CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2020-163 - Agreement for Sewer Service and Sewer Assessment (Ledford Construction & Development Company, LLC)

MEETING DATE
November 16, 2020

ORIGINATING DEPT
Public Works

ATTACHMENTS
CB 2020-163 Ordinance; Agreement for Sewer Service; Location Map

REVIEWED BY
Director of Public Works – David Hertzberg, Director of Finance – Leslie Haase, City Attorney – Peter C. Edwards, City Manager – Nicholas Edwards

SUMMARY
This Council Bill approves an Agreement with Ledford Construction & Development Company L.L.C., for Sewer Service and Sewer Assessment.

BACKGROUND
In 2018 the City was approached by a developer wishing to subdivide a tract of land for residential development consisting of approximately 600 homes. City staff reviewed the potential capacity available in the collection system that would serve the development and found that there was not enough sewerage capacity available for 600 homes. The developer's engineers evaluated the collection system and reached the same conclusion. City staff contracted with Allgeier Martin and Associates to perform a study of the collection system serving this area and to provide options and cost estimates for improving the system to provide more capacity for development. The engineering report was completed in December of 2018 and has been used during discussions between City staff, property owners and developers to incorporate into the agreement. This agreement allows the City to collect a surcharge of 30% on all sewer charges collected from sewer users connecting to the improved collection system within the property described in this agreement. The funds collected will pay for half of the cost, plus interest of the Phase 1 and Phase 2 improvements needed to increase the available sanitary sewer capacity of the sewer collection system. The total cost of Phase 1 is estimated to be $233,750; the total cost of Phase 2 is estimated to be $2,867,370. The total capacity gained from the improvements will be split with half being reserved by the City for industrial or commercial development and the remainder is reserved for residential development. The industrial and commercial developments will also pay the 30% surcharge but the amount to be paid for by the surcharge is half of the total cost, plus interest. Approving this Agreement is consistent with the goal of the sanitary sewer department to provide sanitary sewer service to as many homes and businesses as possible. Ledford's subdivision, Eagles Edge, contains 152 residential lots.

FUNDING SOURCE

Sewer improvement projects will be funded from the sanitary sewer fund with the funds collected from the 30% surcharge paying for half, plus interest.

RECOMMENDATION

Staff recommends adoption of this Council Bill on First Reading and moving it to Second and Third Reading.

AGREEMENT FOR SEWER SERVICE
AND SEWER ASSESSMENT

THIS AGREEMENT made and entered into this _____ day of September, 2020, by and between Ledford Construction & Development Company, L.L.C., a Missouri Limited Liability Company (hereinafter referred to as "Owner"), and the City of Joplin, Missouri, a Missouri Municipal Corporation (hereinafter referred to as "City"). City's mailing address is 602 S. Main St., Joplin, MO 64801.

WHEREAS, Owner owns certain real estate (hereinafter referred to as "the Property"), said real estate being described as follows:

"Legal Description is attached as Exhibit A"

WHEREAS, Owner desires that City construct, maintain, and repair certain improvements to treat the sewage of and from the Property upon the terms, conditions, and considerations hereinafter set forth.

NOW THEREFORE, the parties do hereby agree as follows:

1. Phase 1 Improvements.

a. City's Responsibilities. City shall engineer, construct, maintain, and repair all sewage collection system sewer main lines to make sanitary sewer service available to the Property. City shall construct, maintain, and repair improvements to the 20th Street Lift Station to increase pumping capacity to 400 gpm. Specifically, these improvements are projected to include Duplex 400 gpm, 83 hp submersible pumps. The cost estimate of these improvements is $162,250.00. City shall, at Owner's expense, construct, maintain, and repair improvements to the 20th Street Lift Station to increase flow equalization. Specifically, these improvements are projected to include two 10' diameter by 22' deep flow equalization basins. The cost estimate of these improvements is $71,500.00. City shall advance the cost of the improvements. These improvements, including the design, engineering, and construction thereof, as well as the actual cost of improvements, are subject to change at City's sole discretion.

b. Owner's Responsibilities. Owner shall, at its expense, acquire and dedicate any and all necessary easements, now and in the future, to City for construction, maintenance, and repair of improvements. In the event that additional easements or right

of way is required, City may, at Owner's expense, acquire easements for construction, maintenance, or repair of improvements. Owner shall, at its expense, construct, maintain, and repair all sewer lateral lines extending from sewer main lines to the Property. Owner, at its expense, shall construct a sewage collection system as part of its development of the property from the lateral lines to the lift station, and this collection system shall be dedicated to the City upon completion. Owner shall repay City for the actual cost of improvements as provided in paragraphs 4 and 5 herein. Owner's obligation to pay shall be a covenant that runs with the land and bind its successors and assigns, and any subsequent owners of any part of the Property in accordance with the terms of this Agreement.

2. Phase 2 Improvements.

a. City's Responsibilities. After such time as City determines that fifty percent (50%) of the capacity created by the Phase 1 Improvements has been used, City shall design, engineer, construct, maintain, and repair improvements to the 20th Street Lift Station and Lift Station #19. Specifically, flow from the 20th Street Lift Station will be eliminated from the Lift Station #19 basin and directly piped to the Shoal Creek WWTP. The cost estimate of these improvements is $2,867,370. City shall advance the cost of the improvements. These improvements, including the design, engineering, and construction thereof, as well as the actual cost of improvements, are subject to change at City's sole discretion.

b. Owner's Responsibilities. Owner shall, at its expense, acquire and dedicate any and all necessary easements, now and in the future, to City for construction, maintenance, and repair of improvements. City may, at Owner's expense, acquire easements for construction, maintenance, or repair of improvements. Owner shall, at its expense, construct, maintain, and repair all sewage collection system sewer lateral lines extending from sewer main lines to the Property. Owner shall repay City for the actual cost of improvements as provided in paragraphs 4 and 5 herein. Owner's obligation to pay shall be a covenant that runs with the land and bind its successors and assigns, and any subsequent owners of any part of the Property in accordance with the terms of this Agreement.

3. Maintenance and Repair. City shall be responsible for maintenance and repair of the Property's sewage collection system sewer main lines. Owner shall be responsible for maintenance and repair of the Property's sewage collection system sewer lateral lines in accordance with the Joplin City Code.

4. Payment Obligation of Owner and Rates for Service. It is the intent of this Agreement that Owner, its successors and assigns, and any subsequent owners of any part of the Property pay fifty percent (50%) of the total actual cost of Phase 1 Improvements and Phase 2 Improvements. Owner plans to construct a subdivision or sell all or part of the Property for a subsequent owner to construct a subdivision and it is agreed that each residential home located on the Property will be responsible for the monthly service rates and surcharge set forth in this paragraph. Owner, its successors and assigns, and any subsequent owners of any part of the Property shall be assessed fees for "in city" sewer service pursuant to the rates established by Section 118-202 of the City of Joplin Code of Ordinances, plus a thirty percent (30%) surcharge. Said surcharge shall be assessed until fifty percent (50%) of the total actual cost of Phase 1 Improvements and Phase 2 Improvements, plus interest computed at 2.75% per annum, has been fully paid, at which time the surcharge shall cease. Said fees shall be due from any owner of any part of the Property receiving sewer service, regardless of whether the user is residential, commercial, or industrial. Total actual cost includes engineering and design and all construction and related costs.

5. Payment Schedule. Owner, its successors and assigns, and any subsequent owner of any part of the Property shall pay City for any fees for sanitary sewer service assessed pursuant to the terms of the sewer bills that are sent by City.

6. City's Reservation of Capacity from Phase 2 Improvements. City reserves fifty percent (50%) of the increased sewer capacity from the Phase 2 Improvements for allocation and use by City at its sole discretion.

7. Development of the Property. Owner agrees that the Property is governed by the Joplin City Code, including but not limited to the building code, fire code, and zoning. Owner agrees that any construction or development of the Property shall conform to all requirements of the Joplin City Code. Owner agrees that any construction or development of the Property shall conform with all requirements of City's Standard

Specifications. Any addresses at the Property shall conform to the City's standard numbering system. This paragraph 7 shall survive termination of this Agreement and shall be a covenant that runs with the land.

8. Annexation.

a. The parties agree that the annexation agreement contained in the January 15, 2008 Agreement for Sanitary Sewer Construction and Treatment Services between that parties shall be strictly followed. In addition, all property that is served by sanitary sewer under this Agreement shall be annexed into the City prior to the sanitary sewer being connected to the City's sewer line.

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

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

d. Owner, its successors and assigns, agrees not to take any action to oppose any annexation initiated by the City or by any other property owners which includes the Property.

e. This paragraph 8 shall survive termination of this Agreement and shall be a covenant that runs with the land.

9. Amendments. The covenants and obligations herein contained are the full and complete terms of this Agreement, and no alteration, amendments, or changes to such terms shall be binding unless first reduced to writing and executed with the same formality as this Agreement.

10. Binding Effect. This Agreement shall be binding upon the parties hereto, their heirs, executors, administrators, legal representatives, successors, and assigns, and shall be binding in the event of the death or legal disability of the parties. This Agreement shall be recorded in the Recorder's Office and shall run with the land and bind all successor owners of any real estate described above.

11. Compliance with Law. Owner shall comply with all laws at all times, including the Missouri Revised Statutes and the City of Joplin Code of Ordinances.

12. Entire Agreement. This instrument embodies the whole Agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties.

13. Governing Law and Venue. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Missouri, both as to interpretation and performance. Venue shall exclusively lie in the Circuit Court of Jasper County, Missouri.

14. Headings. The headings hereof are intended as guides only and shall not be construed as having any legal effect.

15. Indemnification. Owner hereby assumes all risk of, and responsibility for, and agrees to indemnify and save harmless City, from and against any and all claims, demands, suits, actions, recoveries, judgments, costs, and expenses, including reasonable attorney's fees and expenses, therewith made, brought or obtained on account of the loss of life or property or injury or damage to the person or property of any person or persons whomsoever, whether such person or persons be City, its agents or employees, or Owner, its agents or employees, or any third-person in any way connected with the parties hereto, which loss of life or property, or injury or damage to persons or property, shall be due to, or arise out of, result from, or be in any way connected with, this Agreement.

16. Severability. The clauses of this Agreement are independent and several and should any part or portion of this Agreement be adjudicated to be void, this finding shall have no effect upon the remaining body of the Agreement, and it shall remain in full force and effect.

17. Waiver. City's rights under this Agreement shall not be affected by its prior failure to require the performance by Owner, nor shall the waiver by City of a breach of any term hereof constitute a waiver of any succeeding breach of the same or any other term or constitute a waiver of the term itself. A waiver of any right or obligation hereunder must be in writing and signed by the parties to this Agreement.

18. Termination. City may terminate this Agreement upon the failure of Owner to comply with the terms of this Agreement or any amendments thereto after ninety (90) days' notice by City to Owner.

19. Effective Date. This Agreement shall be in full force and effect after passage of an appropriate ordinance by City.

IN WITNESS THEREOF, this Agreement is executed this _____ day of September, 2020.

CITY OF JOPLIN

_____
Nicholas Edwards
City Manager

ATTEST:

_____
Barbara J. Gollhofer
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards
City Attorney

LEDFORD CONSTRUCTION &
DEVELOPMENT COMPANY, L.L.C.

_____
By: Lance Ledford
Its: Owner

STATE OF MISSOURI)
)ss
COUNTY OF JASPER)

ACKNOWLEDGEMENT OF LIMITED LIABILITY COMPANY

On this 30th day of October, in the year **2020**, before me, a Notary Public in and for said state, personally appeared Lance Ledford, of Ledford Construction* known to me to be the person who executed the foregoing instrument in behalf of said limited liability company and acknowledged to me that _____ executed the same for the purposes therein stated.

* Development Company LLC

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in Joplin Mo, the day and year above written.

My term expires February 25th, 2023.

Natalia Breanne Going Mrs
Notary Public

Natalia Breanne Going Mrs
Notary Public-Notary Seal
State of Missouri, Jasper County
Commission #18895116
My Commission Expires February 25, 2023

ANDERSON ENGINEERING
EMPLOYEE OWNED

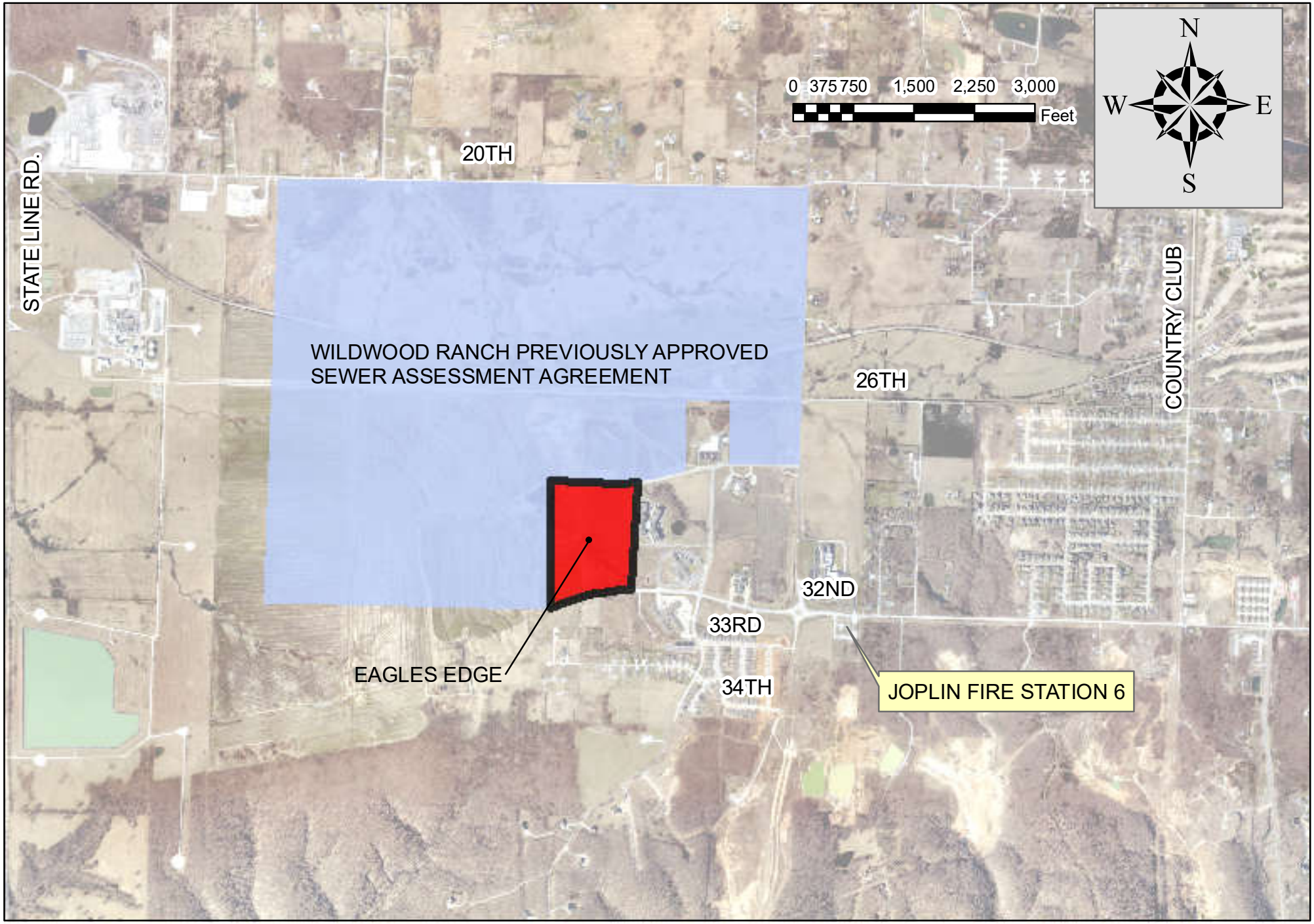
AndersonEngineeringInc.com
811 E. 3rd Street.
Joplin, MO 64801
417-782-7399

EXHIBIT A

BOOK 2528, PAGE 23
PART OF A TRACT OF LAND DESCRIBED IN BOOK 1962, PAGE 1457 IN THE RECORDER OF DEEDS OFFICE IN JASPER COUNTY, MISSOURI, BEING PART OF SECTION 13, TOWNSHIP 27 NORTH, RANGE 34 WEST, JASPER COUNTY, MISSOURI, DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND ALUMINUM MONUMENT AT THE SOUTHEAST CORNER OF SAID SECTION 13; THENCE NORTH 88°40'30" WEST ALONG THE SOUTH LINE THEREOF, 2027.47 FEET TO A POINT ON THE EAST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 2501, PAGE 39 IN THE RECORDER OF DEEDS OFFICE IN JASPER COUNTY, MISSOURI; THENCE NORTH 0°00'00" EAST ALONG THE EAST LINE THEREOF, 220.09 FEET TO A FOUND 1/2" IRON BAR AT THE NORTHEAST CORNER OF SAID TRACT OF LAND, BEING THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE ALONG THE NORTH LINE OF SAID TRACT OF LAND 634.24 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2955.00 FEET AND A CHORD BEARING SOUTH 80°32'34" WEST, 633.03 FEET; THENCE CONTINUING ALONG SAID NORTH LINE 510.49 FEET ON A REVERSE CURVE HAVING A RADIUS OF 1545.00 FEET AND A CHORD BEARING SOUTH 83°51'34" WEST, 508.17 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND; THENCE NORTH 86°40'29" WEST, 153.52 FEET; THENCE NORTH 1°30'00" EAST, 1588.59 FEET; THENCE SOUTH 88°30'00" EAST, 1088.01 FEET; THENCE 195.86 FEET ON A CURVE TO THE LEFT HAVING A RADIUS OF 1970.00 FEET AND A CHORD BEARING NORTH 88°39'06" EAST, 195.78 FEET; THENCE SOUTH 1°49'48" WEST ALONG THE WEST LINE OF A TRACT OF LAND DESCRIBED IN BOOK 2398, PAGE 218 AND AN EXTENSION THEREOF, 1325.25 FEET; THENCE SOUTH 0°12'03" EAST, 90.13 FEET TO THE POINT OF BEGINNING. CONTAINS 44.60 ACRES, MORE OR LESS, SUBJECT TO ANY EXISTING EASEMENTS.

EAGLES EDGE - SEWER SERVICE AND SEWER ASSESSMENT AGREEMENT



COUNCIL BILL NO. 2020-163 ORDINANCE NO.

AN ORDINANCE authorizing the City of Joplin, Missouri, to enter into an Agreement with Ledford Construction & Development Company, L.L.C., a Missouri Limited Liability Company, for the purpose of providing sanitary sewer service; and authorizing the City Manager or his designee to execute said Agreement by and on behalf of the City of Joplin.

WHEREAS, Ledford Construction & Development Company, L.L.C., owns certain real property more particularly described in the Agreement, a true and accurate copy of said Agreement being attached hereto and incorporated by reference as "Exhibit A";

WHEREAS, Ledford Construction & Development Company, L.L.C., desires that City design, engineer, construct, maintain, and repair certain improvements for sanitary sewer service to said real property. The estimated cost of the Phase 1 improvements is $233,750. The estimated cost of the Phase 2 improvements is $2,867,370;

WHEREAS, City agrees to advance the costs of said improvements;

WHEREAS, Ledford Construction & Development Company, L.L.C., its successors and assigns, and any subsequent owners of any part of said real property, agree that the actual costs of said improvements shall be recovered by a 30% surcharge on any and all sewer service charges established by Section 118-202 of the Joplin City Code for said real property until the actual costs of said improvements, plus interest computed at 2.75% per annum, have been fully paid; and

WHEREAS, City and Ledford Construction & Development Company, L.L.C., agree that City reserves fifty percent (50%) of the increased sewer capacity created by said improvements for allocation and use by City at its sole discretion.

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

Section 1. That the agreement with Ledford Construction & Development Company, L.L.C. for the purpose of providing sanitary sewer service, a true and accurate copy of said Agreement being attached hereto and incorporated by reference as "Exhibit A," be and the same is hereby approved.

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

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this _____ day of _____, 2020, by a _____ vote.

_____
Ryan D. Stanley, Mayor

ATTEST:

_____
Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney