities described in this Agreement.

(6) RAILROAD RESPONSIBILITIES: The Railroad shall furnish materials and labor and do the work described in this section, including all subsections, as the progress of the Project requires and in accordance with the approved plans, specifications, and construction procedures, for which the City shall reimburse one hundred percent (100%) of the Railroad's eligible cost.

(A) Preliminary and Construction Engineering; Cost Estimate: The Railroad shall review the City's proposed plans for the Project to the extent that the plans relate to work that may affect the Railroad's property or operations. The Railroad has prepared and furnished to the City a reasonable estimate of its costs for all of its

work on the Project as indicated in **Exhibit D**, which is incorporated herein by reference and attached hereto; and the Railroad may provide construction engineering and inspection services as necessary to protect the Railroad's operations.

(B) Facility Adjustments: The Railroad shall rearrange its facilities as necessary to facilitate the completion of the Project, provided that such rearrangement shall not materially reduce the utility of said facilities to meet Railroad's purposes. After receiving written notice from the City authorizing it to proceed, the Railroad shall prepare and furnish to the City four sets of plans and cost estimates for these facility adjustments, including the cost of preliminary engineering. The preliminary cost estimates for Facility Adjustments as indicated in **Exhibit E**, are incorporated herein by reference and attached hereto. The City shall reimburse the Railroad one hundred percent (100%) of the Railroad's eligible cost of all facility adjustments performed to facilitate completion of the Project. The City will not reimburse the Railroad for any costs incurred by the Railroad for facility adjustments before the date when the City has given the written notice referred to in this section. The City shall not be allowed access to Railroad's property, including the property covered by the easements described in Section 5 above, prior to giving the notice to proceed.

(C) Approval of Flagging Subcontractor; Railroad's Waiver of Certain Claims Against City: The Railroad shall have the right to approve, and shall not unreasonably delay or withhold its approval of, a qualified subcontractor selected by the City's contractor to perform railroad protective services (hereinafter, "flagging") for the purpose of safeguarding the Railroad's operations and the contractor's personnel and and property during the contractor's work on the Project. In consideration of the rights granted to the Railroad by preceding sentence, the Railroad waives all claims against the City or the City's contractor relating to any loss or liability suffered as a proximate result of any acts or omissions by the flagging subcontractor approved by the Railroad pursuant to the preceding sentence.

(D) Temporary Crossing: Except as authorized by Railroad, neither the City nor its contractor(s) or subcontractor(s) will construct any temporary crossing of Railroad's track in connection with this Project at any location. The City intends to design this Project in a manner that will not require the use of any temporary construction crossing. However, the City's contractor may apply for a temporary crossing by paying any and all application and processing fees, which the Railroad may approve. The City shall have no responsibility for any temporary crossing agreement made between its contractor and the Railroad. The City's contractor shall be solely responsible for the payment of any costs relating to a temporary construction crossing.

(E) Force Account Work; Use of Contractors: The Railroad shall furnish materials, equipment and services needed to do all of the Project work described in section (6) of this Agreement, including all subsections, using its own forces. In the alternative, the Railroad may contract with contractors to furnish materials, equipment and services, or any of these, in compliance with provisions of 23 C.F.R. Chapter I, Subchapter B, Part 140, Subpart I and Chapter 34 Missouri Revised Statutes (RSMo), which are incorporated by reference into this Agreement. The

Railroad shall obtain prior written approval from the City of Joplin Director of Public Works before using a contractor to furnish any materials, equipment or services pursuant to this Agreement. The Railroad may also do a part of its work with its own forces and a part of the Project work using an approved contractor or contractors.

(F) Change Orders: If any change is made in the original plan and scope of the work described in this Agreement, then reimbursement to the Railroad shall be limited to costs covered by a change order having approval of the City's Representative before the performance of the work. If the Railroad requests a change order, which is approved by the City's Representative, then the Railroad shall confirm the approval of the change order in writing to the City's Representative within ten (10) days after the work is performed. The Railroad shall not proceed with any work associated with an oral change order until written confirmation to the City is completed.

(G) Statement Of Costs:

1. Progressive Billing: Not more often than once per month, the Railroad may submit to the City progressive billings of its eligible costs incurred for work on the Project, including the cost of materials stockpiled at the Project site or specifically purchased and delivered to the Railroad for use on the Project.

2. Final Billing: Not later than one hundred eighty (180) days after receiving the City's written notice of project completion, the Railroad shall submit to the City four (4) copies of a final itemized statement of its eligible costs incurred for the Railroad's work on this Project, which shall be designated "FINAL BILL".

3. Preparation of Cost Statements: The Railroad's statements of costs shall comply with the applicable requirements and provisions of the Federal Aid Policy Guide, Subchapter B, Part 140, Subpart I (hereinafter, "FAPG"), which are incorporated by reference in this Agreement.

4. Eligible Costs: The Railroad's eligible costs shall be reasonably and necessarily incurred for labor, equipment and materials described in the Railroad's cost estimate, which are actually provided to complete the Railroad's work described in this section (6) of this Agreement, or work approved by a change order in accordance with subsection (6)(F) of this Agreement. Eligible costs shall be determined in accordance with the relevant provisions of applicable Federal and State laws and regulations, and the generally accepted government auditing standards (**GAGAS**) published by the Comptroller General of the United States, which are in force on the date when this Agreement is executed on behalf of the City.

(H) Maintenance of Records: The Railroad shall maintain all books, documents, papers, accounting records, and other evidence pertaining to cost proposals and estimates, and all costs incurred in relation to the Project, in accordance with the provisions in Section (7) of this Agreement.

(7) CITY RESPONSIBILITIES: Except as otherwise provided in subsection (7)(J) of this Agreement, the City shall furnish all material and labor to do the following

work as required by the progress of the Project, and in accordance with the approved plans, specifications, and construction procedure:

(A) Plans: The City shall prepare detailed plans for the Project. To the extent that these plans relate to work that may affect the Railroad's facilities or traffic, the City shall submit copies of the plans for review and approval by the Railroad. Any changes in the City's plans that may affect Railroad's facilities or traffic shall be subject to the review and approval of the Railroad. The Railroad shall not unreasonably withhold its approval of the City's plans or of any changes to those plans.

(B) Construction: The City shall construct a new grade separation structure and all appurtenant highway facilities, in accordance with plans to be approved by the parties in accordance with this Agreement.

(C) City's Contractor to Engage Qualified Flagging Subcontractor: The City shall require its contractor to engage a qualified subcontractor, who is approved by the Railroad and acceptable to the City, to furnish railroad protective services to safeguard the Railroad's operations and property during the contractor's work on the Project (hereinafter referred to as "flagging"). The City's contractor and its flagging subcontractor shall perform flagging for the Project in accordance with the "The Kansas City Southern Railway Company Requirements" (hereinafter, "Railroad Requirements") attached as **Exhibit F**, which requirements are incorporated by reference in this Agreement. The City's contractor shall assume sole responsibility to the flagging subcontractor for payment of the costs of flagging for the Project. Neither the City nor the Railroad shall be obligated by this Agreement to pay any flagging costs to the flagging subcontractor.

(D) Additional Contractor Responsibilities: The City shall require its contractor to comply with the applicable provisions of the "Railroad Requirements" in **Exhibit F**.

(E) Temporary Structural Clearance: The City's contractor shall provide a minimum vertical clearance of twenty-two feet (22') above the top rail of the track, and a minimum lateral clearance of fourteen feet (14') from centerline of track to the nearest temporary construction falsework, formwork, or other obstruction.

(F) Payment of Railroad's Eligible Costs: Upon receipt of the Railroad's statement(s) of costs and after a reasonable time for the City's preliminary review, which shall be completed not more than 60 days after receiving the cost statement, absent extraordinary circumstances, the City shall reimburse the Railroad for the eligible costs of the Project utilizing federal and/or state funds available to the City.

(G) Maintenance: Responsibility for the maintenance of the bridge and appurtenant highway facilities described in this Agreement shall rest solely on the City.

(H) Snow Removal. The City agrees that during snow removal operations, the City will not expel or cause snow, ice or other materials to be plowed over the sides of the bridge.

(I) Collision Walls: After the execution of this Agreement, if the Railroad constructs any additional track underneath the proposed new bridge, then the City at its own expense shall design, construct, and maintain collision walls to a height not less than six (6) feet vertically above the top of the nearest rail, at each location where collision walls are necessary for the adequate protection of the bridge piers from potential impacts due to the Railroad's train operations. The City shall construct the collision walls within nine (9) months after receiving written notice from the Railroad, which reasonably shows the need for construction of the collision walls by including *bona fide* plans and the schedule for construction of specific additional track under the new bridge. (J) The City shall furnish all material and labor to do all of its required work, and shall comply with all other requirements applicable to the City, in accordance with provisions of the Funding Agreement and of this Agreement, and in accordance with the progress of the Project.

(8) CONSTRUCTION INSPECTION: All work performed under this Agreement shall be subject at all times to inspection by authorized representatives of any of the parties or of the Federal Highway Administration (FHWA). Nothing herein shall deny the Railroad the right to place inspectors on the job site during the construction of the Project.

(9) AUDITS AND RECORD RETENTION:

(A) Audit Procedures: The City may conduct a final audit of all Railroad cost statements submitted to the City for each Project. The City shall have the right to audit the Railroad's cost statements without regard to the source of the funding of the Project, and without prejudice to FHWA's audit rights under Federal law or regulations. The City's auditors will comply with all applicable audit standards and procedures prescribed by FHWA, or by any Federal statute or regulation that is applicable to the Project, except when any applicable State law or regulation requires the application of a different standard or procedure with reference to the expenditure of any State funds for the Project. The City shall provide written audit findings to the Railroad. Not later than sixty (60) days after receipt of the City's audit findings, the Railroad shall notify the City of any response to those findings. After the City issues its final audit report, the City immediately will issue payment to reimburse the Railroad for any underpayment shown by the audit to be payable by the City; but if the audit reveals that the Railroad has been overpaid, then the Railroad immediately shall refund the overpayment to the City.

(B) Retention and Availability of Railroad Records: For a period of three (3) years after the Railroad receives the City's final payment for a Project, the Railroad shall:

1. Retain and preserve, and require its contractors to retain and preserve, all books, documents, papers, accounting records, and other evidence pertaining to cost proposals, cost estimates, and costs incurred with respect to the Project; and

2. Make such information available to the City and/or FHWA for examination, at no charge, either at the offices of the Railroad and its contractors, or by providing copies as reasonably requested.

(C) Audit Commenced Within Three Years Extends Retention Period: If the City and/or FHWA commences its audit within this three (3) year period, then the Railroad and its contractors shall continue to retain and preserve all this evidence until the City issues its final audit letter to the Railroad.

(D) City's Audit to Commence Within Six Years: The City shall commence any audit of a Project within six (6) years after the date when the Project has been placed in service.

(10) FHWA REQUIREMENTS: Those portions of FHWA's FAPG which are relevant to highway-rail crossing construction or safety improvement projects, and associated supplements and amendments or replacement(s) for the FAPG, in effect at the time of execution of this Agreement, are incorporated herein and made a part of this Agreement. This Agreement is subject to the approval of the FHWA.

(11) GOVERNING LAW: This Agreement shall be construed according to the laws of the State of Missouri, except that any Federal law or regulation incorporated or referenced in this Agreement shall be interpreted according to applicable Federal interpretation.

(12) COMPLIANCE WITH APPLICABLE LAWS: The Railroad and the City shall comply with all applicable local, state and federal laws and regulations relating to their respective performances under this Agreement, including applicable wage and labor laws.

(13) BINDING EFFECT; DURATION OF AGREEMENT: When the Project has been approved by the FHWA and this Agreement has been executed by the duly-authorized representatives of each of the parties, this Agreement shall be effective to bind the parties, their successors or assigns. This Agreement shall continue in force so long as the City maintains the grade separation structure and appurtenant highway facilities at this location as part of the state highway system.

(14) AMENDMENTS: Except for any change order as provided in subsection (6)(F) of this Agreement, 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 parties.

(15) ASSIGNMENT: Except as authorized in subsection (6)(E) of this Agreement, the Railroad shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the City, which the City will not unreasonably withhold.

(16) INDEMNIFICATION BY RAILROAD: To the extent allowed or imposed by law, the Railroad shall defend, indemnify and hold harmless the City from damages or

claims for damages arising as a proximate result of the negligence of Railroad or its employees or contractors in connection with the Project.

(17) INDEMNIFICATION BY CITY:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and Missouri Department of Transportation (**MoDOT** or **Department)** employees, and shall indemnify and hold harmless the Railroad 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 wrongful or negligent performance, by the City, of its obligations under this Agreement.

(B) The City shall require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the City's engineer prior to working on the City's right-of-way, which shall be signed by an authorized contractor representative (a permit from the City's engineer will not be required for work outside of the City's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the City, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities ($500,000 per claimant and $3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation of either the City's or the City's rights or defenses with regard to sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(18) EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED:

(A) Compliance with Executive Order 07-13: If the City has reasonable cause to believe that the Railroad has knowingly employed to perform services under this Agreement any individual who is not eligible to work in the United States in violation of federal law, then the City may declare a breach and may cancel the contract immediately, with no penalty. By signing this Agreement, the Railroad certifies that, to the best of its knowledge, any employee of the Railroad assigned to perform services under this Agreement is eligible to work in the United States.

(B) Requirements Generally Applicable to Work Performed in Missouri: The Railroad shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform any work within the State of Missouri.

(C) Requirements Generally Applicable to Business Entity Receiving State Contract in Excess of $5,000.00: If the total amount payable by the City to the Railroad in connection with this Agreement will exceed Five Thousand Dollars ($5,000.00), then the Railroad shall comply with all the applicable provisions of subsections 2, 4 and 5 within section 285.530 of the Missouri Revised Statutes (Supp. 2009). As a condition for the award of this Agreement, the Railroad shall annually, until the Project is completed, sign an affidavit in accordance with the form attached to this Agreement as **Exhibit G**, which is incorporated by reference in this Agreement. Upon request, the Railroad shall provide documentation of compliance with this section to the City.

(19) NONDISCRIMINATION ASSURANCE: The provisions in Section (20) of this Agreement shall apply to the Railroad and City with regard to work under this Agreement. The Railroad agrees to the following:

(A) Civil Rights Statutes: The Railroad and City 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, et seq.), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, et seq.). In addition, if the Railroad and City are providing services or operating programs on behalf of the Department or the City under this Agreement, they shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The Railroad and City shall comply with the administrative rules of the USDOT relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The Railroad and City, including any subrecipient or subcontractor of the Railroad or City, shall not discriminate on the grounds of race, color, religion, creed, sex, disability, national origin, age or ancestry in the performance of this Agreement including in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Railroad and City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices. The Railroad's or City's failure to carry out these requirements is a material breach of this Agreement. If either party commits such a breach, the other party may terminate this Agreement and pursue any other lawful remedy.

(D) Nondiscrimination in Subcontracting: The Railroad and City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the solicitation (either by competitive bidding or negotiation), selection and retention of subcontractors, including procurement of materials and leases of equipment. Each potential subcontractor or supplier shall be notified by the Railroad and City of the requirements of this Agreement relative to nondiscrimination on the foregoing grounds.

(E) Information and Reports: The Railroad and City shall provide to the authorized personnel of the State of Missouri, or of the Federal government, having jurisdiction with respect to the nondiscrimination provisions of this section all information and reports required by Section (19) of this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities reasonably related to ascertaining compliance with Section (20) of this Agreement. Where any information required of the Railroad and City is in the exclusive possession of another who fails or refuses to furnish this information, the Railroad and City shall so certify to the City 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 Railroad or City fails to comply with the nondiscrimination provisions of this Agreement, the City or Railroad may impose such contract sanctions as it or the USDOT may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the Railroad and City complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The Railroad and City shall include or expressly incorporate the provisions of Section (20) 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 City or the USDOT. The Railroad and City will take such action with respect to any subcontract or procurement as the City or the USDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Railroad becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Railroad may request the USDOT to enter into such litigation to protect the interests of the United States.

(20) PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBE): If the Railroad is either a "recipient" or "contractor" within the meaning of 49 CFR section 26.5, then the provisions in this section shall apply. As used in this section, the term "DBE" means "disadvantaged business enterprise" as defined in 49 CFR part 26; and the term "DOT" means the United States Department of Transportation.

(A) Nondiscrimination in Award and Performance of DOT-Assisted Contract, Administration and Incorporation of DBE Program; Sanctions: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by

49 CFR part 26 and as approved by DOT, is incorporated by reference in this Agreement. A copy thereof shall be provided to Railroad by the City. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. sections 3801, *et seq.*).

(B) Prescribed Contract Provisions: Each contract the recipient signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

> The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

(21) WAIVER OF NOTICE AND HEARING ON ISSUANCE OF ADMINISTRATIVE ORDERS: This Project may require approval by a final Administrative Order issued by the Missouri Highways and Transportation Commission, or by the Missouri Administrative Hearing Commission (hereinafter "AHC"), in accordance with sections 389.610, 621.040, 622.240, RSMo, or other applicable laws. The Railroad and the City each consents that the Commission or AHC, or both, may issue Administrative Orders approving and authorizing the completion of this Project in conformity with the provisions of this Agreement, and the Railroad and the City each waives its right to notice and an opportunity for hearing regarding the issuance of these Administrative Orders.

(22) EXISTING AGREEMENTS: Except as modified, amended, or supplemented by this Grade Separation Agreement, all previous Agreements between the parties, or between any of them, which are currently in force with reference to any existing or proposed facility, property, payment or activity that is specifically identified in this Agreement, shall remain in full force and effect. These existing Agreements include, but may not be limited to, FY 2012 TIGER Discretionary Grant for the City of Joplin, Missouri – Joplin Transportation and Disaster Recovery Initiative Agreement, the STP-Urban Program Agreement between the City and the Commission and this Agreement.

(23) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective organizations and have been duly authorized, directed and empowered to execute this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the last date written below. The City executed same pursuant to Ordinance No. _____, of said City, approved on the ____ day of _____, 2014.

Executed by Railroad this _____ day of _____, 2014

Executed by City this _____ day of _____, 2014

Executed by Commission this _____ day of_____, 2014

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By _____
Michelle Teel
Director of Multimodal Operations

ATTEST:

_____
Commission Secretary

APPROVED AS TO FORM:

_____
Senior Administrative Counsel

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By _____

Name_____

Title_____

CITY OF JOPLIN, MISSOURI

By _____

Title_____

ATTEST:

By _____

Title_____

APPROVED AS TO FORM:

By _____

Title_____

City Ordinance No._____

EXHIBIT A

PLACEHOLDER FOR

DETAILED RIGHT OF WAY PLANS

TO BE PREPARED BY CITY

[DRAFTER'S NOTE: PLEASE INSERT ACTUAL EXHIBIT IN LIEU OF THIS PLACEHOLDER PAGE, AND THEN DELETE THIS PAGE]

EXHIBIT B

PLACEHOLDER FOR

DETAILED CONSTRUCTION PLANS

TO BE PREPARED BY CITY

[DRAFTER'S NOTE: PLEASE INSERT ACTUAL EXHIBIT IN LIEU OF THIS PLACEHOLDER PAGE, AND THEN DELETE THIS PAGE]

EXHIBIT C

RAILROAD CONTRIBUTIONS

PROJECT COST SUMMARY	COST	
	COMPLETE	PARTICIPATING
CONSTRUCTION TOTAL	$6,473,156.26	$5,921,072.02
RIGHT-OF WAY TOTAL	$1,000,000.00	$1,000,000.00
PRELIMINARY ENGINEERING TOTAL	$1,016,000.00	$929,347.13
PROJECT TOTAL	$8,489,156.26	$7,850,419.14
5% PARTICIPATION	N/A	**$392,520.96**

Detailed estimate is shown in the following pages.

EXHIBIT D

RAILROAD ESTIMATE

OLSSON ASSOCIATES – KCS' SUBCONTRACTOR:	
1. Preliminary Engineering Review	$3,500.00
2. Construction Monitoring and construction management	$32,800.00
SUB TOTAL – OLSSON ASSOCIATES	**$36,300.00**
KCS COSTS:	
1. Preliminary Engineering	$5,000.00
2. Construction Monitoring	$5,000.00
3. Construction Management	$10,000.00
4. Accounting, mapping, etc.	$3,000.00
5. Expenses-Travel, meals, lodging, etc.	$5,000.00
SUB TOTAL – KCS COST	**$28,000.00**
GRAND TOTAL – ALL COSTS	**$64,000.00**

EXHIBIT E

RAILROAD FACILITY ADJUSTMENT COST

CROSSING SIGNAL RELOCATION COSTS

1. Estimated Cost to remove the grade crossing signals (See details of the estimate in the next page)	$66,000.00
SUB TOTAL – KCS SIGNAL WORK ESTIMATE	**$66,000.00**

EXHIBIT E (Cont'd)

KANSAS CITY SOUTHERN RAILWAY COMPANY
GRADE CROSSING WARNING DEVICES
SIGNAL PROJECT ESTIMATE OF COST

ESTIMATE IS DEFINED AS: TO PRODUCE A STATEMENT OF APPROXIMATE COST

DATE 9/3/13

Project Description & Location...

PROPOSED TO REMOVE ALL CROSSING SIGNAL EQUIPMENT AT THE CROSSING OF KCS RAILWAY TRACKS WITH **20TH STREET IN JOPLIN, MO**

...REMOVAL COST INCLUDES ALL LABOR TIME IT WILL TAKE TO REMOVE ALL OF THE EQUIPMENT AND TRANSPORT IT TO A STORAGE LOCATION.

States Identification...	Funding Mechanism...	Railroads Identification...
20TH STREET JOPLIN JASPER COUNTY DOT NO. 330-057L JOB NO. ORDER NO.	SIGNAL PROJECT 100% MO/DOT	FILE NO. SD-02-5-155.97 DOT NO. 330-057L MILE POST 155.97 ASSET # MIDCONTINENT DIVISION HEAVENER SUBDIVISION

MATERIAL Description & Pricing Info...	QTY Unit	Unit Price	TOTAL
MATERIAL SUB TOTAL =			

LABOR & ADDITIVES, Equipment, Engineering...	QTY Unit	Unit Price	TOTAL
KCS LABOR with Additives, all Signal Dept. Personnel required for Administration, Supervision and for Field Installation, testing and cut-over as directed by the Signal Engineer. 6d	1 Const	26,520	$ 26,520.00
EQUIPMENT CHARGES, for Signal Dept Pickup Trucks, Backhoes, Boom Trucks, etc.	1 Const	8,385	$ 8,385.00
KCS PERSONAL EXPENSES, for all Signal Dept Personnel	1 Const	4,095	$ 4,095.00
CONTRACT ENGINEERING, for Layout Design, Quote Plans, Material Lists, Layout Plans & Estimate, Shop Wiring & Field Construction Plans as directed by the RR (JaKay)	1 Const	3,500	$ 3,500.00
CONTRACT ACCOUNTING, Project Cost Tracking System through the life of the project, Completion Reports and assist Accounting with Final Billing preperation. (BHS)	1 Const	2,000	$ 2,000.00
UTILITY COORDINATION, arrangements for removal of electrical service (JaKay)	1 Const	1,500	$ 1,500.00
SURFACE REMOVAL LABOR & EQUIPMENT	1 Const	20,000	$ 20,000.00
THIS ESTIMATE IS LIMITED TO 180 DAYS FROM DATE OF ISSUANCE, KCS SHALL AUTHORIZE IT'S USE THEREAFTER	LABOR SUB TOTAL =		**$ 66,000.00**

TO REMOVE ALL SIGNAL EQUIPMENT AT PEARL STREET IN BEAUMONT, TEXAS

TOTAL ESTIMATE OF COST

$ 66,000.00

EXHIBIT F

THE KANSAS CITY SOUTHERN RAILWAY COMPANY REQUIREMENTS

To report an emergency on The Kansas City Southern Railway Company right-of-way call: (877) 527-9464.

This Project is located on the Heavener Subdivision, MP 155.97, designated as DOT # 330 057L.

1.0 Authority of Railroad Engineer and State Engineer.

1.1 The authorized representative of The Kansas City Southern Railway Company, herein called "Railroad Engineer", shall have final authority in all matters affecting the safety of employees of The Kansas City Southern Railway Company, herein called "Railroad", and the safe maintenance and operation of railroad traffic including the adequacy of the foundations and structures supporting the railroad tracks. The Railroad designates the following individual as the Railroad Engineer for this project. Except as otherwise provided in this document, herein called "Railroad Requirements", the City of Joplin's Contractor, herein called "Contractor", shall address all notices to the Railroad concerning this Project to the following person:

Mr. Jeffrey Songer
Vice President and Chief Engineer
The Kansas City Southern Railway
427 West 12th Street
Kansas City, MO 64105
c/o Mr. Srikanth Honnur, P.E.
Office: (816) 983-1138; Fax: (816) 983-1186
E-mail:SHonnur@KCSouthern.com

1.2 The authorized representative, herein called "Engineer", of the City of Joplin, herein called "City", shall have authority over all other matters as prescribed herein and in the project plans and specifications.

1.3 The Railroad's right of way (hereinafter, "Railroad ROW") is located within this Project, which requires the Contractor to perform work on Railroad ROW. Therefore, the Contractor shall coordinate its work activities with the activities of the Railroad as required in this document.

1.4 Indemnification of Railroad by Contractor.

1.4.a. The term Contractor as used herein includes any and all subcontractors.

1.4.b. The Contractor agrees to defend, indemnify and hold harmless Railroad, its directors, officers, employees, agents, successors and assigns from and against any injury or death of persons whomsoever or from any loss or damage to the Railroad's property, right of way, tracks and other facilities, herein called "Railroad's property," and from the Railroad's liability or loss incurred for damage to any other property in Railroad's care, custody or control in or upon Railroad's property, caused by acts or omissions of the Contractor in performing work on this Project, whether on, over, under or in the vicinity of the Railroad's property.

1.4.c. In the event the Contractor shall fail to restore the Railroad's property immediately to a condition acceptable to the Railroad when any such loss or damage to the Railroad's property is called to the Contractor's attention by the Railroad, then the Railroad may perform such corrective work at the cost of the Contractor. The term "loss or damage" as used herein shall include, but not be limited to, the erosion and silting of, water damage to, and the accidental or intentional placing or dropping of objects on the Railroad's property.

2.0 Construction Requirements.

2.1 Prior to entering the Railroad's ROW, outside the City's easements or other property rights, the Contractor shall obtain a Right of Entry Permit from the Railroad by paying any and all fees by contacting:

Sylvia Schmidt
Jones Lang Lasalle
4300 Amon Carter Blvd., Suite 100
Fort Worth, Texas 76155
Ph: 817-230-2688
Email: Sylvia.Schmidt@am.jll.com

2.2 The Contractor's work on the Railroad's ROW shall be performed in accordance with these Railroad Requirements. The Contractor shall supply adequate equipment, labor and materials to perform the proposed work at the job site. The Contractor shall take special precaution and care to prevent any debris or material from falling on the Railroad's right of way. The safe operation of the Railroad shall take precedence over all work and nothing shall be done by the Contractor that will endanger the Railroad's operations. The Contractor shall protect the Railroad property from any damage resulting from the Contractor's acts or omissions during the highway Project.

3.0 Contractor Plans and Procedures. Before performing any excavation, demolition, blasting, lifting of structural members or construction of falsework on or over Railroad's ROW or adjacent to the Railroad's ROW that may interfere with the safe operation of the trains, the Contractor shall submit its excavation, shoring, demolition, blasting, lifting of structural members and falsework plans and relevant procedures to

the Engineer for review, and to the Railroad Engineer for review and approval. These plans and procedures shall be signed and sealed by a Professional engineer licensed in the State of Missouri. However, such approval shall not relieve the Contractor from any liability relating to this Project. During the course of the Project, the Contractor shall submit any proposed changes to the approved plans or procedures to the Engineer for review and to the Railroad Engineer for review and approval. Any clearing and grubbing to increase the sight distance for a safer construction operation, or erection of temporary structures within the Railroad property shall not be done prior to the approval of the Railroad. The Railroad Engineer shall make a decision within 30 days. Should the Railroad Engineer deny the plans and requires a resubmittal, the Railroad Engineer shall provide approval or denial and requirement for resubmittal within 30 days after receipt of the revised plans.

3.1 The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Section IV, Design and Construction of Shoring Adjacent to and on Railroad Right-Of-Way contained within the "KCS Guidelines for the Design and Construction of Railroad Overpasses and Underpasses".

3.2 The Contractor shall abide by the following minimum temporary clearances during the course of construction:

(a) 14 feet horizontal from centerline of track

(b) 22 feet vertical above top of rail.

3.3 The Contractor shall comply with the Railroad's rules and regulations concerning protection of persons and property and the Contractor shall consult with the Railroad Engineer concerning the Railroad's rules and regulations. Any questions arising about coordination of work between the Contractor and the Railroad Engineer or between the Contractor and others shall be taken up with the Engineer and the Contractor, Railroad Engineer and Engineer shall agree upon a method of coordination before commencing the work.

3.4 Prior to commencing any work upon, over or under the Railroad's ROW, the Contractor shall furnish to the Railroad Engineer evidence that the Contractor's insurance is in compliance with Section 6 of this special provision.

3.5 If the Contractor must cross tracks with cleated or crawler type equipment, the track shall be protected with a temporary surfacing as approved by the Railroad Engineer. Except as authorized by the Railroad, neither the City nor its Contractor(s) or subcontractor(s) will construct a crossing over any track at any location. Where crossings are needed or desired, City's Contractor shall make arrangements with Railroad and obtain a Permit paying any and all fees.

3.6 The Contractor shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from Contractor's operations; to promptly repair eroded areas within Railroad's right-of-way and to repair any other damage to the property of the Railroad or its tenants which may result from Contractor's operations. All such maintenance and repair of damages due to the Contractor's operations shall be done at the Contractor's expense. If the Contractor's method of erosion control differs from the approved plans, the Contractor shall submit a proposed method of erosion control and have the method reviewed by the Railroad and Commission prior to beginning any grading work on the Project site. Erosion control methods must comply with all applicable local, state and federal regulations.

3.7 The Contractor shall, reasonably throughout each work day and at the end of each work day when performing work near the Railroad's tracks, inspect the track area and clean up any debris that may have been dropped on or within ten (10) feet of Railroad's tracks. Upon completion of the Project, the Contractor shall return the Railroad ROW and all other Railroad property to a condition equal to or better than existed prior to commencement of the work. Contractor shall remove all waste, excess materials, false work and other temporary structures, and equipment, leaving the location of the work cleaned to the reasonable satisfaction of Railroad. The Contractor shall repair to the reasonable satisfaction of Railroad Engineer, and at the Contractor's sole cost and expense, any and all damages to the Railroad's property caused during construction of the Project.

4.0 Site Inspections By Railroad's Designated Representative.

4.1 In addition to the office review of construction submittals, site inspections may be performed by Railroad's Designated Representative at milestone events during construction, including but not limited to the following:

(a) Preconstruction meetings.

(b) Excavations, shoring placement/removal, pile driving, drilling of caissons or drilled shafts adjacent to tracks.

(c) Reinforcement and concrete placement for near track piers.

(d) Erection of precast concrete or steel overpass bridge superstructure.

(e) Reinforcement and concrete placement of overpass bridge decks.

(f) Completion of the bridge structure.

4.2 The Railroad Designated Representative can either be an employee of the Railroad or a hired outside consultant. Site inspection is not limited to the milestone events listed above. Site visits to check progress of the work may be performed at any time throughout the construction as deemed necessary by the Railroad.

4.3 In addition to the project schedule required by the City, the Contractor shall provide to the Engineer a detailed construction schedule for its work on Railroad ROW, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed on Railroad ROW. The Contractor shall submit a copy of this detailed construction schedule to Railroad's Designated Representative for review prior to the start of the work. This schedule shall also include the anticipated dates when the milestone events listed in subsection 4.1 will occur. The Contractor shall update the schedule for these milestone events as necessary, but at least monthly, and shall provide a copy of all updates to the Railroad so that site visits may be scheduled. The City shall reimburse the Railroad all costs associated with Site Inspection work by the Railroad.

5.0 Safety and Railroad Flagging.

5.1 The safe operation of the Railroad shall take precedence over City's work on, under and above the Railroad ROW. Contractor shall not, without Railroad's prior consent, come within 25 feet of Railroad's tracks. All work of the Contractor to be performed on, above, below or adjacent to the Railroad ROW shall be coordinated with Railroad so as to avoid, to the greatest extent possible, interference with railroad operations and to assure, at a minimum, sufficient advance notice to Railroad to ensure operational safety. Contractor shall be solely responsible with complying with any applicable laws, rules and regulations, including but not limited to OSHA regulations governing multi-employer work sites.

5.2 While on the Railroad's ROW, Contractor shall comply with Railroad's rules and regulations concerning protection of persons and property. Railroad shall make its applicable rules available to the Contractor for review and copying.

5.3 Except as authorized by Railroad the Contractor shall not work within the "Minimum Clearance Zone" of any track. The "Minimum Clearance Zone" is defined as an area measured 25 feet, horizontally, on either side of the centerline of track with unlimited vertical distance within the horizontal limits. Additionally, Contractor will locate all equipment, devices, and materials at a sufficient distance from any track to ensure that no apparatus or part of any equipment, device, or material, such as the boom of a crane or a dragline, could under any circumstances encroach on the "Minimum Clearance Zone" of any track. A railroad flagger will also be required when any equipment or its attachment or booms, even though stationed outside the above-mentioned 25 feet of the nearest rail but within the railroad ROW, has a potential to come within the 25 feet of the nearest rail.

5.4 Flagging services provided by a Railroad-qualified flagging contractor will be required whenever agents, employees or equipment of the Contractor or any of its contractors or subcontractors on this Project shall be within twenty-five feet (25') of the nearest rail, unless specifically waived in writing by the Railroad.

5.5 Contractor shall notify the Railroad concerning any flagging services that will be required during the course of the Project, but the Contractor shall make all arrangements for flagging protection directly with a Railroad-qualified flagging contractor. Railroad's designation of a flagging contractor as a "Railroad-qualified" flagging contractor shall be construed solely as Railroad's willingness to allow that flagging contractor to provide flagging services on Railroad's property without further proof of qualification, and shall not be construed as an endorsement or other verification of the abilities or qualifications of that flagging contractor. Under these Railroad Requirements, all flagging contractors utilized on the Project shall be treated solely as independent contractors of the Contractor for all purposes under these Railroad Requirements.

5.6 The Contractor shall contract directly with any of the Railroad-qualified flagging contractors and pay them directly. The Contractor shall provide at least one month's notice prior to the first use of flaggers. Current Railroad-qualified flagging contractors are:

Railroad Protective Services 2001 Ryan Road Saint Augustine, FL 32092 Contact: David Schaffer 904-588-3433 drsshaffer@aol.com	Rail Pros, Inc. 25 Mauchly Drive, Suite 329 Irvine, CA 92618 Donna Beasley 318-938-2815, Ext. 3 (Office) 714-900-9270 (Cell) 866-762-7619 (Fax) Donna.Beasley@railpros.com General e-mail flagging@railpros.com Alternate Contact Johnny Johnson 949-278-8637 (Cell) johnny.johnson@railpros.com

5.7 Contractor may also obtain a list of Railroad-qualified flagging contractors together with their address and telephone numbers for flagging purposes at the proposed site by written request, sent at least 30 (thirty) days in advance, by U.S. mail or by e-mail addressed to:

Sri Honnur, P. E.
Engineering Department
Post Office Box 219335
Kansas City, MO 64121-9335
SHonnur@KCSouthern.com

5.8 Contractor shall clear the tracks when directed to do so by the flagger. The presence of the flagger will not relieve Contractor of its duty to keep all of its agents, employees and contractors clear of the tracks when trains are in dangerous proximity to the area where construction is occurring.

5.9 All Contractor employees and supervisors who will routinely perform work within the Railroad ROW, except any personnel employed or assigned by a Railroad-qualified flagging contractor, shall be trained with reference to the Railroad's On Track Safety Rules. Contractor shall provide the accommodations for this classroom training at its own expense, and shall pay any and all applicable fees for this training by a Railroad certified training consultant. The consultant can be contacted at:

TrackSense Inc.
308 Durst Dr. Warren, OH 44483
Phone: (330) 847-8661; Cell: (330) 219-4721;
Attention: Larry Slater
Email: lslater@neo.rr.com

5.10 All railroad tracks within and adjacent to the Project site are active, and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations will occur continuously throughout the day and night on the tracks. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with railroad operations. Any and all costs associated with delays caused to the train traffic by the Contractor shall be reimbursed by the Contractor. The City or the Contractor may audit these costs.

5.11 The Contractor shall notify Railroad of the completion of work on Railroad ROW within 30 days after the completion of work on Railroad ROW. Railroad shall inspect Railroad's property within 30 days after the Contractor has given this notice, to verify the Contractor's compliance with these Railroad Requirements. Railroad shall notify the Engineer of any outstanding issues to be addressed on Railroad ROW. Engineer will notify the Contractor of work to be completed.

6.0 Insurance Requirements. The amount of work to be performed upon, over or under Railroad's right of way is estimated to be __ percent of the Contractor's total bid for the Project. In addition to any other forms of insurance or bonds required under the terms of the contract and specifications, the Contractor shall be required to carry insurance of the following kinds:

(a) Commercial General Liability Insurance, including contractual liability and products completed/operations, against claims arising out of bodily injury, illness and death and from damage to or destruction of property of others, including loss of use thereof, with minimum limits for bodily injury and property damage of $5,000,000 for each occurrence, with an aggregate of $10,000,000.

1. The definition of "insured contract" shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.

2. No other endorsement limiting the coverage required by paragraph (a) of section 6.0 of these Railroad Requirements shall be included on the policy with regard to the work being performed under the contract between the contractor and the City.

(b) Business Automobile Policy Insurance, including owned, non-owned, and hired vehicles with minimum limits for bodily injury and property damage of $1,000,000 per occurrence, on all vehicles used on Railroad's property during the term of the contract between the contractor and the City.

(c) Worker's Compensation Insurance or coverage as required under the Worker's Compensation Act of the State of Missouri. The policy shall include occupational disease to required statutory limits, employer's liability of $1,000,000 to include FELA, if appropriate, and an "all states" endorsement.

(d) A Railroad Protective Liability policy issued in the name of the Railroad with limits of $5,000,000 for bodily injury and property damage per occurrence, with an aggregate of $10,000,000. The policy shall remain in force during the construction phase of the Project and shall be provided prior to start of work. The following provisions apply to the endorsements to this policy:

1. The policy shall be endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93).

2. The policy shall be endorsed to include the Limited Seepage and Pollution Endorsement.

3. The policy shall be endorsed to remove any exclusion for punitive damages.

4. The policy shall be endorsed to include Evacuation Expense Coverage Endorsement.

5. No other endorsements restricting coverage shall be added to the policy, except as authorized by paragraph 6.1.2 of these Railroad Requirements.

6. The Contractor shall provide the original policy to the Railroad before performing any work or services under the contract between the Contractor and the City.

6.1 Evidence of Insurance. The Declarations shall include the description of operations matching the Project description in the Contractor's contract with the City, and shall include the appropriate City project and contract identification numbers. The job number and Project location shall appear on the Declarations and shall include the city, state and appropriate highway designation as follows:

20th Street
City of Joplin, Jasper County, MO
Job No. TDG-3200(718)
KCS Heavener Sub MP 155.97 Crossing DOT 330057L

6.1.1 The name and address of the Contractor shall appear on the Declarations. The name and address of the City shall be identified on the Declarations as the "Involved Governmental Authority or Other Contracting Party".

6.1.2 Other endorsements/forms that will be accepted are:

(a) Broad Form Nuclear Exclusion – Form IL 00 21.

(b) 30-day Advance Notice of Non-renewal or cancellation.

(c) Required State Cancellation Endorsement.

(d) Quick Reference or Index Form CL/IL 240.

6.1.3 Endorsements/forms that will NOT be acceptable are:

(a) Any Pollution Exclusion Endorsement except CG 28 31.

(b) Any Punitive or Exemplary Damages Exclusion.

(c) Known injury or Damage Exclusion form CG 00 59.

(d) Any Common Policy Conditions form.

(e) Any other endorsement/form not specifically authorized in this special provision.

6.1.4 If any part of the work is sublet, similar insurance and evidence thereof as specified above, shall be provided by or on behalf of the subcontractor to cover the subcontractor's operations on the Railroad ROW, including such operations by any Railroad-qualified flagging contractor.

6.1.5 Prior to entry on the Railroad's right of way, the Contractor shall submit the original Railroad Protective Liability Insurance Policy to the City and to the Railroad at the addresses below, for review by the City and approval by the Railroad. In addition,

the Contractor shall submit certificates of insurance evidencing the Contractor's and any subcontractor's Commercial General Liability Insurance to the Railroad and the City at the addresses below, for review by the City and approval by the Railroad. The certificates of insurance shall state that the insurance coverage shall not be suspended, voided, canceled or reduced in coverage or limits without 30 days advance written notice to the Railroad and the City. No work shall be permitted on the Railroad's right-of-way until the Railroad has reviewed and approved the evidence of insurance required herein.

Railroad
Srikanth Honnur, P. E.
Director, Track & Bridge Construction
The Kansas City Southern Railway Co.
P.O. Box 219335
Kansas City, MO 64121-9335

City
Mr. Nick Heatherly
Director of Public Works
City of Joplin 602 S Main
Joplin, MO 64801

7.0 Failure to Comply. If the Contractor violates or fails to comply with any of these Railroad Requirements, then the provisions in paragraphs (a) and (b) of this section shall apply, and shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

(a) The Railroad Engineer may require that the Contractor shall vacate the Railroad's property.

(b)The Engineer may withhold all monies due to the Contractor until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

8.0 Payment for Cost of Compliance. No separate payment will be made for any extra cost incurred by the Contractor on account of compliance with these Railroad Requirements. The Contractor shall include all such costs in its contract unit price for other items included in its contract with the City.

(End of Exhibit)

EXHIBIT G

ANNUAL WORKER ELIGIBILITY VERIFICATION AFFIDAVIT
(for joint ventures, a separate affidavit is required for each business entity)

STATE OF Missouri)
) ss
COUNTY OF Jackson)

On the 18th day of November, 2013, before me appeared Robert Matthew Brazeal, personally known to me or proved to me on the basis of satisfactory evidence to be a person whose name is subscribed to this affidavit, who being by me duly sworn, stated as follows:

* I, the Affiant, am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the state to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

* I, the Affiant, am the Director Employee Relations & Workforce Compliance of The Kansas City Southern Railway Company, and I am duly authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.

* I, the Affiant, hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security, and the aforementioned business entity shall participate in said program to verify the employment eligibility of newly hired employees working in connection with any services contracted by the Missouri Highways and Transportation Commission (MHTC). I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.

* I, the Affiant, also hereby affirm and warrant that the aforementioned business entity does not and shall not knowingly employ, in connection with any services contracted by MHTC, any alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

* I, the Affiant, am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 though 285.550, RSMo, for subcontractors that knowingly employ or continue to employ any unauthorized alien to work within the state of Missouri.

* I, the Affiant, acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress.

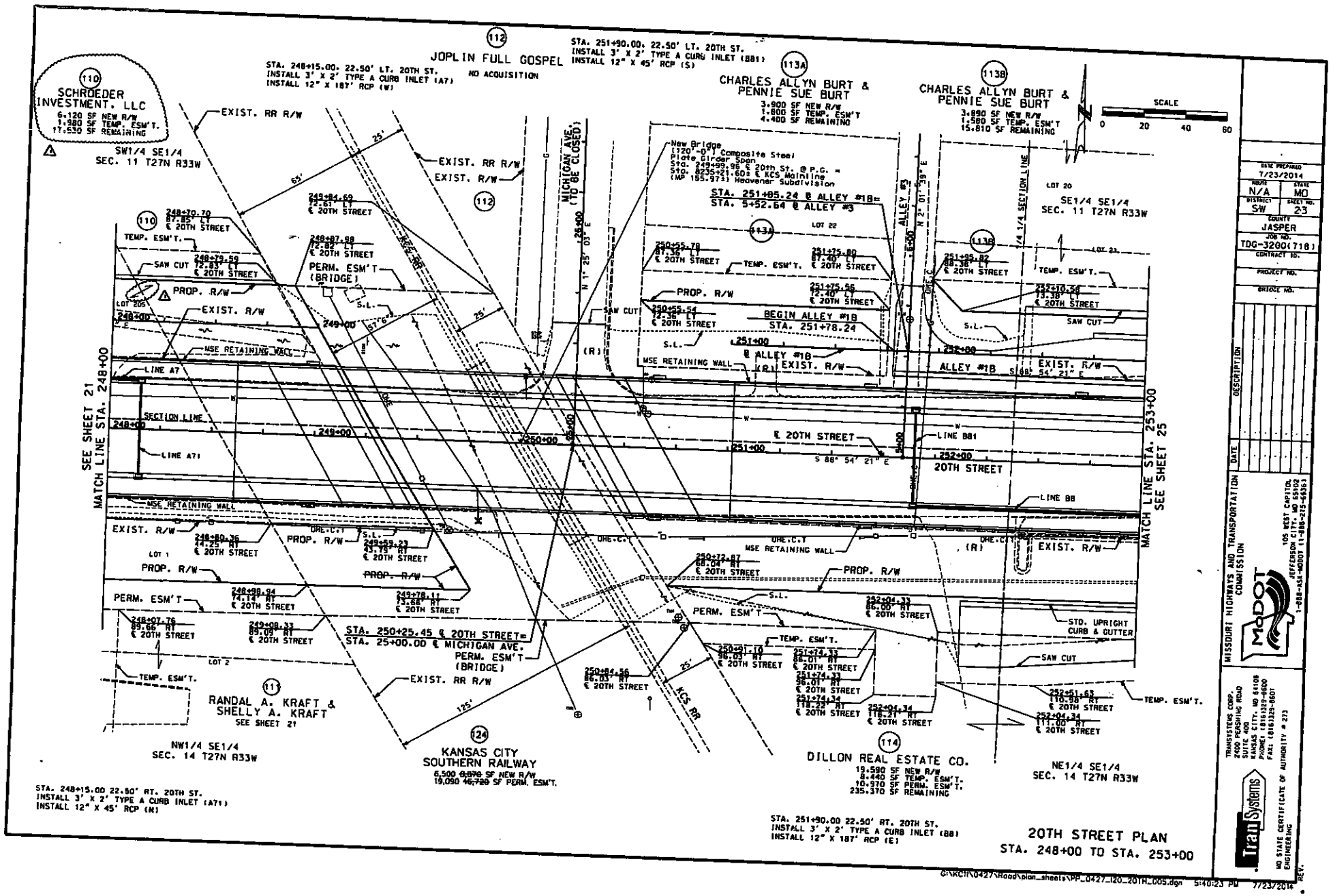
Affiant Signature

Subscribed and sworn to before me in Kansas City, MO the day and year first above-written.
city (or county) state

Notary Public

My commission expires: 6-3-14

[documentation of enrollment/participation in a federal work authorization program attached]


JOPLIN FULL GOSPEL
STA. 248+15.00, 22.50' LT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (A7)
INSTALL 12" X 187' RCP (W)
NO ACQUISITION
STA. 251+90.00, 22.50' LT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (B8)
INSTALL 12" X 45' RCP (S)
SCHROEDER INVESTMENT, LLC
6,120 SF NEW R/W
1,380 SF TEMP. ESM'T.
17,630 SF REMAINING
CHARLES ALLYN BURT & PENNIE SUE BURT
3,900 SF NEW R/W
1,800 SF TEMP. ESM'T
4,400 SF REMAINING
CHARLES ALLYN BURT & PENNIE SUE BURT
3,890 SF NEW R/W
1,580 SF TEMP. ESM'T
15,810 SF REMAINING
SCALE
0 20 40 80
SW1/4 SE1/4
SEC. 11 T27N R33W
SE1/4 SE1/4
SEC. 11 T27N R33W
EXIST. RR R/W
EXIST. R/W
PROP. R/W
TEMP. ESM'T.
PERM. ESM'T (BRIDGE)
MSE RETAINING WALL
SAW CUT
MICHIGAN AVE. (TO BE CLOSED)
New Bridge
1720'-0" Composite Steel
Plate Girder Span
Sta. 249+99.96 ℄ 20th St. @ P.C. =
Sta. 8235+21.60 ℄ KCS Mainline
(MP 155.973) Heavener Subdivision
STA. 251+85.24 @ ALLEY #1B=
STA. 5+52.64 @ ALLEY #3
BEGIN ALLEY #1B
STA. 251+78.24
ALLEY #1B
ALLEY #3
EXIST. R/W
S 88° 54' 21" E
℄ 20TH STREET
20TH STREET
LINE A7
LINE A71
LINE B81
LINE B8
SECTION LINE
1/4 1/4 SECTION LINE
SEE SHEET 21
MATCH LINE STA. 248+00
SEE SHEET 25
MATCH LINE STA. 253+00
STD. UPRIGHT CURB & GUTTER
STA. 250+25.45 ℄ 20TH STREET=
STA. 25+00.00 ℄ MICHIGAN AVE.
PERM. ESM'T (BRIDGE)
RANDAL A. KRAFT & SHELLY A. KRAFT
SEE SHEET 21
NW1/4 SE1/4
SEC. 14 T27N R33W
KANSAS CITY SOUTHERN RAILWAY
6,500 6,870 SF NEW R/W
19,090 16,720 SF PERM. ESM'T.
DILLON REAL ESTATE CO.
19,590 SF NEW R/W
8,440 SF TEMP. ESM'T.
10,970 SF PERM. ESM'T.
235,370 SF REMAINING
NE1/4 SE1/4
SEC. 14 T27N R33W
STA. 248+15.00 22.50' RT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (A71)
INSTALL 12" X 45' RCP (N)
STA. 251+90.00 22.50' RT. 20TH ST.
INSTALL 3' X 2' TYPE A CURB INLET (B8)
INSTALL 12" X 187' RCP (E)
20TH STREET PLAN
STA. 248+00 TO STA. 253+00
DATE PREPARED
7/23/2014
ROUTE N/A
STATE MO
DISTRICT SW
SHEET NO. 23
COUNTY JASPER
JOB NO. TDG-3200(718)
CONTRACT ID.
PROJECT NO.
BRIDGE NO.
DESCRIPTION
DATE
REV.
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
MoDOT
105 WEST CAPITOL
JEFFERSON CITY, MO 65102
1-888-ASK-MODOT (1-888-275-6636)
TRANSYSTEMS CORP.
2700 PERSHING ROAD
SUITE 600
KANSAS CITY, MO 64108
PHONE: (816)329-8600
FAX: (816)329-8601
TranSystems
MO STATE CERTIFICATE OF AUTHORITY # 273
ENGINEERING
G:\RCFI\0427\Road\plan_sheets\PP_0427_120_201H_005.dgn 5:40:23 PM 7/23/2014

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014
Council Bill No. 2014-178

Item: Motor Vehicle Expenditures
Originating Department: Public Works – Street Maintenance

Attachments: 1) MoDOT Pricing Contract#3-120223RJ
2) Vehicle Warranty

Operations Planning: Lynden Lawson LDL	Date: 9/29/2014
Department Head: Nicholas A. Heatherly NAH	Date: 9/30/2014
Finance Department: Leslie Haase LH	Date: 9-30-14
City Attorney: Peter Edwards PE	Date: 9/30/14
City Manager: Sam Anselm	Date: 10/1/14

Recommended Action: Approval of the purchase of one Elgin Broom Badger for the Street Maintenance Division.

Background: Following the approval of the FY 2013-2014 Operating Budget, one of the replacement equipment listed for Capital Expenses was for a Street Sweeper to replace an existing broken piece of equipment. It became time to look for replacement of existing Street Sweeper in the Street Maintenance Department after the maintenance costs have risen with the older equipment and only two of the three have been operable at any given time.

Discussion: The decision was made to use the MoDOT bid to purchase a Elgin Broom Sweeper truck bid presented by Key Equipment & Supply Company, in the amount of $204,620.00. The equipment as bid meets the specifications requested by the Public Works Department. There is no trade in for this piece of equipment.

Recommendation: It is recommended that the City accept the bid as described for the purchase of a Street Sweeper.

COUNCIL BILL NO. 2014-178 **ORDINANCE NO.**

AN ORDINANCE Authorizing the purchase of an Elgin Broom Badger Street Sweeper from the Missouri Highways and Transportation Commission, (MoDOT) bid list in the amount of Two Hundred and Four Thousand, Six Hundred and Twenty Dollars ($204,620.00), using funds set aside for Capital Improvement used for the Maintenance of the City of Joplin, on an emergency basis.

BE IT ORDAINED by the Council of the City of Joplin, Missouri, as follows:

Section 1. That the purchase of an Elgin Broom Badger 4M from Key Equipment & Supply Company under the bid of Missouri Highways and Transportation Commission (MoDOT), in the amount of Two Hundred and Four Thousand, Six Hundred and Twenty Dollars and no cents ($204,620.00), a true and accurate copy of said specifications and bid being attached hereto and incorporated herein and the same is hereby approved.

Section 2. That the Director of Public Works is hereby authorized and directed to execute the purchase by and on behalf of the City of Joplin, Missouri.

Section 3. That this Ordinance dealing with the public improvements, is an emergency within the meaning of Section 2.12(6) of the Home Rule Charter of the City of Joplin, Missouri, and, shall be in full force and effect immediately after its passage and approval. Street maintenance is an essential Public Works function and this replacement equipment needs to be purchased with funds allocated in the 2013-2014 budget.

Passed by the Council of the City of Joplin, Missouri, this _____ day of _____, 2014, by a _____ vote.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

Key Equipment & Supply Co.
The key to quality since 1962

Branch Office
P.O. Box 692109
Tulsa, OK 74169
918-809-8011

Branch Office
P.O. Box 11035
Kansas City, KS
66111
913-371-8260

Main Office
P.O. Box 2007
Maryland Heights, MO
63043
314-298-8330

August 25, 2014

Dean Smith
City of Joplin, MO
1301 West 2nd Street
Joplin, MO 64801

Dear Dean,

Thank you again for extending to us the opportunity to do business with the City of Joplin.

As per our discussion in early March, the Broom Badger is available for purchase off the MoDOT contract. It is part of Elgin's 4M Line and was bid as the compact option of the 4M Sweeper lineup, the following proposal is for an Elgin 4M Compact Mechanical Sweeper with MoDOT Pricing. **MoDOT Bid Number 3-120223RJ.**

Please review this information and let me know a good time for you so we can arrange for me to travel to Joplin and we can discuss this further.



Best Regards,

James Williams
Territory Manager
Key Equipment & Supply Company
Mobile: 913-207-0205
Office: 913-371-8260
jwilliams@keyequipment.com
www.keyequipment.com

James Williams – Territory Manager

Presents A Confidential Proposal Of The

Elgin Broom Badger Mechanical Street Sweeper

With MoDOT Pricing

MoDOT Contract Number 3-120223RJ



Dean Smith -- Infrastructure Superintendent

STANDARD FEATURES

Broom Badger, DUAL, 4-wheel configuration, 2015 Isuzu NRR single left hand steer Chassis, Kubota V2403M Auxiliary Engine Tier 4i, chassis and wheels powder coated Elgin white and including the standard features listed as follows.

- AM/FM Radio W/ CD
- Low Engine Oil Pressure, High Coolant Temp, Hyd Oil Level/Temp Shutdown
- Broom Side, 36" And 42" Steel Vertical Digger 4 And 5 Segment
- Broom Side, Hydraulic Floating Suspension, Adjustable Spring Loaded Deploy
- Broom, Main, 34" Diameter, 58" Wide Prefab Disposable
- Camera, Rear And Right Hand Side View With In-Cab Monitor
- Conveyor Chain, Hardened With Polyurethane Sprockets
- Conveyor, 8 Flight Squeegee With Rubber Edging
- Conveyor, Lift Independent From Main Broom
- Conveyor, Two Piece Replaceable Wear Plates
- Conveyor Raise In Reverse
- Conveyor Stall Alarm
- Dirt Shoes, Heavy Duty Steel
- Electric Backup Alarm
- Front Spray Bar
- Hopper Inspection Door
- PM 10 Compliant (Rule 1186)
- Sweeper Painted White
- Amber Strobe Mounted Directly Behind Truck Cab
- Rear Mounted Lightbar
- Side Broom Tilt Left
- Side Broom Tilt Right
- Conveyor Flusher
- Air Suspension Rear Axle

Standard Warranty:

- **1 year parts & labor warranty on Elgin sweeper** (Optional 2nd & 3rd year offered)
- **3 year parts & labor warranty on Isuzu Chassis**

ELGIN
Subsidiary of Federal Signal Corporation

ISO 9001 CERTIFIED (2000)

DATE OF OFFER:	August 25, 2014
VALIDITY OF OFFER:	December 2014
FACTORY DELIVERY:	90 Days A.R.O.
PAYMENT TERMS:	UPON DELIVERY

MoDOT 2014 Pricing	**$ 187,995.00**
Dualized Chassis	**$ 12,000.00**
3rd Year Extended Warranty	**$ 4,625.00**
Total	**$ 204,620.00**

- Includes Freight
- On-site Training
- Free Lifetime Training

Optional Enhancements That May Be Added:

- Second Amber Rear Strobe Mounted on the Curbside
- Strip Main Broom In Lou of Standard Main Broom

SIGNED BY:

K. James Williams

James Williams, Territory Manager

Date: August 25, 2014



Warranty

ELGIN SWEEPER COMPANY warrants each new machine manufactured by it against defects in material and workmanship provided the machine is used in a normal and reasonable manner. This warranty is extended only to the original user-purchaser for a period of twelve (12) months from the date of delivery to the original user-purchaser.

ELGIN SWEEPER COMPANY will cause to be repaired or replaced, as the Company, may elect, any part or part of such machine which the Company's examination discloses to be defective in material or workmanship.

Repairs or replacements are to be made at the selling Elgin distributor's location or at other locations approved by ELGIN SWEEPER COMPANY.

The ELGIN SWEEPER COMPANY warranty shall not apply to:

1. Major components or trade accessories such as but not limited to, trucks, engines, tires or batteries that have a separate warranty by the original manufacturer.
2. Normal adjustments and maintenance services.
3. Normal wear parts such as but not limited to, broom filters, broom wire, shoe runners and rubber deflectors.
4. Failures resulting from the machine being operated in a manner or for a purpose not recommended by ELGIN SWEEPER COMPANY.
5. Repairs, modifications or alterations without the consent of ELGIN SWEEPER COMPANY which, in the Company's sole judgment, have adversely affected the machine's stability or reliability.
6. Items subjected to misuse, negligence, accident or improper maintenance.

The use in the product of any part other than parts approved by ELGIN SWEEPER COMPANY may invalidate this warranty. ELGIN SWEEPER COMPANY reserves the right to determine, in its sole discretion, if the use of non-approved parts operates to invalidate the warranty.

Nothing contained in this warranty shall make ELGIN SWEEPER COMPANY liable for loss, injury, or damage of any king to any person or entity resulting from any defect or failure in the machine.

TO THE EXTENT LIMITED BY LAW, THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND **FITNESS FOR A PARTICULAR PURPOSE.**

This warranty is also in lieu of all other obligations or liabilities on the part of ELGIN SWEEPER COMPANY, including but not limited to, liability for incidental and consequential damages on the part of the Company or the seller.

ELGIN SWEEPER COMPANY makes no representation that the machine has the capacity to perform any functions other than as contained in the Company's written literature, catalogs or specifications accompanying delivery of the machine.

No person or affiliated company representative is authorized to give any other warranties or to assume any other liability on behalf of ELGIN SWEEPER COMPANY in connection with the sale, servicing or repair of any machine manufactured by the Company.

ELGIN SWEEPER COMPANY reserves the right to make design changes or improvements in its products without imposing any obligation upon itself to change or improve previously manufactured products.

City of Joplin **City Council Agenda Item**

REQUESTED COUNCIL MEETING DATE: October 6, 2014

ITEM: Council Bill No. 2014-454 approving the Program Services Contract between the City of Joplin and the Missouri Department of Health and Senior Services regarding maternal and child health services.

ORIGINATING DEPARTMENT: Health Department
ATTACHMENTS: Council Bill No. 2014-454 together with a copy of the contract.

CITY ATTORNEY:	Peter C. Edwards PE	**DATE:** 9/30/14
INTERIM CITY MANAGER:	Sam Anselm	**DATE:** 9/30/14
HEALTH DEPARTMENT:	Dan Pekarek DP	**DATE:** 9/29/14
FINANCE DEPT:	Leslie Haase LH	**DATE:** 9-30-14

RECOMMENDED ACTION:

Staff recommends approval of this council bill on an emergency basis.

SUMMARY:

The Health Department requests consideration of this Council Bill that would authorize the execution of a Program Services Contract between the Missouri Department of Health and Senior Services (DHSS) and the City of Joplin Health Department (City) to provide maternal and child health services. The City Council has previously approved similar contracts.

This contract is for first year funding of a three year agreement for an outcome-based contracting method that targets appropriations to issues of local concern that impact maternal and child health. Local health status indicators are examined and problem areas are prioritized for development of strategies to improve health. The primary focus area for this three year program cycle is preventing and reducing obesity among children, adolescents and women. Funding also assists in providing the childhood immunization program.

The City will be working with other members of the local Community Health Collaborative to address these issues, primarily through activities associated with the local Livesmart initiative. Goals of the initiative are to increase the percentage of local residents receiving the recommended daily levels of exercise and fruit/vegetable intake.

The contract term is for a period of October 1, 2014 through September 30, 2015 and the first year funding is $32,722.68. No city matching funds are required and funds for this contract are budgeted.

Staff recommends approval of this council bill on an emergency basis.

COUNCIL BILL NO. 2014-454 ORDINANCE NO.

AN ORDINANCE approving a Program Services Contract by and between the State of Missouri, Department of Health and Senior Services, and the City of Joplin, Missouri, for a term commencing October 1, 2014 and running through September 30, 2015, for the amount of Thirty-Two Thousand, Seven Hundred Twenty-Two Dollars and Sixty-Eight Cents ($32,722.68), to enable the Health Department to provide maternal and child health services to residents of Joplin, authorizing the Interim City Manager to execute the same by and on behalf of the City of Joplin, Missouri; and containing an emergency clause.

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

Section 1. That the Program Services Contract by and between the State of Missouri, Department of Health and Senior Services, and the City of Joplin, Missouri, dealing generally with the provision by the Health Department, of contract services for maternal and child health services to residents of Joplin, a true and accurate copy of the same being attached hereto and incorporated herein, be and the same is hereby approved.

Section 2. That the Interim City Manager is hereby authorized and directed to execute said Contract by and on behalf of the City of Joplin.

Section 3. That this Ordinance dealing with the immediate preservation of public health and safety is an emergency within the meaning of Section 2.12(1) of the Home Rule Charter of the City of Joplin, Missouri, and, as such, shall be in full force and effect immediately from and after its adoption and approval. Specifically, this is an emergency because this Agreement needs Council approval, and returned and accepted by the state government so that funding begins at the beginning of the federal fiscal year, October 1, 2014.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2014, by a _____ vote.

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

RECEIVED
SEP 0 8 2014

Missouri Department of Health and Senior Services
P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010
RELAY MISSOURI for Hearing and Speech Impaired 1-800-735-2966 VOICE 1-800-735-2466

Gail Vasterling
Director

Jeremiah W. (Jay) Nixon
Governor

Dear Contractor:

Enclosed is a contract between your organization and the Department of Health and Senior Services that requires you to complete the following steps:

1. Review and sign the front page of the contract;
2. Complete and sign Exhibit 1 (Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization); and
3. Return the contract to:

Bureau of Financial Services, Procurement Unit
Missouri Department of Health and Senior Services
P.O. Box 570
Jefferson City, MO 65102

Also, please forward the enclosed yellow page to your Chief Financial Officer. It explains the process for completing the Business Management Assessment (BMA) form and submitting your most recent audit report.

Once all signed copies have been returned to our office and the contract is signed by the department, a fully executed copy of the contract will be returned to you. Please contact Christine James in the Procurement Unit at (573) 751-6471 or via email at Christine.James@health.mo.gov if you have any questions regarding this letter.

Enclosures

Updated 11/2012

Missouri Department of Health and Senior Services
P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010
RELAY MISSOURI for Hearing and Speech Impaired 1-800-735-2966 VOICE 1-800-735-2466

Gail Vasterling
Director

Jeremiah W. (Jay) Nixon
Governor

The following information should be directed to your Chief Financial Officer:

The Department of Health and Senior Services (DHSS) requires financial assistance contractor/providers to complete the Business Management Assessment (BMA) form each year. The information provided in the BMA and recent audit reports is used to evaluate contractor/provider financial management systems to determine what special terms and conditions, if any, need to be included in the agreement. Factors assessed include, but are not limited to: the contractor/provider's history of managing federal funds, financial stability, management systems, and their ability to carry out program objectives.

If you have not yet completed the Business Management Assessment (BMA) form for this calendar year, please go to http://health.mo.gov/atoz/bma/index.php to **complete and submit the information within 15 calendar days.**

After you have submitted your information, you can print a hard copy to keep for your records. A confirmation number will be provided, which you should note in case there are questions regarding your submission. **Keep in mind the form is completed only once per year for each federal taxpayer identification number (nine digit number).**

Please note there is not a **Save** feature for the online BMA form. Once you start entering information into the online BMA form, it must be completed. If you have to close out and come back at a later time/date you will have to start the process all over again. Information needed to complete the process:

1. your federal taxpayer ID#;
2. access to any written policies and procedures; and,
3. a copy of your most recently completed audit.

If you have not already submitted a copy of your latest completed audit, a copy should be sent:

- via the preferred method, email, to Monitoring@health.mo.gov (many CPA firms already have it in electronic format if requested);
- or by fax to 573-526-6049;
- or by regular mail to

Missouri Department of Health and Senior Services
Division of Administration
ATTN: BMA
PO Box 570
Jefferson City, MO 65102-0570

NOTE: Failure to submit an annual BMA form and your most recent audit may result in your being deemed a high-risk provider. For questions concerning the BMA form, or if you do not have access to the internet, please call 573-751-6104 for assistance.

Updated 11/2012

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER: Services provided on a nondiscriminatory basis.

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES

PROGRAM SERVICES CONTRACT

This contract is entered into by and between the State of Missouri, Department of Health and Senior Services (Department/state agency) and the below named entity/individual (Contractor). The contract consists of the contract signature page, the scope of work; any attachments referenced and incorporated herein; the terms and conditions; and any written amendments made in accordance with the provisions contained herein. This contract expresses the complete agreement of the parties. By signing below, the Contractor and Department agree to all the terms and conditions set forth in this contract.

To the extent that this contract involves the use, in whole or in part, federal funds, the signature of the Contractor's authorized representative on the contract signature page indicates compliance with the Certifications contained in Attachment A as attached hereto and incorporated by reference as if fully set forth herein.

Tracking #	**Contract Title:**	
40660	MATERNAL CHILD HEALTH SERVICES	
Contract Start:	**Contract End:**	**Questions/Please Contact:**
10/1/2014	9/30/2015	PROCUREMENT UNIT @ (573)751-6471
Contract #:		**Amend #:**
		00

PLEASE VERIFY/COMPLETE - TYPE OR PRINT - SIGNATURE REQUIRED

NAME OF ENTITY/INDIVIDUAL (Contractor)		
JOPLIN CITY HEALTH DEPARTMENT		
DOING BUSINESS AS (DBA) NAME		
MAILING ADDRESS		
321 EAST 4TH STREET		
CITY, STATE, and ZIP CODE		
JOPLIN	MO	64801
REMIT TO (PAYMENT) ADDRESS (if different from above)		
CITY, STATE, and ZIP CODE		
CONTACT PERSON		EMAIL ADDRESS
PHONE NUMBER		FAX NUMBER
TAXPAYER ID NUMBER (TIN)		DUNS NUMBER
446000196		010649846
CONTRACTOR'S AUTHORIZED SIGNATURE		DATE
PRINTED NAME		TITLE
DEPARTMENT OF HEALTH AND SENIOR SERVICES DIRECTOR OF DIVISION OF ADMINISTRATION OR DESIGNEE SIGNATURE		DATE

Maternal Child Health Services
Joplin City Health Department

Scope of Work

1. GENERAL

1.1 The contract amount shall not exceed $32,722.68 for the period of October 1, 2014 through September 30, 2015.

1.2 The Department has determined this contract is subrecipient in nature as defined in the Office of Management and Budget (OMB) Circular A-133, Section 210. To the extent that this contract involves the use, in whole or in part, federal funds, the Contractor shall comply with the special conditions contained in Attachment B as attached hereto and incorporated by reference as if fully set forth herein.

1.3 Refer to the Glossary for the Maternal Child Health (MCH) Services Contract as reference for clarification of terminology used within the scope of work for the contract. The glossary is posted on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein.

1.4 The contracting local public health agency (LPHA) will hereinafter be referred to as Contractor or LPHA Contractor.

2. ELIGIBILITY AND PROPOSAL

2.1 Any LPHA is eligible to participate in the MCH Services Contract after completion and approval of a proposal hereinafter referred to as the proposed work plan.

2.2 No proposed work plan may cover an area smaller than a county in size with the exception of Joplin, Independence, Springfield, Kansas City, and St. Louis City.

2.3 Joint submission of a proposed work plan is allowable for this contract. Refer to the Glossary for the MCH Services Contract for a definition on joint submission of a proposed work plan used within the scope of work and guidance for the contract. The glossary is posted on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein.

2.4 The proposed work plan must include the following requirements:

2.4.1 The proposed work plan shall be completed in accordance with the Proposal Guidance for the MCH Services Contract. The guidance is posted on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein. The proposed work plan shall be for the three-year period of October 1, 2014 through September 30, 2017.

2.4.2 The proposed work plan shall be based on the priority health issue selected by the LPHA, shall utilize the Spectrum of Prevention Model, and shall show progressive

growth toward an improved coordinated system and be based on interventions that are evidence-based, field-tested, or validated by expert opinion.

2.4.3 The work plan component shall be submitted to the MCH Services Program for approval on the program provided template. The template for the MCH Services Contract Work Plan, is available on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein. The proposed work plan shall be submitted electronically via e-mail attachment to the assigned MCH Services Program District Nurse Consultant (DNC).

2.4.4 The MCH Services Program DNC will review, provide technical assistance on the content, approve the proposed work plan, and forward to the MCH Services Program Manager and Health Program Representative.

2.4.5 Contracts will be awarded following proposed work plan approval by the MCH Services Program. The Department reserves the right to clarify or verify any component of the proposed three-year work plan.

3. PURPOSE

3.1 To support a leadership role for local public health agencies within coalitions and partnerships at the local level to build MCH systems and expand the resources those systems can use to respond to priority health issues.

4. DELIVERABLES AND OUTCOMES

4.1 The Contractor shall address **one** of the following priority health issues derived from the state's Maternal and Child Health Title V Block Grant priorities. The Contractor's Selected Priority Health Issue is identified in the MCH Services Contract Work Plan hereinafter referred to as the approved work plan, attached hereto as Attachment C and incorporated by reference as if fully set forth herein.

4.1.1 Prevent and reduce obesity among children, adolescents, and women

4.1.2 Prevent and reduce tobacco use and secondhand smoke exposure among infants, children, adolescents, and women

4.1.3 Prevent and reduce intentional and/or unintentional injuries among infants, children, adolescents, and women

4.1.4 Prevent and reduce adverse birth outcomes

4.2 The Contractor shall work with the local community to maintain, develop, and enhance a system to address the priority health issue identified in the approved work plan.

4.3 The Contractor should address risk and protective factors that influence health disparities within families and communities through the Life Course Perspective.

4.4 The Contractor shall demonstrate progressive yearly growth toward the third-year system outcomes specified in the approved work plan.

4.5 The Contractor shall meet the system outcomes by the end of the third contract period.

5. REPORTS

5.1 The Contractor shall submit reports using the forms and/or formats specified by the Department. Reports shall be submitted to the MCH Services DNC via e-mail attachment.

5.1.1 The Contractor shall complete and submit the Progress Report no later than February 15th of each contract period. The Progress Report is located on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein. The Progress Report shall include the following:

a) Progress toward the system outcomes set forth in the approved work plan

b) Summary of activities demonstrating progress toward system outcomes

5.1.2 The Contractor shall complete and submit the Year-End Report no later than October 31st in the first and second contract periods. The Year-End Report is located on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein. The Year-End Report shall include the following:

a) Progress toward the system outcomes set forth in the approved work plan

b) Summary of activities demonstrating progress toward system outcomes

c) Description of challenges/barriers in completing activities

d) Annual financial report on use of contract funding to address the selected priority health issue and, as applicable, the use of contract funding to address other maternal and child health issues

e) Compliance with the contract funding and general contract provisions

f) Local match funding amounts on health activities for the maternal and child health population, or an entry to indicate decision not to report

g) Tangible personal property documenting any equipment purchased with MCH contract funding, defined as any single item that has a useful life of more than one year and has a purchase price that exceeds $5,000

5.1.3 The Contractor shall complete and submit the Contract Outcome Report at the end of the third contract period. The Contract Outcome Report is located on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein. The Contract Outcome Report shall include the following:

a) System outcomes set forth in the approved work plan have been met or not met

b) For any outcome marked "NOT MET" explanation of the barriers or extenuating circumstances that prevented the outcome from being met

c) Summary of activities demonstrating progress toward system outcomes

d) Describe challenges and/or barriers for each activity not completed

e) Description of what has changed in the community as a result of efforts addressing the selected priority health issue

f) Annual financial report on use of contract funding to address the selected priority health issue and, as applicable, the use of contract funding to address other maternal and child health issues

g) Compliance with the contract funding and general contract provisions

h) Local match funding amounts on health activities for the maternal and child health population, or an entry to indicate decision not to report

i) Tangible personal property documenting any equipment purchased with MCH contract funding, defined as any single item that has a useful life of more than one year and has a purchase price that exceeds $5,000

5.2 The Department reserves the right to make changes on any Department supplied contract reporting forms and formats without the need for a contract amendment. The Department will notify the Contractor of all reporting form changes and provide the Contractor with the new forms.

6. BUDGET AND ALLOWABLE COSTS

6.1 The Contractor shall be paid the total contract amount for each contract period in equal monthly payments upon satisfactory progress toward the deliverables and submission and approval of all required reports and monthly invoices.

6.2 Administrative costs billed to the Department shall not exceed 8% of the direct contract costs billed. Administrative costs are those associated with the management and oversight of an organization's activities. The Contractor is not required to submit supporting documentation to the Department.

6.3 The Contractor shall follow competitive procurement practices assuring all purchases are at reasonable prices.

6.4 Funding Provisions

6.4.1 Funding for this contract is provided by federal grant dollars from the Maternal and Child Health Services Title V Block Grant issued to the State of Missouri from the United States (U.S.) Health Resources and Services Administration (HRSA) and the U.S. Department of Health and Human Services (HHS).

6.4.2 Funding for this contract is awarded annually for a one-year funding period only. The two subsequent contract periods will be based on the availability of funds by the Maternal and Child Health Services Title V Block Grant. Funding for the subsequent contract periods will be awarded via a contract renewal and will be restricted to that funding period only.

6.4.3 Funding for this contract shall be expended during the applicable contract period.

6.4.4 Funding for this contract shall be used to expand or enhance activities that improve the health of the maternal and child health population, and to address local maternal and child health issues.

6.4.5 Funding for this contract shall not be used for cash payments to intended recipients of maternal and child health services or for purchase of land, buildings, or major medical equipment.

6.4.6 Funding for this contract shall not be expended for the purpose of performing, assisting, or encouraging abortion, and none of these funds shall be expended to directly, or indirectly, subsidize abortion services.

6.4.7 Funding for this contract shall not be expended for the purpose of providing comprehensive family planning services.

6.4.8 A minimum of 30% of the Contractor's efforts should be directed toward children with special health care needs pursuant to Maternal and Child Health Services Title V Block Grant requirements.

6.4.9 Individuals with income falling below one hundred percent (100%) of the federal poverty guidelines shall not be charged for services under this contract. Poverty Guidelines are published annually by the U.S. HHS.

6.4.10 The Contractor agrees that funds provided by the Department shall not be used in any manner to replace or supplant state or federal funds for any service included in this contract. No contract provisions preclude the Contractor from being a Medicaid provider. Contractors shall not use contract funding for services reimbursed under Medicaid. For payments under this contract, the Department shall be viewed as the payer of last resort.

7. INVOICING AND PAYMENT

7.1 If the Contractor has not already submitted a properly completed State Vendor Automated Clearing House Electronic Funds Transfer (ACH/EFT) Application for deposit into a bank account of the Contractor, such Application shall be completed and submitted per this section, as the Department will make payments to the Contractor through Electronic Funds Transfer. The Department may delay payment until the ACH/EFT application is completed and approved.

7.1.1 A copy of State Vendor ACH/EFT Application and completion instructions may be obtained from the Internet at: https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx.

7.1.2 The Contractor must fax the ACH/EFT Application to: Office of Administration, Division of Accounting at 573-526-9813.

7.2 The Contractor shall submit to the Department, uniquely identifiable invoices for payment processing using the Vendor Request for Payment Form (DH-38). The Vendor Request for Payment form shall be submitted by the 15th of the month following the month in which services were provided.

7.3 The Contractor shall utilize the Department provided on-line Missouri Public Health Invoicing and Reporting System (MOPHIRS) for submission of the DH-38 located at https://healthapps.dhss.mo.gov/Login/Login.aspx?ReturnUrl=%2fmophirs%2fhome.aspx and is incorporated by reference as if fully set forth herein.

7.3.1 In the event MOPHIRS is not operational, and if directed by the Department, the Contractor shall utilize the Vendor Request for Payment form located at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein. Such invoices shall not be submitted before the last day of the month in which services were provided.

a) The Contractor shall indicate the invoice number for each invoice submitted to the Department for payment in the following format: MCHmmyy. For example, an invoice submitted to the Department for the month of October 2014 should have the following invoice number: MCH1014.

b) If directed by the Department to utilize the Vendor Request for Payment form located at http://clphs.health.mo.gov/lphs/lphainfo.php, the invoices shall be submitted via postal mail or fax as follows:

Postal mail:
Missouri Department of Health and Senior Services
Center for Local Public Health Services
MCH Services Program
P.O. Box 570
Jefferson City, MO 65102-0570

Fax:
(573) 751-5350
ATTN: Center for Local Public Health Services
MCH Services Program

7.4 The Contractor shall be paid the total contract amount for each federal fiscal year in equal monthly payments upon receipt and approval of a properly prepared invoice for deliverables performed during the month prior to the month in which an invoice is received.

7.5 Final invoices are due within fifteen (15) calendar days of the contract ending date. The Department shall have no obligation to pay any invoice submitted after the due date.

7.6 If a request by the Contractor for payment or reimbursement is denied, the Department shall provide the Contractor with written notice of the reason(s) for denial.

7.7 Notwithstanding any other payment provision of this contract, if the Contractor fails to perform required work or services, fails to submit reports when due, or is indebted to the United States, the Department may withhold payment or reject invoices under this contract.

7.7.1 Failure by the Contractor to make a satisfactory effort to meet any contract deliverable may result in withholding one or more contract payments or placing a moratorium on such a contract until the Contractor takes corrective action.

7.7.2 The Department may return all or part of any payments withheld upon receipt of an approved plan of corrective action that outlines steps for meeting contract deliverables, and based upon plan feasibility and/or effectiveness in implementation. The Contractor shall submit such plan within 30 days of notification that a contract deliverable(s) is not met.

7.8 If the Contractor is overpaid by the Department, the Contractor shall issue a check made payable to "DHSS-DA-Fee Receipts" upon official notification by the Department and shall mail the payment to:

Missouri Department of Health and Senior Services
Division of Administration, Fee Receipts
P.O. Box 570
920 Wildwood Drive
Jefferson City, Missouri 65102-0570

8. AMENDMENTS

8.1 Any changes to this contract shall only be made by execution of a written amendment signed and approved by the Department.

8.2 The Contractor's selected priority health issue shall remain unchanged during the duration of the work plan.

8.3 The Contractor may request to amend work plan activities and/or system outcome(s). The proposed amendment request is to be submitted via e-mail to the Contractor's assigned MCH Services DNC, available on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php.

8.4 The Contractor shall submit proposed amendment requests prior to March 31st of each contract period.

8.5 The Contractor's proposed amendment request shall include the following:

8.5.1 An amendment request letter including the reason(s) for the proposed change(s) and an effective date for this change to begin. This request shall be submitted on dated agency letterhead, and include an original or legal electronic signature of authorization.

8.5.2 An attached revised work plan using the template for the Maternal Child Health Services Contract Work Plan. The template is available on the Center for Local Public Health Services web page at http://clphs.health.mo.gov/lphs/lphainfo.php and is incorporated by reference as if fully set forth herein. The Revision Date section on the template shall be completed.

8.6 The MCH Services Program will review, provide technical assistance and consultation, and request any clarification or changes to the proposed amendment request.

8.7 The Contractor's amendment request may be approved, modified, or rejected by the Department.

8.8 The Department reserves the right to clarify, amend, modify, or verify any component of the contract at any time within the contract period.

9. RENEWALS

9.1 The Department shall have the right, at its sole option, based upon available funding and Contractor performance during the prior contract period, to renew the contract for two (2) additional one-year periods. In the event the option is exercised, all terms and conditions, requirements and specifications of this contract shall remain the same and apply during the renewal period.

10. MONITORING

10.1 The Department reserves the right to monitor this contract during the contract period to ensure financial and contractual compliance.

10.2 Contractors deemed high-risk by the Department may have special conditions or restrictions imposed, including but not limited to the following: withholding authority to proceed to the next phase of the project until the Department receives evidence of acceptable performance within a given contract period; requiring additional, more detailed financial reports or other documentation; additional project monitoring; requiring the Contractor to obtain technical or management assistance; or establishing additional prior approvals from the Department. Special conditions or restrictions can be imposed at the time of the contract award or at any time after the contract award. Written notification will be provided to the Contractor prior to the effective date of the high-risk status.

10.3 The Department reserves the right to monitor the Contractor through on-site visits during the contract period at a minimum of once a year to ensure contractual compliance. The focus of the on-site visit is consultation and technical assistance to assist the Contractor in acquiring the resources and expertise necessary to address the selected priority health issue.

10.3.1 The on-site visit will include:

a) Monitoring the Contractor's compliance with terms of the contract

b) Verifying the Contractor's progress toward meeting the system outcomes in the approved work plan

c) Assessing local capacity to support the MCH Ten Essential Services

10.3.2 The Department reserves the right to conduct desk monitoring of the contract through reviews on required reporting submitted during the contract period to ensure contractual compliance.

10.4 The Contractor will be evaluated on the extent of progress toward system outcomes.

10.5 The Department reserves the right to request corrective action if satisfactory effort is not being made each year toward progress on the approved work plan. The Contractor will receive written notification of such corrective action plan requests.

10.6 The Department reserves the right to request an audit performed in accordance with generally accepted auditing standards at the expense of the Contractor at any time contract monitoring reveals such an audit is warranted.

11. DOCUMENT RETENTION

11.1 The Contractor shall retain all books, records, and other documents relevant to this contract for a period of three (3) years after final payment or the completion of an audit, whichever is later, or as otherwise designated by the federal funding agency and stated in the contract. The Contractor shall allow authorized representatives of the Department, State, and Federal Government to inspect these records upon request. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three (3) year period, whichever is later. The Department may recover any payment it has made to the Contractor if adequate documentation is not retained by the Contractor.

12. CONFIDENTIALITY

12.1 The Contractor shall comply with provisions of Attachment D, as attached hereto and incorporated by reference as if fully set forth herein, in regards to the Health Insurance Portability and Accountability Act of 1996, as amended.

13. LIABILITY

13.1 The relationship of the Contractor to the Department shall be that of an independent Contractor. The Contractor shall have no authority to represent itself as an agent of the Department. Nothing in this contract is intended to, nor shall be construed in any manner as creating or establishing an agency relationship or the relationship of employer/employee between the parties. Therefore, the Contractor shall assume all

legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, or any other applicable employee related obligation or expense, and shall assume all costs, attorney fees, losses, judgments, and legal or equitable imposed remedies associated with the matters outlined in this paragraph in regards to the Contractor's subcontractors, employees and agents. The Contractor shall have no authority to bind the Department for any obligation or expense not specifically stated in this contract. This provision is not intended to waive any claim of sovereign immunity to which a public entity would otherwise be entitled to under Missouri law.

13.2 The Contractor shall be responsible for all claims, actions, liability, and loss (including court costs and attorney's fees) for any and all injury or damage (including death) occurring as a result of the Contractor's performance or the performance of any subcontractor, involving any equipment used or service provided, under the terms and conditions of this contract or any subcontract, or any condition created thereby, or based upon any violation of any state or federal statute, ordinance, building code, or regulation by Contractor. However, the Contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the Department, including its officers, employees, and assigns. This provision is not intended to waive any claim of sovereign immunity to which a public entity would otherwise be entitled to under Missouri law.

14. PUBLICATIONS, COPYRIGHTS, AND RIGHTS IN DATA AND REPORTS

14.1 Any publicity release mentioning contract activities shall reference the contract number and the Department. Any publications, including audiovisual items produced with contract funds, shall give credit to the contract and the Department. The Contractor shall obtain approval from the Department prior to the release of such publicity or publications.

14.2 In accordance with the Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, Public Law112-74, Section 505, "Steven's Amendment," the Contractor shall not issue any statements, press release, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money unless it clearly states the following:

14.2.1 The percentage of the total costs of the program or project which will be financed with Federal money; and

14.2.2 The percentage of the total costs of the project or program that will be financed by nongovernmental sources.

14.3 If any copyrighted material is developed as a result of this contract, the Department shall have a royalty-free, nonexclusive and irrevocable right to publish or use, and to authorize others to use, the work for Department purposes or the purpose of the State of Missouri.

15. AUTHORIZED PERSONNEL

15.1 The Contractor shall be responsible for assuring that all personnel are appropriately qualified and licensed or certified, as required by state, federal or local law, statute or regulation, respective to the services to be provided through this contract; and documentation of such licensure or certification shall be made available upon request.

15.2 The Contractor shall only utilize personnel authorized to work in the United States in accordance with applicable federal and state laws. This includes but is not limited to the Immigration Reform and Control Act of 1986 as codified at 8 U.S.C. § 1324a, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and Section 274A of the Immigration and Nationality Act. If the Contractor is found to be in violation of these requirements or the applicable laws of the state, federal and local laws and regulations, and if the State of Missouri has reasonable cause to believe that the Contractor has knowingly employed individuals who are not eligible to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the Contractor from doing business with the state. The state may also withhold up to twenty-five percent of the total amount due to the Contractor. The Contractor agrees to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.

15.3 Affidavit of Work Authorization and Documentation: Pursuant to section 285.530, RSMo, if the Contractor meets the section 285.525, RSMo definition of a "business entity" (http://www.moga.mo.gov/statutes/C200-299/2850000525.HTM), the Contractor must affirm the Contractor's enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services requested herein. The Contractor should complete applicable portions of Exhibit 1, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization as attached hereto and incorporated by reference as if fully set forth herein. The applicable portions of Exhibit 1 must be submitted prior to an award of a contract.

15.4 If the Contractor meets the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo the Contractor shall maintain enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the contracted services included herein. If the Contractor's business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then the Contractor shall, prior to the performance of any services as a business entity under the contract:

15.4.1 Enroll and participate in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND

15.4.2 Provide to the Missouri Department of Health and Senior Services the documentation required in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program; AND

15.4.3 Submit to the Missouri Department of Health and Senior Services a completed, notarized Affidavit of Work Authorization provided in the exhibit titled, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization.

15.5 In accordance with subsection 2 of section 285.530 RSMo, the Contractor should renew their Affidavit of Work Authorization annually. A valid Affidavit of Work Authorization is necessary to award any new contracts.

16. TERMINATION

16.1 If state and/or federal funds are not appropriated, continued, or available at a sufficient level to fund this contract, or in the event of a change in federal or state law relevant to this contract, the obligations of each party may, at the sole discretion of the Department, be terminated in whole or in part, effective immediately or as determined by the Department, upon written notice to the Contractor from the Department.

16.2 The Contractor may terminate the contract by giving written notice at least sixty (60) calendar days prior to the effective date of such termination. The Department reserves the right to terminate the contract, in whole or in part, at any time, for the convenience of the Department, without penalty or recourse, by giving written notice to the Contractor at least thirty (30) calendar days prior to the effective date of such termination. In the event of termination pursuant to this paragraph, all documents, data, reports, supplies, equipment, and accomplishments prepared, furnished or completed by the Contractor pursuant to the terms of the contract shall, at the option of the Department, become the property of the Department as authorized by law. The Contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the Department and for all non-cancelable obligations incurred pursuant to the contract prior to the effective date of termination.

17. SUBCONTRACTING

17.1 Any subcontract shall include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the Contractor and the Department, including the civil rights requirements set forth in 19 CSR 10-2.010 (5) (A)-(L), if applicable, and provided that the Department approves the subcontracting arrangement prior to finalization. The Contractor shall ensure that the Department is indemnified, saved and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described herein. The Contractor shall expressly understand and agree that the responsibility for all legal and financial obligations related to the execution of a subcontract rests solely with the Contractor; and the Contractor shall assure and maintain documentation that any and all subcontractors comply with all requirements of this contract. The Contractor shall agree and understand that utilization of a subcontractor to provide any of the equipment or services in this contract shall in no way relieve the Contractor of the responsibility for providing the equipment or services as described and set forth herein.

17.2 Pursuant to subsection 1 of section 285.530, RSMo no Contractor or subcontractor shall knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri. In accordance with sections 285.525 to 285.550, RSMo a general Contractor or subcontractor of any tier shall not be liable when such Contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of section 285.530, RSMo if the contract binding the Contractor and subcontractor affirmatively states that

17.2.1 the direct subcontractor is not knowingly in violation of subsection 1 of section 285.530, RSMo and

17.2.2 shall not henceforth be in such violation and

17.2.3 the Contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

17.3 The Contractor shall be responsible for assuring that any subcontractor(s), are appropriately qualified and licensed or certified, as required by state, federal or local law, statute or regulation, respective to the services to be provided through this contract; and documentation of such licensure or certification shall be made available upon request.

17.4 The Contractor shall notify all subcontractor(s) of applicable Office of Management and Budget (OMB) administrative requirements, cost principles, other applicable federal rules and regulations, and funding source information as included herein.

CERTIFICATIONS

1. GENERAL

1.1 To the extent that this contract involves the use, in whole or in part, federal funds, the signature of the Contractor's authorized representative on the contract signature page indicates compliance with the following Certifications.

2. CONTRACTOR'S CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

2.1 The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any Federal department or agency pursuant to 2 CFR 180.

2.2 The Contractor shall include these certification requirements regarding debarment, suspension, ineligibility, and voluntary exclusion in all lower tier covered transactions.

2.3 If the Contractor enters into a covered transaction with another person at the next lower tier, the Contractor must verify that the person with whom it intends to do business is not excluded or disqualified by:

2.3.1 Checking the EPLS; or

2.3.2 Collecting a certification from that person; or

2.3.3 Adding a clause or condition to the covered transaction with that person.

3. CONTRACTOR'S CERTIFICATION REGARDING LOBBYING

3.1 The Contractor certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

3.2 The Contractor certifies that no funds under this contract shall be used to pay for any activity to support or defeat the enactment of legislation before the Congress, or any State or local legislature or legislative body. No funds under this contract shall be used to pay for any activity to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government.

3.3 The Contractor certifies that no funds under this contract shall be used to pay the salary or expenses of the Contractor, or agent acting for the Contractor to engage in any activity designed to influence the enactment of legislation, appropriations, regulation,

administrative action, or Executive Order proposed or pending before the Congress, any State, local legislature or legislative body.

3.4 The above prohibitions include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

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

3.6 The Contractor shall require that the language of this section be included in the award documents for all subawards at all levels (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

3.7 This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code of Federal Regulations. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

4. CONTRACTOR'S CERTIFICATION REGARDING A DRUG FREE WORKPLACE

4.1 The Contractor certifies it shall provide a drug free workplace in accordance with the Drug Free Workplace Act of 1988 and all applicable regulations. The Contractor is required to report any conviction of employees under a criminal drug statute for violations occurring on the Contractor's premises or off the Contractor's premises while conducting official business. A report of a conviction shall be made to the Department within five (5) working days after the conviction. Submit reports to:

Missouri Department of Health and Senior Services
Division of Administration, Grants Accounting Unit
P.O. Box 570
920 Wildwood Drive
Jefferson City, Missouri 65102-0570

5. CONTRACTOR'S CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

CERTIFICATIONS

5.1 Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

5.2 The Contractor certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

5.3 The Contractor agrees that it will require that the language of this certification be included in any subcontract or subaward that contains provisions for children's services and that all subrecipients shall certify accordingly. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to $1,000 per day.

6. CONTRACTOR'S CERTIFICATION REGARDING NON-DISCRIMINATION

6.1 The contractor shall comply with all federal and state statutes, regulations and executive orders relating to nondiscrimination and equal employment opportunity to the extent applicable to the contract. These include but are not limited to:

6.1.1 Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color, or national origin (this includes individuals with limited English proficiency) in programs and activities receiving federal financial assistance and Title VII of the Act which prohibits discrimination on the basis of race, color, national origin, sex, or religion in all employment activities;

6.1.2 Equal Pay Act of 1963 (P.L. 88 -38, as amended, 29 U.S.C. Section 206 (d));

6.1.3 Title IX of the Education Amendments of 1972, as amended (20 U.S.C 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;

6.1.4 Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) which prohibit discrimination on the basis of disabilities;

6.1.5 The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age;

6.1.6 Equal Employment Opportunity – E.O. 11246, "Equal Employment Opportunity", as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity";

6.1.7 Missouri State Regulation, 19 CSR 10-2.010, Civil Rights Requirements;

6.1.8 Missouri Governor's E.O. #94-03 (excluding article II due to its repeal);

6.1.9 Missouri Governor's E.O. #05-30; and

6.1.10 The requirements of any other nondiscrimination federal and state statutes, regulations and executive orders which may apply to the services provided via the contract.

7. CONTRACTOR'S CERTIFICATION REGARDING EMPLOYEE WHISTLEBLOWER PROTECTIONS

7.1 The contractor shall comply with the provisions of 41 U.S.C. 4712 that states an employee of a contractor, subcontractor, grantee, or subgrantee may not be discharged, demoted or otherwise discriminated against as a reprisal for "whistleblowing". In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

7.2 The contractor's employees are encouraged to report fraud, waste, and abuse. The contractor shall inform their employees in writing they are subject to federal whistleblower rights and remedies. This notification must be in the predominant native language of the workforce.

7.3 The contractor shall include this requirement in any agreement made with a subcontractor or subgrantee.

SUBRECIPIENT SPECIAL CONDITIONS

1. The Department of Health and Senior Services (DHSS) has determined that this contract is subrecipient in nature as defined in the Office of Management and Budget (OMB) Circular A-133, Section 210. To the extent that this contract involves the use, in whole or in part, federal funds, the Contractor shall comply with the following special conditions.

1.1 The Contractor shall comply with all applicable implementing regulations, and all other laws, regulations and policies authorizing or governing the use of any federal funds paid to the Contractor through this contract.

1.2 In performing its responsibilities under this contract, the Contractor shall fully comply with the following Office of Management and Budget (OMB) administrative requirements and cost principles, as applicable, including any subsequent amendments.

1.2.1 Uniform Administrative Requirements
A-102 – State/Local Governments
2 CFR 215 – Hospitals, Colleges and Universities, For-Profit Organizations (if specifically included in federal agency implementation), and Not-For-Profit Organizations (OMB Circular A-110)

1.2.2 Cost Principles
2 CFR 225 – State/Local Governments (OMB Circular A-87)
2 CFR 230 – Not-For-Profit Organizations (OMB Circular A-122)
2 CFR 220 – Colleges and Universities (OMB Circular A-21)
48 CFR 31.2 – For-Profit Organizations
45 CFR 74 Appendix E – Hospitals

1.3 The Contractor shall comply with the requirements of the Single Audit Act Amendments of 1996 (P.L. 104-156) and OMB Circular A-133, including subsequent amendments or revisions, as applicable or 2 CFR 215.26 as it relates to for-profit hospitals and commercial organizations. A copy of any audit report shall be sent to DHSS, Division of Administration, P.O. Box 570, Jefferson City, MO 65102 each contract year if applicable. The Contractor shall return to the Department any funds disallowed in an audit of this contract.

1.4 The Contractor shall comply with the public policy requirements as specified in the Department of Health and Human Services (HHS) Grants Policy Statement which is incorporated herein as if fully set forth.

http://www.hhs.gov/asfr/ogapa/aboutog/hhsgps107.pdf

1.5 The Contractor shall comply with Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104), as amended. This law applies to any private entity. A private entity includes any entity other than a State, local government, Indian tribe, or foreign public entity, as defined in 2 CFR 175.25. The subrecipient and subrecipients' employees may not:

SUBRECIPIENT SPECIAL CONDITIONS

1.5.1 Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

1.5.2 Procure a commercial sex act during the period of time that the award is in effect; or

1.5.3 Use forced labor in the performance of the award or subawards under the award.

1.5.4 The Contractor must include the requirements of this paragraph in any subaward made to a private entity.

1.6 The Contractor shall comply with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations, as applicable.

1.7 The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

1.8 The Contractor shall provide its Data Universal Numbering System (DUNS) number, unless the Contractor is an exempt individual as per 2 CFR 25.110(b). Pursuant to 2 CFR 25, no entity may receive a subaward unless the entity has provided its DUNS number. The award of this contract shall be withheld until the DUNS number has been submitted to and verified by the Department.

1.9 Equipment

1.9.1 Title to equipment purchased by the Contractor for the purposes of fulfilling contract services vests in the Contractor upon acquisition, subject to the conditions that apply as set forth in 2 CFR 215.34 or 45 CFR 92.32, as applicable. The Contractor must obtain written approval from the Department prior to purchasing equipment with a cost greater than $1,000. The repair and maintenance of purchased equipment will be the responsibility of the Contractor. Upon satisfactory completion of the contract, if the current fair market value (FMV) of the equipment purchased by the Contractor is less than $5,000 there is no further obligation to the Department. Items purchased by the Contractor with a current FMV greater than $5,000 may be sold or retained by the Contractor but the Contractor may be required to reimburse the Department for costs up to the current value of the equipment.

1.9.2 Equipment purchased by the Department and placed in the custody of the Contractor shall remain the property of the Department. The Contractor must ensure these items are safeguarded and maintained appropriately, and return such equipment to the Department at the end of the program.

Maternal Child Health Services Contract

City of Joplin Health Department, Joplin, Missouri

Administrator: Dan Pekarek

Cynthia L. Burnham, 417-623-6122, ext. 254

cburnham@joplinmo.org

April 15, 2014

Accepted and Approved: May 29, 2014

Melissa Egan RN, BSN

Maternal Child Health Services Contract Work Plan

FFY 2015-2017

Contract Period October 1, 2014-September 30, 2017

LPHA Contractor: City of Joplin Health Department

Selected Priority Health Issue: Prevent and reduce obesity among children, adolescents, and women.

Statement of the Problem: One out of four residents in Jasper/Newton County participate in no leisure time activity, compared to one out of three statewide. 91% of residents ate fruits and vegetables less than five times per day. In part because of these unhealthy behaviors, almost two thirds of adult Missourians are overweight or obese. "Failing to maintain a healthy weight can have serious health consequences that impact pregnancy outcomes, early childhood development, and the prevalence of acute and chronic conditions that compromise the quality and length of life". (http://health.mo.gov/living/healthcondiseases/obesity/index.php). Over the last 34 years, childhood obesity rates have more than tripled nationally. Being overweight or obese is a contributing factor in many chronic diseases including diabetes, heart disease, and hypertension. In fact, the American Medical Association now considers obesity to be a medical diagnosis. A healthy weight, active lifestyle, and a balanced diet can directly impact and lower many risk factors related to chronic diseases. The Joplin City Health Department is an active member of the Community Health Collaborative LiveSmart project. The LiveSmart Project goals are to improve chronic disease rates impacted by unhealthy behaviors in the two county area including Joplin. The initiative seeks to improve diet of area residents by encouraging them to Eat Right (5 fruits and vegetables daily) and Move More (exercise a minimum of 30 minutes a day, 5 times a week). The program involves a community-wide concept that incorporates school, work and church based events.

Source: County Level Study 2007-2011 Comparison - Health & Preventive Practices
http://health.mo.gov/data/mica/County_Level_Study_12/headera.php?cnty=929&profile_type=5&chkBox=C.

Goal(s):

1. Improve physical activity environment to increase opportunities for exercise.
2. Improve food and beverage environment to increase availability of healthy lifestyle choices.
3. Improve the messaging environment to promote a healthy lifestyle.

Maternal Child Health Services Contract Work Plan FFY 2015-2017

Strategies:

1. Increase access to outdoor and other recreational facilities.
2. Improve access to healthier choices in food venues.
3. Improve community messaging to promote healthy food consumption.

Instructions: Develop a three-year work plan for actions in each level of the Spectrum of Prevention for each contract period year that progress toward the planned System Outcomes, giving consideration to the Life Course Framework and issues in Risk and Protective Factors (see MCH Services Contract Proposal Guidance).

Spectrum of Prevention	Activities	System Outcomes by Sept. 30, 2017
Influence Policy and Legislation *Develop strategies to change laws and policies to influence outcomes in health, education, and justice*	**FFY 2015:** Advocate for policies to allow breastfeeding in public venues.	Joplin community leaders will have current information on best practices to promote and implement policy to support access to public breastfeeding, recreation facilities, and healthy food options within Joplin as evidenced by meeting minutes, log of materials dispersed.
	FFY 2016: Advocate for policies that promote multi-modal transportation (walking, bicycling, etc.) in the community to increase healthy behaviors.	
	FFY 2017: Promote food policy councils as a way to improve food environment at state and local levels.	
Change Organizational Practices *Adopt regulations and norms to improve health and safety and creating new models*	**FFY 2015:** The City of Joplin Health Department will assist the Joplin Area Food Network (JFAN) in completing a community food equity assessment.	We will increase awareness of food equity, food access, and local resources as evidenced by JFAN meeting minutes.
	FFY 2016: The City of Joplin Health Department will assist JFAN in evaluating public and organizational policies that impact food access.	
	FFY 2017: The City of Joplin Health Department will assist JFAN in developing a resource guide for those wanting to start community gardens and/or Farmer's Markets.	

Maternal Child Health Services Contract Work Plan

FFY 2015-2017

Foster Coalitions and Networks *Bring together groups and individuals for broader goals and greater impact*	**FFY 2015:** Will work to expand participation in the Joplin, Jasper, and Newton Counties Community Health Collaborative by inviting additional groups, coalitions, agencies or individuals with shared interests or knowledge in healthy behavior priority areas. **FFY 2016:** Support and promote the local JFAN to help improve food access and equity for local residents. **FFY 2017:** The City of Joplin will continue to engage individual citizens, professionals, and community-based organizations to focus on the health, nutrition, and physical activity levels of children in the county through the LiveSmart website.	There will be an increase in participation of the Community Health Collaborative group and the Joplin Food Access Network as evidenced by meeting sign-in sheets and website log-ins.
Educate Providers *Inform influential organizations and leaders to transmit skills and knowledge to others*	**FFY 2015:** The Joplin City Health Department will assist in developing a PowerPoint presentation promoting the LiveSmart message to "Eat Right and Move More" to be used by Coalition members. **FFY 2016:** Advocate and promote the LiveSmart message within the City of Joplin Parent's as Teachers programs in order to reach the preschool population. **FFY 2017:** Advocate and promote the LiveSmart message to Head Start programs within the City of Joplin.	Increase the use of educational materials by early childhood programs with parents and children as evidenced by materials and presentation records.
Promote Community Education *Reach groups of people with information and resources to promote health and safety*	**FFY 2015:** The City of Joplin Health Department will assist in developing a PowerPoint presentation regarding the Community Assessment and how it can be utilized as a tool by community leaders to effect changes and promote healthy lifestyles. **FFY 2016:** The City of Joplin Health Department will participate in a TV campaign at Missouri Southern State University to promote the LiveSmart message. **FFY 2017:** The LiveSmart website will be updated frequently with current event news regarding community health status.	Increase media messages and educational materials for promoting the LiveSmart message and healthy lifestyles efforts as evidenced by PowerPoint presentation and media campaign log.
Strengthen Individual Knowledge and Skills	**FFY 2015:** The City of Joplin Health Department will assist the city WIC program in advocating and promoting breastfeeding by participating in the Breastfeeding Coalition and disseminating a resource directory of local lactation support services available to new mothers. Will also post resource directory on the LiveSmart website.	Utilization of the LiveSmart website will increase as evidenced by the number of hits to the website.

Enhance an individual's capability for health and safety	**FFY 2016:** The City of Joplin Health Department will participate in local booster events that will provide education and promotion of healthy lifestyles in the community.	
	FFY 2017: The LiveSmart website will be updated frequently by The City of Joplin Health Department with current information regarding individual health including local activity options and healthy recipes.	

Revision Date:

(to be completed only for an amendment)

1. Business Associate Provisions

1.1 Health Insurance Portability and Accountability Act of 1996, as amended - The state agency and the contractor are both subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein. The contractor constitutes a "Business Associate" of the state agency. Therefore, the term, "contractor" as used in this section shall mean "Business Associate."

1.1.1 The contractor agrees that for purposes of the Business Associate Provisions contained herein, terms used but not otherwise defined shall have the same meaning as those terms defined in 45 CFR Parts 160 and 164 and 42 U.S.C. §§ 17921 *et. seq.* including, but not limited to the following:

a. "Access", "administrative safeguards", "confidentiality", "covered entity", "data aggregation", "designated record set", "disclosure", "hybrid entity", "information system", "physical safeguards", "required by law", "technical safeguards", "use" and "workforce" shall have the same meanings as defined in 45 CFR 160.103, 164.103, 164.304, and 164.501 and HIPAA.

b. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of Protected Health Information which compromises the security or privacy of such information, except as provided in 42 U.S.C. § 17921. This definition shall not apply to the term "breach of contract" as used within the contract.

c. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the contractor.

d. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the state agency.

e. "Electronic Protected Health Information" shall mean information that comes within paragraphs (1)(i) or (1)(ii) of the definition of Protected Health Information as specified below.

f. "Enforcement Rule" shall mean the HIPAA Administrative Simplification: Enforcement; Final Rule at 45 CFR Parts 160 and 164.

g. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

h. "Individual" shall have the same meaning as the term "individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).

i. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

j. "Protected Health Information" as defined in 45 CFR 160.103, shall mean individually identifiable health information:

- (i) Except as provided in paragraph (b) of this definition, that is: (i) Transmitted by electronic media; or (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.

- (ii) Protected Health Information excludes individually identifiable health information in (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); and (iii) Employment records held by a covered entity (state agency) in its role as employer.

k. "Security Incident" shall be defined as set forth in the "Obligations of the Contractor" section of the Business Associate Provisions.

l. "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 164, Subpart C.

m. "Unsecured Protected Health Information" shall mean Protected Health Information that is not secured through the use of a technology or methodology determined in accordance with 42 U.S.C. § 17932 or as otherwise specified by the secretary of Health and Human Services.

1.1.2 The contractor agrees and understands that wherever in this document the term Protected Health Information is used, it shall also be deemed to include Electronic Protected Health Information.

1.1.3 The contractor must appropriately safeguard Protected Health Information which the contractor receives from or creates or receives on behalf of the state agency. To provide reasonable assurance of appropriate safeguards, the contractor shall comply with the business associate provisions stated herein, as well as the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) and all regulations promulgated pursuant to authority granted therein.

1.1.4 The state agency and the contractor agree to amend the contract as is necessary for the parties to comply with the requirements of HIPAA and the Privacy Rule, Security Rule, Enforcement Rule, and other rules as later promulgated (hereinafter referenced as the regulations promulgated thereunder). Any ambiguity in the contract shall be interpreted to permit compliance with the HIPAA Rules.

1.2 Permitted Uses and Disclosures of Protected Health Information by the Contractor:

1.2.1 The contractor may not use or disclose Protected Health Information in any manner that would violate Subpart E of 45 CFR Part 164 if done by the state agency, except for the specific uses and disclosures in the contract.

1.2.2 The contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, the state agency as specified in the contract, provided that such use or disclosure would not violate HIPAA and the regulations promulgated thereunder.

1.2.3 The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1) and shall notify the state agency by no later than ten (10) calendar days after the contractor becomes aware of the disclosure of the Protected Health Information.

1.2.4 If required to properly perform the contract and subject to the terms of the contract, the contractor may use or disclose Protected Health Information if necessary for the proper management and administration of the contractor's business.

1.2.5 If the disclosure is required by law, the contractor may disclose Protected Health Information to carry out the legal responsibilities of the contractor.

1.2.6 If applicable, the contractor may use Protected Health Information to provide Data Aggregation services to the state agency as permitted by 45 CFR 164.504(e)(2)(i)(B).

1.2.7 The contractor may not use Protected Health Information to de-identify or re-identify the information in accordance with 45 CFR 164.514(a)-(c) without specific written permission from the state agency to do so.

1.2.8 The contractor agrees to make uses and disclosures and requests for Protected Health Information consistent with the state agency's minimum necessary policies and procedures.

1.3 Obligations and Activities of the Contractor:

1.3.1 The contractor shall not use or disclose Protected Health Information other than as permitted or required by the contract or as otherwise required by law, and shall comply with the minimum necessary disclosure requirements set forth in 45 CFR § 164.502(b).

1.3.2 The contractor shall use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the contract. Such safeguards shall include, but not be limited to:

a. Workforce training on the appropriate uses and disclosures of Protected Health Information pursuant to the terms of the contract;

b. Policies and procedures implemented by the contractor to prevent inappropriate uses and disclosures of Protected Health Information by its workforce and subcontractors, if applicable;

c. Encryption of any portable device used to access or maintain Protected Health Information or use of equivalent safeguard;

d. Encryption of any transmission of electronic communication containing Protected Health Information or use of equivalent safeguard; and

e. Any other safeguards necessary to prevent the inappropriate use or disclosure of Protected Health Information.

1.3.3 With respect to Electronic Protected Health Information, the contractor shall use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that contractor creates, receives, maintains or transmits on behalf of the state agency and comply with Subpart C of 45 CFR Part 164, to prevent use or disclosure of Protected Health Information other than as provided for by the contract.

1.3.4 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), the contractor shall require that any agent or subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of the contractor agrees to the same restrictions, conditions, and requirements that apply to the contractor with respect to such information.

1.3.5 By no later than ten (10) calendar days after receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall make the contractor's internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, created by, or received by the contractor on behalf of the state agency available to the state agency and/or to the Secretary of the Department of Health and Human Services or designee for purposes of determining compliance with the HIPAA Rules and the contract.

1.3.6 The contractor shall document any disclosures and information related to such disclosures of Protected Health Information as would be required for the state agency to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 42 USCA §17932 and 45 CFR 164.528. By no later than five (5) calendar days of receipt of a written request from the state agency, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, the contractor shall provide an accounting of disclosures of Protected Health Information regarding an individual to the state agency. If requested by the state agency or the individual, the contractor shall provide an accounting of disclosures directly to the individual. The contractor shall maintain a record of any accounting made directly to an individual at the individual's request and shall provide such record to the state agency upon request.

1.3.7 In order to meet the requirements under 45 CFR 164.524, regarding an individual's right of access, the contractor shall, within five (5) calendar days following a state agency request, or as otherwise required by state or federal law or regulation, or by another time as may be agreed upon in writing by the state agency, provide the state agency access to the Protected Health Information in an individual's designated record set. However, if requested by the state agency, the contractor shall provide access to the Protected Health Information in a designated record set directly to the individual for whom such information relates.

1.3.8 At the direction of the state agency, the contractor shall promptly make any amendment(s) to Protected Health Information in a Designated Record Set pursuant to 45 CFR 164.526.

1.3.9 The contractor shall report to the state agency's Security Officer any security incident immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. For purposes of this paragraph, security incident shall mean the attempted or successful unauthorized access, use, modification or destruction of information or interference with systems operations in an information system. This does not include trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the state agency's Security Officer with a description of any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan of action for approval that describes plans for preventing any such future security incidents.

1.3.10 The contractor shall report to the state agency's Privacy Officer any unauthorized use or disclosure of Protected Health Information not permitted or required as stated herein immediately upon becoming aware of such use or disclosure and shall take immediate action to stop the unauthorized use or disclosure. By no later than five (5) calendar days after the contractor becomes aware of any such use or disclosure, the contractor shall provide the state agency's Privacy Officer with a written description of any remedial action taken to mitigate any harmful effect of such disclosure and a proposed written plan of action for approval that describes plans for preventing any such future unauthorized uses or disclosures.

1.3.11 The contractor shall report to the state agency's Security Officer any breach immediately upon becoming aware of such incident and shall take immediate action to stop the continuation of any such incident. By no later than five (5) days after the contractor becomes aware of such incident, the contractor shall provide the state agency's Security Officer with a description of the breach, the information compromised by the breach, and any remedial action taken to mitigate any harmful effect of such incident and a proposed written plan for approval that describes plans for preventing any such future incidents.

1.3.12 The contractor's reports required in the preceding paragraphs shall include the following information regarding the security incident, improper disclosure/use, or breach, (hereinafter "incident"):

a. The name, address, and telephone number of each individual whose information was involved if such information is maintained by the contractor;

b. The electronic address of any individual who has specified a preference of contact by electronic mail;

c. A brief description of what happened, including the date(s) of the incident and the date(s) of the discovery of the incident;

d. A description of the types of Protected Health Information involved in the incident (such as full name, Social Security Number, date of birth, home address, account number, or

disability code) and whether the incident involved Unsecured Protected Health Information; and

e. The recommended steps individuals should take to protect themselves from potential harm resulting from the incident.

1.3.13 Notwithstanding any provisions of the Terms and Conditions attached hereto, in order to meet the requirements under HIPAA and the regulations promulgated thereunder, the contractor shall keep and retain adequate, accurate, and complete records of the documentation required under these provisions for a minimum of six (6) years as specified in 45 CFR Part 164.

1.3.14 Contractor shall not directly or indirectly receive remuneration in exchange for any Protected Health Information without a valid authorization.

1.3.15 If the contractor becomes aware of a pattern of activity or practice of the state agency that constitutes a material breach of contract regarding the state agency's obligations under the Business Associate Provisions of the contract, the contractor shall notify the state agency's Security Officer of the activity or practice and work with the state agency to correct the breach of contract.

1.3.16 The contractor shall indemnify the state agency from any liability resulting from any violation of the Privacy Rule or Security Rule or Breach arising from the conduct or omission of the contractor or its employee(s), agent(s) or subcontractor(s). The contractor shall reimburse the state agency for any and all actual and direct costs and/or losses, including those incurred under the civil penalties implemented by legal requirements, including but not limited to HIPAA as amended by the Health Information Technology for Economic and Clinical Health Act, and including reasonable attorney's fees, which may be imposed upon the state agency under legal requirements, including but not limited to HIPAA's Administrative Simplification Rules, arising from or in connection with the contractor's negligent or wrongful actions or inactions or violations of this Agreement.

1.4 Obligations of the State Agency:

1.4.1 The state agency shall notify the contractor of limitation(s) that may affect the contractor's use or disclosure of Protected Health Information, by providing the contractor with the state agency's notice of privacy practices in accordance with 45 CFR 164.520.

1.4.2 The state agency shall notify the contractor of any changes in, or revocation of, authorization by an Individual to use or disclose Protected Health Information.

1.4.3 The state agency shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the state agency has agreed to in accordance with 45 CFR 164.522.

1.4.4 The state agency shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA and the regulations promulgated thereunder.

1.5 Expiration/Termination/Cancellation - Except as provided in the subparagraph below, upon the expiration, termination, or cancellation of the contract for any reason, the contractor shall, at the discretion of the state agency, either return to the state agency or destroy all Protected Health Information received by the contractor from the state agency, or created or received by the contractor on behalf of the state agency, and shall not retain any copies of such Protected Health Information. This provision shall also apply to Protected Health Information that is in the possession of subcontractor or agents of the contractor.

1.5.1 In the event the state agency determines that returning or destroying the Protected Health Information is not feasible, the contractor shall extend the protections of the contract to the Protected Health Information for as long as the contractor maintains the Protected Health Information and shall limit the use and disclosure of the Protected Health Information to those purposes that made return or destruction of the information infeasible. If at any time it becomes feasible to return or destroy any such Protected Health Information maintained pursuant to this paragraph, the contractor must notify the state agency and obtain instructions from the state agency for either the return or destruction of the Protected Health Information.

1.5.2 Breach of Contract – In the event the contractor is in breach of contract with regard to the business associate provisions included herein, the contractor agrees that in addition to the requirements of the contract related to cancellation of contract, if the state agency determines that cancellation of the contract is not feasible, the State of Missouri may elect not to cancel the contract, but the state agency shall report the breach of contract to the Secretary of the Department of Health and Human Services.

EXHIBIT 1
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION, AND AFFIDAVIT OF WORK AUTHORIZATION

BUSINESS ENTITY CERTIFICATION:
The contractor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

BOX A:	To be completed by a non-business entity as defined below.
BOX B:	To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at http://www.dhs.gov/files/programs/gc_1185221678150.shtm.
BOX C:	To be completed by a business entity who has current work authorization documentation on file with a Missouri state agency including Division of Purchasing and Materials Management.

Business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term "**business entity**" shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors. The term "**business entity**" shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term "**business entity**" shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities (other than stated in Box C), out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

BOX A – CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- ☐ I am a self-employed individual with no employees; **OR**
- ☐ The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (Company/Individual Name) is awarded a contract for the services requested herein under Maternal Child Health (Contract Name) and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then, prior to the performance of any services as a business entity, _____(Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Department of Health and Senior Services with all documentation required in Box B of this exhibit.

_____	_____
Authorized Representative's Name (Please Print)	Authorized Representative's Signature
_____	_____
Company Name (if applicable)	Date

(Complete the following if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530.

Authorized Business Entity Representative's Name (Please Print)	Authorized Business Entity Representative's Signature
Business Entity Name	Date
E-Mail Address	

As a business entity, the contractor must perform/provide each of the following. The contractor should check each to verify completion/submission of all of the following:

- ☐ Enroll and participate in the E-Verify federal work authorization program (Website: http://www.dhs.gov/files/programs/gc_1185221678150.shtm; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein; AND

- ☐ Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the E-Verify Employment Eligibility Verification page listing the contractor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed, at minimum, by the contractor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the contractor's name and company ID, then no additional pages of the MOU must be submitted; AND

- ☐ Submit a completed, notarized Affidavit of Work Authorization provided on the next page of this Exhibit.

EXHIBIT 1, continued

AFFIDAVIT OF WORK AUTHORIZATION:

The contractor who meets the section 285.525, RSMo, definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now _____ (Name of Business Entity Authorized Representative) as _____ (Position/Title) first being duly sworn on my oath, affirm _____ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that _____ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

_____	_____
Authorized Representative's Signature	Printed Name
_____	_____
Title	Date
_____	_____
E-Mail Address	E-Verify Company ID Number

Subscribed and sworn to before me this _____ (DAY) of _____ (MONTH, YEAR). I am commissioned as a notary public within the County of _____ (NAME OF COUNTY), State of _____ (NAME OF STATE), and my commission expires on _____ (DATE).

_____	_____
Signature of Notary	*Date*

EXHIBIT 1, continued

(Complete the following if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page OR a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed by the contractor and the Department of Homeland Security – Verification Division
- ✓ A current, notarized Affidavit of Work Authorization (must be completed, signed, and notarized within the past twelve months).

Name of **Missouri State Agency** or **Public University*** to Which Previous E-Verify Documentation Submitted: _____

(*Public University includes the following five schools under chapter 34, RSMo: Harris-Stowe State University – St. Louis; Missouri Southern State University – Joplin; Missouri Western State University – St. Joseph; Northwest Missouri State University – Maryville; Southeast Missouri State University – Cape Girardeau.)

Date of Previous E-Verify Documentation Submission: _____

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted: _____
(if known)

Authorized Business Entity Representative's Name (Please Print)	Authorized Business Entity Representative's Signature
E-Verify MOU Company ID Number	E-Mail Address
Business Entity Name	Date

FOR STATE USE ONLY

Documentation Verification Completed By:

Buyer	Date

STATE OF MISSOURI
DEPARMENT OF HEALTH AND SENIOR SERVICES

TERMS AND CONDITIONS

This contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained herein. Any change must be accomplished by a formal signed amendment prior to the effective date of such change.

1. APPLICABLE LAWS AND REGULATIONS

a. The contract shall be construed according to the laws of the State of Missouri (state). The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the state.
c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
e. The exclusive venue for any legal proceeding relating to or arising out of the contract shall be in the Circuit Court of Cole County, Missouri.
f. The contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws and Executive Order 07-13 for work performed in the United States.

2. INVOICING AND PAYMENT

a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified herein.
b. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the state.
d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the specific contract terms.
e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in section 34.055, RSMo.
g. The State of Missouri reserves the right to purchase goods and services using the state purchasing card.

3. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

4. INSPECTION AND ACCEPTANCE

a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

5. CONFLICT OF INTEREST

Elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.

6. WARRANTY

The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the state, (2) be fit and sufficient for the purpose intended, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

7. REMEDIES AND RIGHTS

a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

8. CANCELLATION OF CONTRACT

a. In the event of material breach of the contractual obligations by the contractor, the state may cancel the contract. At its sole discretion, the state may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide the state within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
b. If the contractor fails to cure the breach or if circumstances demand immediate action, the state will issue a notice of cancellation terminating the contract immediately. If it is determined the state improperly cancelled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.
c. If the state cancels the contract for breach, the state reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the state deems appropriate and charge the contractor for any additional costs incurred thereby.
d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

9. BANKRUPTCY OR INSOLVENCY

Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the state immediately. Upon learning of any such actions, the state reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

10. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

11. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status unless otherwise provided by law. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
b. The identification of a person designated to handle affirmative action;
c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
d. The exclusion of discrimination from all collective bargaining agreements; and
e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the state shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the state until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

12. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

13. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise.

14. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICE

CONTRACT FUNDING SOURCE(S)

The Contract Funding Source(s) is supplemental information the Department is required to provide the Contractor when issuing a contract or amendment that will be funded by federal sources. The document identifies the total amount of funding and the federal funding source(s) expected to be used over the life of this contract. For the specific amount for a contract period, refer to the contract and/or applicable amendments. If the funding information is not available at the time the contract is issued or the information below changes, the Contractor will be notified in writing by the Department. Please retain this information with your official contract files for future reference.

Tracking # 40660	**State:** 0% $0.00	**Federal:** 100% $32,722.68

Contract Title: MATERNAL CHILD HEALTH SERVICES

Contract Start: 10/1/2014 **Contract End:** 9/30/2015 **Amend#:** 00 **Contract #:**

Vendor Name: JOPLIN CITY HEALTH DEPARTMENT

Federal Award Year: 2014 **DHSS #:** 14MCH

Federal Agency: DEPARTMENT OF HEALTH AND HUMAN SERVICES / HEALTH RESOURCES AND SERVICES ADMINISTRATION

CFDA: 93.994 **CFDA Name:** MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT TO THE STATES

Federal Award Name: MATERNAL AND CHILD HEALTH SERVICES

Federal Award: 1 B04MC26677-01

Research and Development: N **Subject to A-133 Requirements:** Y

*** The Department will provide this information when it becomes available.**

ORDINANCES

FIRST READING

City of **Joplin** City Council Agenda Item

Requested Council Meeting Date: October 6, 2014

ITEM: COUNCIL BILL
ORIGINATING DEPARTMENT: CITY MANAGER'S OFFICE
ATTACHMENTS: Revised City Organization Chart, Council Bill No. 2014-023

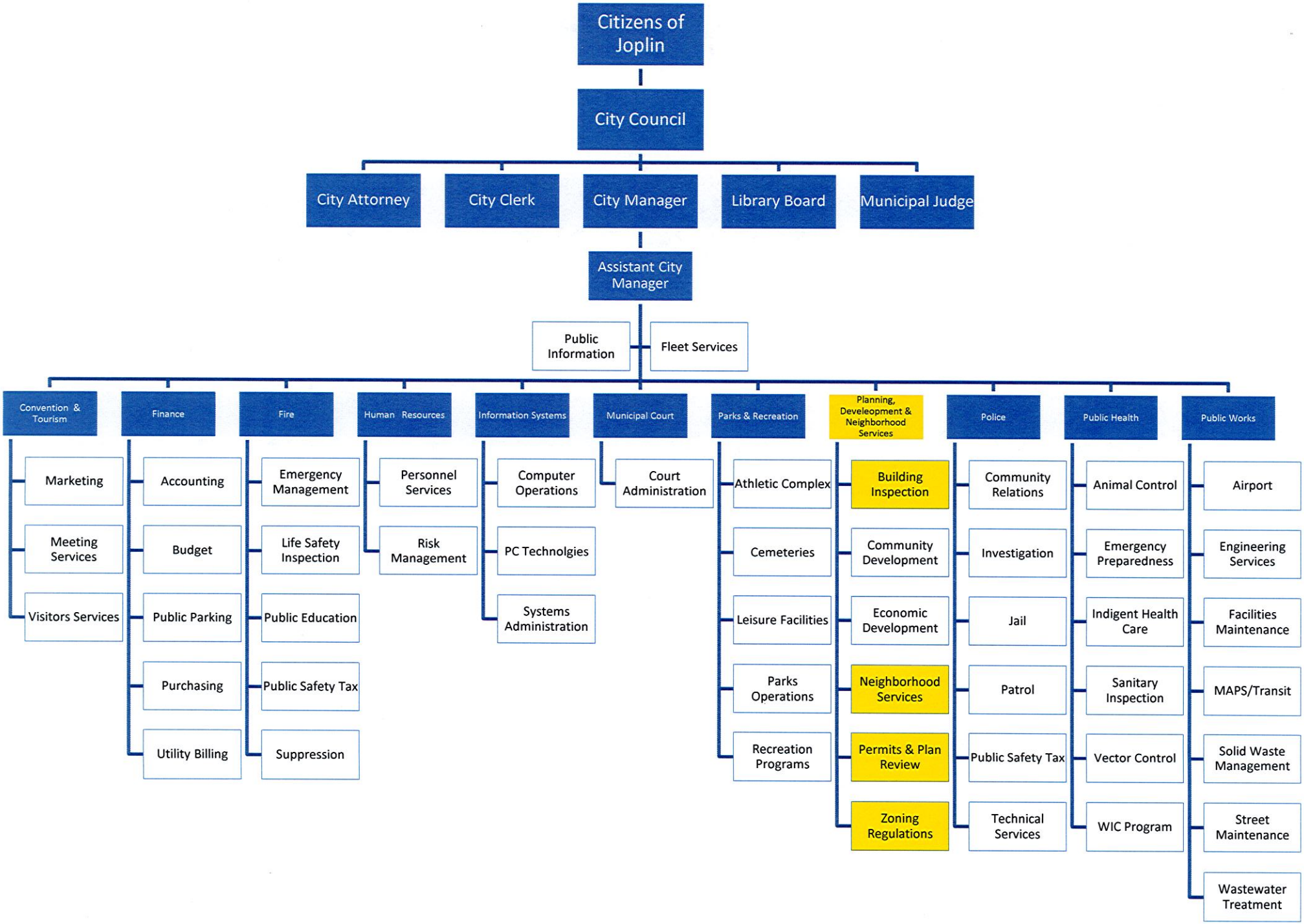
INTERIM CITY MANAGER SAM ANSELM: **DATE:** 9/22/14
CITY ATTORNEY PETER EDWARDS: **DATE:** 9/22/14
DIRECTOR OF PUBLIC WORKS NICHOLAS A. HEATHERLY: **DATE:** 9/24/14

BACKGROUND:
Section 2.10 of the Home Rule Charter grants the council the authority to create, change, and abolish offices, boards, departments or agencies established by the charter. For the past several years, our planning and zoning division has mainly operated independently, yet under the authority of, the public works department, with Troy Bolander serving as the manager of this division and de facto director. As a result of the reorganization of the public works department last fall, it has been determined by staff involved that there is a need to create a separate department that oversees planning and development activities independent of the public works function.

DISCUSSION:
This council bill would create a separate Planning, Development and Neighborhood Services department, to be overseen by a director who reports to the city manager. Areas of responsibility would include planning and zoning functions, building permits and plan review, as well as neighborhood improvement/code enforcement and inspections in addition to existing economic development and area planning activities with other agencies. Staff believes that creating a truly separate department will result in better provision of service to our resident and business communities by clarifying lines of responsibility and accountability, creating a more business and citizen-friendly process, and increasing transparency. This will also allow our public works department to better focus their efforts on engineering, operations and maintenance of our existing infrastructure and transportation networks. Both departments will continue to work together on major initiatives for the betterment of our community.

If approved, there will be a need to amend our pay plan to reflect changes in both departments, but these changes would be discussed and presented to you in a future bill that will accompany the FY2014-15 budget resolutions.

RECOMMENDATION:
Staff recommends approval of this Council Bill.


Citizens of Joplin
City Council
City Attorney
City Clerk
City Manager
Library Board
Municipal Judge
Assistant City Manager
Public Information
Fleet Services
Convention & Tourism
Marketing
Meeting Services
Visitors Services
Finance
Accounting
Budget
Public Parking
Purchasing
Utility Billing
Fire
Emergency Management
Life Safety Inspection
Public Education
Public Safety Tax
Suppression
Human Resources
Personnel Services
Risk Management
Information Systems
Computer Operations
PC Technolgies
Systems Administration
Municipal Court
Court Administration
Parks & Recreation
Athletic Complex
Cemeteries
Leisure Facilities
Parks Operations
Recreation Programs
Planning, Develeopment & Neighborhood Services
Building Inspection
Community Development
Economic Development
Neighborhood Services
Permits & Plan Review
Zoning Regulations
Police
Community Relations
Investigation
Jail
Patrol
Public Safety Tax
Technical Services
Public Health
Animal Control
Emergency Preparedness
Indigent Health Care
Sanitary Inspection
Vector Control
WIC Program
Public Works
Airport
Engineering Services
Facilities Maintenance
MAPS/Transit
Solid Waste Management
Street Maintenance
Wastewater Treatment

COUNCIL BILL NO. 2014-023 ORDINANCE NO.

AN ORDINANCE amending Chapter 94, Zoning, of the Joplin City Code, by enacting a new Article IV., Department of Planning, Development and Neighborhood Services., Sec. 94-91. Director of planning, development and neighborhood services; and Sec. 94-92. Powers and Duties.

WHEREAS, Urban Development issues and processes are increasingly important to the citizens and businesses located in and around the City of Joplin as the City and the surrounding area continue to grow; and

WHEREAS, planning and zoning play a key role in coordinating and administering the responsibilities of Joplin's development and planning functions, and this multifaceted task involves the establishment and regulatory implementation of local land use goals and objectives, and the review of land use projects; and

WHEREAS, the planning and zoning functions at the City have evolved and grown over the last decade as the City has seen shifts in population, land use and growth, and it is important to create a separate department and to define the role and responsibility of the department in order to more effectively handles these changes.

WHEREAS, the creation of a Department of Planning, Development and Neighborhood Services will better enable the City of Joplin to identify and address Urban Development issues by allowing for the superior delivery of services to the public, creating a more business and citizen-friendly development process, and increasing transparency.

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

Section 1. That Chapter 94, Zoning, of the Joplin City Code, be amended by enacting a new Article IV., Department of Planning, Development and Neighborhood Services., Sec. 94-91. Director of Planning, Development and Neighborhood Services., and Sec. 94-92. Powers and Duties., to read as follows:

"Sec. 94-91. Director of Planning, Development and Neighborhood Services.

There shall be a Department of Planning, Development and Neighborhood Services, the director of which shall be known as the Director of Planning, Development and Neighborhood Services. He shall be appointed by the city manager. He shall have such educational and experience qualifications as will enable him to understand and deal with the broad range of urban development

issues and processes in the City and to organize and administer the work of a professional planning staff.

Sec. 94-92. Powers and Duties.

The Director of Planning, Development and Neighborhood Services shall have the following powers and duties:

(1) Make recommendations with respect to city planning, zoning, land use and development to the planning and zoning commission, the mayor and council, the city manager and other departments and agencies of the City.

(2) Direct and supervise staff in the Department of Planning, Development and Neighborhood Services.

(3) Provide technical and expert assistance to the planning and zoning commission and the board of adjustment.

(4) Solicit recommendations and secure data from other City departments and agencies relative to urban development issues and problems.

(5) Direct the preparation and updating of a comprehensive or master plan for the orderly development and redevelopment of the City.

(6) Discuss with and explain to the public the principles, policies and procedures of urban development and redevelopment and provide the city council and the planning and zoning commission, from time to time, with reports on new or current planning ideas and practices and land use control techniques.

(7) Keep the records of the planning and zoning commission and the board of adjustment.

(8) In the performance of his functions, the director, or his representative, may enter upon any land at reasonable times and after giving reasonable notice to make examinations or surveys.

(9) Perform such other duties as may be assigned by the city manager.

(10) Perform those functions delegated to the director by ordinance.

(11) Maintain liaison and cooperate with local, state, and federal government concerning development of the City."

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2014.

_____

Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney

City of Joplin **City Council Agenda Item**

REQUESTED COUNCIL MEETING DATE: October 6, 2014

ITEM: Council Bill No. 2014-455 repealing the existing city food code and adopting a new city food code.

ORIGINATING DEPARTMENT: Health Department
ATTACHMENTS: Council Bill No. 2014-455

HEALTH DIRECTOR:	Dan Pekarek DP	**DATE:** 9/29/14
INTERIM CITY MANAGER:	Sam Anselm	**DATE:** 9/30/14
CITY ATTORNEY:	Peter C. Edwards PE	**DATE:** 9/30/14
FINANCE DIRECTOR:	Leslie Haase LH	**DATE:** 9-30-14

RECOMMENDED ACTION:
Staff recommends approval of this Council Bill.

SUMMARY:

The food service industry in Joplin is an integral part of the local retail trade activity. The industry continues to grow and heavily contributes to the regional draw of Joplin. The most recent Comprehensive Annual Financial Report FY 2013 showed that eating and drinking establishments in 2012 made up 12.01% of all taxable sales in the City of Joplin, which is the third highest percentage of all sales tax categories.

The U.S. Food and Drug Administration (FDA) has for years produced a recommended food code for use by states and localities. This model food code is updated approximately every 3-4 years taking into account new science relative to foodborne illness prevention. The code is developed by a committee of government and industry representatives with expertise in food science. In addition to updating the code with new developments in food science, it is also intended to provide a uniform set of standards that the food industry can operate in from state to state and community to community. State and local governments are encouraged to adopt the code updates.

The Joplin Health Department currently uses a food code based on the 1999 version of the FDA's Model Food Ordinance. The City has been utilizing this ordinance since the city's adoption in 2000. Recently in 2013 the Missouri Department of Health and Senior Services (MO DHSS) updated the State of Missouri Food Code from the 1999 FDA code to the 2009 version of the FDA Model Code.

MO DHSS encourages local health departments to update their food codes in conjunction with the State update. Updating the City of Joplin food code would keep the City's code consistent with the state food code, which results in a more consistent and friendlier business environment for establishments that may have other locations outside of Joplin. Additionally, with the new code inclusions of new food science, a higher level of protection from food-borne illness will result.

Changes from the 1999 to the 2009 version of the model code in the technical chapters (chapters 1 through7) primarily include terminology, holding temperatures and the addition of cut leafy greens as food requiring temperature control. Chapter 8 deals with enforcement capabilities of the code and remains largely the same from the 1999 version. Chapter 9 is not part of the model code and represents new proposed language from staff. The purpose of adding this chapter is to clarify the requirements of non – traditional food establishments. The new food code also incorporates changes relative to the handling of non-profit food events as required by a new State law passed in 2014.

The city health department hosted two industry informational sessions to answer questions and take comments and recommendations on the new proposed code. The food establishments were notified by mail of the sessions and the mailer included instructions on how to electronically view the proposed ordinance and make online comments. Both classroom sessions were well attended, however there were no comments submitted and discussion in the sessions was of a general nature.

The Health Board at their August 2014 meeting unanimously recommended the update of the city food code.

Staff recommends that the City of Joplin amend its current food code to update to the 2009 Food Code.

COUNCIL BILL NO. 2014-455 ORDINANCE NO.

AN ORDINANCE amending Chapter 62, Health and Sanitation, of the Code of Ordinances of the City of Joplin, Missouri, by repealing Section 62-111, Food code adopted., and Section 62-112, Amendments to food code., and enacting in lieu thereof, Sections 62-111, "Food Service Sanitation.", and 62-112, "Amendments to Food Service Sanitation.", providing generally for the adoption of the 2009 Food Code as written by the Food and Drug Administration as adopted by the State of Missouri Department of Health as the Missouri Food Code as published June 3, 2013 and providing certain amendments thereto.

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

Section 1. That Section 62-111, "Food code adopted", be repealed and a new Section 62-111, "Food Service Sanitation", be enacted to read as follows:

"Sec. 62-111. Food Service Sanitation adopted.

The Missouri Food Code as published June 3, 2013, as codified in 19 CSR 20-1.025, be and the same is hereby adopted as the Joplin Food Service Sanitation Ordinance of the City of Joplin, Missouri, for regulating the design, construction, management, and operation of food establishments."

Section 2. That Section 62-112., "Amendments to food code", be repealed and a new Section 62-112, "Amendments to Food Service Sanitation", be enacted to read as follows:

"Sec. 62-112. Amendments to Food Service Sanitation.

The Food Service Sanitation provided for in Section 62-111 is hereby amended, changed, and altered as follows:

(1) Subpart 1-201.10 (B) "Department" is amended to read as follows: "Department" means the City of Joplin Health Department.

(2) Subpart 1-201.10 (B) "Temporary Food Event" is amended to read as follows:

"Temporary Food Event or celebration' means a fair, festival, carnival, celebration, grand opening, non-profit fundraiser, customer appreciation, promotional, seasonal or other occasion where food is advertised and served to the public on a temporary basis from a fixed location.

(3) Subpart 3-501.16 (A) (2) is amended to read as follows:

(A) (2) At forty-one degrees Fahrenheit (41°F) or less.[P]

(4) Subpart 3-501.17 (A) is amended to read as follows:

(A) Except when packaging food using a reduced oxygen packaging method as specified under § 3-502.12, and except as specified in ¶¶ (E) and (F) of this section, refrigerated, ready-to-eat, potentially hazardous food, prepared and held in a food establishment for more than twenty-four (24) hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of forty-one degrees Fahrenheit (41°F) or less for a maximum of seven (7) days. [P]

(5) Subpart 3-501.17 (C) (4) is amended to read as follows:

(C) (4) When the food is removed from the freezer, to indicate the date by which the food shall be consumed on the premises, sold or discarded which is seven (7) days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated, if the food is maintained at forty-one degrees Fahrenheit (41°F) or less before and after freezing.[P]

(6) Subpart 3-701.11 (E) is amended to read as follows:

(E) Violations of §§ 3-301.11, 3-307.11, 3-501.13, 3-501.16, 3-501.17, 3-501.19 or other violations that may cause food to be unsafe or adulterated. [P]

(7) Subpart 5-403.11 (C) is amended to read as follows:

(C) A public sewage treatment plant or otherwise according to law.

(8) That Chapter 8, Compliance and Enforcement, of the Missouri Food Code as published June 3, 2013, is hereby omitted and a new Chapter 8, "Compliance and Enforcement", be enacted, a true and accurate copy attached hereto as "Exhibit A" be hereby adopted and approved.

(9) That Chapter 9, "Modified Food Establishments", be enacted, a true and accurate copy attached hereto as "Exhibit B" be hereby adopted and approved."

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, THIS _____ DAY OF _____, 2014.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Food Service Sanitation Ordinance 2014

Joplin City Health Department
321 E 4th Street
Joplin, Missouri 64801
(417)623-6122 (Phone)
(417)624-6453 (Fax)

ORDINANCE NUMBER:
EFFECTIVE:

Chapter 1: Definitions

1-101.10 Food Code. These provisions shall be known as the Food Code, hereinafter referred to as "this Code."

1-102.10 Food Safety, Illness Prevention, and Honest Presentation. The purpose of this Code is to safeguard public health and provide to consumers food that is safe, unadulterated, and honestly presented.

1-103.10 Statement. This Code establishes definitions; set standards for management and personnel, food operations, equipment and facilities, and drinking and non-drinking water and wastewater; and establishes procedures for approval to open, Hazard Analysis and Critical Control Points (HACCP) plans, and enforcement by the department.

1-201.10 Statement of Application and Listing of Terms.

(A) The following definitions shall apply in the interpretation and application of this Code.

(B) Terms Defined. As used in this Code, each of the terms listed in ¶ 1-201.10(B) shall have the meaning stated below.

Accredited Program.

(1) **"Accredited program"** means a food protection manager certification program that has been evaluated and listed by a Conference for Food Protection recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs that certify individuals.

(2) **"Accredited program"** refers to the certification process and is a designation based upon an independent evaluation of factors such as the sponsor's mission; organizational structure; staff resources; revenue sources; policies; public information regarding program scope, eligibility requirements, re-certification, discipline and grievance procedures; and test development and administration.

(3) ***"Accredited program"*** *does not refer to training functions or educational programs.*

Additive.

(1) **"Food additive"** means any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, radiation intended for any such use, if such substance is not generally recognized as safe under the conditions of its use; except *such term does not include a pesticide chemical residue in or on a raw agricultural commodity or processed food; a pesticide chemical; a color additive; any substance used in accordance with a sanction or approval granted prior to the enactment of relevant federal laws; a new animal drug; or an ingredient in, or intended for use in, a dietary supplement.*

(2) **"Color additive"** means a dye, pigment, or other substance, which is capable of imparting color when added or applied to food, drug, cosmetic, or to the human body and requires prior approval by the Food and Drug Administration (FDA); except *such term does not include any material which the Secretary of Health and Human Services, by regulation, determines is used or intended to be used solely for a purpose or purposes other than coloring or any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest.*

"Adulterated" means a food that:

(1) Bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this subdivision if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2) Bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of Section 196.085, RSMo; or

(3) Consists, in whole or in part, of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) Has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) Is, in whole or in part, the product of a diseased animal or of an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

(6) Its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) Any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(8) Any substance has been substituted wholly or in part therefore; or

(9) Damage or inferiority has been concealed in any manner; or

(10) Any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or

(11) It is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent (0.4%), harmless natural wax not in excess of four-tenths of one percent (0.4%), harmless natural gum, and pectin; provided, that this subdivision shall not apply to any confectionery, by reason of its containing less than five percent (5%) by weight of alcohol, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; or

(12) It bears or contains a coal tar color other than one from a batch, which has been certified under authority of the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

"Approval to open" means certificate issued by the regulatory authority authorizing a food establishment to commence operations as a food establishment due to its meeting minimum requirements set forth by the regulatory authority.

"Approved" means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.

Asymptomatic.

(1) "Asymptomatic" means without obvious symptoms; not showing or producing indications of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice.

(2) "Asymptomatic" includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

"a_w" means water activity which is a measure of the free moisture in a food, is the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol Aw.

"Balut" means an embryo inside a fertile egg that has been incubated for a period sufficient for the embryo to reach a specific stage of development after which it is removed from incubation before hatching.

"Beverage" means a liquid for drinking, including water.

"Bottled drinking water" means water that is sealed in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.

"Casing" means a tubular container for sausage products made of either natural or artificial (synthetic) material.

"Certification number" means a unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program.

"CFR" means Code of Federal Regulations and is a compilation of the general and permanent rules published in the Federal Register by the executive department and agencies of the federal government.

CIP.

(1) "CIP" means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning, such as the method used, in part, to clean and sanitize a frozen dessert machine.

(2) *"CIP" does not include the cleaning of equipment such as band saws, slicers, or mixers that are subjected to in-place manual cleaning without the use of a CIP system.*

"Commingle" means:

(1) To combine shellstock harvested on different days or from different growing areas as identified on the tag or label, or

(2) To combine shucked shellfish from containers with different container codes or different shucking dates.

Comminuted.

(1) "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing.

(2) "Comminuted" includes fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, gyros, ground beef, and sausage; and a mixture of two (2) or more types of meat that have been reduced in size and combined, such as sausages made from two (2) or more meats.

"Conditional employee" means a potential food employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential food employees who may be suffering from a disease that can be transmitted through food and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

"Confirmed foodborne disease outbreak" means a foodborne disease outbreak in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the food as the source of the illness.

"Consumer" means a person who is a member of the public, takes possession of food, is not functioning in the capacity of an operator of a food establishment or food processing plant, and does not offer the food for resale.

Core item.

(1) **"Core item"** means a provision that, if in noncompliance, may lead to conditions favorable for food contamination, illness, or environmental health hazards. A core item includes violations related to general sanitation, operational controls, sanitation standard operating

procedures (SSOPs), facilities or structures, equipment design, or general maintenance.

(2) **"Core item"** means a provision in this Code that is not designated as a priority item.

"Corrosion-resistant material" means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions, and other conditions of the use environment.

"Counter-mounted equipment" means equipment that is not portable and is designed to be mounted off the floor on a table, counter, or shelf.

"Critical control point" means a point or procedure in a specific food system where loss of control may result in an unacceptable health risk.

"Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur.

"Cut leafy greens" means fresh leafy greens whose leaves have been cut, shredded, sliced, chopped, or torn. The term "leafy greens" includes iceberg lettuce, romaine lettuce, leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard. The term "leafy greens" does not include herbs such as cilantro or parsley.

"Dealer" means a person who is authorized by a shellfish control authority for the activities of shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

"Department" means the City of Joplin Health Department.

"Disclosure" means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

Drinking Water.

(1) "Drinking water", traditionally known as "potable water", means water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects and, for the purpose of this Code, must meet the standards of the EPA, Department of Natural Resources or the department prior to serving to the general public.

(2) "Drinking water" includes the term "water" *except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "nondrinking" water.*

"Dry storage area" means a room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service items.

Easily Cleanable.

(1) "Easily cleanable" means a characteristic of a surface that:

(a) Allows effective removal of soil by normal cleaning methods;

(b) Is dependent on the material, design, construction, and installation of the surface; and

(c) Varies with the likelihood of the surface's role in introducing pathogenic or toxigenic agents or other contaminants into food based on the surface's approved placement, purpose, and use.

(2) "Easily cleanable" includes a tiered application of the criteria that qualify the surface as easily cleanable as specified in Subparagraph (1) of this definition to different situations in which varying degrees of cleanability are required such as:

(a) The appropriateness of stainless steel for a food preparation surface as opposed to the lack

of need for stainless steel to be used for floors or for tables used for consumer dining; or

(b) The need for a different degree of cleanability for a utilitarian attachment or accessory in the kitchen as opposed to a decorative attachment or accessory in the consumer dining area.

"Easily moveable" means:

(1) Portable; mounted on casters, gliders, or rollers; or provided with a mechanical means to safely tilt a unit of equipment for cleaning; and

(2) Having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area.

Egg.

(1) "Egg" means the shell egg of avian species such as chicken, duck, goose, guinea, quail, ratites or turkey.

(2) *"Egg" does not include:*

(a) *A balut;*

(b) *The egg of reptile species such as alligator; or*

(c) *An egg product.*

Egg Product.

(1) "Egg product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen or liquid eggs.

(2) *"Egg product" does not include food, which contains eggs only in a relatively small proportion such as cake mixes.*

"Employee" means the operator, person in charge, food employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a food establishment.

"Enterohemorrhagic *Escherichia coli*" (EHEC) means *E. coli*, which cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E. coli* that has the capacity to produce Shiga toxins and to cause attaching and effacing lesions in the intestine. EHEC is a subset of Shiga toxin-producing *Escherichia coli* (STEC), whose members produce additional virulence factors. Infections with EHEC may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; or *E. coli* O111:NM. *Also see* shiga toxin- producing *E. coli*.

"EPA" means the U.S. Environmental Protection Agency.

Equipment.

(1) "Equipment" means an article that is used in the operation of a food establishment such as a freezer, grinder, hood, ice maker, meat block, mixer, oven, reach-in refrigerator, scale, sink, slicer, stove, table, temperature measuring device for ambient air, vending machine, or warewashing machine.

(2) *"Equipment" does not include apparatuses used for handling or storing large quantities of packaged foods that are received from a supplier in a cased or overwrapped lot, such as hand trucks, forklifts, dollies, pallets, racks, and skids.*

"Exclude" means to prevent a person from working as an employee in a food establishment or entering a food establishment as an employee.

Extensive renovation.

(1) "Extensive renovation" means a physical change to portions of the food establishment designated for food preparation, food storage, and/or warewashing. Examples include, but are not limited to, building additions, demolition of interior or exterior walls, the addition or removal of hand sinks, three compartment sinks or service sinks. *Repair or replacement of broken, dated or worn equipment/items shall not be considered an extensive renovation.*

(2) "Extensive renovation" means a substantial change in the foods prepared, sold or served as to require additional equipment or different food handling processes or procedures. This includes changing the type of food service operation, such as fast food to full service.

"FDA" means the U.S. Food and Drug Administration.

Fish.

(1) "Fish" means fresh or saltwater finfish, crustaceans and other forms of aquatic life (including alligator, frog, aquatic turtle, jellyfish, sea cucumber, and sea urchin and the roe of such animals) other than birds or mammals, and all mollusks, if such animal life is intended for human consumption.

(2) "Fish" includes an edible human food product derived in whole or in part from fish, including fish that have been processed in any manner.

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

"Food-contact surface" means:

(1) A surface of equipment or a utensil with which food normally comes into contact; or

(2) A surface of equipment or a utensil from which food may drain, drip, or splash:

(a) Into a food, or

(b) Onto a surface normally in contact with food.

"Food employee" means an individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

Food Establishment.

(1) "Food establishment" means an operation that:

(a) Stores, prepares, packages, serves, vends food directly to the consumer or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or food bank;

(b) Relinquishes possession of food to a consumer, directly or indirectly, through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers; and

(2) "Food establishment" includes:

(a) An element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; and

(b) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(3) *"Food establishment" does not include*:

(a) *An establishment that offers only prepackaged foods that are not potentially hazardous foods;*

(b) *A produce stand that only offers whole, uncut fresh fruits and vegetables;*

(c) *A food processing plant; including those that are located on the premises of a food*

establishment;

(d) *A kitchen in a private home if only food that is not potentially hazardous food, is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;*

(e) *An area where food that is prepared as specified in Subparagraph (3)(d) of this definition is sold or offered for human consumption;*

(f) *A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation, that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed four (4), and breakfast is the only meal offered;*

(g) *A private home that receives catered or home-delivered food; or*

(h) *Where local codes allow, individual stands in which only foods meeting the following conditions are sold, sampled or served:*

(i) *Non-potentially hazardous processed food, except low acid canned and acidified foods as specified in 21 CFR 113 and 114 respectively, including, but not limited to breads, cookies, fruit pies, jams, jellies, preserves, fruit butters, honey, sorghum, cracked nuts, packaged spices and spice mixes, dry cookie, cake, bread, and soup mixes;*

(ii) *The seller is the individual actually producing the food or an immediate family member residing in the producer's household with extensive knowledge about the food;*

(iii) *The seller only sells, samples or serves the food directly to the end consumer;*

(iv) *All processed packaged foods bear a label stating the name and address of the manufacturer/processor preparing the food, common name of the food, name of all the ingredients in the food in order of predominance, the net weight of the food in English or metric units, and a statement that the product is prepared in a kitchen that is not subject to inspection by the department. It is recommended that honey manufacturers/processors include this additional statement to their product label: "Honey is not recommended for infants less than twelve (12) months of age"; and*

(v) *The consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to inspection by the department if the foods specified in Part 3. H. (I) of this definition, are sold, sampled or served in unpackaged, individual portions. The department shall have the final authority in determining whether a food is non-potentially hazardous and may enjoin individuals who violate the provisions of this subparagraph from selling, sampling or serving these foods.*

Food Processing Plant.

(1) "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption, and provides food for sale or distribution to other business entities such as food processing plants or food establishments.

(2) *"Food processing plant" does not include a food establishment.*

Game Animal.

(1) "Game animal" means an animal, the products of which are food that is not classified as livestock, poultry or fish.

(2) "Game animal" includes mammals such as reindeer, deer, antelope, water buffalo, rabbit, squirrel, opossum, raccoon, nutria, or muskrat, and nonaquatic reptiles such as land snakes.

(3) "Game animal" does not include ratites, such as ostrich, emu, and rhea.

"Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" with which certain fluid and dry milk and milk products comply.

"HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis and Critical Control Point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

Handwashing Sink.

(1) "Handwashing sink" means a lavatory, a basin or vessel for washing, a wash basin, or a plumbing fixture especially placed for use in personal hygiene and designed for the washing of the hands.

(2) "Handwashing sink" includes an automatic handwashing facility.

"Hazard" means a biological, chemical, or physical property that may cause an unacceptable consumer health risk.

"Health menace" means a situation that does not carry the urgency of an imminent health hazard, yet carries the threat of potentially serious health consequences if not corrected.

"Health practitioner" means a physician licensed to practice medicine, a nurse practitioner, or physician assistant.

"Hermetically sealed container" means a container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing.

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

(1) Immunocompromised; preschool age children, or older adults; and

(2) Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

(1) The number of potential injuries, and

(2) The nature, severity, and duration of the anticipated injury.

"Injected" meat means a meat to which liquid substances have been introduced into its interior by processes that are referred to as "injecting," "pump marinating," or "stitch pumping."

Juice.

(1) "Juice" means the aqueous liquid expressed or extracted from one (1) or more fruits or vegetables, purées of the edible portions of one (1) or more fruits or vegetables, or any concentrates of such liquid or purée.

(2) *"Juice" does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.*

"Kitchenware" means food preparation and storage utensils.

"Law" means applicable local, state, and federal statutes, regulations, and ordinances.

"Linens" means fabric items such as cloth hampers, cloth napkins, tablecloths, wiping cloths, and work garments including cloth gloves.

"Livestock" means cattle, sheep, swine, goat, horse, mule or other equine.

Major Food Allergen.

(1) "Major food allergen" means:

(a) Milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or

(b) A food ingredient that contains protein derived from a food, as specified in Subparagraph (1)(a) of this definition.

(2) *"Major food allergen" does not include:*

(a) *Any highly refined oil derived from a food specified in Subparagraph* (1)(a) *of this definition and any ingredient derived from such highly refined oil; or*

(b) *Any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282).*

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, goats, elk, bison, llama, alpaca, and other edible animals including game animals, *except fish and poultry.*

Mechanically Tenderized.

(1) "Mechanically tenderized" means manipulating meat with deep penetration by processes which may be referred to as "blade tenderizing," "jaccarding," "pinning," "needling," or using blades, pins, needles or any mechanical device.

(2) "Mechanically tenderized" does not include processes by which solutions are injected into meat.

"mg/L" means milligrams per liter, which is the metric equivalent of parts per million (ppm).

"Molluscan shellfish" means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, *except when the scallop product consists only of the shucked adductor muscle.*

Non-Continuous Cooking.

(1) "Non-continuous cooking" means the cooking of food in a food establishment using a process in which the initial heating of the food is intentionally halted so that it may be cooled and held for complete cooking at a later time prior to sale or service.

(2) "Non-continuous cooking" does not include cooking procedures that only involve temporarily interrupting or slowing an otherwise continuous cooking process.

"Operator" means the entity that is legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person.

Packaged.

(1) "Packaged" means bottled, canned, cartoned, securely bagged, or securely wrapped, whether packaged in a food establishment or a food processing plant.

(2) *"Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize food with the purpose of facilitating food protection during service and receipt of the food by the consumer.*

"Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

"Person in charge (PIC)" means the individual present at a food establishment who is responsible for the operation at the time of inspection.

Personal Care Items.

(1) "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance.

(2) "Personal care items" include items such as medicines; first aid supplies; and other items such as cosmetics; and toiletries such as toothpaste and mouthwash.

"pH" means the symbol for the negative logarithm of the hydrogen ion concentration, which is a measure of the degree of acidity or alkalinity of a solution.

(1) Values between zero (0) and seven (7) indicate acidity;

(2) Values between seven (7) and fourteen (14) indicate alkalinity; and

(3) The value for pure distilled water is seven (7), which is considered neutral.

"Physical facilities" means the structure and interior surfaces of a food establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.

"Plumbing fixture" means a receptacle or device that:

(1) Is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or

(2) Discharges used water, waste materials, or sewage directly or indirectly to the drainage system of the premises.

"Plumbing system" means the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment.

"Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four (4) categories:

(1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(2) Pesticides, which include substances such as insecticides and rodenticides;

(3) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

Potentially Hazardous Food.

(1) "Potentially hazardous food" means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

(a) The rapid and progressive growth of infectious or toxigenic microorganisms;

(b) The growth and toxin production of *Clostridium botulinum*; or

(c) In raw shell eggs, the growth of *Salmonella Enteritidis*.

(2) "Potentially hazardous food" includes an animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts; cut melons; cut leafy greens; cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation.

(3) *"Potentially hazardous food" does not include:*

(a) *An air-cooled hard-boiled egg with shell intact;*

(b) *A food with an A_w value of eighty-five one-hundredth (0.85) or less;*

(c) *A food with a pH level of four and six-tenths (4.6) or below when measured at seventy-five degrees Fahrenheit (75°F);*

(d) *A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution; and*

(e) *A food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of S. Enteritidis in eggs or C.*

botulinum cannot occur, such as a food that has an A_w value above eighty-five one-hundredths (0.85) and a pH level above four and six-tenths (4.6) when measured at seventy-five degrees Fahrenheit (75°F)and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms.

(f) *A food that does not support the growth of microorganisms as specified under Paragraph 1. of this definition even though the food may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness.*

"Poultry" means:

(1) Any domesticated bird (chickens, turkeys, ducks, geese, guineas, ratites or squabs), whether live or dead, as defined by USDA; and

(2) Any migratory waterfowl or game bird, pheasant, partridge, quail, grouse, or pigeon, whether live or dead, as defined by USDA.

"Premises" means:

(1) The physical facility, its contents, and the contiguous land or property under the control of the operator; or

(2) The physical facility, its contents, and the land or property not described in Subparagraph (1) of this definition if its facilities and contents are under the control of the operator and may impact food establishment personnel, facilities, or operations, and a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

"Primal cut" means a basic major cut into which carcasses and sides of meat are separated, such as a beef round, pork loin, lamb flank, or veal breast.

Priority Item.

(1) **"Priority item"** means a provision that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or an environmental health hazard. A priority item's application supports, facilitates or enables the elimination, prevention or reduction of hazards associated with foodborne illness or injury to an acceptable level.

(2) **"Priority item"** includes items with a quantifiable measure to show control of hazards such as cooking, reheating, cooling, handwashing;

(3) **"Priority item"** includes an item that requires the incorporation of specific actions, equipment or procedures to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling; and

(4) **"Priority item"** is an item that is denoted in this Code with a superscript P-^{P}.

"Private water system" means individual drinking water supplies available to the general public not included under the rules governing public water supplies.

"Public water system" means a piped water system that provides water to the public for human consumption, if the system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. The system includes any collection, treatment, storage or distribution facilities used in connection with the system. A public water system is either a community water system or a noncommunity water system.

"Ratite" means a flightless bird such as an emu, ostrich, or rhea.

Ready-to-Eat Food.

(1) "Ready-to-eat food" means food that:

(a) Is in a form that is edible without additional preparation to achieve food safety, as specified under one of the following: ¶ 3-401.11(A) or (B), § 3- 401.12, or § 3-402.11, or

as specified in ¶ 3-401.11(C); or
(b) Is a raw or partially cooked animal food and the consumer is advised as specified in Subparagraphs 3-401.11(D)(1) and (3); or
(c) Is prepared in accordance with a special process approved by the department; and
(d) May receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

(2) "Ready-to-eat food" includes:
(a) Raw animal food that is cooked as specified under § 3-401.11 or 3-401.12, or frozen as specified under § 3-402.11;
(b) Raw fruits and vegetables that are washed as specified under § 3-302.15;
(c) Fruits and vegetables that are cooked for hot holding, as specified under § 3- 401.13;
(d) All potentially hazardous food that is cooked to the temperature and time required for the specific food under Subpart 3-401 and cooled as specified under § 3-501.14;
(e) Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present are removed;
(f) Substances derived from plants such as spices, seasonings, and sugar;
(g) A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
(h) The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogens: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto ham, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and
(i) Thermally processed low-acid foods packaged in hermetically sealed containers.

Reduced Oxygen Packaging.

(1) "Reduced oxygen packaging" means:
(a) The reduction of the amount of oxygen in a package by removing oxygen; displacing oxygen and replacing it with another gas or combination of gases; or otherwise controlling the oxygen content to a level below that normally found in the atmosphere (approximately twenty-one percent (21%) at sea level); and
(b) A process as specified in Subparagraph (1) (a) of this definition that involves a food for which the hazards *Clostridium botulinum* or *Listeria monocytogenes* require control in the final packaged form.

(2) "Reduced oxygen packaging" includes:
(a) Vacuum packaging, in which air is removed from a package of food and the package is hermetically sealed so that a vacuum remains inside the package;
(b) Modified atmosphere packaging, in which the atmosphere of a package of food is modified so that its composition is different from air but the atmosphere may change over time due to the permeability of the packaging material or the respiration of the food. Modified atmosphere packaging includes reduction in the proportion of oxygen, total replacement of oxygen, or an increase in the proportion of other gases such as carbon dioxide or nitrogen;
(c) Controlled atmosphere packaging, in which the atmosphere of a package of food is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement of oxygen, nonrespiring food, and impermeable packaging material;

(d) Cook chill packaging, in which cooked food is hot filled into impermeable bags which have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychotropic pathogens; or

(e) Sous vide packaging, in which raw or partially cooked food is placed in a hermetically sealed, impermeable bag, cooked in the bag, rapidly chilled, and refrigerated at temperatures that inhibit the growth of psychotropic pathogens.

"Refuse" means solid waste not carried by water through the sewage system.

"Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the food establishment.

"Reminder" means a written statement concerning the health risk of consuming animal foods raw, undercooked, or without otherwise being processed to eliminate pathogens.

"Re-service" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, or unwrapped single-service or single-use articles.

"Restricted use pesticide" means a pesticide product labeled for use only by or under the direct supervision of a certified applicator.

"Risk" means the likelihood that an adverse health effect will occur within a population as a result of a hazard in a food.

"Safe material" means:

(1) An article manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food;

(2) An additive; or

(3) Other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

"Sanitization" means the application of cumulative heat or chemicals on cleaned food- contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of five (5) logs, which is equal to a 99.999% reduction, of representative disease microorganisms of public health importance.

"Sealed" means free of cracks or other openings that allow the entry or passage of moisture.

"Service animal" means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purpose of this Code.

"Servicing area" means an operating base location to which a mobile food establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

"Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

"Shellfish control authority" means a state, federal, foreign, tribal, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce.

"Shellstock" means raw, in-shell molluscan shellfish.

"Shiga toxin-producing *Escherichia coli*" (STEC) means any *E. coli* capable of producing Shiga toxins (also called verocytotoxins or "Shiga-like" toxins). Examples of serotypes of STEC

include both O157 and non-O157 *E. coli*. Also see enterohemorrhagic *ESCHERICHIA COLI.*

"Shucked shellfish" means molluscan shellfish that have one (1) or both shells removed.

"Single-service articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard.

Single-Use Articles.

(1) "Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded.

(2) "Single-use articles" includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength, and cleanability specifications under §§ 4- 101.11, 4-201.11, and 4-202.11 for multiuse utensils.

"Slacking" means the process of moderating the temperature of a food such as allowing a food to gradually increase from a temperature of negative ten degrees Fahrenheit (- 10°F) to twenty-five degrees Fahrenheit (25°F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food such as shrimp.

"Smooth" means:

(1) A food-contact surface having a surface free of pits and inclusions with a cleanability equal to or exceeding that of hundred (100) grit number 3 stainless steel;

(2) A non food-contact surface of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and

(3) A floor, wall, or ceiling having an even or level surface with no roughness or projections that renders it difficult to clean.

"Special process" means a modification or waiver of one or more requirements of this Code, authorized in written form, by the department, if in the opinion of the department, a health hazard or nuisance will not result.

"Tableware" means eating, drinking, and serving utensils for table use such as flatware including forks, knives, and spoons; hollowware including bowls, cups, serving dishes, and tumblers; and plates.

"Temperature measuring device" means a thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water.

"Temporary food establishment" means a food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration.

"Temporary food event or celebration" means a fair, festival, carnival, celebration, grand opening, non-profit fundraiser, customer appreciation, promotional, seasonal or other occasion where food is advertised and served to the public on a temporary basis from a fixed location.

"USDA" means the U.S. Department of Agriculture.

"Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

"Vending machine" means a self-service device that, upon insertion of a coin, paper currency, token, card, or key, or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

"Vending machine location" means the room, enclosure, space, or area where one (1) or more vending machines are installed and operated and includes the storage areas and areas on the

premises that are used to service and maintain the vending machines.

"Warewashing" means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

"Whole-muscle, intact beef" means whole muscle beef that is not injected, mechanically tenderized, reconstructed, or scored and marinated, from which beef steaks may be cut.

"Wild mushroom identification expert" means an individual who provides the regulatory authority with a letter or certificate verifying successful completion of a wild mushroom identification course provided by either an accredited college or university or a mycological society.

Chapter 2: Management and Personnel

2-101.11 Assignment.

(A) Except as specified in ¶ (B) of this section, the operator shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation [P].

(B) *In a food establishment with two (2) or more separate food operations/departments that are the legal responsibility of the same operator that are located on the same premises, the operator may, during specific time periods when food is not being prepared, packaged, or served, designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each food operation/department on the premises* [P].

2-102.11 Demonstration of Knowledge. Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, application of the Hazard Analysis and Critical Control Point principles, and the requirements of this Code. The person in charge shall demonstrate this knowledge by:

(A) Complying with this Code by having no violations of priority items during the current inspection [P];

(B) Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program [P]; or

(C) Responding correctly to the inspector's questions as they relate to the specific food operation [P]. The areas of knowledge include:

(1) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee [P];

(2) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease [P];

(3) Describing the symptoms associated with the diseases that are transmissible through food [P];

(4) Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food and the prevention of foodborne illness [P];

(5) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish [P];

(6) Stating the required food temperatures and times for safe cooking of potentially hazardous food including meat, poultry, eggs, and fish [P];

(7) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food [P];

(8) Describing the relationship between the prevention of foodborne illness and the management and control of the following [P]:

(a) Cross contamination [P],

(b) Hand contact with ready-to-eat foods [P],

(c) Handwashing [P], and

(d) Maintaining the food establishment in a clean condition and in good repair [P];

(9) Describing foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction [P];

(10) Explaining the relationship between food safety and providing equipment that is [P]:

(a) Sufficient in number and capacity [P], and

(b) Properly designed, constructed, located, installed, operated, maintained, and cleaned [P];

(11) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment [P];
(12) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections [P];
(13) Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law [P];
(14) Identifying critical control points in the operation from purchasing through sale or service that when not controlled may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this Code [P];
(15) Explaining the details of how the person in charge and food employees comply with the HACCP plan if a plan is required by law, this Code, or an agreement between the regulatory authority and the food establishment [P];
(16) Explaining the responsibilities, rights, and authorities assigned by this Code to the [P]:
(a) Food employee [P],
(b) Conditional employee [P],
(c) Person in charge [P],
(d) Regulatory authority [P]; and
(17) Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and exclusion or restriction of food employees [P].

2-102.20 Food Protection Manager Certification. A person in charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs is deemed to comply with ¶ 2- 102.11(B).

2-103.11 Person in Charge. The person in charge shall ensure that:
(A) Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under § 6-202.111;
(B) Persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;
(C) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this Code;
(D) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;
(E) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;
(F) Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under § 4-203.11 and ¶ 4-502.11(B);

(G) Employees are using proper methods to rapidly cool potentially hazardous foods that are not held hot or are not for consumption within four (4) hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;

(H) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under § 3-603.11 that the food is not cooked sufficiently to ensure its safety;

(I) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;

(J) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under § 3-304.16;

(K) Employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;

(L) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; and

(M) Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under ¶ 2-201.11(A).

2-201.10 Department Reserves Right to Adjust Parameters for Exclusions and/or Restrictions. The department may adjust the parameters for excluding, restricting, and reinstating a food employee to address public health concerns as they relate to a confirmed foodborne disease outbreak or an individual's symptoms or diagnosed illness.

2-201.11 Responsibility of Operator, Person in Charge, Food Employees, and Conditional Employees.

(A) The operator shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness [P].

(B) The food employee or conditional employee shall notify the person in charge when they have any symptom, diagnosed illness or exposure as specified in §§ 2-201.12 or 2-201.13 [P].

(C) The person in charge shall notify the regulatory authority when a food employee is jaundiced, [P] or diagnosed by a health practitioner with an illness due to Norovirus, [P], hepatitis A virus, [P] *Shigella* spp., [P] ENTEROHEMORRHAGIC or shiga toxin-producing ESCHERICHIA COLI, [P] or *Salmonella typhi* [P].

(D) The person in charge shall ensure that a conditional employee who exhibits or reports a symptom, who reports a diagnosed illness, or reports a history of exposure as specified in §§ 2-201.12 or 2-201.13, is prohibited from becoming a food employee until the conditional employee meets the criteria for reinstatement as specified in §§ 2-201.12 or 2-201.13 [P].

(E) A food employee shall comply with:

(1) An exclusion and the provisions specified in this Code; [P] or

(2) A restriction and the provisions specified in this Code [P].

2-201.12 Exclusions and Reinstatement.

(A) A food employee symptomatic with:

(1) Vomiting [P] or diarrhea [P] shall be:

(a) Excluded by the person in charge, *except when the symptom is from a noninfectious condition* [P]; and
(b) Reinstated by the person in charge, if the food employee:
(i) Is asymptomatic for at least twenty-four (24) hours [P]; or
(ii) Provides to the person in charge written medical documentation from a health practitioner that states the symptom is from a noninfectious condition [P].

(2) Jaundice and the onset of jaundice occurred within the last seven (7) calendar days [P] shall be:
(a) Excluded by the person in charge, *unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by hepatitis A virus or other fecal-orally transmitted infection* [P]; and
(b) Reinstated if the person in charge obtains approval from the regulatory authority and the food employee meets one of the following conditions:
(i) Has been jaundiced for more than seven (7) calendar days [P];
(ii) Has been symptomatic with symptoms other than jaundice for more than fourteen (14) calendar days [P]; or
(iii)Provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a hepatitis A virus infection [P].

(3) Acute onset of sore throat with fever [P] shall be:
(a) Excluded by the person in charge [P]; and
(b) Reinstated if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions [P]:
(i) Has received antibiotic therapy for *Streptococcus pyogenes* infection for more than twenty-four (24) hours [P];
(ii) Has at least one (1) negative throat specimen culture for *Streptococcus pyogenes* infection [P]; or
(iii)Is otherwise determined by a health practitioner to be free of a *Streptococcus pyogenes* infection [P].

(B) A food employee diagnosed with:

(1) An infection from hepatitis A virus within fourteen (14) calendar days from the onset of any illness symptoms, or within seven (7) calendar days of the onset of jaundice or an infection from hepatitis A virus without developing symptoms [P] shall be:
(a) Excluded by the person in charge [P]; and
(b) Reinstated if the person in charge obtains approval from the regulatory authority and the food employee meets one of the following conditions [P]:
(i) Has been jaundiced for more than seven (7) calendar days [P];
(ii) Has been symptomatic with symptoms other than jaundice for more than fourteen (14) calendar days [P]; or
(iii)Provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a hepatitis A virus infection [P].

(2) An infection from Norovirus [P] shall be:
(a) Excluded by the person in charge [P]; and
(b) Reinstated if the person in charge obtains approval from the regulatory authority and the food employee meets one of the following conditions [P]:
(i) Provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Norovirus infection [P];

(ii) Has been asymptomatic for more than forty-eight (48) hours [P]; or
(iii)Did not develop symptoms and more than forty-eight (48) hours have passed since the food employee was diagnosed [P].

(3) An infection from *Shigella* spp.[P] shall be:
(a) Excluded by the person in charge [P]; and
(b) Reinstated if the person in charge obtains approval from the regulatory authority and the food employee meets one of the following conditions [P]:
(i) Provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a *Shigella* spp. infection based on test results showing two (2) consecutive negative stool specimen cultures that are taken no earlier than forty-eight (48) hours after discontinuance of antibiotics and at least twenty-four (24) hours apart [P];
(ii) Has been asymptomatic for more than seven (7) calendar days [P]; or
(iii)Did not develop symptoms and more than seven (7) calendar days have passed since the food employee was diagnosed [P].

(4) An infection from ENTEROHEMORRHAGIC or shiga toxin-producing E. *coli* [P] shall be:
(a) Excluded by the person in charge [P]; and
(b) Reinstated if the person in charge obtains approval from the regulatory authority and the food employee meets one of the following conditions [P]:
(i) Provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from ENTEROHEMORRHAGIC or shiga toxin-producing ESCHERICHIA COLI based on test results that show two (2) consecutive negative stool specimen cultures that are taken no earlier than forty-eight (48) hours after discontinuance of antibiotics and at least twenty-four (24) hours apart [P];
(ii) Has been asymptomatic for more than seven (7) calendar days [P]; or
(iii)Did not develop symptoms and more than seven (7) days have passed since the food employee was diagnosed [P].

(5) An infection from *Salmonella typhi*, or reports a previous infection with *Salmonella typhi* within the past three (3) months, without having received antibiotic therapy as determined by a health practitioner [P] shall be:
(a) Excluded by the person in charge [P]; and
(b) Reinstated if the person in charge obtains approval from the regulatory authority and the food employee provides to the person in charge written medical documentation from a health practitioner that states the food employee is free from *S. typhi* infection [P].

2-201.13 Restrictions and Reinstatement.

(A) A food employee exposed to, or is the suspected source of, a confirmed foodborne disease outbreak, because they consumed or prepared food implicated in the outbreak; consumed food at an event or food establishment prepared by a person infected or ill with an illness listed in this section; attended or worked in a setting where there is a confirmed foodborne disease outbreak, is living in the same household as, and has knowledge about, an individual who works or attends a setting where there is a confirmed foodborne disease outbreak, or living in the same household as, and has knowledge about, an individual diagnosed with an illness caused by [P]:

(1) Norovirus [P] shall be:
(a) Restricted by the person in charge [P]; and
(b) Reinstated by the person in charge if one of the following condition is met:
(i) More than forty-eight (48) hours have passed since the last day the food employee was potentially exposed [P]; or

(ii) More than forty-eight (48) hours have passed since the food employee's household contact became asymptomatic [P].

(2) *Shigella* spp. [P] shall be:

(a) Restricted by the person in charge [P]; and

(b) Reinstated by the person in charge if one of the following condition is met:

(i) More than three (3) calendar days have passed since the last day the food employee was potentially exposed [P]; or

(ii) More than three (3) calendar days have passed since the food employee's household contact became asymptomatic [P].

(3) ENTEROHEMORRHAGIC or shiga toxin-producing ESCHERICHIA COLI [P] shall be:

(a) Restricted by the person in charge [P]; and

(b) Reinstated by the person in charge if one of the following condition is met [P]:

(i) More than three (3) calendar days have passed since the last day the food employee was potentially exposed [P]; or

(ii) More than three (3) calendar days have passed since the food employee's household contact became asymptomatic [P].

(4) *S. typhi* [P] shall be:

(a) Restricted by the person in charge [P]; and

(b) Reinstated by the person in charge if one of the following condition is met [P]:

(i) More than fourteen (14) calendar days have passed since the last day the food employee was potentially exposed [P]; or

(ii) More than fourteen (14) calendar days have passed since the food employee's household contact became asymptomatic [P].

(B) A food employee exposed to, or is the suspected source of, a confirmed hepatitis A outbreak, because they consumed or prepared food implicated in the outbreak; consumed food at an event or food establishment prepared by a person diagnosed with hepatitis A virus; attended or worked in a setting where there is a confirmed hepatitis A outbreak; works with, and has knowledge about, an individual diagnosed with hepatitis A virus; or is living in the same household as, and has knowledge about, an individual diagnosed with an illness caused by [P]:

(1) Hepatitis A virus [P] shall be:

(a) Restricted by the person in charge [P]; and

(b) Reinstated by the person in charge if one of the following condition is met [P]:

(i) The food employee is immune to hepatitis A virus infection because of a prior illness from hepatitis A [P];

(ii) The food employee is immune to hepatitis A virus infection because of vaccination against hepatitis A [P];

(iii) The food employee is immune to hepatitis A virus infection because of IG administration [P];

(iv) More than thirty (30) calendar days have passed since the last day the food employee was potentially exposed [P]; or

(v) More than thirty (30) calendar days have passed since the food employee's household contact became jaundiced [P].

(C) A food employee living in the same household as, and has knowledge about, an individual who was exposed as specified in Subsection (B) of this section to [P]:

(1) Hepatitis A virus [P] shall be:

(a) Restricted by the person in charge [P]; and

(b) Reinstated by the person in charge if one of the following condition is met [P]:

(i) The food employee complies with one of the conditions as specified in Part (B)(1)(b) (i) – (v) of this section [P]; or

(ii) The food employee receives additional training about hepatitis A symptoms and preventing the transmission of infection, proper handwashing procedures, and protecting ready-to-eat food from contamination introduced by bare hand contact [P].

(D) A food employee infected with:

(1) A skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered [P] shall be:

(a) Restricted by the person in charge [P]; and

(b) Reinstated by the person in charge if the skin, infected wound, cut, or pustular boil is properly covered with one of the following [P]:

(i) An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist [P];

(ii) An impermeable cover on the arm, if the infected wound or pustular boil is on the arm [P]; or

(iii) A dry, durable, tight-fitting bandage, if the infected wound or pustular boil is on another part of the body [P].

2-301.11 Clean Condition. Food employees shall keep their hands and exposed portions of their arms clean [P].

2-301.12 Cleaning Procedure.

(A) Except as specified in ¶ (D) of this section, food employees shall clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands or arms for at least twenty (20) seconds, using a cleaning compound in a handwashing sink that is equipped as specified under § 5-202.12 and Subpart 6-301 [P].

(B) Food employees shall use the following cleaning procedure in the order stated to clean their hands and exposed portions of their arms, including surrogate prosthetic devices for hands and arms:

(1) Rinse under clean, running warm water; [P]

(2) Apply an amount of cleaning compound recommended by the cleaning compound manufacturer; [P]

(3) Rub together vigorously for at least ten (10) to fifteen (15) seconds [P] while:

(a) Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure, [P] and

(b) Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, fingertips, and areas between the fingers; [P]

(4) Thoroughly rinse under clean, running warm water; [P] and

(5) Immediately follow the cleaning procedure with thorough drying using a method as specified under § 6-301.12. [P]

(C) *To avoid recontaminating their hands or surrogate prosthetic devices, food employees may use disposable paper towels or similar clean barriers when touching surfaces such as manually operated faucet handles on a handwashing sink or the handle of a restroom door.*

(D) *If approved and capable of removing the types of soils encountered in the food operations involved, an automatic handwashing facility may be used by food employees to clean their hands or surrogate prosthetic devices.*

2-301.14 When to Wash. Food employees shall clean their hands and exposed portions of their arms as specified under § 2-301.12 immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles [P] and:

(A) After touching bare human body parts other than clean hands and clean, exposed portions of

arms; [P]

(B) After using the toilet room; [P]

(C) After caring for or handling service animals or aquatic animals as specified in ¶ 2- 403.11(B); [P]

(D) Except as specified in ¶ 2-401.11(B), after coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking; [P]

(E) After handling soiled equipment or utensils; [P]

(F) During food preparation, as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; [P]

(G) When switching between working with raw food and working with ready-to-eat food; [P]

(H) Before donning gloves for working with food; [P] and

(I) After engaging in other activities that contaminate the hands. [P]

2-301.15 Where to Wash. Food employees shall clean their hands in a handwashing sink or approved automatic handwashing facility and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or a curbed cleaning facility used for the disposal of mop water and similar liquid waste.

2-301.16 Hand Antiseptics.

(A) A hand antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:

(1) Comply with one of the following:

(a) Be an approved drug that is listed in the Food and Drug Administration (FDA) publication Approved Drug Products with Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness; or

(b) Have active antimicrobial ingredients that are listed in the FDA monograph for OTC Health-Care Antiseptic Drug Products as an antiseptic handwash; and

(2) Comply with one of the following:

(a) Have components that are exempted from the requirement of being listed in federal food additive regulations as specified in 21 CFR 170.39 – Threshold of regulation for substances used in food contact articles; or

(b) Comply with and be listed as:

(i) 21 CFR 178 – Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers as regulated for use as a food additive with conditions of safe use, or

(ii) 21 CFR 182 – Substances Generally Recognized as Safe, 21 CFR 184 – Direct Food Substances Affirmed as Generally Recognized as Safe, or 21 CFR 186 - Indirect Food Substances Affirmed as Generally Recognized as Safe for use in contact with food; and

(3) Be applied only to hands that are cleaned as specified under § 2-301.12.

(B) If a hand antiseptic or a hand antiseptic solution used as a hand dip does not meet the criteria specified under Subparagraph (A)(2) of this section, use shall be:

(1) Followed by thorough hand rinsing in clean water before hand contact with food or by the use of gloves; or

(2) Limited to situations that involve no direct contact with food by the bare hands.

(C) A hand antiseptic solution used as a hand dip shall be maintained clean and at a strength equivalent to at least hundred milligrams per liter (100 mg/L) chlorine.

2-302.11 Maintenance.

(A) Food employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(B) *Unless wearing intact gloves in good repair*, a food employee may not wear fingernail polish or

artificial nails when working with exposed food.

2-303.11 Prohibition. Except for *a plain ring such as a wedding band*, while preparing food, food employees may not wear jewelry including medical information jewelry on their arms and hands.

2-304.11 Clean Condition. Food employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

2-401.11 Eating, Drinking, or Using Tobacco.

(A) Except as specified in ¶ (B) of this section, an employee shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food; clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result. [P]

(B) *A food employee may drink from a closed beverage container if the container is handled to prevent contamination of:*

(1) *The employee's hands;*

(2) *The container; and*

(3) *Exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.*

2-401.12 Discharges from the Eyes, Nose, and Mouth. Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles. [P]

2-402.11 Effectiveness.

(A) Except as provided in ¶ (B) of this section, food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(B) *This section does not apply to food employees such as counter staff who only serve beverages and wrapped or packaged foods, hostesses, and wait staff if they present a minimal risk of contaminating exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.*

2-403.11 Handling Prohibition.

(A) Except as specified in ¶ (B) of this section, food employees may not care for or handle animals that may be present such as patrol dogs, service animals, or pets that are allowed as specified in Subparagraphs 6-501.115(B)(2)-(5). [P]

(B) *Food employees with service animals may handle or care for their service animals and food employees may handle or care for fish in aquariums or molluscan shellfish or crustacean in display tanks if they wash their hands as specified under § 2-301.12 and ¶ 2-301.14(C).*

Chapter 3: Food

3-101.11 Safe, Unadulterated, and Honestly Presented. Food shall be safe, unadulterated, and, as specified under § 3-601.12, honestly presented. [P]

3-201.11 Compliance with Food Law.

(A) Food shall be obtained from inspected and approved sources that comply with law.[P]

(B) Food prepared in a private home may not be used or offered for human consumption in a food establishment.[P]

(C) Packaged food shall be labeled as specified in law, including 21 CFR 101 Food Labeling; 9 CFR 317 Labeling, Marking Devices, and Containers; and 9 CFR 381 Subpart N Labeling and Containers, and as specified under §§ 3-202.17 and 3-202.18. [P]

(D) Fish, other than those specified in paragraph 3-402.11(B), that are intended for consumption in raw or undercooked form and allowed as specified in Subparagraph 3- 401.11(D), may be offered for sale or service if they are obtained from a supplier that freezes the fish as specified under § 3-402.11; or if they are frozen on the premises as specified under § 3-402.11 and records are retained as specified under § 3-402.12.[P]

(E) Whole-muscle, intact beef steaks that are intended for consumption in an undercooked form without a consumer advisory as specified in ¶ 3-401.11(C) shall be: [P]

(1) Obtained from a food processing plant that packages the steaks and labels them to indicate that the steaks meet the definition of whole-muscle, intact beef; [P] or

(2) Deemed acceptable by the regulatory authority based on other evidence, such as written buyer specifications or invoices, that indicates that the steaks meet the definition of whole-muscle, intact beef, [P] and

(3) If individually cut in a food establishment:

(a) Cut from whole-muscle, intact beef that is labeled by a food processing plant as specified in Subparagraph (E)(1) of this section or identified as specified in Subparagraph (E)(2) of this section, [P]

(b) Prepared so they remain intact, [P] and

(c) If packaged for undercooking in a food establishment, labeled as specified in Subparagraph (E)(1) of this section or identified as specified in (E)(2) of this section. [P]

(F) Meat and poultry that is not a ready-to-eat food and is in a packaged form when it is offered for sale or otherwise offered for consumption shall be labeled to include safe handling instructions as specified in law, including 9 CFR 317.2(I) and 9 CFR 381.125(b). [P]

(G) Eggs that have not been specifically treated to destroy all viable Salmonellae shall be labeled to include safe handling instructions as specified in law, including 21 CFR 101.17(h). [P]

3-201.12 Food in a Hermetically Sealed Container. Food in a hermetically sealed container shall be obtained from a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant. [P]

3-201.13 Fluid Milk and Milk Products. Fluid milk and milk products shall be obtained from sources that comply with grade A standards as specified in law. [P]

3-201.14 Fish.

(A) Fish that are received for sale or service shall be:

(1) Commercially and legally caught or harvested; [P] or

(2) Approved for sale or service. [P]

(B) Molluscan shellfish that are recreationally caught may not be received for sale or service. [P]

3-201.15 Molluscan Shellfish.

(A) Molluscan shellfish shall be obtained from sources according to law and the requirements

specified in the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.[P]

(B) Molluscan shellfish received in interstate commerce shall be from sources that are listed in the Interstate Certified Shellfish Shippers List. [P]

3-201.16 Wild Mushrooms.

(A) Except as specified in ¶ (B) of this section, mushroom species picked in the wild shall be obtained from sources where each mushroom is individually inspected and found to be safe by an approved wild mushroom identification expert. [P]

(B) *This section does not apply to:*

(1) *Cultivated wild mushroom species that are grown, harvested, and processed in an operation that is regulated by the food regulatory agency that has jurisdiction over the operation; or*

(2) *Wild mushroom species if they are in packaged form and are the product of a food processing plant that is regulated by the food regulatory agency that has jurisdiction over the plant.*

3-201.17 Game Animals.

(A) If game animals are received for sale or service they shall be commercially raised for food [P] and:

(1) Raised, slaughtered, and processed under a voluntary inspection program that is conducted by the agency that has animal health jurisdiction, [P] or

(2) Under a voluntary inspection program administered by the U.S. Department of Agriculture (USDA) and/or Missouri Department of Agriculture (MDA) for [P]:

(a) Game animals, such as exotic animals (reindeer, elk, deer, antelope or water buffalo), that are "inspected and approved" in accordance with USDA and/or MDA law. [P]

(b) Rabbits that are "inspected and certified" in accordance with USDA and/or MDA law. [P]

(B) A game animal may not be received for sale or service if it is a species of wildlife that is listed in 50 CFR 17 Endangered and threatened wildlife and plants.

(C) *Any political subdivision, elementary or secondary school or any charitable, religious, fraternal or other not-for-profit organization may prepare or serve wild game provided there is no charge for the wild game served according to Section 252.244, RSMo.*

3-202.11 Temperature.

(A) Except as specified in ¶ (B) of this section, refrigerated, potentially hazardous food shall be at a temperature of forty-one degrees Fahrenheit (41°F) or below when received. [P]

(B) If a temperature other than forty-one degrees Fahrenheit (41°F) for a potentially hazardous food is specified in law governing its distribution, such as laws governing milk and molluscan shellfish, the food may be received at the specified temperature.

(C) Raw eggs shall be received in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit (45°F) or less. [P]

(D) Potentially hazardous food that is cooked to a temperature and for a time specified under §§ 3-401.11 – 3.401.13 and received hot shall be at a temperature of one hundred thirty- five degrees Fahrenheit (135°F) or above. [P]

(E) A food that is labeled frozen and shipped frozen by a food processing plant shall be received frozen. [P]

(F) Upon receipt, potentially hazardous food shall be free of evidence of previous temperature abuse. [P]

3-202.12 Additives. Food may not contain unapproved food additives or additives that exceed amounts specified in 21 CFR 170-180 relating to food additives, generally recognized as safe or prior sanctioned substances that exceed amounts specified in 21 CFR 181-186, substances that exceed amounts specified in 9 CFR Subpart C Section 424.21(b) Food ingredients and sources of radiation, or pesticide residues

that exceed provisions specified in 40 CFR 180 Tolerances for pesticides chemicals in food, and exceptions. [P]

3-202.13 Eggs. Eggs shall be received clean and sound and may not exceed the restricted egg tolerances for U.S. Consumer Grade B as specified in United States Standards, Grades, and Weight Classes for Shell Eggs, AMS 56.200 et seq., administered by the Agricultural Marketing Service of USDA. [P]

3-202.14 Eggs and Milk Products, Pasteurized.

(A) Egg products shall be obtained pasteurized. [P]

(B) Fluid and dry milk and milk products shall:

(1) Be obtained pasteurized; [P] and

(2) Comply with Grade A Standards as specified in law. [P]

(C) Frozen milk products, such as ice cream, shall be obtained pasteurized as specified in 21 CFR 135 – Frozen desserts. [P]

(D) Cheese shall be obtained pasteurized *unless alternative procedures to pasteurization are specified in the CFR, such as 21 CFR 133 – Cheeses and related cheese products, for curing certain cheese varieties.* [P]

3-202.15 Package Integrity. Food packages shall be in good condition and protect the integrity of the contents so that the food is not exposed to adulteration or potential contaminants. [P]

3-202.16 Ice. Ice for use as a food or a cooling medium shall be made from drinking water. [P]

3-202.17 Shucked Shellfish, Packaging and Identification.

(A) Raw shucked shellfish shall be obtained in nonreturnable packages which bear a legible label that identifies the:

(1) Name, address, and certification number of the shucker, packer, or repacker of the molluscan shellfish; and

(2) The "sell by" or "best if used by" date for packages with a capacity of less than one and eighty-nine hundredths liter (1.89 L) (one-half (0.5) gallon) or the date shucked for packages with a capacity of one and eighty-nine hundredths liter (1.89 L) (one- half (0.5) gallon) or more.

(B) A package of raw shucked shellfish that does not bear a label or which bears a label which does not contain all the information as specified under ¶ (A) of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D – Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d) Molluscan shellfish.

3-202.18 Shellstock Identification.

(A) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, and that list: [P]

(1) Except as specified under ¶ (C) of this section, on the harvester's tag or label, the following information in the following order: [P]

(a) The harvester's identification number that is assigned by the shellfish control authority, [P]

(b) The date of harvesting, [P]

(c) The most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellfish control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested, [P]

(d) The type and quantity of shellfish, [P] and

(e) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty or retagged and thereafter kept on file for ninety (90) days;" [P] and

(2) Except as specified in ¶ (D) of this section, on each dealer's tag or label, the following information in the following order: [P]

(a) The dealer's name and address, and the certification number assigned by the shellfish control authority, [P]

(b) The original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested, [P]

(c) The same information as specified for a harvester's tag under Subparagraphs (A) (1)(b)-(d) of this section, [P] and

(d) The following statement in bold, capitalized type: "This tag is required to be attached until container is empty and thereafter kept on file for ninety (90) days." [P]

(B) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under ¶ (A) of this section shall be subject to a hold order, as allowed by law, or seizure and destruction in accordance with 21 CFR Subpart D – Specific Administrative Decisions Regarding Interstate Shipments, Section 1240.60(d).

(C) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

(D) *If the harvester's tag or label is designed to accommodate each dealer's identification as specified under Subparagraphs (A)(2)(a) and (b) of this section, individual dealer tags or labels need not be provided.*

3-202.19 Shellstock, Condition. When received by a food establishment, shellstock shall be reasonably free of mud, dead shellfish, and shellfish with broken shells. Dead shellfish or shellstock with badly broken shells shall be discarded.

3-202.110 Juice Treated. Pre-packaged juice shall:

(A) Be obtained from a processor with a Hazard Analysis and Critical Control Point (HACCP) system as specified in 21 CFR Part 120 Hazard Analysis and Critical Control (HACCP) Systems; and

(B) Be obtained pasteurized or otherwise treated to attain a five (5) log reduction of the most resistant microorganism of public health significance as specified in 21 CFR Part 120.24 Process Controls; [P] or

(C) Bear a warning label with the following, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." [P]

3-203.11 Molluscan Shellfish, Original Container.

(A) Except as specified in ¶¶ (B) – (D) of this section, molluscan shellfish may not be removed from the container in which they are received other than immediately before sale or preparation for service.

(B) *For display purposes, shellstock may be removed from the container in which they are received, displayed on drained ice, or held in a display container, and a quantity specified by a consumer may be removed from the display or display container and provided to the consumer if:*

(1) *The source of the shellstock on display is identified as specified under § 3-202.18 and recorded as specified under § 3-203.12; and*

(2) *The shellstock are protected from contamination.*

(C) *Shucked shellfish may be removed from the container in which they were received and held in a display container from which individual servings are dispensed upon a consumer's request if:*

(1) *The labeling information for the shellfish on display as specified under § 3-202.17 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and*

(2) *The shellfish are protected from contamination.*

(D) *Shucked shellfish may be removed from the container in which they were received and repacked in consumer self service containers where allowed by law if:*

(1) *The labeling information for the shellfish is on each consumer self service container as specified under § 3-202.17 and ¶¶ 3-602.11(A) and (B)(1) – (5);*

(2) *The labeling information as specified under § 3-202.17 is retained and correlated with the date when, or dates during which, the shellfish are sold or served;*

(3) *The labeling information and dates specified under Subparagraph (D)(2) of this section are maintained for ninety (90) days; and*

(4) *The shellfish are protected from contamination.*

3-203.12 Shellstock, Maintaining Identification.

(A) Except as specified under Subparagraph (C)(2) of this section, shellstock tags or labels shall remain attached to the container in which the shellstock are received until the container is empty. [P]

(B) The date when the last shellstock from the container is sold or served shall be recorded on the tag or label. [P]

(C) The identity of the source of shellstock that are sold or served shall be maintained by retaining shellstock tags or labels for ninety (90) calendar days from the date that is recorded on the tag or label, as specified under ¶ B of this section, by: [P]

(1) Using an approved record keeping system that keeps the tags or labels in chronological order correlated to the date that is recorded on the tag or label, as specified under ¶ B of this section; [P] and

(2) If shellstock are removed from its tagged or labeled container:

(a) Preserving source identification by using a record keeping system as specified under Subparagraph (C)(1) of this section, [P] and

(b) Ensuring that shellstock from one (1) tagged or labeled container are not commingled with shellstock from another container with different certification numbers; different harvest dates; or different growing areas as identified on the tag or label before being ordered by the consumer. [P]

3-301.11 Preventing Contamination from Hands.

(A) Food employees shall wash their hands as specified under § 2-301.12.

(B) Except when washing fruits and vegetables as specified under § 3-302.15, food employees may not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment. [P]

(C) Food employees shall minimize bare hand and arm contact with exposed food that is not in a ready-to-eat form.

3-301.12 Preventing Contamination When Tasting. A food employee may not use a utensil more than once to taste food that is to be sold or served. [P]

3-302.11 Packaged and Unpackaged Food - Separation, Packaging, and Segregation.

(A) Food shall be protected from cross contamination by:

(1) Separating raw animal foods during storage, preparation, holding, and display from:

(a) Raw ready-to-eat food including other raw animal food such as fish for sushi or molluscan shellfish, or other raw ready-to-eat food such as fruits and vegetables, [P] and

(b) Cooked ready-to-eat food; [P]

(2) Except when combined as ingredients, separating types of raw animal foods from each other such as beef, fish, lamb, pork, and poultry during storage, preparation, holding, and display by:

(a) Using separate equipment for each type,[P] or
(b) Arranging each type of food in equipment so that cross contamination of one type with another is prevented,[P] and
(c) Preparing each type of food at different times or in separate areas;[P]

(3) Cleaning equipment and utensils as specified under ¶ 4-602.11 (A) and sanitizing as specified under § 4-703.11;
(4) Except as specified under Subparagraph 3-501.15(B)(2) and in ¶ (B) of this section, storing the food in packages, covered containers, or wrappings;
(5) Cleaning hermetically sealed containers of food of visible soil before opening;
(6) Protecting food containers that are received packaged together in a case or overwrap from cuts when the case or overwrap is opened;
(7) Storing damaged, spoiled, or recalled food being held in the food establishment as specified under § 6-404.11; and
(8) Separating fruits and vegetables, before they are washed as specified under § 3-302.15 from ready-to-eat food.

(B) *Subparagraph (A)(4) of this section does not apply to:*
(1) *Whole, uncut, raw fruits and vegetables and nuts in the shell, that require peeling or hulling before consumption;*
(2) *Primal cuts, quarters, or sides of raw meat or slab bacon that are hung on clean, sanitized hooks or placed on clean, sanitized racks;*
(3) *Whole, uncut, processed meats such as country hams, and smoked or cured sausages that are placed on clean, sanitized racks;*
(4) *Food being cooled as specified under Subparagraph 3-401.15(B)(2); or*
(5) *Shellstock.*

3-302.12 Food Storage Containers, Identified with Common Name of Food. *Except for containers holding food that can be readily and unmistakably recognized such as dry pasta*, working containers holding food or food ingredients that are removed from their original packages for use in the food establishment, such as cooking oils, flour, herbs, potato flakes, salt, spices, and sugar shall be identified with the common name of the food.

3-302.13 Pasteurized Eggs, Substitute for Raw Eggs for Certain Recipes. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages that are not:[P]

(A) Cooked as specified under Subparagraphs 3-401.11(A)(1) or (2);[P] or
(B) Included in ¶ 3-401.11(D).[P]

3-302.14 Protection from Unapproved Additives.

(A) Food shall be protected from contamination that may result from the addition of, as specified in § 3-202.12:
(1) Unsafe or unapproved food or color additives;[P] and
(2) Unsafe or unapproved levels of approved food and color additives.[P]

(B) A food employee may not:
(1) Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B1;[P] or
(2) *Except that grapes*, serve or sell food specified under Subparagraph (B)(1) of this section that is treated with sulfiting agents before receipt by the food establishment.[P]

3-302.15 Washing Fruits and Vegetables.

(A) Except as specified in ¶ (B) of this section and except for whole, raw fruits and vegetables that are intended for washing by the consumer before consumption, raw fruits and vegetables shall be

thoroughly washed in water to remove soil and other contaminants before being cut, combined with other ingredients, cooked, served, or offered for human consumption in ready-to-eat form.

(B) *Fruits and vegetables may be washed by using chemicals as specified under § 7-204.12.*

3-303.11 Ice Used as Exterior Coolant, Prohibited as Ingredient. After use as a medium for cooling the exterior surfaces of food such as melons or fish, packaged foods such as canned beverages, or cooling coils and tubes of equipment, ice may not be used as food. [P]

3-303.12 Storage or Display of Food in Contact with Water or Ice.

(A) Packaged food may not be stored in direct contact with ice or water if the food is subject to the entry of water because of the nature of its packaging, wrapping, or container or its positioning in the ice or water.

(B) Except as specified in ¶¶ (C) and (D) of this section, unpackaged food may not be stored in direct contact with undrained ice.

(C) *Whole, raw fruits or vegetables; cut, raw vegetables such as celery or carrot sticks or cut potatoes; and tofu may be immersed in ice or water.*

(D) *Raw poultry and raw fish that are received immersed in ice in shipping containers may remain in that condition while in storage awaiting preparation, display, service, or sale.*

3-304.11 Food Contact with Equipment and Utensils. Food shall only contact surfaces of:

(A) Equipment and utensils that are cleaned as specified under Part 4-6 of this Code and sanitized as specified under Part 4-7 of this Code; [P] or

(B) Single-service and single-use articles. [P]

3-304.12 In-Use Utensils, Between-Use Storage. During pauses in food preparation or dispensing, food preparation and dispensing utensils shall be stored:

(A) Except as specified under ¶ (B) of this section, in the food with their handles above the top of the food and the container;

(B) In food that is not potentially hazardous with their handles above the top of the food within containers or equipment that can be closed, such as bins of sugar, flour, or cinnamon;

(C) On a clean portion of the food preparation table or cooking equipment only if the in-use utensil and the food-contact surface of the food preparation table or cooking equipment are cleaned and sanitized at a frequency specified under §§ 4-602.11 and 4-702.11;

(D) In running water of sufficient velocity to flush particulates to the drain, if used with moist food such as ice cream or mashed potatoes;

(E) In a clean, protected location if the utensils, such as ice scoops, are used only with a food that is not potentially hazardous; or

(F) In a container of water if the water is maintained at a temperature of at least one hundred thirty-five degrees Fahrenheit (135°F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).

3-304.13 Linens and Napkins, Use Limitation. Linens and napkins may not be used in contact with food *unless they are used to line a container for the service of foods and the linens and napkins are replaced each time the container is refilled for a new consumer.*

3-304.14 Wiping Cloths, Use Limitation.

(A) Cloths in-use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:

(1) Maintained dry; and

(2) Used for no other purpose.

(B) Cloths in-use for wiping counters and other equipment surfaces shall be:

(1) Held between uses in a chemical sanitizer solution at a concentration specified under § 4-501.114; and

(2) Laundered daily as specified under ¶ 4-802.11(D).

(C) Cloths in-use for wiping surfaces in contact with raw animal foods shall be kept separate from cloths used for other purposes.

(D) Dry wiping cloths and the chemical sanitizing solutions specified in Subparagraph (B)(1) of this section in which wet wiping cloths are held between uses shall be free of food debris and visible soil.

(E) Containers of chemical sanitizing solutions specified in Subparagraph (B)(1) of this section in which wet wiping cloths are held between uses shall be stored off the floor and used in a manner that prevents contamination of food, equipment, utensils, linens, single- service, or single-use articles.

(F) Single-use disposable sanitizer wipes shall be used in accordance with Environmental Protection Agency (EPA)-approved manufacturer's label use instructions.

3-304.15 Gloves, Use Limitation.

(A) If used, single-use gloves shall be used for only one task such as working with ready-to- eat food or with raw animal food, used for no other purpose, and discarded when damaged or soiled, or when interruptions occur in the operation. [P]

(B) Except as specified in ¶ (C) of this section, slash-resistant gloves that are used to protect the hands during operations requiring cutting shall be used in direct contact only with food that is subsequently cooked as specified under Part 3-4 such as frozen food or a primal cut of meat.

(C) *Slash-resistant gloves may be used with ready-to-eat food that will not be subsequently cooked if the slash-resistant gloves have a smooth, durable, and nonabsorbent outer surface; or if the slash-resistant gloves are covered with a smooth, durable, nonabsorbent glove, or a single-use glove.*

(D) Cloth gloves may not be used in direct contact with food, *unless the food is subsequently cooked as required under Part 3-4 such as frozen or a primal cut of meat.*

3-304.16 Using Clean Tableware for Second Portions and Refills.

(A) Except for refilling a consumer's drinking cup or container without contact between the pouring utensil and the lip-contact area of the drinking cup or container, food employees may not use tableware, including single-service articles, soiled by the consumer, to provide second portions or refills.

(B) Except as specified in ¶ (C) of this section, self-service consumers may not be allowed to use soiled tableware, including single-service articles, to obtain additional food from the display and serving equipment.

(C) *Drinking cups and containers may be reused by self-service consumers if refilling is a contamination-free process as specified under ¶¶ 4-204.13(A), (B), and (D).*

3-304.17 Refilling Returnables.

(A) A take-home food container returned to a food establishment may not be refilled at a food establishment with a potentially hazardous food.

(B) Except as specified in ¶ (C), a take-home food container refilled with food that is not potentially hazardous shall be cleaned as specified under ¶ 4-603.17(B).

(C) *Personal take-out beverage containers, such as thermally insulated bottles, nonspill coffee cups, and promotional beverage glasses, may be refilled by employees or the consumer if refilling is a contamination-free process as specified under ¶¶ 4-204.13 (A), (B), and (D).*

3-305.11 Food Storage.

(A) Except as specified in ¶¶ (B) and (C) of this section, food shall be protected from contamination by storing the food:

(1) In a clean, dry location;

(2) Where it is not exposed to splash, dust, or other contamination; and
(3) At least six inches (6") above the floor.

(B) *Food in packages and working containers may be stored less than six inches (6") above the floor on case lot handling equipment, such as dollies, pallets, racks and skids.*

(C) *Pressurized beverage containers, cased food in waterproof containers, such as bottles or cans, and milk containers in plastic crates, may be stored on a floor that is clean and not exposed to floor moisture.*

3-305.12 Food Storage, Prohibited Areas. Food may not be stored:

(A) In locker rooms;
(B) In toilet rooms;
(C) In dressing rooms;
(D) In garbage rooms;
(E) In mechanical rooms;
(F) Under sewer lines that are not shielded to intercept potential drips;
(G) Under leaking water lines, including leaking automatic fire sprinkler heads, or under lines on which water has condensed;
(H) Under open stairwells; or
(I) Under other sources of contamination.

3-305.13 Vended Potentially Hazardous Food, Original Container. Potentially hazardous food dispensed through a vending machine shall be in the package in which it was placed at the food establishment or food processing plant at which it was prepared.

3-305.14 Food Preparation. During preparation, unpackaged food shall be protected from environmental sources of contamination.

3-306.11 Food Display. *Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption*, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means. [P]

3-306.12 Condiments, Protection.

(A) Condiments shall be protected from contamination by being kept in dispensers that are designed to provide protection, protected food displays provided with the proper utensils, original containers designed for dispensing, or individual packages or portions.

(B) Condiments at a vending machine location shall be in individual packages or provided in dispensers that are filled at an approved location, such as the food establishment that provides food to the vending machine location, a food processing plant that is regulated by the agency that has jurisdiction over the operation, or a properly equipped facility that is located on the site of the vending machine location.

3-306.13 Consumer Self-Service Operations.

(A) Raw, unpackaged animal food, such as beef, lamb, pork, poultry, and fish may not be offered for consumer self-service. [P] *This paragraph does not apply to:*
(1) *Consumer self-service of ready-to-eat foods at buffets or salad bars that serve foods such as sushi or raw shellfish;*
(2) *Ready-to-cook individual portions for immediate cooking and consumption on the premises such as consumer-cooked meats or consumer-selected ingredients for Mongolian barbecue; or*
(3) *Raw, frozen, shell-on shrimp or lobster.*

(B) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect the food from contamination. [P]

(C) Consumer self-service operations such as buffets and salad bars shall be monitored by food employees trained in safe operating procedures.

3-306.14 Returned Food and Re-Service of Food.

(A) Except as specified in ¶ (B) of this section, after being served or sold and in the possession of a consumer, food that is unused or returned by the consumer may not be offered as food for human consumption. [P]

(B) Except as specified under ¶ 3-801.11(G), *a container of food that is not potentially hazardous may be re-served from one (1) consumer to another if:*

(1) *The food is dispensed so that it is protected from contamination and the container is closed between uses, such as a narrow-neck bottle containing catsup, steak sauce, or wine; or*

(2) *The food, such as crackers, salt, or pepper, is in an unopened original package and is maintained in sound condition.*

3-307.11 Miscellaneous Sources of Contamination. Food shall be protected from contamination that may result from a factor or source not specified under Subparts 3-301 – 3-306.

3-401.11 Raw Animal Foods.

(A) Except as specified under ¶ (B) and in ¶¶ (C) and (D) of this section, raw animal foods such as eggs, meat, poultry, and foods containing these raw animal foods, shall be cooked to heat all parts of the food to a temperature and for a time that complies with one of the following methods based on the food that is being cooked:

(1) One hundred forty-five degrees Fahrenheit (145°F) or above for fifteen (15) seconds for: [P]

(a) Raw eggs that are broken and prepared in response to a consumer's order and for immediate service, [P] and

(b) Except as specified under Subparagraphs (A)(2) and (A)(3) and ¶(B), and in ¶ (C) of this section, fish and meat including game animals commercially raised for food as specified under Subparagraph 3-201.17(A)(1) and game animals under a voluntary inspection program as specified under Subparagraph 3-201.17(A)(2); [P]

(2) One hundred fifty-five degrees Fahrenheit (155°F) for fifteen (15) seconds or the temperature specified in the following chart that corresponds to the holding time for ratitites, mechanically tenderized, and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under Subparagraph 3-201.17(A)(1), and game animals under voluntary inspection program as specified under Subparagraph 3-201.17(A)(2); and raw eggs that are not prepared as specified under Subparagraph (A)(1)(a) of this section: [P]; or

Minimum Temperature ° F	**Minimum Time**
145	3 minutes
150	1 minute
158	<1 second (instantaneous)

(3) One hundred sixty-five degrees Fahrenheit (165°F) or above for fifteen (15) seconds for poultry, baluts, wild game animals as specified under Subparagraphs 3- 201.17(A)(3) and (4), stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, poultry, or ratites. [P]

(B) Whole meat roasts including beef, corned beef, lamb, pork, and cured pork roasts such as ham shall be cooked:

(1) In an oven that is preheated to the temperature specified for the roast's weight in the following chart and that is held at that temperature:

Oven Type	**Oven Temperature Based on Roast Weight**	
	Less than 4.5 kg (10 lbs)	*4.5 kg (10 lbs) or More*
Still Dry	350°F or more	250°F or more
Convection	325°F or more	250°F or more
High Humidity[1]	250°F or less	250°F or less
[1] Relative humidity greater than ninety percent (90%) for at least one (1) hour as measured in the cooking chamber or exit of the oven; or in a moisture-impermeable bag that provides one hundred percent (100%) humidity.		

; and

(2) As specified in the following chart, to heat all parts of the food to a temperature and for the holding time that corresponds to that temperature: [P]

Temperature °F	Time[1] in Minutes	Temperature °F	Time1 in Seconds
130	112	147	134
131	89	149	85
133	56	151	54
135	36	153	34
136	28	155	22
138	18	157	14
140	12	158	0
142	8		
144	5		
145	4		
[1]*Holding time may include postoven heat rise.*			

(C) *A raw or undercooked whole-muscle, intact beef steak may be served or offered for sale in a ready-to-eat form if:*

(1) *The food establishment serves a population that is not a highly susceptible population,* [P]

(2) *The steak is labeled to indicate that it meets the definition of "whole-muscle, intact beef" as specified under ¶ 3-201.11(E),* [P] *and*

(3) *The steak is cooked on both the top and bottom to a surface temperature of one hundred forty-five degrees Fahrenheit (145°F) or above and a cooked color change is achieved on all external surfaces.* [P]

(D) *A raw animal food such as raw egg, raw fish, raw-marinated fish, raw molluscan shellfish, or steak tartare; or a partially cooked food such as lightly cooked fish, soft cooked eggs, or rare meat other than whole-muscle, intact beef steaks as specified in ¶(C) of this section, may be served or offered for sale upon consumer request or selection in a ready-to-eat form if:*

(1) *As specified under ¶¶ 3-801.11(C)(1) and (2), the food establishment serves a population that is not a highly susceptible population;* [P]

(2) *The food, if served or offered for service by consumer selection from a children's menu, does not contain comminuted meat;* [P] *and*

(3) *The consumer is informed as specified under § 3-603.11 that to ensure its safety, the food should be cooked as specified under ¶ (A) or (B) of this section;* [P] *or*

(4) *The department approves a special process from ¶ (A) or (B) of this section as specified in § 8-103.10 based on a HACCP plan that:*

(a) *Is submitted by the operator and approved as specified under § 8-103.11,*

(b) *Documents scientific data or other information showing that a lesser time and temperature regimen results in a safe food, and*

(c) *Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the approved conditions of the special process.*

3-401.12 Microwave Cooking. Raw animal foods cooked in a microwave oven shall be:

(A) Rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat; [P]

(B) Covered to retain surface moisture; [P]

(C) Heated to a temperature of at least one hundred sixty-five degrees Fahrenheit (165°F) in all parts of the food; [P] and

(D) Allowed to stand covered for two (2) minutes after cooking to obtain temperature equilibrium. [P]

3-401.13 Plant Food Cooking for Hot Holding. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of one hundred thirty-five degrees Fahrenheit (135°F).

3-401.14 Non-Continuous Cooking of Raw Animal Foods. Raw animal foods that are cooked using a non-continuous cooking process shall be:

(A) Subject to an initial heating process that is no longer than sixty (60) minutes in duration;[P]

(B) Immediately after initial heating, cooled according to the time and temperature parameters specified for cooked potentially hazardous food under ¶ 3-501.14(A); [P]

(C) After cooling, held frozen or cold, as specified for potentially hazardous food under ¶ 3-501.16(A)(2); [P]

(D) Prior to sale or service, cooked using a process that heats all parts of the food to a temperature of at least one hundred sixty-five degrees Fahrenheit (165 °F) for fifteen (15) seconds; [P]

(E) Cooled according to the time and temperature parameters specified for cooked potentially hazardous food under ¶ 3-501.14(A) if not either hot held as specified under ¶ 3- 501.16(A), served immediately, or held using time as a public health control as specified under § 3-501.19 after complete cooking; [P] and

(F) Prepared and stored according to written procedures that:

(1) Have obtained prior approval from the regulatory authority;

(2) Are maintained in the food establishment and are available to the regulatory authority upon request;

(3) Describe how the requirements specified under ¶ (A)-(E) of this Section are to be monitored and documented by the operator and the corrective actions to be taken if the requirements are not met;

(4) Describe how the foods, after initial heating, but prior to complete cooking, are to be marked or otherwise identified as foods that must be cooked as specified under ¶ (D) of this section prior to being offered for sale or service; and

(5) Describe how the foods, after initial heating but prior to cooking as specified under ¶ (D)of this section, are to be separated from ready-to-eat foods as specified under ¶ 3- 302.11(D).

3-402.11 Parasite Destruction.

(A) Except as specified in ¶ (B) of this section, before service or sale in ready-to-eat form, raw, raw-marinated, partially cooked, or marinated-partially cooked fish shall be:

(1) Frozen and stored at a temperature of negative four degrees Fahrenheit (-4°F) or below for a

minimum of one hundred sixty-eight 168 hours (seven (7) days) in a freezer; [P]

(2) Frozen at negative thirty-one degrees Fahrenheit (-31°F) or below until solid and stored at negative thirty-one degrees Fahrenheit (-31°F) or below for a minimum of fifteen (15) hours; [P] or

(3) Frozen at negative thirty-one degrees Fahrenheit (-31°F) or below until solid and stored at negative four degrees Fahrenheit (-4°F) or below for a minimum of twenty- four (24) hours. [P]

(B) *Paragraph (A) of this section does not apply to:*

(1) *Molluscan shellfish;*

(2) *Tuna of the species Thunnus alalunga, Thunnus albacares (Yellowfin tuna), Thunnus atlanticus, Thunnus maccoyii (Bluefin tuna, Southern), Thunnus obesus (Bigeye tuna), or Thunnus thynnus (Bluefin tuna, Northern); or*

(3) *Aquacultured fish, such as salmon, that:*

(a) *If raised in open water, are raised in net-pens, or*

(b) *Are raised in land-based operations such as ponds or tanks, and*

(c) *Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.*

(4) Fish eggs that have been removed from the skein and rinsed.

3-402.12 Records, Creation and Retention.

(A) Except as specified in ¶ 3-402.11 (B) and ¶ (B) of this section, if raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records of the food establishment for ninety (90) days beyond the time of service or sale of the fish.

(B) *If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under § 3-402.11 may substitute for the records specified under ¶ (A) of this section.*

(C) If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in Subparagraph 3- 402.11(B)(3), a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in Subparagraph 3-402.11 (B)(3) shall be obtained by the person in charge and retained in the records of the food establishment for ninety (90) calendar days beyond the time of service or sale of the fish.

3-403.10 Preparation for Immediate Service. Cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich au jus, may be served at any temperature.

3-403.11 Reheating for Hot Holding.

(A) Except as specified under ¶¶ (B) and (C) and in ¶ (E) of this section, potentially hazardous food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit (165°F) for fifteen (15) seconds. [P]

(B) Except as specified under ¶ (C) of this section, potentially hazardous food reheated in a microwave oven for hold holding shall be reheated so that all parts of the food reach a temperature of at least one hundred sixty-five degrees Fahrenheit (165°F) and the food is rotated or stirred, covered, and allowed to stand covered for two (2) minutes after reheating. [P]

(C) Ready-to-eat food taken from a commercially processed, hermetically sealed container, or from an intact package from a food processing plant that is inspected by the food regulatory authority that has jurisdiction over the plant, shall be heated to a temperature of at least one hundred thirty-

five degrees Fahrenheit (135°F) for hot holding. [P]

(D) Reheating for hot holding as specified under ¶¶ (A) – (C) of this section shall be done rapidly and the time the food is between forty-one degrees Fahrenheit (41°F) and the temperatures specified under ¶¶ (A) – (C) of this section may not exceed two (2) hours.[P]

(E) *Remaining unsliced portions of meat roasts that are cooked as specified under ¶ 3-401.11 (B) may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under ¶ 3-401.11(B).*

3-404.11 Treating Juice. Juice packaged in a food establishment shall be:

(A) Treated under a HACCP plan as specified in § 8-201.14 to attain a five (5) log reduction, which is equal to a 99.999% reduction, of the most resistant microorganism of public health significance; [P] or

(B) Labeled, if not treated to yield a five (5) log reduction of the most resistant microorganism of public health significance:

(1) As specified under § 3-602.11, and

(2) As specified in 21 CFR 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens with the following, "WARNING: This product has not been pasteurized and, therefore, may contain harmful bacteria that can cause serious illness in children, the elderly, and persons with weakened immune systems." P

3-501.11 Frozen Food. Stored frozen foods shall be maintained frozen.

3-501.12 Potentially Hazardous Food, Slacking. Frozen potentially hazardous food that is slacked to moderate the temperature shall be held:

(A) Under refrigeration that maintains the food temperature at forty-one degrees Fahrenheit (41°F) or less; or

(B) At any temperature if the food remains frozen.

3-501.13 Thawing. Except as specified in ¶ (D) of this section, potentially hazardous food shall be thawed:

(A) Under refrigeration that maintains the food temperature at forty-one degrees Fahrenheit (41°F) or less; or

(B) Completely submerged under running water:

(1) At a water temperature of seventy degrees Fahrenheit (70°F) or below,

(2) With sufficient water velocity to agitate and float off loose particles in an overflow, and

(3) For a period of time that does not allow thawed portions of ready-to-eat food to rise above forty-one degrees Fahrenheit (41°F), or

(4) For a period of time that does not allow thawed portions of a raw animal food requiring cooking as specified under ¶ 3-401.11(A) and (B) to be above forty-one degrees Fahrenheit (41°F), for more than four (4) hours including:

(a) The time the food is exposed to the running water and the time needed for preparation for cooking, or

(b) The time it takes under refrigeration to lower the food temperature to forty-one degrees Fahrenheit (41°F);

(C) As part of a cooking process if the food that is frozen is:

(1) Cooked as specified under ¶ 3-401.11(A) or (B) or § 3-401.12, or

(2) Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or

(D) *Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.*

3-501.14 Cooling.

(A) Cooked potentially hazardous food shall be cooled:

(1) Within two (2) hours from one hundred thirty-five degrees Fahrenheit (135°F) to seventy degrees Fahrenheit (70°F); [P] and

(2) Within a total of six (6) hours from one hundred thirty-five degrees Fahrenheit (135°F) to forty-one degrees Fahrenheit (41°F) or less. [P]

(B) Potentially hazardous food shall be cooled within four (4) hours to forty-one degrees Fahrenheit (41°F) or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna. [P]

(C) Except as specified under ¶ (D) of this section, a potentially hazardous food received in compliance with laws allowing a temperature above forty-one degrees Fahrenheit (41°F) during shipment from the supplier as specified in ¶ 3-202.11(B), shall be cooled within four (4) hours to forty-one degrees Fahrenheit (41°F) or less. [P]

(D) Raw eggs shall be received as specified under ¶ 3-202.11(C) and immediately placed in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit (45°F) or less. [P]

3-501.15 Cooling Methods.

(A) Cooling shall be accomplished in accordance with the time and temperature criteria specified under § 3-501.14 by using one or more of the following methods based on the type of food being cooled:

(1) Placing the food in shallow pans;

(2) Separating the food into smaller or thinner portions;

(3) Using rapid cooling equipment;

(4) Stirring the food in a container placed in an ice water bath;

(5) Using containers that facilitate heat transfer;

(6) Adding ice as an ingredient; or

(7) Other effective methods.

(B) When placed in cooling or cold holding equipment, food containers in which food is being cooled shall be:

(1) Arranged in the equipment to provide maximum heat transfer through the container walls; and

(2) Loosely covered, or uncovered if protected from overhead contamination as specified under Subparagraph 3-305.11(A)(2), during the cooling period to facilitate heat transfer from the surface of the food.

3-501.16 Potentially Hazardous Food, Hot and Cold Holding.

(A) *Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under § 3-501.19*, and except as specified under ¶ (B) and in ¶ (C) of this section, potentially hazardous food, shall be maintained:

(1) At one hundred thirty-five degrees Fahrenheit (135°F) or above, *except that roasts cooked to a temperature and for a time specified under § 3-401.11(B) or reheated as specified in ¶ 3-403.11(E) may be held at a temperature of one hundred thirty degrees Fahrenheit (130°F) or above,* [P] or

(2) At forty-one degrees Fahrenheit (41°F) or less. [P]

(B) Eggs that have not been treated to destroy all viable Salmonellae shall be stored in refrigerated equipment that maintains an ambient air temperature of forty-five degrees Fahrenheit (45°F) or less. [P]

(C) *Potentially hazardous food in a homogenous liquid form may be maintained outside of the temperature control requirements, as specified under ¶ (A) of this section, while contained within specially designed equipment that complies with the design and construction requirements as*

specified under ¶ 4-204.13(E).

3-501.17 Ready-to-Eat, Potentially Hazardous Food, Date Marking.

(A) Except when packaging food using a reduced oxygen packaging method as specified under § 3-502.12, and except as specified in ¶¶ (E) and (F) of this section, refrigerated, ready-to-eat, potentially hazardous food, prepared and held in a food establishment for more than twenty-four (24) hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of forty-one degrees Fahrenheit (41°F) or less for a maximum of seven (7) days. [P]

(B) Except as specified in ¶¶ (E) – (G) of this section, refrigerated, ready-to-eat, potentially hazardous food, prepared and packaged by a food processing plant shall be clearly marked, at the time the original container is opened in a food establishment and if the food is held for more than twenty four (24) hours, to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded, based on the temperature and time combinations specified in ¶ (A) of this section and: [P]

(1) The day the original container is opened in the food establishment shall be counted as Day 1; [P] and

(2) The day or date marked by the food establishment may not exceed a manufacturer's use-by-date if the manufacturer determined the use-by date based on food safety. [P]

(C) Except as specified in ¶¶ (E) – (G) of this section, a ready-to-eat, potentially hazardous food prepared in a food establishment and subsequently frozen or a ready-to-eat, potentially hazardous food prepared in a food processing plant and subsequently opened and frozen in a food establishment, shall be clearly marked: [P]

(1) As required based on the temperature and time combinations specified in ¶ (A) of this section; [P] and

(2) When the food is placed into the freezer, to indicate the length of time before freezing that the food is held refrigerated and which is, including the day of preparation; [P] and

(3) When the food is removed from the freezer and is to be consumed within twenty-four (24) hours, mark the food with the next day as the date with which the foods shall be consumed, sold or discarded; [P] or

(4) When the food is removed from the freezer, to indicate the date by which the food shall be consumed on the premises, sold or discarded which is seven (7) days or less after the food is removed from the freezer, minus the time before freezing, that the food is held refrigerated, if the food is maintained at forty-one degrees Fahrenheit (41°F) or less before and after freezing. [P]

(D) A refrigerated, ready-to-eat, potentially hazardous food ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest- prepared or first-prepared ingredient. [P]

(E) *A date marking system that meets the criteria stated in ¶¶ (A) - (C) of this section may include:*

(1) *Using a method approved by the regulatory authority for refrigerated, ready-to-eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine;*

(2) *Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified under ¶ (A) of this section;*

(3) *Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date or day by which the food must be*

consumed on the premises, sold, or discarded as specified under ¶(B) of this section; or

(4) *Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.*

(F) *Paragraphs (A) - (C) of this section do not apply to individual meal portions served or repackaged for sale from a bulk container upon a consumer's request.*

(G) *Paragraph (B) of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:*

(1) *Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR 110 Current good manufacturing practice in manufacturing, packing, or holding human food;*

(2) *Hard cheeses containing not more than thirty-nine percent (39%) moisture as defined in 21 CFR 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;*

(3) *Semi-soft cheeses containing more than 39% moisture, but not more than fifty percent (50%) moisture, as defined in 21 CFR 133 Cheeses and related cheese products, such as blue, edam, gorgonzola, gouda, and monterey jack;*

(4) *Cultured dairy products as defined in 21 CFR 131 Milk and cream, such as yogurt, sour cream, and buttermilk;*

(5) *Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products defined in 21 CFR 114 Acidified foods;*

(6) *Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers, and which retain the original casing on the product;*

(7) *Shelf stable salt-cured products such as prosciutto and Parma (ham) that are not labeled "Keep Refrigerated" as specified in 9 CFR 317 Labeling, marking devices, and containers; and*

(8) *Unsliced portions of ready-to-eat fermented sausages and salt-cured products such as cooked bologna and cooked salami with the original casing maintained on the remaining portion.*

3-501.18 Ready-to-Eat, Potentially Hazardous Food, Disposition.

(A) A food specified in ¶¶ 3-501.17(A) - (C) shall be discarded if it:

(1) Exceeds the temperature and time combination specified in ¶ 3-501.17(A), except time that the product is frozen; [P]

(2) Is in a container or package that does not bear a date or day; [P] or

(3) Is inappropriately marked with a date or day that exceeds a temperature and time combination as specified in ¶ 3-501.17(A). [P]

(B) Refrigerated, ready-to-eat, potentially hazardous food prepared in a food establishment and dispensed through a vending machine with an automatic shutoff control shall be discarded if it exceeds a temperature and time combination as specified in ¶ 3-501.17(A). [P]

3-501.19 Time as a Public Health Control.

(A) Except as specified under ¶ (D) of this section, if time without temperature control is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for sale or service:

(1) Written procedures shall be prepared in advance, maintained in the food establishment and made available to the regulatory authority upon request that specify:

(a) Methods of compliance with Subparagraphs (B)(1) – (3) or (C)(1) – (5) of this section; and

(b) Methods of compliance with § 3-501.14 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

(B) If time without temperature control is used as the public health control up to a maximum of four (4) hours:

(1) The food shall have an initial temperature of forty-one degrees Fahrenheit (41°F) or less when removed from cold holding temperature control, or one hundred thirty-five degrees Fahrenheit (135°F) or greater when removed from hot holding temperature control; [P]

(2) The food shall be marked or otherwise identified to indicate the time that is four (4) hours past the point in time when the food is removed from temperature control;

(3) The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded within four (4) hours from the point in time when the food is removed from temperature control; [P] and

(4) The food in unmarked containers or packages, or marked to exceed a four (4) hour limit shall be discarded. [P]

(C) If time without temperature control is used as the public health control up to a maximum of six (6) hours:

(1) The food shall have an initial temperature of forty-one degrees Fahrenheit (41°F) or less when removed from temperature control and the food temperature may not exceed seventy degrees Fahrenheit (70°F) within a maximum time period of six (6) hours; [P]

(2) The food shall be monitored to ensure the warmest portion of the food does not exceed seventy degrees Fahrenheit (70°F) during the six (6) hour period, unless an ambient air temperature is maintained that ensures the food does not exceed seventy degrees Fahrenheit (70°F) during the six (6) hour holding period; [P]

(3) The food shall be marked or otherwise identified to indicate:

(a) The time when the food is removed from forty-one degrees Fahrenheit (41°F) or less cold holding temperature control, [P] and

(b) The time that is six (6) hours past the point in time when the food is removed from cold holding temperature control; [P]

(4) The food shall be:

(a) Discarded if the temperature of the food exceeds seventy degrees Fahrenheit (70°F), [P] or

(b) Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of six (6) hours from the point in time when the food is removed from forty-one degrees Fahrenheit (41°F) or less cold holding temperature control; [P] and

(5) The food in unmarked containers or packages, or marked with a time that exceeds the six (6) hour limit shall be discarded. [P]

(D) A food establishment that serves a highly susceptible population may not use time as specified under ¶¶ (A), (B), or (C) of this section as the public health control for raw eggs.

3-502.11 Special Processes. A food establishment shall obtain approval for a special process from the department as specified in § 8-103.10 and under § 8-103.11 before:

(A) Smoking food as a method of food preservation rather than as a method of flavor enhancement; [P]

(B) Curing food; [P]

(C) Using food additives or adding components such as vinegar:

(1) As a method of food preservation rather than as a method of flavor enhancement, [P] or

(2) To render a food so that it is not potentially hazardous; [P]

(D) Packaging food using a reduced oxygen packaging method except where the growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes* are controlled as specified under § 3-502.12; [P]

(E) Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption; [P]

(F) Custom processing animals; [P]

(G) Sprouting seeds or beans; [P] or

(H) Preparing food by another method that is determined by the department to require approval. [P]

3-502.12 Reduced Oxygen Packaging Without a Special Process, Criteria.

(A) Except for a food establishment that obtains approval as specified under § 3-502.11, a food establishment that packages potentially hazardous food using a reduced oxygen packaging method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*. [P]

(B) A food establishment that packages potentially hazardous food using a reduced oxygen packaging method shall have a HACCP plan that contains the information specified under § 8-201.14 and that:

(1) Identifies the food to be packaged;

(2) Except as specified under ¶¶ (C) - (E) of this section, requires that the packaged food shall be maintained at forty-one degrees Fahrenheit (41°F) or less and meet at least one (1) of the following criteria:

(a) Has an a_w of ninety-one hundredths (0.91) or less,

(b) Has a pH of four and six tenths (4.6) or less,

(c) Is a meat or poultry product cured at a food processing plant regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact package, or

(d) Is a food with a high level of competing organisms such as raw meat, raw poultry, or raw vegetables;

(3) Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

(a) Maintain the food at forty-one degrees Fahrenheit (41°F) or below, and

(b) Discard the food if within fourteen (14) calendar days of its packaging it is not served for on-premises consumption, or consumed if served or sold for off- premises consumption;

(4) Limits the refrigerated shelf life to no more than fourteen (14) calendar days from packaging to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first; [P]

(5) Includes operational procedures that:

(a) Prohibit contacting ready-to-eat food with bare hands as specified under ¶ 3-301.11(B),

(b) Identify a designated work area and the method by which:

(i) Physical barriers or methods of separation of raw foods and ready-to-eat foods minimize cross contamination, and

(ii) Access to the processing equipment is limited to responsible trained personnel familiar with the potential hazards of the operation, and

(c) Delineate cleaning and sanitization procedures for food-contact surfaces; and

(6) Describes the training program that ensures that the individual responsible for the reduced oxygen packaging operation understands the:

(a) Concepts required for a safe operation,

(b) Equipment and facilities, and

(c) Procedures specified under Subparagraph (B)(5) of this section and § 8-201.14.

(C) Except for fish that is frozen before, during, and after packaging, a food establishment may not package fish using a reduced oxygen packaging method. [P]

(D) Except as specified under ¶ (C) of this section, a food establishment that packages food using a cook-chill or sous vide process shall:
(1) Implement a HACCP plan that contains the information as specified under § 8- 201.14;
(2) Ensure the food is:
(a) Prepared and consumed on the premises, or prepared and consumed off the premises but within the same business entity with no distribution or sale of the packaged product to another business entity or the consumer,
(b) Cooked to heat all parts of the food to a temperature and for a time as specified under § 3-401.11, [P]
(c) Protected from contamination before and after cooking as specified under Parts 3- 3 and 3-4, [P]
(d) Placed in a package with an oxygen barrier and sealed before cooking, or placed in a package and sealed immediately after cooking and before reaching a temperature below one hundred thirty-five degrees Fahrenheit (135°F), [P]
(e) Cooled to forty-one degrees Fahrenheit (41°F) in the sealed package or bag as specified under § 3-501.14 and subsequently: [P]
(i) Cooled to thirty-four degrees Fahrenheit (34°F) within forty-eight (48) hours of reaching forty-one degrees Fahrenheit (41°F) and held at that temperature until consumed or discarded within thirty (30) days after the date of packaging; [P]
(ii) Cooled to thirty-four degrees Fahrenheit (34°F) within forty-eight (48) hours of reaching forty-one degrees Fahrenheit (41°F), removed from refrigeration equipment that maintains a thirty-four degrees Fahrenheit (34°F) food temperature and then held at forty-one degrees Fahrenheit (41°F) or less for no more than seventy-two (72) hours, at which time the food must be consumed or discarded; [P]
(iii) Cooled to thirty-eight degrees Fahrenheit (38°F) or less within twenty-four (24) hours of reaching forty-one degrees Fahrenheit (41°F) and held there for no more than seventy-two (72) hours from packaging, at which time the food must be consumed or discarded; [P] or
(iv) Held frozen with no shelf life restriction while frozen until consumed or used. [P]
(f) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily,
(g) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, and
(h) Labeled with the product name and the date packaged; and
(3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP plan and:
(a) Make such records available to the regulatory authority upon request, and
(b) Hold such records for at least six (6) months; and
(4) Implement written operational procedures as specified under Subparagraph (B)(5) of this section and a training program as specified under Subparagraph (B)(6) of this section.

(E) A food establishment that packages cheese using a reduced oxygen packaging method shall:
(1) Limit the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses; [P]
(2) Have a HACCP plan that contains the information specified under § 8-201.14 and as specified under ¶¶(B)(1), (B)(3)(a), (B)(5) and (B)(6) of this section;
(3) Labels the package on the principal display panel with a "use by" date that does not exceed thirty

(30) days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first; and

(4) Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within thirty (30) calendar days of its packaging.

3-601.11 Standards of Identity. Packaged food shall comply with standard of identity requirements in 21 CFR 131-169 and 9 CFR 319 Definitions and standards of identity or composition, and the general requirements in 21 CFR 130 – Food Standards: General and 9 CFR 319 Subpart A- General.

3-601.12 Honestly Presented.

(A) Food shall be offered for human consumption in a way that does not mislead or misinform the consumer.

(B) Food or color additives, colored overwraps, or lights may not be used to misrepresent the true appearance, color, or quality of a food.

3-602.11 Food Labels.

(A) Food packaged in a food establishment, shall be labeled as specified in law, including 21 CFR 101 – Food labeling, and 9 CFR 317 Labeling, marking devices, and containers.

(B) Label information shall include:

(1) The common name of the food, or absent a common name, an adequately descriptive identity statement;

(2) If made from two (2) or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(3) An accurate declaration of the quantity of contents;

(4) The name and place of business of the manufacturer, packer, or distributor; and

(5) The name of the food source for each major food allergen contained in the food unless the food source is already part of the common or usual name of the respective ingredient.

(6) Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) – (5), nutrition labeling as specified in 21 CFR 101 – Food Labeling and 9 CFR 317 Subpart B Nutrition Labeling.

(7) For any salmonid fish containing canthaxanthin as a color additive, the labeling of the bulk fish container, including a list of ingredients, displayed on the retail container or by other written means, such as a counter card, that discloses the use of canthaxanthin.

(C) Bulk food that is available for consumer self-dispensing shall be prominently labeled with the following information in plain view of the consumer:

(1) The manufacturer's or processor's label that was provided with the food; or

(2) A card, sign, or other method of notification that includes the information specified under Subparagraphs (B)(1), (2), and (5) of this section.

(D) *Bulk, unpackaged foods such as bakery products and unpackaged foods that are portioned to consumer specification need not be labeled if:*

(1) *A health, nutrient content, or other claim is not made; and*

(2) *The food is manufactured or prepared on the premises of the food establishment or at another food establishment or a food processing plant that is owned by the same person and is regulated by the food regulatory agency that has jurisdiction.*

3-602.12 Other Forms of Information.

(A) If required by law, consumer warnings shall be provided.

(B) Food establishment or manufacturers' dating information on foods may not be concealed or altered.

3-603.11 Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens.

(A) Except as specified in ¶ 3-401.11(C) and Subparagraph 3-401.11(D)(4) and under ¶ 3-801.11(C), if an animal food such as beef, eggs, fish, lamb, pork, poultry, or shellfish is served or sold raw, undercooked, or without otherwise being processed to eliminate pathogens, either in ready-to-eat form or as an ingredient in another ready-to-eat food, the operator shall inform consumers of the significantly increased risk of consuming such foods by way of a disclosure and reminder, as specified in ¶¶ (B) and (C) of this section using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means. [P]

(B) Disclosure shall include:

(1) A description of the animal-derived foods, such as "oysters on the half shell (raw oysters)," "raw-egg Caesar salad," and "hamburgers (can be cooked to order);" or

(2) Identification of the animal-derived foods by asterisking them to a footnote that states that the items are served raw or undercooked, or contain (or may contain) raw or undercooked ingredients.

(C) Reminder shall include asterisking the animal-derived foods requiring disclosure to a footnote that states:

(1) Regarding the safety of these items, written information is available upon request;

(2) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness; or

(3) Consuming raw or undercooked meats, poultry, seafood, shellfish, or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.

3-701.11 Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food.

(A) A food that is unsafe, adulterated, or not honestly presented as specified under § 3-101.11 shall be discarded or reconditioned according to an approved procedure. [P]

(B) Food that is not from an approved source as specified under §§ 3-201.11-.17 shall be discarded. [P]

(C) Ready-to-eat food that may have been contaminated by an employee who has been restricted or excluded as specified under § 2-201.12 and § 2-201.13 shall be discarded. [P]

(D) Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges or other means shall be discarded. [P]

(E) Violations of §§ 3-301.11, 3-307.11, 3-501.13, 3-501.16, 3-501.17, 3-501.19 or other violations that may cause food to be unsafe or adulterated. [P]

3-801.11 Pasteurized Foods, Prohibited Re-Service, and Prohibited Food. In a food establishment that serves a highly susceptible population:

(A) The following criteria apply to juice:

(1) For the purposes of this paragraph only, children who are age nine (9) or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;

(2) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR, 101.17(g) Food labeling, warning, notice, and safe handling statements, Juice that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label as specified under ¶ 3-404.11(B) may not be served or offered for sale; [P] and

(3) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified under § 8-201.14 and as specified in 21 CFR Part 120 – Hazard Analysis and Critical Control Point Systems, Subpart B Pathogen Reduction, 120.24 Process controls. [P]

(B) Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of:[P]
  (1) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages,[P] and
  (2) Except as specified in ¶ (F) of this section, recipes in which more than one (1) egg is broken and the eggs are combined;[P]

(C) The following foods may not be served or offered for sale in a ready-to-eat form:[P]
  (1) Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare,[P]
  (2) A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue;[P] and
  (3) Raw seed sprouts.[P]

(D) Under no circumstances shall bare hand contact with ready-to-eat food be allowed.[P]

(E) Time only, as the public health control as specified under ¶ 3-501.19(D) may not be used for raw eggs.[P]

(F) *Subparagraph (B)(2) of this section does not apply if:*
  (1) *The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under Subparagraph 3-401.11(A)(1), and served immediately, such as an omelet, soufflé, or scrambled eggs;*
  (2) *The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or*
  (3) *The preparation of the food is conducted under a HACCP plan that:*
    (a) *Identifies the food to be prepared,*
    (b) *Prohibits contacting ready-to-eat food with bare hands,*
    (c) *Includes specifications and practices that ensure:*
      (i) *Salmonella* Enteritidis *growth is controlled before and after cooking, and*
      (ii) *Salmonella* Enteritidis *is destroyed by cooking the eggs according to the temperature and time specified in Subparagraph 3-401.11(A)(2),*
    (d) *Contains the information specified under § 8-201.14 including procedures that:*
      (i) *Control cross contamination of ready-to-eat food with raw eggs, and*
      (ii) *Delineate cleaning and sanitization procedures for food-contact surfaces; and*
    (e) *Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.*

(G) Except as specified in paragraph (H) of this section, food may be re-served as specified under Subparagraph 3-306.14(B)(1) and (2).

(H) *Food may not be re-served under the following conditions:*
  (1) *Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be re-served to others outside.*
  (2) Packages of food from any patients, clients, or other consumers should not be re- served to persons in protective environment isolation.

Chapter 4: Equipment, Utensils and Linens

4-101.11 Characteristics. Materials that are used in the construction of utensils and food-contact surfaces of equipment may not allow the migration of deleterious substances or impart colors, odors, or tastes to food and under normal use conditions shall be: [P]

(A) Safe; [P]

(B) Durable, corrosion-resistant, and nonabsorbent;

(C) Sufficient in weight and thickness to withstand repeated warewashing;

(D) Finished to have a smooth, easily cleanable surface; and

(E) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition.

4-101.12 Cast Iron, Use Limitation.

(A) Except as specified in ¶¶ (B) and (C) of this section, cast iron may not be used for utensils or food-contact surfaces of equipment.

(B) *Cast iron may be used as a surface for cooking.*

(C) *Cast iron may be used in utensils for serving food if the utensils are used only as part of an uninterrupted process from cooking through service.*

4-101.13 Lead, Use Limitation.

(A) Ceramic, china, and crystal utensils, and decorative utensils such as hand painted ceramic or china that are used in contact with food shall be lead-free or contain levels of lead not exceeding the limits of the following utensil categories: [P]

Utensil Category	Ceramic Article Description	Maximum Lead mg/L
Beverage Mugs, Cups, Pitchers	Coffee Mugs	0.5
Large Hollowware (excluding pitchers)	Bowls > to 1.1 Liter (1.16 Quart)	1
Small Hollowware (excluding cups and mugs)	Bowls < 1.1 Liter (1.16 Quart)	2.0
Flat Tableware	Plates, Saucers	3.0

(B) Pewter alloys containing lead in excess of five hundredths of one percent (0.05%) may not be used as a food-contact surface. [P]

(C) Solder and flux containing lead in excess of two tenths of one percent (0.2%) may not be used as a food-contact surface.

4-101.14 Copper, Use Limitation.

(A) Except as specified in ¶ (B) of this section, copper and copper alloys such as brass may not be used in contact with a food that has a pH below six (6) such as vinegar, fruit juice, or wine or for a fitting or tubing installed between a backflow prevention device and a carbonator. [P]

(B) *Copper and copper alloys may be used in contact with beer brewing ingredients that have a pH below six (6) in the prefermentation and fermentation steps of a beer brewing operation such as a brewpub or microbrewery.*

4-101.15 Galvanized Metal, Use Limitation. Galvanized metal may not be used for utensils or food-contact surfaces of equipment that are used in contact with acidic food. [P]

4-101.16 Sponges, Use Limitation. Sponges may not be used in contact with cleaned and sanitized or in-use food-contact surfaces.

4-101.17 Wood, Use Limitation.

(A) Except as specified in ¶¶ (B), (C), and (D) of this section, wood and wood wicker may not be

used as a food-contact surface.

(B) *Hard maple or an equivalently hard, close-grained wood may be used for:*

(1) *Cutting boards; cutting blocks; bakers' tables; and utensils such as rolling pins, doughnut dowels, salad bowls, and chopsticks; and*

(2) *Wooden paddles used in confectionery operations for pressure scraping kettles when manually preparing confections at a temperature of two hundred thirty degrees Fahrenheit (230°F) or above.*

(C) *Whole, uncut, raw fruits and vegetables, and nuts in the shell may be kept in the wood shipping containers in which they were received, until the fruits, vegetables, or nuts are used.*

(D) *If the nature of the food requires removal of rinds, peels, husks, or shells before consumption, the whole, uncut, raw food may be kept in:*

(1) *Untreated wood containers; or*

(2) *Treated wood containers if the containers are treated with a preservative that meets requirements specified in 21 CFR 178.3800 Preservatives for wood.*

4-101.18 Nonstick Coatings, Use Limitation. Multiuse kitchenware such as frying pans, griddles, sauce pans, cookie sheets, and waffle bakers that have a perfluorocarbon resin coating shall be used with nonscoring or nonscratching utensils and cleaning aids.

4-101.19 Nonfood-Contact Surfaces. Nonfood-contact surfaces of equipment that are exposed to splash, spillage, or other food soiling or that require frequent cleaning shall be constructed of a corrosion-resistant, nonabsorbent, and smooth material.

4-102.11 Characteristics. Materials that are used to make single-service and single-use articles:

(A) May not:

(1) Allow the migration of deleterious substances, [P] or

(2) Impart colors, odors, or tastes to food; and

(B) Shall be:

(1) Safe, [P] and

(2) Clean.

4-201.11 Equipment and Utensils. Equipment and utensils shall be designed and constructed to be durable and to retain their characteristic qualities under normal use conditions.

4-201.12 Food Temperature Measuring Devices. Food temperature measuring devices may not have sensors or stems constructed of glass, *except that thermometers with glass sensors or stems that are encased in a shatterproof coating such as candy thermometers may be used.* [P]

4-202.11 Food-Contact Surfaces.

(A) Multiuse food-contact surfaces shall be:

(1) Smooth; [P]

(2) Free of breaks, open seams, cracks, chips, inclusions, pits, and similar imperfections; [P]

(3) Free of sharp internal angles, corners, and crevices; [P]

(4) Finished to have smooth welds and joints; [P] and

(5) Except as specified in ¶ (B) of this section, accessible for cleaning and inspection by one of the following methods:

(a) Without being disassembled,

(b) By disassembling without the use of tools, or

(c) By easy disassembling with the use of handheld tools commonly available to maintenance and cleaning personnel such as screwdrivers, pliers, open-end wrenches, and Allen wrenches.

(B) *Subparagraph (A)(5) of this section does not apply to cooking oil storage tanks, distribution lines for cooking oils, or beverage syrup lines or tubes.*

4-202.12 CIP Equipment.

(A) CIP equipment shall meet the characteristics specified under § 4-202.11 and shall be designed and constructed so that:

(1) Cleaning and sanitizing solutions circulate throughout a fixed system and contact all interior food-contact surfaces, and

(2) The system is self-draining or capable of being completely drained of cleaning and sanitizing solutions; and

(B) CIP equipment that is not designed to be disassembled for cleaning shall be designed with inspection access points to ensure that all interior food-contact surfaces throughout the fixed system are being effectively cleaned.

4-202.13 "V" Threads, Use Limitation. *Except for hot oil cooking or filtering equipment*, "V" type threads may not be used on food-contact surfaces.

4-202.14 Hot Oil Filtering Equipment. Hot oil filtering equipment shall meet the characteristics specified under § 4-202.11 or § 4-202.12 and shall be readily accessible for filter replacement and cleaning of the filter.

4-202.15 Can Openers. Cutting or piercing parts of can openers shall be readily removable for cleaning and for replacement.

4-202.16 Nonfood-Contact Surfaces. Nonfood-contact surfaces shall be free of unnecessary ledges, projections, and crevices, and designed and constructed to allow easy cleaning and to facilitate maintenance.

4-202.17 Kick Plates, Removable. Kick plates shall be designed so that the areas behind them are accessible for inspection and cleaning by being:

(A) Removable by one of the methods specified under Subparagraph 4-202.11(A)(5) or capable of being rotated open; and

(B) Removable or capable of being rotated open without unlocking equipment doors.

4-202.18 Ventilation Hood Systems, Filters. Filters or other grease extracting equipment shall be designed to be readily removable for cleaning and replacement if not designed to be cleaned in place.

4-203.11 Temperature Measuring Devices, Food.

(A) Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to plus or minus one degree Celsius (±1.0°C) in the intended range of use.

(B) Food temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus two degrees Fahrenheit (±2.0°F) in the intended range of use.

4-203.12 Temperature Measuring Devices, Ambient Air and Water.

(A) Ambient air and water temperature measuring devices that are scaled in Celsius or dually scaled in Celsius and Fahrenheit shall be designed to be easily readable and accurate to plus or minus one and one-half degree Celsius (±1.5°C) in the intended range of use.

(B) Ambient air and water temperature measuring devices that are scaled only in Fahrenheit shall be accurate to plus or minus three degrees Fahrenheit (±3°F) in the intended range of use.

4-203.13 Pressure Measuring Devices, Mechanical Warewashing Equipment. Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of seven (7) kilopascals (one pound (1 lb) per square inch) or smaller and shall be accurate to plus or minus fourteen (± 14) kilopascals (plus or minus two pounds (± 2 lb) per square inch) in the range indicated on the manufacturer's data plate.

4-204.11 Ventilation Hood Systems, Drip Prevention. Exhaust ventilation hood systems in food preparation and warewashing areas including components such as hoods, fans, guards, and ducting shall be designed to prevent grease or condensation from draining or dripping onto food, equipment, utensils,

linens, and single-service and single-use articles.

4-204.12 Equipment Openings, Closures and Deflectors.

(A) A cover or lid for equipment shall overlap the opening and be sloped to drain.

(B) An opening located within the top of a unit of equipment that is designed for use with a cover or lid shall be flanged upward at least five (5) millimeters (two-tenths 0.2"of one inch).

(C) Except as specified under ¶ (D) of this section, fixed piping, temperature measuring devices, rotary shafts, and other parts extending into equipment shall be provided with a watertight joint at the point where the item enters the equipment.

(D) If a watertight joint is not provided:

(1) The piping, temperature measuring devices, rotary shafts, and other parts extending through the openings shall be equipped with an apron designed to deflect condensation, drips, and dust from openings into the food; and

(2) The opening shall be flanged upward as specified under ¶ (B) of this section.

4-204.13 Dispensing Equipment, Protection of Equipment and Food. In equipment that dispenses or vends liquid food or ice in unpackaged form:

(A) The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;

(B) The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;

(C) The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:

(1) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or

(2) Available for self-service during hours when it is not under the full-time supervision of a food employee; and

(D) The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

(E) Dispensing equipment in which potentially hazardous food in a homogenous liquid form is maintained outside of the temperature control requirements as specified under ¶ 3- 501.16(C) shall:

(1) Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; [P] and

(2) Conform to the requirements for this equipment as specified in *NSF/ANSI 18-2006- Manual Food and Beverage Dispensing equipment.* [P]

4-204.14 Vending Machine, Vending Stage Closure. The dispensing compartment of a vending machine including a machine that is designed to vend prepackaged snack food that is not potentially hazardous such as chips, party mixes, and pretzels shall be equipped with a self- closing door or cover if the machine is:

(A) Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment; or

(B) Available for self-service during hours when it is not under the full-time supervision of a food employee.

4-204.15 Bearings and Gear Boxes, Leakproof. Equipment containing bearings and gears that require lubricants shall be designed and constructed so that the lubricant cannot leak, drip, or be forced into food or onto food-contact surfaces.

4-204.16 Beverage Tubing, Separation. *Except for cold plates that are constructed integrally with an ice storage bin*, beverage tubing and cold-plate beverage cooling devices may not be installed in contact with stored ice.

4-204.17 Ice Units, Separation of Drains. Liquid waste drain lines may not pass through an ice machine or ice storage bin.

4-204.18 Condenser Unit, Separation. If a condenser unit is an integral component of equipment, the condenser unit shall be separated from the food and food storage space by a dustproof barrier.

4-204.19 Can Openers on Vending Machines. Cutting or piercing parts of can openers on vending machines shall be protected from manual contact, dust, insects, rodents, and other contamination.

4-204.110 Molluscan Shellfish Tanks.

(A) Except as specified under ¶ (B) of this section, molluscan shellfish life-support system display tanks may not be used to store or display shellfish that are offered for human consumption and shall be conspicuously marked so that it is obvious to the consumer that the shellfish are for display only.

(B) Molluscan shellfish life-support system display tanks that are used to store or display shellfish that are offered for human consumption shall be operated and maintained in accordance with a special process approved by the department as specified in § 8-103.10 and a HACCP plan that:

(1) Is submitted by the operator and approved as specified under § 8-103.11; and

(2) Ensures that:

(a) Water used with fish other than molluscan shellfish does not flow into the molluscan tank,

(b) The safety and quality of the shellfish as they were received are not compromised by the use of the tank, and

(c) The identity of the source of the shellstock is retained as specified under § 3- 203.12.

4-204.111 Vending Machines, Automatic Shutoff.

(A) A machine vending potentially hazardous food shall have an automatic control that prevents the machine from vending food:

(1) If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that cannot maintain food temperatures as specified under Chapter 3; [P] and

(2) If a condition specified under Subparagraph (A)(1) of this section occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Chapter 3. [P]

(B) When the automatic shutoff within a machine vending potentially hazardous food is activated:

(1) In a refrigerated vending machine, the ambient temperature may not exceed forty-one degrees Fahrenheit (41°F) for more than thirty (30) minutes immediately after the machine is filled, serviced, or restocked; [P] or

(2) In a hot holding vending machine, the ambient temperature may not be less than one hundred thirty-five degrees Fahrenheit (135°F) for more than one-hundred twenty (120) minutes immediately after the machine is filled, serviced, or restocked. [P]

4-204.112 Temperature Measuring Devices.

(A) In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature or a simulated product temperature in the

warmest part of a mechanically refrigerated unit and in the coolest part of a hot food storage unit.

(B) Except as specified in ¶ (C) of this section, cold or hot holding equipment used for potentially hazardous food shall be designed to include and shall be equipped with at least one (1) integral or permanently affixed temperature measuring device that is located to allow easy viewing of the device's temperature display.

(C) *Paragraph (B) of this section does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bainmaries, steam tables, insulated food transport containers, and salad bars.*

(D) Temperature measuring devices shall be designed to be easily readable.

(E) Food temperature measuring devices and water temperature measuring devices on warewashing machines shall have a numerical scale, printed record, or digital readout in increments no greater than one degree Celsius (1°C) or two degrees Fahrenheit (2°F) in the intended range of use.

4-204.113 Warewashing Machine, Data Plate Operating Specifications. A warewashing machine shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer that indicates the machine's design and operation specifications including the:

(A) Temperatures required for washing, rinsing, and sanitizing;

(B) Pressure required for the fresh water sanitizing rinse *unless the machine is designed to use only a pumped sanitizing rinse*; and

(C) Conveyor speed for conveyor machines or cycle time for stationary rack machines.

4-204.114 Warewashing Machines, Internal Baffles. Warewashing machine wash and rinse tanks shall be equipped with baffles, curtains, or other means to minimize internal cross contamination of the solutions in wash and rinse tanks.

4-204.115 Warewashing Machines, Temperature Measuring Devices. A warewashing machine shall be equipped with a temperature measuring device that indicates the temperature of the water:

(A) In each wash and rinse tank; and

(B) As the water enters the hot water sanitizing final rinse manifold or in the chemical sanitizing solution tank.

4-204.116 Manual Warewashing Equipment, Heaters and Baskets. If hot water is used for sanitization in manual warewashing operations, the sanitizing compartment of the sink shall be:

(A) Designed with an integral heating device that is capable of maintaining water at a temperature not less than one hundred seventy-one degrees Fahrenheit (171°F); and

(B) Provided with a rack or basket to allow complete immersion of equipment and utensils into the hot water.

4-204.117 Warewashing Machines, Automatic Dispensing of Detergents and Sanitizers. A warewashing machine that is installed after January 2000 shall be equipped to:

(A) Automatically dispense detergents and sanitizers; and

(B) Incorporate a visual means to verify that detergents and sanitizers are automatically dispensed and delivered or a visual or audible alarm to signal if the detergents and sanitizers are not delivered to the respective washing and sanitizing cycles.

4-204.118 Warewashing Machines, Flow Pressure Device.

(A) Warewashing machines that provide a fresh hot water sanitizing rinse shall be equipped with a pressure gauge or similar device such as a transducer that measures and displays the water pressure in the supply line immediately before entering the warewashing machine; and

(B) If the flow pressure measuring device is upstream of the fresh hot water sanitizing rinse control valve, the device shall be mounted in a one-fourth inch (1/4") Iron Pipe Size (IPS) valve.

(C) *Paragraphs (A) and (B) of this section do not apply to a machine that uses only a pumped or recirculated sanitizing rinse.*

4-204.119 Warewashing Sinks and Drainboards, Self-Draining. Sinks and drainboards of warewashing sinks and machines shall be self-draining.

4-204.120 Equipment, Drainage. Equipment compartments that are subject to accumulation of moisture due to conditions such as condensation, food or beverage drip, or water from melting ice shall be sloped to an outlet that allows complete draining.

4-204.121 Vending Machines, Liquid Waste Products.

(A) Vending machines designed to store beverages that are packaged in containers made from paper products shall be equipped with diversion devices and retention pans or drains for container leakage.

(B) Vending machines that dispense liquid food in bulk shall be:

(1) Provided with an internally mounted waste receptacle for the collection of drip, spillage, overflow, or other internal wastes; and

(2) Equipped with an automatic shutoff device that will place the machine out of operation before the waste receptacle overflows.

(C) Shutoff devices specified under Subparagraph (B)(2) of this section shall prevent water or liquid food from continuously running if there is a failure of a flow control device in the water or liquid food system or waste accumulation that could lead to overflow of the waste receptacle.

4-204.122 Case Lot Handling Apparatuses, Moveability. Apparatuses, such as dollies, pallets, racks, and skids used to store and transport large quantities of packaged foods received from a supplier in a cased or overwrapped lot, shall be designed to be moved by hand or by conveniently available apparatuses such as hand trucks and forklifts.

4-204.123 Vending Machine Doors and Openings.

(A) Vending machine doors and access opening covers to food and container storage spaces shall be tight-fitting so that the space along the entire interface between the doors or covers and the cabinet of the machine, if the doors or covers are in a closed position, is no greater than one-sixteenth inch (1/16") by:

(1) Being covered with louvers, screens, or materials that provide an equivalent opening of not greater than twelve (12) or more mesh to one inch (1");

(2) Being effectively gasketed;

(3) Having interface surfaces that are at least one-half inch (1/2") wide; or

(4) Jambs or surfaces used to form an L-shaped entry path to the interface.

(B) Vending machine service connection openings through an exterior wall of a machine shall be closed by sealants, clamps, or grommets so that the openings are no larger than one-sixteenth inch (1/16").

4-205.10 Food Equipment, Certification and Classification. Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply with Parts 4-1 and 4-2 of this Chapter.

4-301.11 Cooling, Heating, and Holding Capacities. Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Chapter 3.

4-301.12 Manual Warewashing, Sink Compartment Requirements.

(A) Except as specified in ¶ (C) of this section, a sink with at least three (3) compartments shall be provided for manually washing, rinsing, and sanitizing equipment and utensils.

(B) Sink compartments shall be large enough to accommodate immersion of the largest equipment and utensils. If equipment or utensils are too large for the warewashing sink, a warewashing

machine or alternative equipment as specified in ¶ (C) of this section shall be used.

(C) *Alternative manual warewashing equipment may be used when there are special cleaning needs or constraints and its use is approved. Alternative manual warewashing equipment may include:*
- (1) *High-pressure detergent sprayers;*
- (2) *Low- or line-pressure spray detergent foamers;*
- (3) *Other task-specific cleaning equipment;*
- (4) *Brushes or other implements; or*
- (5) *2-compartment sinks as specified under ¶¶ (D) and (E) of this section; or*
- (6) *Receptacles that substitute for the compartments of a multi-compartment sink.*

(D) Before a two (2) compartment sink is used:
- (1) The operator shall have its use approved; and
- (2) The operator shall limit the number of kitchenware items cleaned and sanitized in the two (2) compartment sink, and shall limit warewashing to batch operations for cleaning kitchenware such as between cutting one type of raw meat and another or cleanup at the end of a shift, and shall:
  - (a) Make up the cleaning and sanitizing solutions immediately before use and drain them immediately after use, and
  - (b) Use a detergent-sanitizer to sanitize and apply the detergent- sanitizer in accordance with the manufacturer's label instructions and as specified under § 4- 501.115, or
  - (c) Use a hot water sanitization immersion step as specified under ¶ 4-603.16(C).

(E) A 2-compartment sink may not be used for warewashing operations where cleaning and sanitizing solutions are used for a continuous or intermittent flow of kitchenware or tableware in an ongoing warewashing process.

4-301.13 Drainboards. Drainboards, utensil racks, or tables large enough to accommodate all soiled and cleaned items that may accumulate during hours of operation shall be provided for necessary utensil holding before cleaning and after sanitizing.

4-301.14 Ventilation Hood Systems, Adequacy. Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.

4-301.15 Clothes Washers and Dryers.

(A) Except as specified in ¶ (B) of this section, if work clothes or linens are laundered on the premises, a mechanical clothes washer and dryer shall be provided and used.

(B) If on-premises laundering is limited to wiping cloths intended to be used moist, or wiping cloths are air-dried as specified under § 4-901.12, a mechanical clothes washer and dryer need not be provided.

4-302.11 Utensils, Consumer Self-Service. A food dispensing utensil shall be available for each container displayed at a consumer self-service unit such as a buffet or salad bar.

4-302.12 Food Temperature Measuring Devices.

(A) Food temperature measuring devices shall be provided and readily accessible for use in ensuring attainment and maintenance of food temperatures as specified under Chapter 3.

(B) A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods such as meat patties and fish filets.

4-302.13 Temperature Measuring Devices, Manual Warewashing. In manual warewashing operations, a temperature measuring device shall be provided and readily accessible for frequently measuring the washing and sanitizing temperatures.

4-302.14 Sanitizing Solutions, Testing Devices. A test kit or other device that accurately measures the concentration in mg/L of sanitizing solutions shall be provided.

4-401.11 Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention.

(A) Except as specified in ¶ (B) of this section, equipment, a cabinet used for the storage of food, or a cabinet that is used to store cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be located:
  (1) In locker rooms;
  (2) In toilet rooms;
  (3) In garbage rooms;
  (4) In mechanical rooms;
  (5) Under sewer lines that are not shielded to intercept potential drips;
  (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
  (7) Under open stairwells;
  (8) In a room with a mechanical clothes washer or dryer; or
  (9) Under other sources of contamination.

(B) *A storage cabinet used for linens or single-service or single-use articles may be stored in a locker room.*

(C) If a mechanical clothes washer or dryer is provided, it shall be located so that the washer or dryer is protected from contamination and only where there is no exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

4-402.11 Fixed Equipment, Spacing or Sealing.

(A) Equipment that is fixed because it is not easily moveable shall be installed so that it is:
  (1) Spaced to allow access for cleaning along the sides, behind, and above the equipment;
  (2) Spaced from adjoining equipment, walls, and ceilings a distance of not more than one thirty-second inch (1/32"); or
  (3) Sealed to adjoining equipment or walls, if the equipment is exposed to spillage or seepage.

(B) Counter-mounted equipment that is not easily moveable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:
  (1) Sealed; or
  (2) Elevated on legs as specified under ¶ 4-402.12(D).

4-402.12 Fixed Equipment, Elevation or Sealing.

(A) Except as specified in ¶¶ (B) and (C) of this section, floor-mounted equipment that is not easily moveable shall be sealed to the floor or elevated on legs that provide at least a six inch (6") clearance between the floor and the equipment.

(B) *If no part of the floor under the floor-mounted equipment is more than six inches (6") from the point of cleaning access, the clearance space may be only four inches (4").*

(C) *This section does not apply to display shelving units, display refrigeration units, and display freezer units located in the consumer shopping areas of a retail food store, if the floor under the units is maintained clean.*

(D) Except as specified in ¶ (E) of this section, counter-mounted equipment that is not easily moveable shall be elevated on legs that provide at least four inch (4") clearance between the table and the equipment.

(E) *The clearance space between the table and counter-mounted equipment may be:*
  (1) *Three inches (3") if the horizontal distance of the table top under the equipment is no more than twenty inches (20") from the point of access for cleaning; or*
  (2) *Two inches (2") if the horizontal distance of the table top under the equipment is no more than three inches (3") from the point of access for cleaning.*

4-501.11 Good Repair and Proper Adjustment.

(A) Equipment shall be maintained in a state of repair and condition that meets the requirements specified under Parts 4-1 and 4-2.

(B) Equipment components such as doors, seals, hinges, fasteners, and kick plates shall be kept intact, tight, and adjusted in accordance with manufacturer's specifications.

(C) Cutting or piercing parts of can openers shall be kept sharp to minimize the creation of metal fragments that can contaminate food when the container is opened.

4-501.12 Cutting Surfaces. Surfaces such as cutting blocks and boards that are subject to scratching and scoring shall be resurfaced if they can no longer be effectively cleaned and sanitized, or discarded if they are not capable of being resurfaced.

4-501.13 Microwave Ovens. Microwave ovens shall meet the safety standards specified in 21 CFR 1030.10 Microwave ovens.

4-501.14 Warewashing Equipment, Cleaning Frequency. A warewashing machine; the compartments of sinks, basins, or other receptacles used for washing and rinsing equipment, utensils, or raw foods, or laundering wiping cloths; and drainboards or other equipment used to substitute for drainboards as specified under § 4-301.13 shall be cleaned:

(A) Before use;

(B) Throughout the day at a frequency necessary to prevent recontamination of equipment and utensils and to ensure that the equipment performs its intended function; and

(C) If used, at least every twenty-four (24) hours.

4-501.15 Warewashing Machines, Manufacturer's Operating Instructions.

(A) A warewashing machine and its auxiliary components shall be operated in accordance with the machine's date plate and other manufacturer's instructions.

(B) A warewashing machine's conveyor speed or automatic cycle times shall be maintained accurately timed in accordance with manufacturer's specifications.

4-501.16 Warewashing Sinks, Use Limitation.

(A) A warewashing sink may not be used for handwashing as specified under § 2-301.15.

(B) If a warewashing sink is used to wash wiping cloths, wash produce, or thaw food, the sink shall be cleaned as specified under § 4-501.14 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash or thaw food shall be sanitized as specified under Part 4-7 before and after using the sink to wash produce or thaw food.

4-501.17 Warewashing Equipment, Cleaning Agents. When used for warewashing, the wash compartment of a sink, mechanical warewasher, or wash receptacle of alternative manual warewashing equipment as specified in ¶ 4-301.12 (C), shall contain a wash solution of soap, detergent, acid cleaner, alkaline cleaner, degreaser, abrasive cleaner, or other cleaning agent according to the cleaning agent manufacturer's label instructions.

4-501.18 Warewashing Equipment, Clean Solutions. The wash, rinse, and sanitize solutions shall be maintained clean.

4-501.19 Manual Warewashing Equipment, Wash Solution Temperature. The temperature of the wash solution in manual warewashing equipment shall be maintained at not less than one hundred ten degrees Fahrenheit (110°F) or the temperature specified on the cleaning agent manufacturer's label instructions.

4-501.110 Mechanical Warewashing Equipment, Wash Solution Temperature.

(A) The temperature of the wash solution in spray type warewashers that use hot water to sanitize may not be less than:

(1) For a stationary rack, single temperature machine, one hundred sixty-five degrees Fahrenheit (165°F);

(2) For a stationary rack, dual temperature machine, one hundred fifty degrees Fahrenheit (150°F);
(3) For a single tank, conveyor, dual temperature machine, one hundred sixty degrees Fahrenheit (160°F); or
(4) For a multi-tank, conveyor, multi-temperature machine, one hundred fifty degrees Fahrenheit (150°F).

(B) The temperature of the wash solution in spray-type warewashers that use chemicals to sanitize may not be less than one hundred twenty degrees Fahrenheit (120°F).

4-501.111 Manual Warewashing Equipment, Hot Water Sanitization Temperatures. If immersion in hot water is used for sanitizing in a manual operation, the temperature of the water shall be maintained at one hundred seventy-one degrees Fahrenheit (171°F) or above. [P]

4-501.112 Mechanical Warewashing Equipment, Hot Water Sanitization Temperatures.

(A) Except as specified in ¶ (B) of this section, in a mechanical operation, the temperature of the fresh hot water sanitizing rinse as it enters the manifold may not be more than one hundred ninety-four degrees Fahrenheit (194°F), [P] or less than:
(1) For a stationary rack, single temperature machine, one hundred sixty-five degrees Fahrenheit (165°F); [P] or
(2) For all other machines, one hundred eighty degrees Fahrenheit (180°F). [P]

(B) *The maximum temperature specified under ¶ (A) of this section, does not apply to the high pressure and temperature systems with wand-type, hand-held, spraying devices used for the in-place cleaning and sanitizing of equipment such as meat saws.*

4-501.113 Mechanical Warewashing Equipment, Sanitization Pressure. The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the machine manufacturer's data plate and may not be less than thirty-five (35) kilopascals (five pounds (5 lb) per square inch) or more than two hundred (200) kilopascals (thirty pounds (30 lb) per square inch).

4-501.114 Manual and Mechanical Warewashing Equipment, Chemical Sanitization - Temperature, pH, Concentration, and Hardness. A chemical sanitizer used in a sanitizing solution for a manual or mechanical operation at contact times specified under ¶ 4-703.11(C) shall meet the criteria specified under § 7-204.11 Sanitizers, Criteria, shall be used in accordance with the EPA-registered label use instructions, and shall be used as follows: [P]

(A) A chlorine solution shall have a minimum temperature based on the concentration and pH of the solution as listed in the following chart; [P]

Concentration Range	**Minimum Temperature**	
mg/L	pH 10 or less (°F)	pH 8 or less (°F)
25-49	120	120
50-99	100	75
100	55	55

(B) An iodine solution shall have a:
(1) Minimum temperature of sixty-eight degrees Fahrenheit (68 °F), [P]
(2) pH of five (5.0) or less or a pH no higher than the level for which the manufacturer specifies

the solution is effective, [P] and

(3) Concentration between twelve and one-half (12.5) mg/L and twenty-five (25) mg/L; [P]

(C) A quaternary ammonium compound solution shall:

(1) Have a minimum temperature of seventy-five degrees Fahrenheit (75°F), [P]

(2) Have a concentration as specified under § 7-204.11 and as indicated by the manufacturer's use directions included in the labeling, [P] and

(3) Be used only in water with five hundred (500) mg/L hardness or less or in water having a hardness no greater than specified by the EPA-registered label use instructions; [P]

(D) If another solution of a chemical specified under ¶¶ (A) –(C) of this section is used, the operator shall demonstrate to the regulatory authority that the solution achieves sanitization and the use of the solution shall be approved; [P] or

(E) If a chemical sanitizer other than chlorine, iodine, or a quaternary ammonium compound is used, it shall be applied in accordance with the EPA-registered label use instructions. [P]

4-501.115 Manual Warewashing Equipment, Chemical Sanitization Using Detergent- Sanitizers. If a detergent-sanitizer is used to sanitize in a cleaning and sanitizing procedure where there is no distinct water rinse between the washing and sanitizing steps, the agent applied in the sanitizing step shall be the same detergent- sanitizer that is used in the washing step.

4-501.116 Warewashing Equipment, Determining Chemical Sanitizer Concentration. Concentration of the sanitizing solution shall be accurately determined by using a test kit or other device.

4-502.11 Good Repair and Calibration.

(A) Utensils shall be maintained in a state of repair or condition that complies with the requirements specified under Parts 4-1 and 4-2 or shall be discarded.

(B) Food temperature measuring devices shall be calibrated in accordance with manufacturer's specifications as necessary to ensure their accuracy.

(C) Ambient air temperature, water pressure, and water temperature measuring devices shall be maintained in good repair and be accurate within the intended range of use.

4-502.12 Single-Service and Single-Use Articles, Required Use. A food establishment without facilities specified under Parts 4-6 and 4-7 for cleaning and sanitizing kitchenware and tableware shall provide only single-use kitchenware, single-service articles, and single-use articles for use by food employees and single-service articles for use by consumers. [P]

4-502.13 Single-Service and Single-Use Articles, Use Limitations.

(A) Single-service and single-use articles may not be reused.

(B) The bulk milk container dispensing tube shall be cut on the diagonal leaving no more than one inch protruding from the chilled dispensing head.

4-502.14 Shells, Use Limitations. Mollusk and crustacean shells may not be used more than once as serving containers.

4-601.11 Equipment, Food-Contact Surfaces, Nonfood-Contact Surfaces, and Utensils.

(A) Equipment food-contact surfaces and utensils shall be clean to sight and touch. [P]

(B) The food-contact surfaces of cooking equipment and pans shall be kept free of encrusted grease deposits and other soil accumulations.

(C) Nonfood-contact surfaces of equipment shall be kept free of an accumulation of dust, dirt, food residue, and other debris.

4-602.11 Equipment Food-Contact Surfaces and Utensils.

(A) Equipment food-contact surfaces and utensils shall be cleaned:

(1) Except as specified in ¶ (B) of this section, before each use with a different type of raw animal food such as beef, fish, lamb, pork, or poultry; [P]

(2) Each time there is a change from working with raw foods to working with ready-to-eat foods; [P]

(3) Between uses with raw fruits and vegetables and with potentially hazardous food; [P]

(4) Before using or storing a food temperature measuring device; [P] and

(5) At any time during the operation when contamination may have occurred. [P]

(B) *Subparagraph (A)(1) of this section does not apply if the food-contact surface or utensil is in contact with a succession of different raw animal foods each requiring a higher cooking temperature as specified under § 3-401.11 than the previous food, such as preparing raw fish followed by cutting raw poultry on the same cutting board.*

(C) Except as specified in ¶ (D) of this section, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four (4) hours. [P]

(D) *Surfaces of utensils and equipment contacting potentially hazardous food may be cleaned less frequently than every four (4) hours if:*

(1) *In storage, containers of potentially hazardous food and their contents are maintained at temperatures specified under Chapter 3 and the containers are cleaned when they are empty;*

(2) *Utensils and equipment are used to prepare food in a refrigerated room or area that is maintained at one of the temperatures in the following chart and:*

(a) *The utensils and equipment are cleaned at the frequency in the following chart that corresponds to the temperature; and*

Temperature	Cleaning Frequency
41°F or less	24 hours
>41°F - 45°F	20 hours
>45°F - 50°F	16 hours
>50°F - 55°F	10 hours

(b) *The cleaning frequency based on the ambient temperature of the refrigerated room or area is documented in the food establishment.*

(3) *Containers in serving situations such as salad bars, delis, and cafeteria lines hold ready-to-eat potentially hazardous food that is maintained at the temperatures specified under Chapter 3, are intermittently combined with additional supplies of the same food that is at the required temperature, and the containers are cleaned at least every twenty-four (24) hours;*

(4) *Temperature measuring devices are maintained in contact with food, such as when left in a container of deli food or in a roast, held at temperatures specified under Chapter 3;*

(5) *Equipment is used for storage of packaged or unpackaged food such as a reach-in refrigerator and the equipment is cleaned at a frequency necessary to preclude accumulation of soil residues;*

(6) *The cleaning schedule is approved based on consideration of:*

(a) *Characteristics of the equipment and its use,*

(b) *The type of food involved,*

(c) *The amount of food residue accumulation, and*

(d) *The temperature at which the food is maintained during the operation and the potential for the rapid and progressive multiplication of pathogenic or toxigenic microorganisms that are capable of causing foodborne disease; or*

(7) *In-use utensils are intermittently stored in a container of water in which the water is maintained at one hundred thirty-five degrees Fahrenheit (135°F) or more and the utensils and container are cleaned at least every twenty-four (24) hours or at a frequency necessary to preclude accumulation of soil residues.*

(E) *Except when dry cleaning methods are used as specified under § 4-603.11*, surfaces of utensils and equipment contacting food that is not potentially hazardous shall be cleaned:

(1) At any time when contamination may have occurred;
(2) At least every twenty-four (24) hours for iced tea dispensers and consumer self- service utensils such as tongs, scoops, or ladles;
(3) Before restocking consumer self-service equipment and utensils such as condiment dispensers and display containers; and
(4) In equipment such as ice bins and beverage dispensing nozzles and enclosed components of equipment such as ice makers, cooking oil storage tanks and distribution lines, beverage and syrup dispensing lines or tubes, coffee bean grinders, and water vending equipment:
(a) At a frequency specified by the manufacturer, or
(b) Absent manufacturer specifications, at a frequency necessary to preclude accumulation of soil or mold.

4-602.12 Cooking and Baking Equipment.

(A) The food-contact surfaces of cooking and baking equipment shall be cleaned at least every twenty-four (24) hours. This section does not apply to hot oil cooking and filtering equipment if it is cleaned as specified in Subparagraph 4-602.11(D)(6).
(B) The cavities and door seals of microwave ovens shall be cleaned at least every twenty-four (24) hours by using the manufacturer's recommended cleaning procedure.

4-602.13 Nonfood-Contact Surfaces. Nonfood-contact surfaces of equipment shall be cleaned at a frequency necessary to preclude accumulation of soil residues.

4-603.11 Dry Cleaning.

(A) If used, dry cleaning methods such as brushing, scraping, and vacuuming shall contact only surfaces that are soiled with dry food residues that are not potentially hazardous.
(B) Cleaning equipment used in dry cleaning food-contact surfaces may not be used for any other purpose.

4-603.12 Precleaning.

(A) Food debris on equipment and utensils shall be scraped over a waste disposal unit or garbage receptacle or shall be removed in a warewashing machine with a prewash cycle.
(B) If necessary for effective cleaning, utensils and equipment shall be preflushed, presoaked, or scrubbed with abrasives.

4-603.13 Loading of Soiled Items, Warewashing Machines. Soiled items to be cleaned in a warewashing machine shall be loaded into racks, trays, or baskets or onto conveyors in a position that:

(A) Exposes the items to the unobstructed spray from all cycles; and
(B) Allows the items to drain.

4-603.14 Wet Cleaning.

(A) Equipment food-contact surfaces and utensils shall be effectively washed to remove or completely loosen soils by using the manual or mechanical means necessary such as the application of detergents containing wetting agents and emulsifiers; acid, alkaline, or abrasive cleaners; hot water; brushes; scouring pads; high-pressure sprays; or ultrasonic devices.
(B) The washing procedures selected shall be based on the type and purpose of the equipment or utensil, and on the type of soil to be removed.

4-603.15 Washing, Procedures for Alternative Manual Warewashing Equipment. If washing in sink compartments or a warewashing machine is impractical such as when the equipment is fixed or the utensils are too large, washing shall be done by using alternative manual warewashing equipment as specified in ¶ 4-301.12 (C) in accordance with the following procedures:

(A) Equipment shall be disassembled as necessary to allow access of the detergent solution to all parts;
(B) Equipment components and utensils shall be scrapped or rough cleaned to remove food particle

accumulation; and

(C) Equipment and utensils shall be washed as specified under ¶ 4-603.14(A).

4-603.16 Rinsing Procedures. Washed utensils and equipment shall be rinsed so that abrasives are removed and cleaning chemicals are removed or diluted through the use of water or a detergent-sanitizer solution by using one of the following procedures:

(A) Use of a distinct, separate water rinse after washing and before sanitizing if using:
  (1) A 3-compartment sink,
  (2) Alternative manual warewashing equipment equivalent to a 3-compartment sink as specified in ¶ 4-301.12(C), or
  (3) A 3-step washing, rinsing, and sanitizing procedure in a warewashing system for CIP equipment;

(B) Use of a detergent-sanitizer as specified under § 4-501.115 if using:
  (1) Alternative warewashing equipment as specified in ¶ 4-301.12 (C) that is approved for use with a detergent-sanitizer, or
  (2) A warewashing system for CIP equipment;

(C) Use of a nondistinct water rinse that is integrated in the hot water sanitization immersion step of a 2-compartment sink operation;

(D) If using a warewashing machine that does not recycle the sanitizing solution as specified under ¶ (E) of this section, or alternative manual warewashing equipment such as sprayers, use of a nondistinct water rinse that is:
  (1) Integrated in the application of the sanitizing solution, and
  (2) Washed immediately after each application; or

(E) If using a warewashing machine that recycles the sanitizing solution for use in the next wash cycle, use of a nondistinct water rinse that is integrated in the application of the sanitizing solution.

4-603.17 Returnables, Cleaning for Refilling.

(A) Except as specified in ¶¶ (B) and (C) of this section, returned empty containers intended for cleaning and refilling with food shall be cleaned and refilled in a regulated food processing plant. [P]

(B) *A food-specific container for beverages may be refilled at a food establishment if:*
  (1) *Only a beverage that is not a potentially hazardous food is used as specified under ¶ 3-304.17(A);*
  (2) *The design of the container and of the rinsing equipment and the nature of the beverage, when considered together, allow effective cleaning at home or in the food establishment;*
  (3) *Facilities for rinsing before refilling returned containers with fresh, hot water that is under pressure and not recirculated are provided as part of the dispensing system;*
  (4) *The consumer-owned container returned to the food establishment for refilling is refilled for sale or service only to the same consumer; and*
  (5) *The container is refilled by:*
    (a) *An employee of the food establishment, or*
    (b) *The owner of the container if the beverage system includes a contamination-free transfer process that cannot be bypassed by the container owner.*

(C) *Consumer-owned containers that are not food-specific may be filled at a water vending machine or system.*

4-701.10 Food-Contact Surfaces and Utensils. Equipment food-contact surfaces and utensils shall be sanitized.

4-702.11 Before Use After Cleaning. Utensils and food-contact surfaces of equipment shall be sanitized before use after cleaning. [P]

4-703.11 Hot Water and Chemical. After being cleaned, equipment food-contact surfaces and utensils shall be sanitized in:

(A) Hot water manual operations by immersion for at least thirty (30) seconds and as specified under § 4-501.111; [P]

(B) Hot water mechanical operations by being cycled through equipment that is set up as specified under §§ 4-501.15, 4-501.112, and 4-501.113 and achieving a utensil surface temperature of one hundred sixty degrees Fahrenheit (160°F) as measured by an irreversible registering temperature indicator; [P] or

(C) Chemical manual or mechanical operations, including the application of sanitizing chemicals by immersion, manual swabbing, brushing, or pressure spraying methods, using a solution as specified under § 4-501.114. Contact times shall be consistent with those on EPA-registered label use instructions by providing:

(1) Except as specified under Subparagraph (C)(2) of this section, a contact time of at least ten (10) seconds for a chlorine solution specified under ¶ 4-501.114(A), [P]

(2) A contact time of at least seven (7) seconds for a chlorine solution of fifty (50) mg/L that has a pH of ten (10) or less and a temperature of at least one hundred degrees Fahrenheit (100°F) or a pH of eight (8) or less and a temperature of at least seventy- five degrees Fahrenheit (75°F), [P]

(3) A contact time of at least thirty (30) seconds for other chemical sanitizing solutions, [P] or

(4) A contact time used in relationship with a combination of temperature, concentration, and pH that, when evaluated for efficacy, yields sanitization as defined in Subparagraph 1-201.10(B). [P]

4-801.11 Clean Linens. Clean linens shall be free from food residues and other soiling matter.

4-802.11 Specifications.

(A) Linens that do not come in direct contact with food shall be laundered between operations if they become wet, sticky, or visibly soiled.

(B) Cloth gloves used as specified in ¶ 3-304.15(D) shall be laundered before being used with a different type of raw animal food such as beef, fish, lamb, pork, or poultry.

(C) Linens and napkins that are used as specified under § 3-304.13 and cloth napkins shall be laundered between each use.

(D) Wet wiping cloths shall be laundered daily.

(E) Dry wiping cloths shall be laundered as necessary to prevent contamination of food and clean serving utensils.

4-803.11 Storage of Soiled Linens. Soiled linens shall be kept in clean, nonabsorbent receptacles or clean, washable laundry bags and stored and transported to prevent contamination of food, clean equipment, clean utensils, and single-service and single-use articles.

4-803.12 Mechanical Washing.

(A) Except as specified in ¶ (B) of this section, linens shall be mechanically washed.

(B) *In food establishments in which only wiping cloths are laundered as specified in ¶ 4-301.15 (B), the wiping cloths may be laundered in a mechanical washer, sink designated only for laundering wiping cloths, or a warewashing or food preparation sink that is cleaned as specified under § 4-501.14.*

4-803.13 Use of Laundry Facilities.

(A) Except as specified in ¶ (B) of this section, laundry facilities on the premises of a food establishment shall be used only for the washing and drying of items used in the operation of the establishment.

(B) *Separate laundry facilities located on the premises for the purpose of general laundering such as for institutions providing boarding and lodging may also be used for laundering food*

establishment items.

4-901.11 Equipment and Utensils, Air-Drying Required. After cleaning and sanitizing, equipment and utensils:

(A) Shall be air-dried or used after adequate draining as specified in the first paragraph of 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions), before contact with food; and

(B) May not be cloth dried *except that utensils that have been air-dried may be polished with cloths that are maintained clean and dry.*

4-901.12 Wiping Cloths, Air-Drying Locations. Wiping cloths laundered in a food establishment that does not have a mechanical clothes dryer as specified in ¶ 4-301.15(B) shall be air-dried in a location and in a manner that prevents contamination of food, equipment, utensils, linens, and single-service and single-use articles and the wiping cloths. *This section does not apply if wiping cloths are stored after laundering in a sanitizing solution as specified under § 4-501.114.*

4-902.11 Food-Contact Surfaces. Lubricants as specified under § 7-205.11 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

4-902.12 Equipment. Equipment shall be reassembled so that food-contact surfaces are not contaminated.

4-903.11 Equipment, Utensils, Linens, and Single-Service and Single-Use Articles.

(A) Except as specified in ¶ (D) of this section, cleaned equipment and utensils, laundered linens, and single-service and single-use articles shall be stored:
  (1) In a clean, dry location;
  (2) Where they are not exposed to splash, dust, or other contamination; and
  (3) At least six inches (6") above the floor.

(B) Clean equipment and utensils shall be stored as specified under ¶ (A) of this section and shall be stored:
  (1) In a self-draining position that allows air drying; and
  (2) Covered or inverted.

(C) Single-service and single-use articles shall be stored as specified under ¶ (A) of this section and shall be kept in the original protective package or stored by using other means that afford protection from contamination until used.

(D) *Items that are kept in closed packages may be stored less than six inches (6") above the floor on dollies, pallets, racks, and skids that are designed as specified under § 4- 204.122.*

4-903.12 Prohibitions.

(A) Except as specified in ¶ (B) of this section, cleaned and sanitized equipment, utensils, laundered linens, and single-service and single-use articles may not be stored:
  (1) In locker rooms;
  (2) In toilet rooms;
  (3) In garbage rooms;
  (4) In mechanical rooms;
  (5) Under sewer lines that are not shielded to intercept potential drips;
  (6) Under leaking water lines including leaking automatic fire sprinkler heads or under lines on which water has condensed;
  (7) Under open stairwells;
  (8) In a room with a mechanical clothes washer or dryer; or
  (9) Under other sources of contamination.

(B) *Laundered linens and single-service and single-use articles that are packaged or in a facility such as a cabinet may be stored in a locker room.*

4-904.11 Kitchenware and Tableware.

(A) Single-service and single-use articles and cleaned and sanitized utensils shall be handled, displayed, and dispensed so that contamination of food- and lip-contact surfaces is prevented.

(B) Knives, forks, and spoons that are not prewrapped shall be presented so that only the handles are touched by employees and by consumers if consumer self-service is provided.

(C) Except as specified under ¶ (B) of this section, single-service articles that are intended for food- or lip-contact shall be furnished for consumer self-service with the original individual wrapper intact or from an approved dispenser.

4-904.12 Soiled and Clean Tableware. Soiled tableware shall be removed from consumer eating and drinking areas and handled so that clean tableware is not contaminated.

4-904.13 Preset Tableware.

(A) Except as specified in ¶ (B) of this section, tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

(B) *Preset tableware may be exposed if:*

(1) *Unused settings are removed when a consumer is seated; or*

(2) *Settings not removed when a consumer is seated are cleaned and sanitized before further use.*

4-904.14 Rinsing Equipment and Utensils after Cleaning and Sanitizing. After being cleaned and sanitized, equipment and utensils shall not be rinsed before air drying or use unless:

(A) The rinse is applied directly from a potable water supply by a warewashing machine that is maintained and operated as specified under Subparts 4-204 and 4-501; and

(B) The rinse is applied only after the equipment and utensils have been sanitized by the application of hot water or by the application of a chemical sanitizer solution whose EPA-registered label use instructions call for rinsing off the sanitizer after it is applied in a commercial warewashing machine.

Chapter 5: Water, Plumbing and Waste

5-101.11 Approved System. Drinking water shall be obtained from an approved source that is:
(A) A public water system; [P] or
(B) A private water system. [P]

5-101.12 System Flushing and Disinfection. A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification, and after an emergency situation, such as a flood, that may introduce contaminants to the system. [P]

5-101.13 Bottled Drinking Water. Bottled drinking water used or sold in a food establishment shall be obtained from approved sources in accordance with 21 CFR 129 - Processing and Bottling of Bottled Drinking Water. [P]

5-102.11 Standards.
(A) Well and Water Supply Standards.
(1) Public water systems shall:
(a) Be in compliance with 10 CSR 60 - Safe Drinking Water Commission; [P] and
(b) Non-community water supplies shall have a valid permit to dispense water from the Department of Natural Resources (DNR). A current copy of the permit must be available to the regulatory authority. [P]
(2) Private well water supplies shall:
(a) Be located and constructed in accordance with 10 CSR 23 - Division of Geology and Land Survey. [P]
(b) The well casing shall extend a minimum of twelve inches (12") above grade; [P] and
(c) The top of the casing and well seal shall be free of openings that may allow the entry of contaminants. [P]
(3) Private water supplies that are determined by the regulatory authority to potentially be influenced by surface water or shallow ground water (i.e. springs, bored and dug wells) shall be equipped with a treatment system that includes: [P]
(a) Microfiltration using a filter with a one (1) micron absolute or smaller pore size; [P] and
(b) A chlorinator as specified in § 5-102.16. [P]
(B) Standards. Except for non drinking water:
(1) Water supplies that serve food establishments shall provide safe drinking water; [P]
(2) Contaminate levels and monitoring shall be accordance with Chapter 10 CSR 60-4; [P] and
(3) Bacteriological, chemical, and radiological contaminants shall be within levels acceptable to the department. Supplies deemed unsafe by the department or DNR shall not be used as a potable water supply. [P]

5-102.12 Non Drinking Water.
(A) A non drinking water supply shall only be used only if its use is approved. [P]
(B) Nondrinking water shall be used for non-culinary purposes such as air conditioning, nonfood equipment cooling, and fire protection. [P]

5-102.13 Sampling. Water from a private water system or non-community public supplies shall be sampled at least annually by the regulatory authority and tested for the presence of coliform bacteria.
(A) Non-community public supplies shall be sampled by the operator of the food establishment as required by DNR.
(B) Private water supplies required to have continuous disinfection shall be:
(1) Sampled at least annually by the regulatory authority and tested for the presence of nitrates;
(2) Tested by the regulatory authority for free available chlorine between one-half (0.5) and four (4) parts per million (ppm) at the time of each routine inspection; and

(3) Tested weekly by the operator for appropriate chlorine concentrations. Results shall be maintained in a log available for review by the regulatory authority.

(C) Any water supply may be sampled by the regulatory authority and be tested for chemical or other contaminants whenever the regulatory authority believes there is a need for such tests.

5-102.14 Sample Report. The most recent sample report for a private water system shall be retained on file in the food establishment and made available for review by the regulatory authority.

5-102.15 Actions Taken Based on Sample Results.

(A) The operator of a food establishment using a public water supply testing positive for bacterial, chemical, or other contaminants shall comply with the requirements of DNR to regain a potable water supply.

(B) The operator of a food establishment using a public water supply testing positive for bacterial, chemical, or other contaminants shall comply with the requirements of the regulatory authority concerning the use of the water until the water supply is deemed safe by the regulatory authority.

(C) The operator of a food establishment using a private water supply testing positive for total coliform bacteria shall:

(1) Disinfect the well and distribution system according to the guidelines of the department.

(2) Have the supply tested for the presence of nitrates and install a chlorinator to provide continuous disinfection as specified in § 5-102.16, if:

(a) After two (2) attempts at disinfecting the well and distribution system, subsequent sample results continue to be positive for coliform bacteria; or

(b) A pattern of positive coliform bacteria sample results is established.

(D) The operator of a food establishment using a private water supply testing positive for *E. coli* or fecal coliform shall be issued a boil order and comply with the provisions of § 5-102.17 until the water supply is deemed safe by the regulatory authority.

5-102.16 Continuous Disinfection.

(A) Private water supplies that have been determined by the regulatory authority to require continuous disinfection shall be equipped with a positive feed liquid chlorinator and storage capacity to provide at least thirty (30) minutes of retention time based on pump capacity. The chlorinator will be set and maintained to supply chlorine concentrations between one-half (0.5) and four (4) parts per million (ppm) free available chlorine.

(B) Private water supplies equipped with a chlorinator that continue to test positive for coliform or *E. coli* bacteria, or establish a pattern of chlorine residuals not at the required levels, shall provide a new water supply by:

(1) Drilling a new well;

(2) Connecting to a public water supply, if available; or

(3) Other means acceptable to the regulatory authority.

5-102.17 Boil Orders, Boil Advisories and Limit Use Orders. If the DNR, department or water supplier issues a boil order, boil advisory or a limit use order for a water supply serving a food establishment, the operator shall comply with the terms of the order as it applies to the food establishment. [P]

(A) Requirements of a boil order or limit use order issued due to bacteriological concerns shall include:

(1) Discontinuing use of ice machines and disposing of ice made with affected water. [P]

(2) Discontinuing use of post mix soda machines. [P]

(3) Discontinue serving ice tea, lemonade or other cold drinks prepared with affected water. [P]

(4) Discontinue preparing ice tea, lemonade or other cold drinks with affected water. [P]

(5) Using a hand sanitizer after handwashing. [P]

(6) Using bottled water, water that has been boiled for three (3) minutes or water that has been chlorinated, retained for thirty (30) minutes and tested to assure a residual of one-half (0.5) to four (4) ppm free available chlorine for washing produce and other culinary uses. [P]

(7) Rendering faucets, accessible to the public, inoperative or posting a sign stating "Unsafe for Drinking" at these faucets. [P]

(B) After a boil order or limit use order is lifted, all water lines should be flushed and manufacturer's recommendations followed to disinfect or replace water filters and water softeners.

5-103.11 Capacity.

(A) The water source and system shall be of sufficient capacity to meet the peak water demands of the food establishment. [P]

(B) Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment. [P]

5-103.12 Pressure. Water under pressure shall be provided to all fixtures, equipment, and nonfood equipment that are required to use water except that water supplied as specified under § 5-104.12 to a temporary food establishment or in response to a temporary interruption of a water supply need not be under pressure.

5-104.11 System. Except as specified in § 5-104.12, water shall be received from the source through the use of:

(A) An approved public water main; or

(B) A private water main, water pumps, pipes, hoses, connections, and other appurtenances that shall be constructed, maintained, and operated according to law.

(C) Hauled water and water transportation tanks shall not be used as a primary water supply.

5-104.12 Alternative Water Supply. Water meeting the requirements specified under Subparts 5-101, 5-102, and 5-103 shall be made available for a mobile facility, for a temporary food establishment without a permanent water supply, and for a food establishment with a temporary interruption of its water supply through:

(A) A supply of containers of commercially bottled drinking water;

(B) One (1) or more closed portable water containers;

(C) An enclosed vehicular water tank;

(D) An on-premises water storage tank; or

(E) Piping, tubing, or hoses connected to an adjacent approved source.

5-201.11 Approved.

(A) A plumbing system and hoses conveying water shall be constructed and repaired with approved materials according to law. [P]

(B) A water filter shall be made of safe materials. [P]

5-202.11 Approved System and Cleanable Fixtures.

(A) A plumbing system shall be designed, constructed, and installed according to law. [P]

(B) A plumbing fixture such as a handwashing sink, toilet, or urinal shall be easily cleanable.

5-202.12 Handwashing Sink, Installation.

(A) A handwashing sink shall be equipped to provide water at a temperature of at least one hundred degrees Fahrenheit (100°F) through a mixing valve or combination faucet.

(B) A steam mixing valve may not be used at a handwashing sink.

(C) A self-closing, slow-closing, or metering faucet shall provide a flow of water for at least fifteen (15) seconds without the need to reactivate the faucet.

(D) An automatic handwashing facility shall be installed in accordance with manufacturer's instructions.

5-202.13 Backflow Prevention, Air Gap. An air gap between the water supply inlet and the flood level

rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than one inch (1"). [P]

5-202.14 Backflow Prevention Device, Design Standard. A backflow or backsiphonage prevention device, installed on a water supply system shall meet American Society of Sanitary Engineering (A.S.S.E.) standards for construction and installation for that specific application and type of device. [P]

5-202.15 Conditioning Device, Design. A water filter, screen, and other water conditioning device installed on water lines shall be designed to facilitate disassembly for periodic servicing and cleaning. A water filter element shall be of the replaceable type.

5-203.11 Handwashing Sinks.

(A) Except as specified in ¶¶ (B) of this section, at least one (1) handwashing sink, a number of handwashing sinks necessary for their convenient use by employees in areas specified under § 5-204.11, and not fewer than the number of handwashing sinks required by law shall be provided. [P]

(B) *If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing sinks in a food establishment that has at least one (1) handwashing sink.*

5-203.12 Toilets and Urinals. At least one (1) toilet and not fewer than the toilets required by law shall be conveniently provided. [P] If authorized by law and urinals are substituted for toilets, the substitution shall be done as specified by law.

5-203.13 Service Sink. At least one (1) service sink or one (1) curbed cleaning facility equipped with hot and cold running water and a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste, unless otherwise approved by the department and a public health hazard or nuisance is not created.

5-203.14 Backflow Prevention Device, When Required. A plumbing system shall be installed to preclude backflow of a solid, liquid, or gas contaminant into the water supply system at each point of use at the food establishment, including on a hose bibb if a hose is attached or on a hose bibb if a hose is not attached and backflow prevention is required by law, by:

(A) Providing an air gap as specified under § 5-202.13; [P] or

(B) Installing an approved backflow prevention device as specified under § 5-202.14. [P]

5-203.15 Backflow Prevention Device, Carbonator.

(A) If not provided with an air gap as specified under § 5-202.13, a dual check valve with an intermediate vent preceded by a screen of not less than one hundred (100) mesh to one inch (1") shall be installed upstream from a carbonating device and downstream from any copper in the water supply line. [P]

(B) *A dual check valve attached to the carbonator need not be of the vented type if an air gap or vented backflow prevention device has been otherwise provided as specified under ¶ (A) of this section.*

(C) Carbonated beverage dispensers conforming to the backflow protection requirements, established in National Sanitation Foundation standard eighteen (18) and listed as such by an independent testing laboratory, shall be deemed to meet the requirements as specified in Subsection (A) of this section.

5-204.11 Handwashing Sinks. A handwashing sink shall be located:

(A) To allow convenient use by employees in food preparation, food dispensing, and warewashing areas; [P] and

(B) In, or immediately adjacent to, toilet rooms. [P]

5-204.12 Backflow Prevention Device, Location. A backflow prevention device shall be located so that it may be serviced and maintained.

5-204.13 Conditioning Device, Location. A water filter, screen, and other water conditioning device installed on water lines shall be located to facilitate disassembly for periodic servicing and cleaning.

5-205.11 Using a Handwashing Sink.

(A) A handwashing sink shall be maintained so that it is accessible at all times for employee use.

(B) A handwashing sink may not be used for purposes other than handwashing.

(C) An automatic handwashing facility shall be used in accordance with manufacturer's instructions.

5-205.12 Prohibiting a Cross Connection.

(A) A person may not create a cross connection by connecting a pipe or conduit between the drinking water system and a non drinking water system or a water system of unknown quality, except sprinkler systems for fire suppression. [P]

(B) The piping of a non drinking water system shall be durably identified so that it is readily distinguishable from piping that carries drinking water.

5-205.14 Water Reservoir of Fogging Devices, Cleaning.

(A) A reservoir that is used to supply water to a device such as a produce fogger shall be:

(1) Maintained in accordance with manufacturer's specifications; [P] and

(2) Cleaned in accordance with manufacturer's specifications or according to the procedures specified under ¶ (B) of this section, whichever is more stringent. [P]

(B) Cleaning procedures shall include at least the following steps and shall be conducted at least once a week:

(1) Draining and complete disassembly of the water and aerosol contact parts; [P]

(2) Brush-cleaning the reservoir, aerosol tubing, and discharge nozzles with a suitable detergent solution; [P]

(3) Flushing the complete system with water to remove the detergent solution and particulate accumulation; [P] and

(4) Rinsing by immersing, spraying, or swabbing the reservoir, aerosol tubing, and discharge nozzles with at least fifty (50) mg/L hypochlorite solution. [P]

5-205.15 System Maintained in Good Repair. A plumbing system shall be:

(A) Repaired according to law; [P] and

(B) Maintained in good repair.

5-301.11 Approved. Materials that are used in the construction of a mobile water tank, mobile food establishment water tank, and appurtenances shall be:

(A) Safe; [P]

(B) Durable, corrosion-resistant, and nonabsorbent; and

(C) Finished to have a smooth, easily cleanable surface.

5-302.11 Enclosed System, Sloped to Drain. A mobile water tank shall be:

(A) Enclosed from the filling inlet to the discharge outlet; and

(B) Sloped to an outlet that allows complete drainage of the tank.

5-302.12 Inspection and Cleaning Port, Protected and Secured. If a water tank is designed with an access port for inspection and cleaning, the opening shall be in the top of the tank and:

(A) Flanged upward at least one-half inch (0.5"); and

(B) Equipped with a port cover assembly that is:

(1) Provided with a gasket and a device for securing the cover in place, and

(2) Flanged to overlap the opening and sloped to drain.

5-302.13 "V" Type Threads, Use Limitation. A fitting with "V" type threads on a water tank inlet or outlet shall be allowed only when a hose is permanently attached.

5-302.14 Tank Vent, Protected. If provided, a water tank vent shall terminate in a downward direction and shall be covered with:

(A) Sixteen (16) mesh to one inch (1") screen or equivalent when the vent is in a protected area; or
(B) A protective filter when the vent is in an area that is not protected from windblown dirt and debris.

5-302.15 Inlet and Outlet, Sloped to Drain.
(A) A water tank and its inlet and outlet shall be sloped to drain.
(B) A water tank inlet shall be positioned so that it is protected from contaminants such as waste discharge, road dust, oil, or grease.

5-302.16 Hose, Construction and Identification. A hose used for conveying drinking water from a water tank shall be:
(A) Safe; [P]
(B) Durable, corrosion-resistant, and nonabsorbent;
(C) Resistant to pitting, chipping, crazing, scratching, scoring, distortion, and decomposition;
(D) Finished with a smooth interior surface; and
(E) Clearly and durably identified as to its use if not permanently attached.

5-303.11 Filter, Compressed Air. A filter that does not pass oil or oil vapors shall be installed in the air supply line between the compressor and drinking water system when compressed air is used to pressurize the water tank system. [P]

5-303.12 Protective Cover or Device. A cap and keeper chain, closed cabinet, closed storage tube, or other approved protective cover or device shall be provided for a water inlet, outlet, and hose.

5-303.13 Mobile Food Establishment Tank Inlet. A mobile food establishment's water tank inlet shall be:
(A) Three-fourths inch (3/4") in inner diameter or less; and
(B) Provided with a hose connection of a size or type that will prevent its use for any other service.

5-304.11 System Flushing and Sanitization. A water tank, pump, and hoses shall be flushed and sanitized before being placed in service after construction, repair, modification, and periods of nonuse. [P]

5-304.12 Using a Pump and Hoses, Backflow Prevention. A person shall operate a water tank, pump, and hoses so that backflow and other contamination of the water supply are prevented.

5-304.13 Protecting Inlet, Outlet, and Hose Fitting. If not in use, a water tank and hose inlet and outlet fitting shall be protected using a cover or device as specified under § 5-303.12.

5-304.14 Tank, Pump, and Hoses, Dedication.
(A) Except as specified in ¶ (B) of this section, a water tank, pump, and hoses used for conveying drinking water shall be used for no other purpose. [P]
(B) *Water tanks, pumps, and hoses approved for liquid foods may be used for conveying drinking water if they are cleaned and sanitized before they are used to convey water.*

5-401.11 Capacity and Drainage. A sewage holding tank in a mobile food establishment shall be:
(A) Sized fifteen percent (15%) larger in capacity than the water supply tank; and
(B) Sloped to a drain that is one inch (1") in inner diameter or greater, equipped with a shut-off valve.

5-402.10 Establishment Drainage System. Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under ¶ 5-202.11(A).

5-402.11 Backflow Prevention.
(A) Except as specified in ¶¶ (B), (C), (D), and (E) of this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed. [P]
(B) *Paragraph (A) of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.*
(C) *If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (5') of a trapped floor drain and the*

machine outlet is connected to the inlet side of a properly vented floor drain trap.

(D) *If allowed by law, a warewashing or culinary sink may have a direct connection.*

(E) *As otherwise approved by the regulatory authority.*

5-402.12 Grease Trap. If used, a grease trap shall be located to be easily accessible for cleaning.

5-402.13 Conveying Sewage. Sewage shall be conveyed to the point of disposal through an approved sanitary sewage system or other system, including use of sewage transport vehicles, waste retention tanks, pumps, pipes, hoses, and connections that are constructed, maintained, and operated according to law. [P]

5-402.14 Removing Mobile Food Establishment Wastes. Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created.

5-402.15 Flushing a Waste Retention Tank. A tank for liquid waste retention shall be thoroughly flushed and drained in a sanitary manner during the servicing operation.

5-403.11 Approved Sewage Disposal System. Sewage shall be disposed through an approved facility.

(A) On-site wastewater treatment systems serving food establishments which generate three thousand (3,000) gallons or less of wastewater per day and are maintained in a subsurface treatment and disposal system shall be regulated by the DHSS. [P]

(1) Any on-site wastewater treatment system installed after January 1, 1996, shall be constructed according to 19 CSR 20-3.060 Minimum Construction Standards for On-Site Sewage Disposal Systems or applicable local ordinance. [P]

(2) On-site wastewater treatment systems shall be maintained and operated to preclude surfacing or discharging effluent, production of odors or the creation of a habitat for insect breeding, contamination of surface water or groundwater or creation of a nuisance or health hazard. [P]

(3) Malfunctioning systems shall be renovated according to 19 CSR 20-3.060 Minimum Construction Standards for On-site Sewage Disposal Systems or applicable local ordinance. [P]

(B) Wastewater treatment and disposal systems serving food establishments which generate more than three thousand (3,000) gallons of wastewater per day (flow rates determined by 19 CSR 20-3.060), or are connected into waste stabilization ponds, or other alternative systems which discharge shall be regulated by the DNR.

(1) Any wastewater treatment system installed after the effective date of this rule, shall have a National Pollutant Discharge Elimination System (NPDES) Permit, General Permit, Exemption Letter issued by the DNR or utilize a Non-Discharge Lagoon. Non-discharge lagoons shall be fenced with a small animal tight fence and be built in substantial compliance with DNR's 3,000 Gallon per Day or Less No-Discharge Permit Exemption for Domestic Wastewater Design Guidance document. [P]

(2) Wastewater treatment systems shall be maintained and operated to preclude the production of odors or creation of a habitat for insect breeding, growth of tall weeds or trees on or in a lagoon or its berm, or creation of a nuisance or health hazard. [P]

(3) The 3,000 Gallon per Day or Less No-Discharge Permit Exemption for Domestic Wastewater Design Guidance is hereby incorporated by reference in this rule as published May 12, 2009 and is available on the web at www.dnr.mo.gov/pubs/pub1319.pdf or by contacting the Department of Natural Resources, PO Box 176, Jefferson City, MO 65102, (800) 361-4827. This rule does not incorporate any subsequent amendments or additions.

(C) A public sewage treatment plant or otherwise according to law.

5-403.12 Other Liquid Wastes and Rainwater. Condensate drainage and other nonsewage liquids and rainwater shall be drained from point of discharge to disposal according to law.

5-501.10 Indoor Storage Area. If located within the food establishment, a storage area for refuse,

recyclables, and returnables shall meet the requirements specified under §§ 6-101.11, 6-201.11 – 6-201.18, 6-202.15, and 6-202.16.

5-501.11 Outdoor Storage Surface. An outdoor storage surface for refuse, recyclables, and returnables shall be:

(A) Sloped to drain; and

(B) Constructed of nonabsorbent, smooth and durable material, such as concrete or asphalt, if there is evidence of vermin or a creation of a nuisance or health hazard.

5-501.12 Outdoor Enclosure. If used, an outdoor enclosure for refuse, recyclables, and returnables shall be constructed of durable and cleanable materials.

5-501.13 Receptacles.

(A) Except as specified in ¶ (B) of this section, receptacles and waste handling units for refuse, recyclables, and returnables and for use with materials containing food residue shall be durable, cleanable, insect- and rodent-resistant, leakproof, and nonabsorbent.

(B) *Plastic bags and wet strength paper bags may be used to line receptacles for storage inside the food establishment, or within closed outside receptacles.*

5-501.14 Receptacles in Vending Machines. *Except that a receptacle for beverage bottle crown closures*, a refuse receptacle may not be located within a vending machine

5-501.15 Outside Receptacles.

(A) Receptacles and waste handling units for refuse, recyclables, and returnables used with materials containing food residue and used outside the food establishment shall be designed and constructed to have tight-fitting lids, doors, or covers.

(B) Receptacles and waste handling units for refuse and recyclables such as an on-site compactor shall be installed so that accumulation of debris and insect and rodent attraction and harborage are minimized and effective cleaning is facilitated around and, if the unit is not installed flush with the base pad, under the unit.

5-501.16 Storage Areas, Rooms, and Receptacles, Capacity and Availability.

(A) An inside storage room and area and outside storage area and enclosure, and receptacles shall be of sufficient capacity to hold refuse, recyclables, and returnables that accumulate.

(B) A receptacle shall be provided in each area of the food establishment or premises where refuse is generated, commonly discarded or where recyclables or returnables are placed.

(C) If disposable towels are used at handwashing lavatories, a waste receptacle shall be located at each lavatory or group of adjacent lavatories.

5-501.17 Toilet Room Receptacle, Covered. A toilet room used by females shall be provided with a covered receptacle for sanitary napkins.

5-501.18 Cleaning Implements and Supplies.

(A) Except as specified in ¶ (B) of this section, suitable cleaning implements and supplies such as high pressure pumps, hot water, steam, and detergent shall be provided as necessary for effective cleaning of receptacles and waste handling units for refuse, recyclables, and returnables.

(B) *If approved, off-premises-based cleaning services may be used if on-premises cleaning implements and supplies are not provided.*

5-501.19 Storage Areas, Redeeming Machines, Receptacles and Waste Handling Units, Location.

(A) An area designated for refuse, recyclables, returnables, and, except as specified in ¶ (B) of this section, a redeeming machine for recyclables or returnables shall be located so that it is separate from food, equipment, utensils, linens, and single-service and single-use articles and a public health hazard or nuisance is not created.

(B) *A redeeming machine may be located in the packaged food storage area or consumer area of a food establishment if food, equipment, utensils, linens, and single-service and single-use articles*

are not subject to contamination from the machines and a public health hazard or nuisance is not created.

(C) The location of receptacles and waste handling units for refuse, recyclables, and returnables may not create a public health hazard or nuisance or interfere with the cleaning of adjacent space.

5-501.110 Storing Refuse, Recyclables, and Returnables. Refuse, recyclables, and returnables shall be stored in receptacles or waste handling units so that they are inaccessible to insects and rodents.

5-501.111 Areas, Enclosures, and Receptacles, Good Repair. Storage areas, enclosures, and receptacles for refuse, recyclables, and returnables shall be maintained in good repair.

5-501.112 Outside Storage Prohibitions.

(A) Except as specified in ¶ (B) of this section, refuse receptacles not meeting the requirements specified under ¶ 5-501.13(A) such as receptacles that are not rodent-resistant, unprotected plastic bags and paper bags, or baled units that contain materials with food residue may not be stored outside.

(B) *Cardboard or other packaging material that does not contain food residues and that is awaiting regularly scheduled delivery to a recycling or disposal site may be stored outside without being in a covered receptacle if it is stored so that it does not create a rodent harborage problem.*

5-501.113 Covering Receptacles. Receptacles and waste handling units for refuse, recyclables, and returnables shall be kept covered:

(A) Inside the food establishment if the receptacles and units:

(1) Contain food residue and are not in continuous use; or

(2) After they are filled; and

(B) With tight-fitting lids or doors if kept outside the food establishment.

5-501.114 Using Drain Plugs. Drains in receptacles and waste handling units for refuse, recyclables, and returnables shall have drain plugs in place.

5-501.115 Maintaining Refuse Areas and Enclosures. A storage area and enclosure for refuse, recyclables, or returnables shall be maintained free of unnecessary items, as specified under § 6-501.114, and clean.

5-501.116 Cleaning Receptacles.

(A) Receptacles and waste handling units for refuse, recyclables, and returnables shall be thoroughly cleaned in a way that does not contaminate food, equipment, utensils, linens, or single-service and single-use articles, and waste water shall be disposed of as specified under § 5-402.13.

(B) Soiled receptacles and waste handling units for refuse, recyclables, and returnables shall be cleaned at a frequency necessary to prevent them from developing a buildup of soil or becoming attractants for insects and rodents.

5-502.11 Frequency. Refuse, recyclables, and returnables shall be removed from the premises at a frequency that will minimize the development of objectionable odors and other conditions that attract or harbor insects and rodents.

5-502.12 Receptacles or Vehicles. Refuse, recyclables, and returnables shall be removed from the premises by way of:

(A) Portable receptacles that are constructed and maintained according to law; or

(B) A transport vehicle that is constructed, maintained, and operated according to law.

5-503.11 Community or Individual Facility. Solid waste not disposed of through the sewage system such as through grinders and pulpers shall be recycled or disposed of in an approved public or private community recycling or refuse facility; or solid waste shall be disposed of in an individual refuse facility such as a landfill or incinerator which is sized, constructed, maintained, and operated according to law.

Chapter 6: Physical Facilities

6-101.11 Surface Characteristics.

(A) Except as specified in ¶ (B) of this section, materials for indoor floor, wall, and ceiling surfaces under conditions of normal use shall be:

(1) Smooth, durable, and easily cleanable for areas where food establishment operations are conducted;

(2) Closely woven and easily cleanable carpet for carpeted areas; and

(3) Nonabsorbent for areas subject to moisture such as food preparation areas, walk-in refrigerators, warewashing areas, toilet rooms, mobile food establishment servicing areas, and areas subject to flushing or spray cleaning methods.

(B) *In a temporary food establishment:*

(1) *If graded to drain, a floor may be concrete, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other approved materials that are effectively treated to control dust and mud; and*

(2) *Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.*

6-102.11 Surface Characteristics.

(A) The outdoor walking and driving areas shall be surfaced with concrete, asphalt, or gravel or other materials that have been effectively treated to minimize dust, facilitate maintenance, and prevent muddy conditions.

(B) Exterior surfaces of buildings and mobile food establishments shall be of weather- resistant materials and shall comply with law.

(C) Outdoor storage areas for refuse, recyclables, or returnables shall be of materials specified under §§ 5-501.11 and 5-501.12.

6-201.11 Floors, Walls, and Ceilings. Except as specified under § 6-201.14 and except for antislip floor coverings or applications may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

6-201.12 Floors, Walls, and Ceilings, Utility Lines.

(A) Utility service lines and pipes may not be unnecessarily exposed.

(B) Exposed utility service lines and pipes shall be installed so they do not obstruct or prevent cleaning of the floors, walls, or ceilings.

(C) Exposed horizontal utility service lines and pipes may not be installed on the floor.

6-201.13 Floor and Wall Junctures, Coved, and Enclosed or Sealed.

(A) In food establishments in which cleaning methods other than water flushing are used for cleaning floors, the floor and wall junctures shall be coved and closed to no larger than one thirty-second inch (1/32").

(B) The floors in food establishments in which water flush cleaning methods are used shall be provided with drains and be graded to drain and the floor and wall junctures shall be coved and sealed.

6-201.14 Floor Carpeting, Restrictions and Installation.

(A) A floor covering such as carpeting or similar material may not be installed as a floor covering in food preparation areas, walk-in refrigerators, warewashing areas, toilet room areas where handwashing lavatories, toilets, and urinals are located, refuse storage rooms, or other areas where the floor is subject to moisture, flushing, or spray cleaning methods.

(B) If carpeting is installed as a floor covering in areas other than those specified under ¶ (A) of this section, it shall be:

(1) Securely attached to the floor with a durable mastic, by using a stretch and tack method, or by another method; and
(2) Installed tightly against the wall under the coving or installed away from the wall with a space between the carpet and the wall and with the edges of the carpet secured by metal stripping or some other means.

6-201.15 Floor Covering, Mats and Duckboards. Mats and duckboards shall be designed to be removable and easily cleanable.

6-201.16 Wall and Ceiling Coverings and Coatings.

(A) Wall and ceiling covering materials shall be attached so that they are easily cleanable.
(B) *Except in areas used only for dry storage*, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.

6-201.17 Walls and Ceilings, Attachments.

(A) Except as specified in ¶ (B) of this section, attachments to walls and ceilings such as light fixtures, mechanical room ventilation system components, vent covers, wall mounted fans, decorative items, and other attachments shall be easily cleanable.
(B) *In a consumer area, wall and ceiling surfaces and decorative items and attachments that are provided for ambiance need not meet this requirement if they are kept clean.*

6-201.18 Walls and Ceilings, Studs, Joists, and Rafters. *Except for temporary food establishments*, studs, joists, and rafters may not be exposed in areas subject to moisture.

6-202.11 Light Bulbs, Protective Shielding.

(A) Except as specified in ¶ (B) of this section, light bulbs shall be shielded, coated, or otherwise shatter-resistant in areas where there is exposed food; clean equipment, utensils, and linens; or unwrapped single-service and single-use articles.
(B) *Shielded, coated, or otherwise shatter-resistant bulbs need not be used in areas used only for storing food in unopened packages, if:*
  (1) *The integrity of the packages cannot be affected by broken glass falling onto them; and*
  (2) *The packages are capable of being cleaned of debris from broken bulbs before the packages are opened.*
(C) An infrared or other heat lamp shall be protected against breakage by a shield surrounding and extending beyond the bulb so that only the face of the bulb is exposed.

6-202.12 Heating, Ventilating, Air Conditioning System Vents. Heating, ventilating, and air conditioning systems shall be designed and installed so that make-up air intake and exhaust vents do not cause contamination of food, food-contact surfaces, equipment, or utensils.

6-202.13 Insect Control Devices, Design and Installation.

(A) Insect control devices that are used to electrocute or stun flying insects shall be designed to retain the insect within the device.
(B) Insect control devices shall be installed so that:
  (1) The devices are not located over a food preparation area; and
  (2) Dead insects and insect fragments are prevented from being impelled onto or falling on exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

6-202.14 Toilet Rooms, Enclosed. *Except where a toilet room is located outside a food establishment and does not open directly into the food establishment such as a toilet room that is provided by the management of a shopping mall*, a toilet room located on the premises shall be completely enclosed and provided with a tight-fitting and self-closing door.

6-202.15 Outer Openings, Protected.

(A) Except as specified in ¶¶ (B), (C), and (E) and under ¶ (D) of this section, outer openings of a food establishment shall be protected against the entry of insects and rodents by:

(1) Filling or closing holes and other gaps along floors, walls, and ceilings;

(2) Closed, tight-fitting windows; and

(3) Solid, self-closing, tight-fitting doors.

(B) *Paragraph (A) of this section does not apply if a food establishment opens into a larger structure, such as a mall, airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or attached structure are protected against the entry of insects and rodents.*

(C) *Exterior doors used as exits need not be self-closing if they are:*

(1) *Solid and tight-fitting;*

(2) *Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and*

(3) *Limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.*

(D) Except as specified in ¶¶ (B) and (E) of this section, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under ¶ (A) of this section, the openings shall be protected against the entry of insects and rodents by:

(1) Sixteen (16) mesh to one inch (1") screens;

(2) Properly designed and installed air curtains to control flying insects; or

(3) Other effective means.

(E) *Paragraph (D) of this section does not apply if flying insects and other pests are absent due to the location of the establishment, the weather, or other limiting condition.*

6-202.16 Exterior Walls and Roofs, Protective Barrier. Perimeter walls and roofs of a food establishment shall effectively protect the establishment from the weather and the entry of insects, rodents, and other animals.

6-202.17 Outdoor Food Vending Areas, Overhead Protection. *Except for machines that vend canned beverages*, if located outside, a machine used to vend food shall be provided with overhead protection;

6-202.18 Outdoor Servicing Areas, Overhead Protection. *Except for areas used only for the loading of water or the discharge of sewage and other liquid waste, through the use of a closed system of hoses*, servicing areas shall be provided with overhead protection.

6-202.19 Outdoor Walking and Driving Surfaces, Graded to Drain. Exterior walking and driving surfaces shall be graded to drain.

6-202.110 Outdoor Refuse Areas, Curbed and Graded to Drain. Outdoor refuse areas shall be constructed in accordance with law and shall be curbed and graded to drain and if there is evidence of vermin or a creation of a nuisance or health hazard, outdoor receptacles for refuse shall be stored on a smooth, hard surface such as concrete or machine-laid asphalt.

6-202.111 Private Homes and Living or Sleeping Quarters, Use Prohibition. A private home, a room used as living or sleeping quarters, or an area directly opening into a room used as living or sleeping quarters may not be used for conducting food establishment operations. [P]

6-202.112 Living or Sleeping Quarters, Separation. Living or sleeping quarters located on the premises of a food establishment such as those provided for lodging registration clerks or resident managers shall be separated from rooms and areas used for food establishment operations by complete partitioning and solid self-closing doors.

6-301.10 Minimum Number. Handwashing sinks shall be provided as specified under § 5- 203.11.

6-301.11 Handwashing Cleanser, Availability. Each handwashing sink or group of two (2) adjacent handwashing sinks shall be provided with a supply of hand cleaning liquid, powder, or bar soap.

6-301.12 Hand Drying Provision. Each handwashing sink or group of adjacent handwashing sinks shall be provided with:

(A) Individual, disposable towels;

(B) A continuous towel system that supplies the user with a clean towel; or

(C) A heated-air hand drying device; or

(D) A hand drying device that employs an air-knife system that delivers high velocity, pressurized air at ambient temperatures.

6-301.13 Handwashing Aids and Devices, Use Restrictions. A sink used for food preparation or utensil washing, or a service sink or curbed cleaning facility used for the disposal of mop water or similar wastes, may not be provided with the handwashing aids and devices required for a handwashing sink as specified under §§ 6-301.11 and 6-301.12 and ¶ 5-501.16(C).

6-301.14 Handwashing Signage. A sign or poster that notifies food employees to wash their hands shall be provided at all handwashing sinks used by food employees and shall be clearly visible to food employees.

6-301.20 Disposable Towels, Waste Receptacle. A handwashing sink or group of adjacent handwashing sinks that is provided with disposable towels shall be provided with a waste receptacle as specified under ¶ 5-501.16 (C).

6-302.10 Minimum Number. Toilets and urinals shall be provided as specified under § 5- 203.12.

6-302.11 Toilet Tissue, Availability. A supply of toilet tissue shall be available at each toilet.

6-303.11 Intensity. The light intensity shall be:

(A) At least ten (10) foot candles at a distance of thirty inches (30") above the floor, in walk- in refrigeration units and dry storage areas and in other areas and rooms during periods of cleaning;

(B) At least twenty (20) foot candles:

(1) At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;

(2) Inside equipment such as reach-in and under-counter refrigerators; and

(3) At a distance of thirty inches (30") above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and

(C) At least fifty (50) foot candles at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

6-304.11 Mechanical. If necessary to keep rooms free of excessive heat, steam, condensation, vapors, obnoxious odors, smoke, and fumes, mechanical ventilation of sufficient capacity shall be provided.

6-305.11 Designation.

(A) Dressing rooms or dressing areas shall be designated if employees routinely change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions.

6-306.10 Availability. A service sink or curbed cleaning facility shall be provided as specified under ¶ 5-203.13(A).

6-401.10 Conveniently Located. Handwashing sinks shall be conveniently located as specified under § 5-204.11.

6-402.11 Convenience and Accessibility. Toilet rooms shall be conveniently located and accessible to employees during all hours of operation.

6-403.11 Designated Areas.

(A) Areas designated for employees to eat, drink, and use tobacco shall be located so that food, equipment, linens, and single-service and single-use articles are protected from contamination.

(B) Lockers or other suitable facilities shall be located in a designated room or area where contamination of food, equipment, utensils, linens, and single-service and single-use articles cannot occur.

6-404.11 Segregation and Location. Products that are held by the operator for credit, redemption, or return to the distributor, such as damaged, spoiled, or recalled products, shall be segregated and held in designated areas that are separated from food, equipment, utensils, linens, and single-service and single-use articles.

6-405.10 Receptacles, Waste Handling Units, and Designated Storage Areas. Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under § 5-501.19.

6-501.11 Repairing. Physical facilities shall be maintained in good repair.

6-501.12 Cleaning, Frequency and Restrictions.

(A) Physical facilities shall be cleaned as often as necessary to keep them clean.

(B) *Except for cleaning that is necessary due to a spill or other accident*, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

6-501.13 Cleaning Floors, Dustless Methods.

(A) Except as specified in ¶ (B) of this section, only dustless methods of cleaning shall be used, such as wet cleaning, vacuum cleaning, mopping with treated dust mops, or sweeping using a broom and dust-arresting compounds.

(B) *Spills or drippage on floors that occur between normal floor cleaning times may be cleaned:*

(1) *Without the use of dust-arresting compounds; and*

(2) *In the case of liquid spills or drippage, with the use of a small amount of absorbent compound such as sawdust or diatomaceous earth applied immediately before spot cleaning.*

6-501.14 Cleaning Ventilation Systems, Nuisance and Discharge Prohibition.

(A) Intake and exhaust air ducts shall be cleaned and filters changed so they are not a source of contamination by dust, dirt, and other materials.

(B) If vented to the outside, ventilation systems may not create a public health hazard or nuisance or unlawful discharge.

6-501.15 Cleaning Maintenance Tools, Preventing Contamination. Food preparation sinks, handwashing sinks, and warewashing equipment may not be used for the cleaning of maintenance tools, the preparation or holding of maintenance materials, or the disposal of mop water and similar liquid wastes. [P]

6-501.16 Drying Mops. After use, mops shall be placed in a position that allows them to air-dry without soiling walls, equipment, or supplies.

6-501.17 Absorbent Materials on Floors, Use Limitation. Except as specified in ¶ 6- 501.13(B), sawdust, wood shavings, granular salt, baked clay, diatomaceous earth, or similar materials may not be used on floors;

6-501.18 Cleaning of Plumbing Fixtures. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean.

6-501.19 Closing Toilet Room Doors. *Except during cleaning and maintenance operations*, toilet room doors as specified under § 6-202.14 shall be kept closed.

6-501.110 Using Dressing Rooms and Lockers.

(A) Dressing rooms shall be used by employees if the employees regularly change their clothes in the establishment.

(B) Lockers or other suitable facilities shall be used for the orderly storage of employee clothing and other possessions.

6-501.111 Controlling Pests. The presence of insects, rodents, and other pests shall be controlled to minimize their presence on the premises. [P] Control measures shall include:

(A) Routinely inspecting incoming shipments of food and supplies;
(B) Routinely inspecting the premises for evidence of pests;
(C) Using methods, if pests are found, such as trapping devices or other means of pest control as specified under §§ 7-202.12, 7-206.12, and 7-206.13; and
(D) Eliminating harborage conditions.

6-501.112 Removing Dead or Trapped Birds, Insects, Rodents, and Other Pests. Dead or trapped birds, insects, rodents, and other pests shall be removed from control devices and the premises at a frequency that prevents their accumulation, decomposition, or the attraction of pests.

6-501.113 Storing Maintenance Tools. Maintenance tools such as brooms, mops, vacuum cleaners, and similar items shall be:

(A) Stored so they do not contaminate food, equipment, utensils, linens, and single-service and single-use articles; and
(B) Stored in an orderly manner that facilitates cleaning the area used for storing the maintenance tools.

6-501.114 Maintaining Premises, Unnecessary Items and Litter. The premises shall be free of:

(A) Items that are unnecessary to the operation or maintenance of the establishment such as equipment that is nonfunctional or no longer used; and
(B) Litter.

6-501.115 Prohibiting Animals.

(A) Except as specified in ¶¶ (B) and (C) of this section, live animals may not be allowed on the premises of a food establishment. [P]
(B) *Live animals may be allowed in the following situations if the contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result:*
  (1) *Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;*
  (2) *Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;*
  (3) *In areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;*
  (4) *Pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:*
    (a) *Effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas,*
    (b) *Condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and*
    (c) *Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and*
  (5) *In areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.*

(C) *Live or dead fish bait may be stored if contamination of food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles cannot result.*

Chapter 7: Poisonous or Toxic Materials

7-101.11 Identifying Information, Prominence. Containers of poisonous or toxic materials and personal care items shall bear a legible manufacturer's label. [P]

7-102.11 Common Name. Working containers used for storing poisonous or toxic materials such as cleaners and sanitizers taken from bulk supplies shall be clearly and individually identified with the common name of the material. [P]

7-201.11 Separation. Poisonous or toxic materials shall be stored so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(A) Separating the poisonous or toxic materials by spacing or partitioning; [P] and

(B) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. *This paragraph does not apply to equipment and utensil cleaners and sanitizers that are stored in warewashing areas for availability and convenience if the materials are stored to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.* [P]

7-202.11 Restriction.

(A) Only those poisonous or toxic materials that are required for the operation and maintenance of a food establishment, such as for the cleaning and sanitizing of equipment and utensils and the control of insects and rodents, shall be allowed in a food establishment. [P]

(B) *Paragraph (A) of this section does not apply to packaged poisonous or toxic materials that are for retail sale.*

7-202.12 Conditions of Use. Poisonous or toxic materials shall be:

(A) Used according to:

(1) Law and this Code, [P]

(2) Manufacturer's use directions included in labeling, and, for a pesticide, manufacturer's label instructions that state that use is allowed in a food establishment, [P]

(3) The conditions of certification, if certification is required, for use of the pest control materials, [P] and

(4) Additional conditions that may be established by the regulatory authority; and

(B) Applied so that:

(1) A hazard to employees or other persons is not constituted, [P] and

(2) Contamination including toxic residues due to drip, drain, fog, splash or spray on food, equipment, utensils, linens, and single-service and single-use articles is prevented, and for a restricted use pesticide, this is achieved by: [P]

(a) Removing the items, [P]

(b) Covering the items with impermeable covers, [P] or

(c) Taking other appropriate preventive actions, [P] and

(d) Cleaning and sanitizing equipment and utensils after the application. [P]

(C) A restricted use pesticide shall be applied only by an applicator certified by the Missouri Department of Agriculture, a state with a reciprocal agreement, or a person under the direct supervision of a certified applicator.

7-203.11 Poisonous or Toxic Material Containers. A container previously used to store poisonous or toxic materials may not be used to store, transport, or dispense food. [P]

7-204.11 Sanitizers, Criteria. Chemical sanitizers and other chemical antimicrobials applied to food-contact surfaces shall meet the requirements specified in 40 CFR 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (food-contact surface sanitizing solutions). [P] 40 CFR 180.940 is hereby incorporated by reference in this rule as published May 12, 2009

and is available on the web at http://edocket.access.gpo.gov/cfr_2004/julqtr/40cfr180.940.html or by contacting the U.S. Government Printing Office, PO Box 979050, St. Louis, MO 63197-9000, (866) 512-1800. This rule does not incorporate any subsequent amendments or additions.

7-204.12 Chemicals for Washing, Treatment, Storage and Processing Fruits and Vegetables, Criteria.

(A) Chemicals used to wash or peel raw, whole fruits and vegetables shall meet the requirements specified in 21 CFR 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables. [P]

(B) Ozone as an antimicrobial agent used in the treatment, storage, and processing of fruits and vegetables in a food establishment shall meet the requirements specified in 21 CFR 173.368 Ozone.

7-204.13 Boiler Water Additives, Criteria. Chemicals used as boiler water additives shall meet the requirements specified in 21 CFR 173.310 Boiler water additives. [P]

7-204.14 Drying Agents, Criteria. Drying agents used in conjunction with sanitization shall:

(A) Contain only components that are listed as one of the following:

(1) Generally recognized as safe for use in food as specified in 21 CFR 182 – Substances Generally Recognized as Safe, or 21 CFR 184 – Direct Food Substances Affirmed as Generally Recognized as Safe, [P]

(2) Generally recognized as safe for the intended use as specified in 21 CFR 186 –Indirect Food Substances Affirmed as Generally Recognized as Safe, [P]

(3) Approved for use as a drying agent under a prior sanction specified in 21 CFR 181 –Prior-Sanctioned Food Ingredients, [P]

(4) Specifically regulated as an indirect food additive for use as a drying agent as specified in 21 CFR Parts 175-178, [P] or

(5) Approved for use as a drying agent under the threshold of regulation process established by 21 CFR 170.39 Threshold of regulation for substances used in food- contact articles; [P] and

(B) When sanitization is with chemicals, the approval required under Subparagraph (A)(3) or (A)(5) of this section or the regulation as an indirect food additive required under Subparagraph (A)(4) of this section, shall be specifically for use with chemical sanitizing solutions. [P]

7-205.11 Incidental Food Contact, Criteria. Lubricants shall meet the requirements specified in 21 CFR 178.3570 Lubricants with incidental food contact, if they are used on food-contact surfaces, on bearings and gears located on or within food-contact surfaces, or on bearings and gears that are located so that lubricants may leak, drip, or be forced into food or onto food- contact surfaces. [P]

7-206.11 Restricted Use Pesticides, Criteria. Restricted use pesticides specified under ¶ 7- 202.12(C) shall meet the requirements specified in 40 CFR 152 Subpart I – Classification of Pesticides. [P]

7-206.12 Rodent Bait Stations. Rodent bait shall be contained in a covered, tamper-resistant bait station. [P]

7-206.13 Tracking Powders, Pest Control and Monitoring.

(A) Except as specified in ¶ (B) of this section, a tracking powder pesticide may not be used in a food establishment. [P]

(B) If used, a nontoxic tracking powder such as talcum or flour may not contaminate food, equipment, utensils, linens, and single-service and single-use articles.

7-207.11 Restriction and Storage.

(A) *Except for medicines that are stored or displayed for retail sale*, only those medicines that are necessary for the health of employees shall be allowed in a food establishment.

(B) Medicines that are in a food establishment for the employees' use shall be labeled as specified under § 7-101.11 and located to prevent the contamination of food, equipment, utensils, linens,

and single-service and single-use articles. [P]

7-207.12 Refrigerated Medicines, Storage. Medicines on the premises that require refrigeration and are stored in a food refrigerator shall be:

(A) Stored in a package or container and kept inside a covered, leakproof container that is identified as a container for the storage of medicines; [P] and

(B) Located so they are inaccessible to children. [P]

7-208.11 Storage. First aid supplies that are in a food establishment for the employees' use shall be:

(A) Labeled as specified under § 7-101.11; and

(B) Stored in a kit or a container that is located to prevent the contamination of food, equipment, utensils, and linens, and single-service and single-use articles. [P]

7-209.11 Storage. Except as specified under §§ 7-207.12 and 7-208.11, employees shall store their personal care items in facilities as specified under ¶ 6-305.11(B).

7-301.11Separation. Poisonous or toxic materials shall be stored and displayed for retail sale so they cannot contaminate food, equipment, utensils, linens, and single-service and single-use articles by:

(A) Separating the poisonous or toxic materials by spacing or partitioning; [P] and

(B) Locating the poisonous or toxic materials in an area that is not above food, equipment, utensils, linens, and single-service or single-use articles. [P]

Chapter 8: Compliance and Enforcement

8-1 CODE APPLICABILITY

Use for Intended Purposes

8-101.10 Public Health Protection. The regulatory authority shall apply this Code to promote its underlying purpose, as specified in § 1-102.10, of safeguarding public health and ensuring that food is safe, unadulterated, and honestly presented when food is in commercial transport or offered to the consumer. The Department Director or authorized representative may temporarily waive, in the event of natural disasters, state of emergencies or other similar events, provisions of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the waiver.

Additional Requirements

8-102.10 Preventing Health Hazards, Provision for Conditions Not Addressed.

(A) If necessary to protect against public health hazards or nuisances, the regulatory authority may impose specific requirements in addition to the requirements contained in this Code that are authorized by law.

(B) The regulatory authority shall document the conditions that necessitate the imposition of additional requirements and the underlying public health rationale. The documentation shall be provided to the permit applicant or permit holder and a copy shall be maintained in the regulatory authority's file for the food establishment.

Variances

8-103.10 Modifications and Waivers. The regulatory authority may grant a special process by modifying or waiving the requirements of the Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the special process. If a special process is granted, the regulatory authority shall retain the information specified under § 8-103.11 in its records for the food establishment.

8-103.11 Documentation of Proposed Special Process and Justification. Before the regulatory authority waives or modifies a requirement of this Code, the information that shall be provided by the person requesting approval for a special process includes:

(A) A statement of the proposed modification or waiver of the Code requirement citing relevant Code section numbers;

(B) A statement as to why the special process is necessary;

(C) Written procedures for how the modification or waiver will be implemented;

(D) An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant Code sections will be alternatively addressed by the proposal; and

(E) A HACCP plan if required that includes the information specified under § 8-201.14 as it is relevant to the request.

8-103.12 Conformance with Approved Procedures. If the regulatory authority grants a special process as specified in §8-103.10, or a HACCP plan is otherwise required as specified under §8-201.13, the permit holder shall:

(A) Comply with the HAACP plans and procedures that are submitted as specified under §8-201.14 and approved as a basis for the modification or waiver; and

(B) Maintain and provide to the regulatory authority, upon request, records specified under ¶¶ 8-201.14(D) and (E) that demonstrate that the following are routinely employed;

(1) Procedures for monitoring critical control points,

(2) Monitoring of the critical control points,
(3) Verification of the effectiveness of an operation or process, and
(4) Necessary corrective actions if there is failure at a critical control point.

8-103.13 If Conditions or Provisions Change. If conditions change or provisions, upon which a special process is approved, are not followed, the regulatory authority may revoke the approval and the operator shall be required to meet the provisions of this Code.

8-2 PLAN SUBMISSION AND APPROVAL

Facility and Operating Plans

8-201.11 When Plans Are Required. A permit applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval before:
(A) The construction of a food establishment;
(B) The conversion of an existing structure for use as a food establishment; or
(C) The remodeling of a food establishment or a change of a type of food establishment if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this Code.

8-201.12 Contents of the Plans and Specifications. The plans and specifications for a food establishment, including a food establishment specified under §8-201.13, shall include, as required by the regulatory authority based on the type of operation, type of food preparation, and foods prepared, the following information to demonstrate conformance with Code provisions:
(A) Intended menu;
(B) Anticipated volume of food to be stored, prepared, and sold or served;
(C) Proposed layout, mechanical schematics, construction materials, and finish schedules;
(D) Proposed equipment types, manufacturers, model numbers, locations, dimensions, performance capacities, and installation specifications;
(E) Evidence that standard procedures that ensure compliance with the requirements of this Code are developed or are being developed; and
(F) Other information that may be required by the regulatory authority for the proper review of the proposed construction, conversion or modification, and procedures for operating a food establishment.

8-201.13 When a HACCP Plan is Required.
(A) Before engaging in an activity that requires a HACCP plan, a permit applicant or permit holder shall submit to the regulatory authority for approval a properly prepared HACCP plan as specified under § 8-201.14 and the relevant provisions of this Code if:
(1) Submission of a HACCP plan is required according to law;
(2) A special process is required as specified under § 3-401.11 (D)(4), 3-502.11, ¶ 4-204.110(B); or
(3) The regulatory authority determines that a Food preparation or processing method requires a special process based on a plan submittal specified under § 8-201.12, an inspectional finding, or a special process request.
(B) A permit applicant or permit holder shall have a properly prepared HACCP plan as specified under § 3-502.12.

8-201.14 Contents of a HACCP Plan. For a food establishment that is required under § 8-201.13 to have a HACCP plan, the plan and specifications shall indicate:

(A) A categorization of the types of potentially hazardous foods that are specified in the menu such as soups and sauces, salads, and bulk, solid foods such as meat roasts, or of other foods that are specified by the regulatory authority;
(B) A flow diagram by specified food or category type identifying critical control points and providing information on the following:
  (1) Ingredients, materials, and equipment used in the preparation of that food, and
  (2) Formulations or recipes that delineate methods and procedural control measures that address the food safety concerns involved;
(C) Food employee and supervisory training plan that addresses the food safety issues of concern;
(D) A statement of standard operating procedures of the plan under consideration including clearly identifying:
  (1) Each critical control point,
  (2) The critical limits for each critical control point,
  (3) The method and frequency for monitoring and controlling each critical control point by the food employee designated by the person in charge,
  (4) The method and frequency for the person in charge to routinely verify that the food employee is following standard operating procedures and monitoring critical control points,
  (5) Action to be taken by the person in charge if the critical limits for each critical control point are not met and
  (6) Records to be maintained by the person in charge to demonstrate that the HACCP plan is properly operated and managed; and
(E) Additional scientific data or other information, as required by the regulatory authority, supporting the determination that food safety is not compromised by the proposal.

Confidentiality

8-202.10 Trade Secrets. The regulatory authority shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on inspection report forms and in the plans and specifications submitted as specified under §§ 8-201.12 and 8-201.14.

Construction Inspection and Approval

8-203.10 Preoperational Inspections. The regulatory authority shall conduct one or more preoperational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, has established standard operating procedures as specified under ¶ 8-201.12(E), and is in compliance with law and this Code.

8-3 PERMIT TO OPERATE

Requirement

8-301.11 Prerequisite for Operation. A person may not operate a food establishment without a valid permit to operate issued by the regulatory authority.

Application Procedure

8-302.11 Submission 30 Calendar Days Before Proposed Opening. An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment or the expiration date of the current permit for an existing facility.
8-302.12 Form of Submission. A person desiring to operate a food establishment shall submit to the regulatory authority a written application for a permit on a form provided by the regulatory authority.

8-302.13 Qualifications and Responsibilities of Applicants. To qualify for a permit an applicant shall:

(A) Be an owner of the food establishment or an officer of the legal ownership;
(B) Comply with the requirements of this Code;
(C) As specified under § 8-402.11, agree to allow access to the food establishment and to provide required information; and
(D) Pay the applicable permit fees at the time the application is submitted.
(E) Certain food establishments may be exempted from the permit or fee requirements as determined by the regulatory authority.

Issuance

8-303.10 New, Converted, or Remodeled Establishments. For food establishments that are required to submit plans as specified under § 8-201.11 the regulatory authority shall issue a permit to the applicant after:

(A) A properly completed application is submitted;
(B) The required fee is submitted;
(C) The required plans, specifications, and information are reviewed and approved; and
(D) A preoperational inspection as specified in § 8-203-10 shows that the establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this Code.

8-303.20 Existing Establishments, Permit Renewal, and Change of Ownership. The regulatory authority may renew a permit for an existing food establishment or may issue a permit to a new owner of an existing food establishment after a properly completed application is submitted, reviewed, and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this Code.

8-303-30 Denial of Application for Permit, Notice. If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a notice that includes:

(A) The specific reasons and Code citations for the permit denial;
(B) The actions, if any, that the applicant must take to qualify for a permit; and
(C) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

Conditions of Retention

8-304.10 Responsibilities of the Regulatory Authority

(A) The regulatory authority shall make available a copy of this Code so that the permit holder is notified of the compliance requirements and the conditions of retention, as specified under § 8-304.11, that are applicable to the permit.
(B) Failure to provide the information specified in ¶ (A) of this section does not prevent the regulatory authority from taking authorized action or seeking remedies if the permit holder fails to comply with this Code or an order, warning, or directive of the regulatory authority.

8-304.11 Responsibilities of the Permit Holder. Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

(A) Post the permit in a location in the food establishment that is conspicuous to consumers;
(B) Comply with the provisions of this Code including the conditions of a granted special process as specified under § 8-103.12, and approved plans as specified under § 8-201.12;
(C) If a food establishment is required under § 8-201.13 to operate under a HACCP plan, comply with the plan as specified under § 8-103.12;

(D) Immediately contact the regulatory authority to report an illness of an employee as specified under ¶ 2-201.11;
(E) Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under § 8-404.11;
(F) Allow representatives of the regulatory authority access to the food establishment as specified under § 8-402.11;
(G) Replace existing facilities and equipment with facilities and equipment that comply with this Code if:
(1) The regulatory authority directs the replacement of the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted,
(2) The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership, or
(3) The facilities and equipment are replaced in the normal course of operation;
(H) Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;
(I) Accept notices issued and served by the regulatory authority according to law; and
(J) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

8-304.20 Permits Not Transferable. A permit may not be transferred from one person to another person, from one food establishment to another, or from one type of operation to another if the food operation changes from the type of operation and the change in operation is not approved.

8-4 INSPECTION AND CORRECTION OF VIOLATIONS

Frequency

8-401.10 Establishing Inspection Interval.
(A) Except as specified in ¶ (B) of this section, the regulatory authority shall inspect a food establishment at least once every 12 months.
(B) The regulatory authority will determine the interval between inspections by:
(1) Assigning an inspection frequency based on a written risk-based facility assessment that is being uniformly applied throughout the jurisdiction.
(2) Determining if a food establishment is fully operating under an approved and validated HACCP plan as specified under § 8-201.14 and ¶¶ 8-103.12(A) and (B).
(3) Inspecting as needed when a complaint is received which justifies inspection of the food establishment.
(C) The regulatory authority shall inspect vending location operations, if the operation provides potentially hazardous foods, on a frequency determined by the regulatory authority.
(D) The regulatory authority shall periodically inspect modified food establishments as defined in Chapter 9 of this Code, at the discretion of the regulatory authority.

8-401.20 Performance and Risk-Based. Within the parameters specified in § 8-401.10, the regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food

establishment's history of compliance with this Code and the establishment's potential as a vector of food borne illness by evaluating:

(A) Past performance, for nonconformance with Code or HACCP plan requirements that are priority;
(B) Past performance, for numerous or repeat violations of Code or HACCP plan requirements that are non-priority;
(C) Past performance, for complaints investigated and found to be valid;
(D) The hazards associated with the particular foods that are prepared, stored, or served;
(E) The type of operation including the methods and extent of food storage, preparation, and service;
(F) The number of people served; and
(G) Whether the population served is a highly susceptible population.

Access

8-402.11 Allowed at Reasonable Times after Due Notice. After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment is in compliance with this Code by allowing access to the establishment, allowing inspection, and providing information and records specified in this Code and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

8-402.20 Refusal, Notification of Right to Access, and Final Request for Access. If a person denies access to the regulatory authority, the regulatory authority shall:

(A) Inform the person that:
  (1) The permit holder is required to allow access to the regulatory authority as specified under § 8-402.11 of this Code,
  (2) Access is a condition of the acceptance and retention of a food establishment permit to operate as specified under ¶ 8-304.11(F), and
  (3) If access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and
(B) Make a final request for access.

8-402.30 Refusal, Reporting. If after the regulatory authority presents credentials and provides notice as specified under § 8-402.11, explains the authority upon which access is requested, and makes a final request for access as specified in § 8-402.20, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

8-402.40 Inspection Order to Gain Access. If denied access to a food establishment for an authorized purpose and after complying with § 8-402.20, the regulatory authority may issue, or apply for the issuance of, an inspection order to gain access as provided in law.

Report of Findings

8-403.10 Documenting Information and Observations. The regulatory authority shall document on an inspection report form specific factual observations of violative conditions or other deviations from this Code that require correction by the permit holder.

8-403.20 Specifying Time Frame for Corrections. The regulatory authority shall specify on the inspection report from the time frame for correction of the violations as specified under § 8-405.11.

8-403.30 Issuing Report and Obtaining Acknowledgment of Receipt. At the conclusion of the inspection and according to law, the regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

8-403.40 Refusal to Sign Acknowledgment. The regulatory authority shall:

(A) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in § 8-403.30 that:

(1) An acknowledgment of receipt is not an agreement with findings,

(2) Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified, and

(3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the food establishment; and

(B) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

8-403.50 Public Information. Except as specified in § 8-202.10 or any information that would be protected under HIPAA (Health Insurance Portability and Accountability Act), the regulatory authority shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law.

Imminent Health Hazard

8-404.11 Ceasing Operations and Reporting.

(A) Except as specified in ¶ (B) of this section, a permit holder shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent food borne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health.

(B) A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

8-404.12 Resumption of Operations. If operations are discontinued as specified under § 8-404.11 or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

Item Violation

8-405.11 Timely Correction.

(A) Except as specified in ¶ (B) of this section, a permit holder, shall at the time of inspection correct a priority violation of this Code and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

(B) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the permit holder to correct priority Code violations or HACCP plan deviations.

8-405.20 Verification and Documentation of Correction. After the permit holder has corrected violations resulting in a non-compliant inspection or HACCP plan deviation, or at the end of the specified period of time, the regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

8-406.10 Compliance Designation. A facility shall be considered as being in non-compliance with this Code when:

(A) Ten or more uncorrected non-priority violations are documented during a pre-open inspection.

(B) Fifteen or more uncorrected non-priority violations are documented during a routine inspection.

(C) One or more uncorrected priority violation(s) are documented during a routine inspection.

(D) One or more identical repeat priority violation(s) are documented on consecutive routine inspections.
(E) The facility violates any term or condition of the permit as specified under § 8-304.11.

8-406.11 Time Frame for Correction.
(A) Except as specified in ¶ (B) of this section, the permit holder shall correct non-priority violations by a date and time agreed to or specified by the regulatory authority but no later than 90 calendar days after the inspection.
(B) The regulatory authority may approve a compliance schedule that extends beyond the time limits specified under ¶ (A) of this section if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

8-5 PREVENTION OF FOODBORNE DISEASE TRANSMISSION BY EMPLOYEES

Investigation and Control

8-501.10 Obtaining Information: Personal History of Illness, Medical Examination, and Specimen Analysis. The regulatory authority shall act when it has reasonable cause to believe that a food employee has a possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:
(A) Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and
(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

8-501.20 Restriction or Exclusion of Food Employee, or Summary Suspension of Permit. Based on the findings of an investigation related to a food employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee or permit holder instituting one or more of the following control measures:
(A) Restricting the food employee's services to specific areas and tasks in a food establishment that present no risk of transmitting the disease;
(B) Excluding the food employee from a food establishment; or
(C) Closing the food establishment by summarily suspending a permit to operate in accordance with law.

8-501.30 Restriction or Exclusion Order: Warning or Hearing Not Required, Information Required In Order. Based on the findings of the investigation as specified in § 8-501.10 and to control disease transmission, the regulatory authority may issue an order of restriction or exclusion to a suspected food employee or the permit holder without prior warning, notice of a hearing, or a hearing if the order:
(A) States the reasons for the restriction or exclusion that is ordered;
(B) States the evidence that the food employee or permit holder shall provide in order to demonstrate that the reasons for the restriction or exclusion are eliminated;
(C) States that the suspected food employee or the permit holder may request an appeal hearing by submitting a timely request as provided in law; and
(D) Provides the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

8-501.40 Release of Food Employee from Restriction or Exclusion. The regulatory authority shall release a food employee from restriction or exclusion according to law and the conditions as stated in §§ 2-201.12 and 2-201.13 are met.

8-6 CONSTITUTIONAL PROTECTION

Procedural Safeguards

8-601.10 Preservation of Rights. The regulatory authority shall justly apply the remedies according to law and this Code, to preserve the rights to equal protection and due process of a person to whom the remedies are applied.

Judicial Review

8-602.10 Rights of Recipients of Orders or Decisions. A recipient of a regulatory authority order or decision may file a petition for judicial review in a court of competent jurisdiction after available administrative appeal remedies are exhausted.

8-7 NOTICES

Service of Notice

8-701.10 Proper Methods. A notice issued in accordance with this Code shall be considered to be properly served if it is served by one of the following methods:

(A) The notice is personally served by the regulatory authority, a law enforcement officer, or a person authorized to serve a civil process to the permit holder, the person in charge, or person operating a food establishment without a permit;

(B) The notice is sent by the regulatory authority to the last known address of the permit holder or the person operating a food establishment without a permit, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired; or

(C) The notice is provided by the regulatory authority in accordance with another manner of service authorized in law.

8-701.20 Restriction or Exclusion Order, Hold Order or Summary Suspension. An employee restriction or exclusion order, an order to hold and not distribute food, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order or a summary suspension order shall be:

(A) Served as specified in ¶ 8-701.10(A); or

(B) Clearly posted by the regulatory authority at a public entrance to the food establishment and a copy of the notice sent by first class mail to the permit holder or to the owner or custodian of the food, as appropriate.

8-701.30 When Notice is Effective. Service is effective at the time of the notice's receipt or if service is made as specified in ¶ 8-701.20(B), at the time of the notice's posting.

8-701.40 Proof of Proper Service. Proof of proper service may be made by affidavit of the person making service or by admission of the receipt signed by the permit holder, the person operating a food establishment without a permit to operate, or an authorized agent.

8-8 REMEDIES

Criteria for Seeking Remedies

8-801.10 Conditions Warranting Remedy. The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of this Code if a person in charge of a food establishment or a person who owns or controls food in transport that is intended for commerce:

(A) Fails to have a valid permit to operate a food establishment as specified under §8-301.11;
(B) Violates any term or condition of a permit as specified under §8-304.11;
(C) Allows serious or repeated Code violations to remain uncorrected beyond time frames for correction approved, directed, or ordered by the regulatory authority under ¶¶ 8-405.11(A) and (B), and ¶¶ 8-406.11(A) and (B);
(D) Fails to comply with a regulatory authority order issued as specified in §8-501.20 concerning an employee suspected of having a disease transmissible through food by infected persons;
(E) Fails to comply with a hold order as specified in§§ 8-701.20 and 8-803.10;
(F) Fails to comply with an order issued as a result of a hearing for an administrative remedy as specified in §§ 8-806.30 or 8-806.40; or
(G) Fails to comply with a summary suspension order issued by the regulatory authority as Specified in §§ 8-701.20 and 8-804.10;
(H) Fails to follow an order to discard food as specified in § 8-803.95.

Administrative Remedies

Inspection Orders

8-802.10 Gaining Access to Premises and Records. The regulatory authority may order access for one or more of the following purposes, subject to law for gaining access:

(A) If admission to the premises of a food establishment is denied or other circumstances exist that would justify an inspection order under law, to make an inspection including taking photographs or videos;
(B) To examine and sample the food, equipment, surfaces; and
(C) To examine the records on the premises relating to employee work, or food purchased, received, or used by the food establishment.

8-802.20 Contents of Inspection Order. The regulatory authority's inspection order shall:

(A) Stipulate that access be allowed on or to the described premises, food, or records under the order's provisions;
(B) Provide a description that specifies the premises, food, or records subject to the order; and
(C) Specify areas to be accessed and activities to be performed.

Holding, Examination and Destruction of Food

8-803.10 Hold Order, Justifying Conditions and Removal of Food.

(A) According to time limits imposed by law, the regulatory authority may place a hold order on a food that:
  (1) Originated from an unapproved source;
  (2) May be unsafe, adulterated, or not honestly presented;
  (3) Is not labeled according to law, or, if raw molluscan shellfish, is not tagged or labeled according to law; or
  (4) Is otherwise not in compliance with this Code.
(B) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the order to a place of safekeeping.

8-803.20 Hold Order, Warning or Hearing Not Required. The regulatory authority may issue a hold order to a permit holder or to a person who owns or controls the food, as specified in §8-701.20, without prior warning, notice of a hearing, or a hearing on the hold order.

8-803.30 Hold Order, Contents. The hold order notice shall:

(A) State that food subject to the order may not be used, sold, moved from the food establishment, or destroyed without a written release of the order from the regulatory authority;

(B) State the specific reasons for placing the food under the hold order with reference to the applicable provisions of this Code and the hazard or adverse effect created by the observed condition;

(C) Completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, regulatory authority's tag of identification information, and location;

(D) State that the permit holder has the right to an appeal hearing and may request a hearing by submitting a timely request as specified in §§ 8-805.10 and 8-805.20;

(E) State that the regulatory authority may order the destruction of the food if a timely request for an appeal hearing is not received; and

(F) Provide the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

8-803.40 Hold Order, Official Tagging of Food.

(A) The regulatory authority shall securely place an official tag or label on the food or containers or otherwise conspicuously identify food subject to the hold order.

(B) The tag or other method used to identify a food that is the subject of a hold order shall include a summary of the provisions specified in § 8-803.10 and shall be signed and dated by the regulatory authority.

8-803.50 Hold Order, Food May Not Be Used or Moved.

(A) Except as specified in ¶ (B) of this section, a food placed under a hold order may not be used, sold, served, or moved from the establishment by any person.

(B) The regulatory authority may allow the permit holder the opportunity to store the food in an area of the food establishment if the food is protected from subsequent deterioration and the storage does not restrict operations of the establishment.

8-803.60 Examining, Sampling, and Testing Food. The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code.

8-803.70 Hold Order, Removing the Official Tag. Only the regulatory authority may remove hold order tags, labels, or other identification from food subject to a hold order.

8-803.80 Destroying or Denaturing Food. If a hold order is sustained upon appeal or if a timely request for an appeal hearing is not filed, the regulatory authority may order the permit holder or other person who owns or has custody of the food to bring the food into compliance with this Code or to destroy or denature the food under the regulatory authority's supervision.

8-803.90 Releasing Food from Hold Order. The regulatory authority shall issue a notice of release from a hold order and shall remove hold tags, labels, or other identification from the food if the hold order is vacated.

8-803.95 Condemnation of Food. The regulatory authority may condemn and forbid the sale of, or cause to be removed or destroyed, any food which is adulterated or misbranded or as otherwise stated in § 3-701.11.

Summary Permit Suspension

8-804.10 Conditions Warranting Action. The regulatory authority may summarily suspend a permit

to operate a food establishment if it determines through inspection, or examination of employees, food, records, or other means as specified in this Code, that an imminent health hazard exists, or any violation of § 8-801.10 exists.

8-804.20 Summary Suspension, Warning or Hearing Not Required. The regulatory authority may summarily suspend a person's permit as specified in § 8-804.10 by providing written notice as specified in § 8-701.20 of the summary suspension to the permit holder or person in charge, without prior warning, notice of a hearing, or a hearing.

8-804.30 Contents of the Notice. A summary suspension notice shall state:

(A) That the food establishment permit is immediately suspended and that all food operations shall immediately cease;

(B) The reasons for summary suspension with reference to the provisions of this Code that are in violation;

(C) The name and address of the regulatory authority representative to whom a written request for reinspection may be made and who may certify that reasons for the suspension are eliminated; and

(D) That the permit holder may request an appeal hearing by submitting a timely request as specified in §§ 8-805.10 and 8-805.20.

8-804.40 Time Frame for Reinspection. After receiving a written request from the permit holder stating that the conditions cited in the summary suspension order no longer exist, the regulatory authority shall conduct a reinspection of the food establishment for which the permit was summarily suspended within 2 business days, which means 2 days during which the regulatory authority's office is open to the public.

8-804.50 Term of Suspension, Reinstatement of Permit.

(A) A summary suspension shall remain in effect until the conditions cited in the notice-of suspension no longer exist and their elimination has been confirmed by the regulatory authority through reinspection and other means as appropriate.

(B) The suspended permit shall be reinstated immediately if the regulatory authority determines that the public health hazard or nuisance no longer exists. A notice of reinstatement shall be provided to the permit holder or person in charge.

Hearings Administration

8-805.10 Response to Notice of Hearing or Request for Hearing, Basis and Time Frame.

(A) A person who receives a notice of hearing for an administrative remedy as specified in §§ 8.701.10 through 8.701.40, § 8-801.10, or § 8-805.30(A) and elects to respond to the notice shall file a response to notice as specified in § 8-805.20 within 7 calendar days after service.

(B) A permit applicant may request a hearing regarding the disposition of an application for a new or revised permit if the regulatory authority does not issue or deny the permit within the time frame specified in law.

(C) A permit holder may request a hearing to address concerns about the regulatory authority's denial of application for a permit or request for a special process, or compliance actions, except that a hearing request does not stay the regulatory authority's restriction or exclusion of employees specified in §§ 8-501.10 - 8-501.40, a hold order specified in §8-803.10, or the imposition of a summary suspension specified in § 8-804.10.

(D) A person desiring a hearing in response to a denial of an application for permit or an adverse administrative determination shall submit a hearing request to the regulatory authority within 10 calendar days of the date of the denial, inspection, or compliance action, unless the regulatory authority specifies in certain situations that the request shall be submitted within a shorter period of time.

8-805.20 Response to a Notice of Hearing or Request for Hearing, Required Form and Contents. A response to a hearing notice or a request for hearing as specified in § 8-805.10 shall be in written form and contain the following:

(A) If a response to notice of hearing,
  (1) An admission or denial of each allegation of fact;
  (2) A statement as to whether the respondent waives the right to a hearing; and may also contain a request to the regulatory authority for a settlement of the proceeding by consent agreement, if the regulatory authority will provide this opportunity.

(B) If a request for hearing,
  (1) A statement of the issue of fact specified in ¶ 8-805.30(B) for which the hearing is requested; and
  (2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) If either a response to notice of hearing or a request for a hearing,
  (1) A statement indicating whether the presence of witnesses for the regulatory authority is required; and
  (2) The name and address of the respondent's or requester's legal counsel, if any.

8-805.30 Provided Upon Request. The regulatory authority shall hold hearings according to law and the provisions of this Code:

(A) As determined necessary by law or the regulatory authority to accomplish the purpose and intent of this Code specified in § 8-101.10; and

(B) As requested by a permit applicant or a permit holder if:
  (1) Requested as specified in § 8-805.10, and
  (2) The request demonstrates that there is a genuine and material issue of fact that justifies that a hearing be held.

8-805.40 Provided in Accordance with Law. Hearings shall be conducted according to law, administrative procedures, and this Code.

8-805.50 Timeliness, Appeal Proceeding Within 5 Business Days, Other Proceeding Within 30 Calendar Days.

(A) The regulatory authority shall afford a hearing:
  (1) Except as provided in ¶ (B) of this section, within 5 business days after receiving a written request for an appeal hearing from:
    (a) A person who is excluded by the regulatory authority from working in a food establishment as specified in §§ 8-501.10 - 8-501.40,
    (b) A permit holder or person whose food is subject to a hold order as specified in Subpart 8-803, or
    (c) A permit holder whose permit is summarily suspended as specified in Subpart 8-804; and
  (2) Within 30 calendar days but no earlier than 7 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in ¶ 8-805.10(C) or for matters as determined necessary by the regulatory authority.

(B) A permit holder or person who submits a request for a hearing as specified above in Subparagraphs (A) (1) (a)-(c) of this section may waive the prompt hearing in the written request to the regulatory authority.

8-805.60 Notice, Contents. A notice of hearing shall contain the following information:

(A) Time, date, and place of the hearing;

(B) Purpose of the hearing;

(C) Facts that constitute the basis or reason for the hearing including specific details of violations

or allegations;

(D) The rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in§ 8-807.10;

(E) At the regulatory authority's discretion, the procedure for the respondent to request an offer from the regulatory authority to settle the matter;

(F) The consequences of failing to appear at the hearing;

(G) The maximum sanctions or penalties as specified in ¶¶ 8-806.40(8)(D) that may result from the hearing if the hearing concerns a proposed administrative remedy and if the facts are found to be as alleged;

(H) If the hearing concerns a proposed administrative remedy, a statement specifying the form and time frame for response as specified in § 8-805.10;

(I) Notification that the written response shall include the information specified in § 8-805.20; and

(J) The name and address of the person to whom such written response shall be addressed.

8-805.70 Proceeding Commences Upon Notification. A hearing proceeding commences at the time the regulatory authority notifies the respondent of the hearing proceeding.

8-805.80 Procedure, Expeditious and Impartial. Hearings shall be conducted in an expeditious and impartial manner.

8-805.90 Confidential.

(A) Hearings or portions of hearings may be closed to the public:

(1) If compelling circumstances, such as the need to discuss in the hearing a person's medical condition or a food establishment's trade secrets, indicate that it would be prudent; and

(2) According to law, such as an open meetings law.

(B) A party to a hearing shall maintain confidentiality of discussions that warrant closing the hearing to the public.

8-805.100 Record of Proceeding. A complete record of a hearing shall be prepared under the direction of the person conducting the hearing and maintained as part of the regulatory authority's records for the food establishment. Except as required by law, a verbatim transcript of the hearing need not be prepared.

Hearing Officer, Purpose Qualifications, Appointments and Powers

8-806.10 Appointment by Regulatory Authority and Purpose. The regulatory authority may appoint a person such as an adjudicator, administrative law judge, or examiner, hereinafter referred to as a hearing officer, who presides over a proceeding initiated by the regulatory authority or by a person contesting an action of the regulatory authority, to perform one or more of the following:

(A) Hear the facts presented by an applicant or a permit holder;

(B) Make a decision or recommendation concerning administrative remedies to achieve compliance with this Code; or

(C) Address other concerns or allegations appropriately raised according to law, in the matter before the hearing officer.

8-806.20 Qualifications. A hearing officer shall be knowledgeable of the provisions of this chapter and the law as they relate to hearings, and be:

(A) A regulatory authority representative other than the person who inspects the food establishment or who has any other role in making the decision that is being contested; or

(B) An individual who is not employed by the regulatory authority.

8-806.30 Powers, Administration of Hearings.

(A) A hearing officer shall have the following powers in a hearing in which the hearing officer

presides:

(1) Setting and conducting the course of a hearing requested in accordance with or authorized by this Code,

(2) Issuing subpoenas in the name of the regulatory authority at the request of a party to a hearing, administering oaths and affirmations, examining witnesses, receiving evidence,

(3) Approving a consent agreement on the issues involved in the hearing entered into by the regulatory authority and the respondent after the respondent receives a hearing notice,

(4) Sustaining, modifying, rescinding, or vacating an order or directive of the regulatory authority in an appeal hearing proceeding, and if the order or directive is sustained, ordering appropriate measures to execute the regulatory authority's order or directive; and

(B) Unless a party appeals to the head of the regulatory authority within 15 days of the hearing or a lesser number of days specified by the hearing officer:

(1) Rendering a binding decision and final order in a proceeding after conducting a hearing, if the respondent has not waived the right to a hearing, and

(2) Then notifying the respondent of the decision and the order which contains the findings and conclusions of law.

8-806.40 Powers, Administrative Remedies. The hearing officer shall have the following powers in a hearing proceeding concerning an administrative remedy specified in§§ 8-801.10 and 8-805.30:

(A) Issuing orders to abate or correct violations of this Code and establishing a schedule for the abatement or correction of violations;

(B) Making a finding of fact regarding the occurrence of each violation and assessing, levying, and ordering a reasonable civil penalty, according to law and not to exceed the amount specified in ¶ 8-813.10(B) for each violation of this Code that is alleged and found to be committed, and calculated based on each day a violation occurs as specified in ¶ 8-813.10(C);

(C) Suspending, revoking, modifying, or imposing reasonable restrictions or conditions on a permit to operate a food establishment, or ordering the closure of a food establishment that is operated without a valid permit as required under§ 8-301.11 of this Code;

(D) Making a finding of fact regarding the occurrence of each violation of the regulatory authority's or hearing officer's lawful order issued in accordance with this Code and assessing, levying, and ordering a reasonable civil penalty, in accordance with law and not to exceed the amount specified in ¶ 8-813.10(B) for each violation of this Code that is alleged and found to be committed, and calculated based on each day a violation occurs as specified in ¶ 8-813.10(C);

(E) Deferring or suspending the imposition of a decision or execution of an order, and imposing a probationary period, upon the condition that the respondents comply with the hearing officer's reasonable terms and conditions;

(F) Dismissing the appeal if the matter is settled between the regulatory authority and the respondent after a hearing notice is served;

(G) Ordering reinspection of a food establishment to determine compliance with a hearing officer's order;

(H) Suspending or ordering the payment of a fee established by the regulatory authority for a reinspection that is required to determine compliance and for the reinstatement of a permit after suspension;

(I) Retaining and exercising jurisdiction for a specific period of time not to exceed 90 calendar days after the hearing officer's decision and final order is issued, over a respondent who receives a hearing notice; and

(J) Modifying or setting aside an order by rehearing upon the hearing officer's own motion, the motion of the regulatory authority, or the motion of the respondent.

Rights of Parties and Evidence

8-807.10 Rights of Parties. Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support of their position.

8-807.20 Evidence to be Presented by the Regulatory Authority. The regulatory authority shall present at the hearing its evidence, orders, directives, and reports related to the proposed or appealed administrative remedy.

8-807.30 Evidence to be Excluded. Evidence shall be excluded:

(A) If it is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by the state's courts; or

(B) Otherwise according to law.

8-807.40 Testimony under Oath. Testimony of parties and witnesses shall be made under oath or affirmation administered by a duly authorized official.

8-807.50 Written Evidence. Written evidence may be received if it will expedite the hearing without substantial prejudice to a party's interests.

8-807.60 Documentary Evidence. Documentary evidence may be received in the form of a copy or excerpt.

Settlement

8-808.10 Authorization. The regulatory authority may settle a case after a notice of hearing is served by providing a respondent with an opportunity to request a settlement before a hearing commences on the matter and by entering into a consent agreement with the respondent.

8-808.20 Respondent Acceptance of Consent Agreement Is Waiver of Right to Appeal. Respondents accepting a consent agreement waive their right to a hearing on the matter.

Judicial Remedies

Inspection Orders

8-809.10 Gaining Access to Premises and Records. The regulatory authority may seek access for one or more of the following purposes, according to law for gaining access:

(A) If admission to the premises of a food establishment is denied or other circumstances exist that would justify an inspection order under law, to make an inspection including taking photographs or videos;

(B) To examine and sample the food, equipment, or surfaces; and

(C) To examine the records on the premises relating to employee work, food purchased, received, or used by the food establishment.

8-809.20 Contents of Court Petition. In the absence of a specific set of requirements established by law, in its petition to the court to compel access, the regulatory authority shall:

(A) Describe in detail the premises, food, or records on or to which access was denied;

(B) Detail the legal authority to regulate and to have access for a specific purpose on or to the premises, food, or records where access was denied; and

(C) Provide information that the food establishment possesses a valid permit from the regulatory authority and that it applies to the premises where access was denied; or

(D) Provide information that a person is known to be or suspected of operating a food establishment without possessing a valid permit as specified in law and under this Code.

8-809.30 Sworn Statement of Denied Access. The regulatory authority shall demonstrate to the Court

by affidavit, sworn testimony, or both that:

(A) Access on or to the premises, food, or records was denied after the regulatory authority acted as specified in §§ 8-402.20 and 8- 402.30; or

(B) There is reason to believe that a food establishment is being operated on the premises and that access was denied or is sought under a regulatory authority's reasonable administrative plan to enforce the provisions of this Code.

8-809.40 Contents of an Order. Upon petition of the regulatory authority, the court may issue an inspection order that:

(A) Includes the information specified in ¶¶ 8-802.20(A) - (C); and

(B) Orders or authorizes any other identified agencies and persons including law enforcement agencies to execute, or assist with the execution of, the order.

8-809.50 Optional Contents of an Order. Upon petition of the regulatory authority, the court may further issue an inspection order that:

(A) Provides a maximum time limit for the order's execution;

(B) Authorizes law enforcement officers who assist in the order's execution to use necessary force against persons or property to execute the order; and

(C) Requires that the agencies or persons ordered or authorized to execute the order shall report to the court the date and time of the order's execution and the findings reached by the inspection, examination, or sampling conducted under the order.

Means of Instituting Judicial Enforcement Proceedings

8-810.10 Institution of Proceedings.

(A) Proceedings to enforce this Code may be instituted by the regulatory authority according to law by issuing a citation or summons, by filing a misdemeanor complaint' affidavit and request for a warrant of arrest with the court of competent jurisdiction, or by referring the complaint to a grand jury for indictment, as appropriate.

(B) The regulatory authority may designate a representative to issue summons or citations or sign warrants on behalf of the agency.

Criminal Proceedings

8-811.10 Authorities, Methods, Fines, and Sentences.

(A) The regulatory authority may seek to enforce the provisions of this Code and its orders by instituting criminal proceedings as provided in law against the permit holder or other persons who violate its provisions.

(B) A person who violates a provision of this Code shall be guilty of a misdemeanor, punishable by:

(1) A fine of not more than $500 dollars, or by imprisonment not exceeding 100 days, or both the fine and imprisonment; or

(2) If the person has been convicted once of violating this Code or if there is an intent to defraud or mislead, a fine not exceeding $500 or imprisonment not exceeding 100 days or both.

(C) Each day on which a violation occurs is a separate violation under this section.

Injunctive Proceeding

8·812.10 Petitions for Injunction. The regulatory authority may, according to law, petition a Court of competent jurisdiction for temporary or permanent injunctive relief to achieve compliance with the provisions of this Code or its orders.

Civil Proceedings

8-813.10 Petitions, Penalties, and Continuing Violations.

(A) The regulatory authority may petition a court of competent jurisdiction to enforce the provisions of this Code or its administrative orders and according to law collect penalties and fees for violations.

(B) In addition to any criminal fines and sentences imposed as specified in§ 8-811.10, or to being enjoined as specified in § 8-812.10, a person who violates a provision of this Code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this Code, or to any term, condition, or limitation of a permit issued as specified in §§ 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding $500.

(C) Each day on which a violation occurs is a separate violation under this section.

Chapter 9: Modified Food Establishments

9-101.10 Compliance Requirements for Temporary Food Establishments. It is the intent of these regulations to require the following establishments or business types to comply with all sections of the Joplin Food Service Sanitation Ordinance and other applicable City of Joplin ordinances and Codes not specifically waived or modified below in §§ 9-101.11 – 9-101.14.

(A) All applicable City of Joplin permits must be obtained before food can be prepared or dispensed.

(B) With nonprofit status, organizations are exempt from the regulations of a Temporary Food Establishment as stated in the Chapter 196, RSMo.

9-101.11 Conventional Temporary Food Establishments. Conventional Temporary Food Establishment means a food establishment that operates for a period of no more than fourteen (14) consecutive days in conjunction with a single event or celebration as defined in Chapter 1. Conventional Temporary Food Establishments are those that prepare, serve or sample food in conjunction with fairs, festivals, promotional events or similar venues, including sampling at farmer's markets.

9-101.12 Deviations for Conventional Temporary Food Establishments. The following deviations shall apply to Conventional Temporary Food Establishments:

(A) Facilities will not be required to operate inside a fully enclosed structure if:
  (1) Watertight overhead covering that spans the entire work area, including food preparation, dishwashing and food storage areas is provided; and
  (2) There are no significant vectors present.

(B) Facilities will be allowed to cook food on an outdoor grill/smoker provided that;
  (1) All food preparation is conducted within the confines of overhead covering;
  (2) The grill/smoker is designed with a lid to afford protection from the elements;
  (3) The grill/smoker is able to achieve proper cooking and holding temperature requirements; and
  (4) Once food is removed from grill/smoker, it must be protected during transport from environment and temperature abuse.

(C) Facilities using ice to cool food as allowed must provide drainage for the container to prevent standing water.

(D) Facilities will not be required to provide a permanent plumbing system if:
  (1) Potable water and sewer utilities cannot be readily obtained; and
  (2) The facility meets the applicable requirements of Chapter 5.

(E) Unless a facility is offering only pre-packaged foods, a fully equipped and functional handwashing station shall be provided and available for use within 25 ft of food preparation areas with a direct unobstructed path.

(F) Facilities operating longer than 24 consecutive hours will not be required to have a three compartment sink if:
  (1) The operator has an approved Commissary to return to on a daily basis to wash utensils by an approved method;
  (2) The event is less than 24 hours in duration and the operator provides adequate spare utensils to get through the operating period; or
  (3) The operator develops a menu and processes that does not require any warewashing activity while in operation, such as the use of single service articles.

(G) Facilities are required to have access to restrooms for employees.

(H) Facilities must be located as far as reasonably possible from vectors of disease.

9-101.13 Non-Conventional Temporary Food Establishments. Non-Conventional Temporary Food Establishment means a food establishment that operates for a period that may exceed fourteen (14)

consecutive days with prior authorization from the Joplin Health Department. It is not the intent of this regulation to authorize Non-Conventional Temporary Food Establishments to operate year-round. The Joplin Health Department reserves the right to determine if an individual Non-Conventional Temporary Food Establishment will be authorized to continue operations in exceedance of fourteen (14) days. Food items served will be limited to pre-packaged frozen meats, non-Potentially Hazardous Foods or sampling of Ready-To-Eat foods. Non-Conventional Temporary Food Establishments are those that prepare, serve or sample food in conjunction with promotional events, seasonal retail stands or other venues as determined by the Department. Types of approved facilities include, but are not limited to, the following with specific requirements as detailed in § 9-101.14.

9-101.14 Deviations for Non-Conventional Temporary Food Establishments. The following deviations shall apply to Non-Conventional Temporary Food Establishments:

(A) Outdoor promotional cooking must be sponsored by and located adjacent to the supporting licensed and permanent food establishment providing full access to all necessary equipment to facilitate food related activities.
  (1) Facilities will be allowed to cook food on an outdoor grill/smoker provided that;
    (a) All food preparation is conducted inside an approved facility;
    (b) The grill/smoker is designed with a lid to afford protection from the elements;
    (c) The grill/smoker is able to achieve proper cooking and holding temperature requirements; and
    (d) Once food is removed from grill/smoker, it must be protected during transport from environment and temperature abuse.
    (e) A fully equipped and functional handwashing station shall be provided and available for use

(B) Seasonal retail stands are limited to preparing, selling or sampling simple foods, such as Ready-To-Eat Potentially Hazardous Foods, including but not limited to dips, cheese, smoked sausages, or non-Potentially Hazardous Foods, including but not limited to roasted nuts. Seasonal retail stands must operate inside a shopping center or other similar structure providing full access to all necessary equipment to support food related activities.
  (1) Seasonal retail stands shall not be required to provide the following:
    (a) A permanent plumbing system if:
      (i) Potable water and sewer utilities cannot be readily obtained; and
      (ii) The facility meets the applicable requirements of Chapter 5.
    (b) A three compartment sink if:
      (i) The operator develops a menu and processes that does not require any warewashing activity while in operation, such as the use of single service articles; or
      (ii) The operator has an approved Commissary to return to on a daily basis to wash utensils by an approved method.
    (c) A mop sink if the operator provides an approved written contract to the regulatory authority allowing for the use of sinks in an approved host facility; and
    (d) A hand sink if only prepackaged foods are offered.
  (2) Facility must provide a written contractual agreement granting permission for the use of approved shared equipment not specified above.
  (3) Facility must provide adequate sneeze shields or counter protective device for display and service to protect foods from contamination.
  (4) If food is prepared offsite, the food must be made in an approved food establishment and protected from environmental contamination and temperature abuse during transport.

(C) Pre-packaged frozen meat may be sold out of a truck or other approved structure provided that:
(1) The meat must remain in a frozen state at all times; and
(2) The meat must be protected from environmental contamination at all times.

9-201.10 Compliance Requirements for Mobile Food Establishments. It is the intent of these regulations to require the following establishments or business types to comply with all sections of the Joplin Food Service Sanitation Ordinance not specifically waived or modified below in § 9-202.10.

(A) All Mobile Food Establishments must conform to other City of Joplin ordinances and Codes as applicable.
(B) All applicable City of Joplin permits must be obtained before food can be prepared or dispensed.
(C) All Mobile Food Establishments are required to report daily to an approved Commissary for servicing.
(1) A Commissary must be permitted by the Joplin Health Department if located within Joplin city limits and meet all applicable standards.
(2) If located outside of Joplin city limits, the operator must show proof that the Commissary possesses a valid license or permit and has had a satisfactory inspection from the appropriate regulatory authority for that location within the past 12 months.
(3) If the operator does not own the Commissary, an approved written contract must be provided to the regulatory authority allowing for the use of an approved Commissary.

9-201.11 Mobile Food Establishments. Mobile Food Establishment means a food establishment selling, offering for sale, or dispensing food for human consumption from any vehicle or a readily movable unit with wheels. The classifications for Mobile Food Establishments are as follows:

(A) Mobile Food Vehicle means a self-contained food establishment that is fully enclosed with walls, floors and ceilings with service windows and doors, designed to be readily movable from which food is composed, compounded, processed or prepared and from which food is vended, sold or given away.
(B) Pushcart means a vehicle designed to be readily movable, serving non-Potentially Hazardous Foods or fully cooked heat-&-serve Potentially Hazardous Foods maintained at proper temperatures. Unpackaged, non-Potentially Hazardous Foods approved for sale from a pushcart shall be limited to popcorn, pretzels and similar bakery products, shaved ice, snow cones, cut non-Potentially Hazardous Food produce, cracked nuts or nutmeats.
(1) Low Risk Pushcarts are limited to serving non-Potentially Hazardous Foods or fully cooked heat-&-serve Potentially Hazardous Foods such as, but not limited to, frankfurters and pre-made pizza.
(2) High Risk Pushcarts are limited to serving commercially-prepared, fully cooked heat-&-serve Potentially Hazardous Foods such as, but not limited to, chili and barbeque beef.
(C) Food Peddler means a retail food establishment operating from a vehicle designated to be readily movable from which commercially-made Potentially Hazardous Foods that are pre-packaged, portioned and kept in ready-to-eat units, such as frozen or refrigerated foods, can be vended, sold or given away. A food peddler cannot compose, compound, thaw, reheat, cut, cook, process or prepare the food being sold or given away.
(D) Commissary means an approved Food Establishment to which a Mobile Food Establishment or transportation vehicle returns to daily for servicing of vehicles and equipment, including the storage and preparation of food.

9-202.10 Deviations for Mobile Food Vehicles. The following deviations shall apply to Mobile Food Vehicles:

(A) Mobile Food Vehicles will not be required to:
(1) Provide a permanent plumbing system if:
(a) Potable water and sewer utilities cannot be readily obtained; and
(b) The facility meets the applicable requirements of Chapter 5;
(2) Provide restrooms;
(3) Provide a mop sink provided that a mop sink is located in the Commissary;
(4) Provide a handwashing sink if only unopened pre-packaged foods are offered.
(B) Mobile Food Vehicles will be required to meet the following additional requirements:
(1) Mechanical cold- and hot-holding equipment to maintain proper food temperatures.
(2) Pressurized hot and cold running water at an approved handwashing sink.
(3) All food preparation must occur inside the Mobile Food Vehicle, except at the Commissary.
(C) Mobile Food Vehicles must report daily to an approved Commissary.

9-202.11 Deviations for Pushcarts. The following deviations shall apply to Pushcarts:
(A) All of the deviations in §§ 9-202.10 (A) - (C) apply to Pushcarts.
(B) Pushcarts will not be required to be fully enclosed.
(C) Pushcarts will be required to meet the following additional requirements:
(1) Low Risk Pushcarts are required to provide:
(a) a handwashing sink; and
(b) mechanical hot-holding equipment if serving Potentially Hazardous Foods.
(2) High Risk Pushcarts are required to provide:
(a) a handwashing sink;
(b) a three compartment sink; and
(c) mechanical cold- and hot-holding equipment.
(3) All food preparation and food storage shall occur on the Pushcart or in the Commissary.
(4) Low Risk Pushcarts shall provide adequate spare utensils to last for the operational period between commissary visits.
(4) Spigots for coffee and soft drinks shall be kept covered at all times except when drinks are being drawn, unless other protection is provided.
(5) Potentially Hazardous Foods shall be discarded at the end of the daily operational period, except for those held under proper cold-holding temperature by mechanical refrigeration.
(6) Pushcarts shall provide watertight overhead covering that spans the entire work area, including food preparation, dishwashing and food storage areas.
(7) Pushcarts shall be constructed of approved materials. The facility shall contact the regulatory authority to ensure that Pushcart construction is acceptable.
(8) Pushcart sites shall be chosen to minimize exposure to environmental contamination.

9-202.12 Deviations for Food Peddlers. The following deviations shall apply to Food Peddlers:
(A) All of the deviations in §§ 9-202.10 (A) - (C) apply to Food Peddlers.
(B) Food peddlers will not be required to provide a hand washing sink.
(C) Food peddlers will be required to meet the following additional requirements:
(1) Provide an approved Commissary as stated in § 9-301.10(B); and
(2) Provide watertight overhead covering that spans the entire food storage area.

9-301.10 Compliance Requirements for Farmers Markets. It is the intent of these regulations to require the following establishments or business types to comply with all sections of the Joplin Food Service Sanitation Ordinance and other applicable City of Joplin ordinances and Codes not specifically waived or modified below in § 9-302.10.

(A) All applicable City of Joplin permits must be obtained before food can be prepared or dispensed.
(B) With nonprofit status, organizations are exempt from the regulations of a Farmers Market as stated in Chapter 196, RSMo.

9-301.11 Farmers Markets. A Farmers Market means a prescribed location(s) where two or more producers gather on set days and times to sell or dispense agricultural products and/or other related food products directly to consumers. The sale of agriculture products is the primary business of the market. This does not include individual farmers who grow and sell whole uncut fruits and vegetables from the farm, roadside or truck.

9-302.10 Rules and Deviations for Farmers Markets. The following rules and deviations shall apply to Farmers Market:

(A) Adequate refrigeration such as mechanical must be provided to maintain products at the following temperatures:
  (1) Raw meat, fish and poultry must be held frozen;
  (2) Shell eggs must be held at 45°F or below; and
  (3) PHFs must be held at 41°F or below.
(B) Facilities are not allowed to sell raw unpasteurized milk or unpasteurized milk products, including soft cheeses, per Joplin City Ordinance 62-142.
(C) Raw and processed meat products such as, but not limited to, bacon, jerky and sausage, shall either meet exemptions as specified by law or bear the Missouri Department of Agriculture or USDA stamp of inspection and meet all labeling requirements.
(D) Dairy products including but not limited to milk, cheese, yogurt and butter must be produced in a State Milk Board Regulated facility.
(E) Operators must meet approval from FDA process standards for certain food products, such as, but not limited to:
  (1) Acidified and low acid foods such as, but not limited to, salsa and canned vegetables;
  (2) Fermented foods such as, but not limited to, kimchee, sauerkraut and kambucha; and
  (3) Canned products must meet approval except for products defined in § 1-201.10 under Food Establishment (3)(h)(i).
(F) Facilities preparing, dispensing or sampling Potentially Hazardous Foods shall meet the requirements of a Temporary Food Establishment.
(I) Facilities are required to have access to restrooms for employees.
(G) Facilities must be located as far as reasonably possible from vectors of disease.

9-401.10 Compliance Requirements for Cottage Foods. Cottage Food Production Operations must comply with all requirements as set forth in Chapter 196, RSMo, Section 196.268.

9-402.11 Rules and Deviations for Cottage Food. The regulatory authority has the final decision making authority of what foods may be produced and sold as Cottage Foods.

9-401.12 Cottage Food Sales. Direct sales to the end consumer shall be made from the domestic residence or individual stand.

9-402.13 Inspection or Investigation. In the event of a foodborne outbreak involving a Cottage Food, the regulatory authority has the authority to conduct an inspection and/or investigation of the operation.

9-401.14 Embargo. In the event that any Cottage Food is found to be unsafe, adulterated, or otherwise unfit for human consumption, the regulatory authority has the authority to confiscate or destroy the product.

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stored in sanitizer, 3-304.14
use limitations, 3-304.14
Wood, use limitation for food-contact surfaces, 4-101.17
Wrapped tableware, handling, 4-904.11 to 4-904.1

NEW BUSINESS

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1. Discussion and vote to charge the Financial Oversight Committee with looking at our purchasing procedures and other items the council may charge them with.

2. News/Announcements from Public Information Office, Lynn Onstot