AMENDED BILL NO. 2016-014 ORDINANCE NO. _____

AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT CONSISTING OF THE ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF A FROZEN FOODS MANUFACTURING FACILITY; AUTHORIZING THE CITY OF JOPLIN, MISSOURI TO ISSUE ITS TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED $44,250,000 TO FINANCE THE COSTS OF SUCH PROJECT; AUTHORIZING AND APPROVING CERTAIN DOCUMENTS; AND AUTHORIZING CERTAIN OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS.

WHEREAS, the City of Joplin, Missouri (the "City") is a constitutional charter city and municipal corporation of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

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

WHEREAS, DEF, LLC, a Missouri limited liability company (the "Company"), has proposed a project consisting of acquiring, constructing, improving, purchasing, equipping and installing a frozen foods manufacturing facility on approximately 26 acres of land located on the north side of East 32nd Street at the intersection of East 32nd Street and Prairie View Road in the City (the "Project"); and

WHEREAS, the City, in accordance with Section 100.050 of the Act, prepared a plan for industrial development (the "Plan"), gave notice of the Plan on October 18, 2016 by mail to the taxing jurisdictions in accordance with Section 100.059.1 of the Act, and held a public hearing regarding the Plan on November 7, 2016, during which hearing those in attendance were given the opportunity to provide comments with respect to the Plan; and

WHEREAS, the City now desires to approve the Plan; and

WHEREAS, the City desires to finance the costs of the Project out of the proceeds of industrial development revenue bonds to be issued under the Act (the "Bonds"); and

WHEREAS, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City proceed with the issuance of the Bonds for the purpose described above; and

WHEREAS, Section 4.23 of the City Charter requires that all bonds sold by the City be sold at public sale upon sealed proposals after at least fifteen days' notice in a newspaper published in Joplin, Missouri; and

WHEREAS, a notice of sale was published in the *Joplin Globe* on November 4, 2016 inviting potential bond purchasers to submit bids for the Bonds and the City has received one bid for the bonds; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with approval of the Plan and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

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

Section 1. Promotion of Economic Development. The Council hereby finds and determines that the Project will promote the economic welfare and the development of the City, and the issuance of the Bonds by the City to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act.

Section 2. Approval of Plan. The Council hereby approves the Plan attached hereto as **Exhibit A** in accordance with Section 100.050 of the Act.

Section 3. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (DEF, LLC Project), Series 2016, in an aggregate principal amount not to exceed $44,250,000, for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the herein authorized Trust Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate, shall be in such form, shall be subject to redemption, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Trust Indenture upon the execution thereof, and the signatures of the officers of the City executing the Trust Indenture shall constitute conclusive evidence of their approval and the City's approval thereof.

The City hereby determines that the sealed proposal for purchase of the bonds submitted by the company was the only bid submitted at the public sale of the Bonds and that it is in the best interest of the City to accept the bid submitted by the Company. The sale of the Bonds to the Company at the interest rate and upon the terms set forth in the Trust Indenture is hereby approved.

Section 4. Limited Obligations. The Bonds and the interest thereon shall be limited obligations of the City payable solely out of the payments, revenues and receipts derived by the City from the herein authorized Lease Agreement, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Trust Indenture. The Bonds and the interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional provision, statutory limitation or City Charter provision and shall not constitute a pledge of the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefore or to make any appropriation for their payment.

Section 5. Approval and Authorization of Documents. The following documents (the "City Documents") are hereby approved in substantially the forms presented to the Council at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the City Documents with such changes therein as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture dated as of the date set forth therein (the "Trust Indenture"), between the City and Commerce Bank, as trustee (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge and assign the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Trust Indenture;

(b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Company, under which the City will provide funds for the acquisition, construction, improvement and equipping of the Project and lease the Project to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds;

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the Company agrees to purchase the Bonds;

(d) Performance Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the City has granted the Company certain rights with respect to the abatement of ad valorem real property taxes on the Project in consideration for the Company's agreement to pay certain payments in lieu of taxes; and

Section 6. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor, City Manager or Finance Director of the City is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 7. Further Authority. The Mayor, City Manager, Finance Director, City Clerk and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents. The Mayor is authorized to grant on behalf of the City such consents and waivers relating to the Bonds, the Trust Indenture, the Performance Agreement or the Lease Agreement as may be requested during the term thereof and as the Mayor may deem appropriate with the advice and counsel of city staff; provided, such consents and/or waivers shall not increase the principal amount of the Bonds, increase the term of the Lease or the tax exemption as provided for therein, or materially change the nature of the transaction. The name of the single purpose entity, DEF, LLC shall be inserted in all of the related documents as the legal entity for the Project.

Section 8. Effective Date. This Ordinance shall take effect and be in full force from and after its passage and adoption by the City Council and approval by the Mayor.

PASSED by the City Council of the City of Joplin, Missouri and APPROVED by the Mayor this _____ day of December, 2016.

[SEAL]

_____
MICHAEL L. SEIBERT, MAYOR

ATTEST:

_____
Barbara L. Hogelin,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT