COUNCIL AGENDA

Amended 9-12-14 September 15, 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. Update on the Joe Becker Stadium renovations

4. Finalization of Consent Agenda

5. Reports and Communications

6. Citizen Requests and Petitions
1. Phil Stinnett, 2206 E. 10th, Joplin, Missouri, requests to address Council concerning the Joplin Sports Authority.

2. 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.

7. Public Hearings

8. Consent Agenda
1. Minutes of the September 2, 2014 Council Meeting

2. 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.

3. 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

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.

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.

4. 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.

5. 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.

9. Resolutions

1. 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.

10. Ordinances – Emergency

1. COUNCIL BILL NO. 2014-024 -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.

2. COUNCIL BILL NO. 2014-168 - 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.

3. COUNCIL BILL NO. 2014-169 - AN ORDINANCE for return of the title to the 8.78 + - acres located within the former Mercy Site ("Property") with said Property being legally described in the attached Exhibit A being returned by JRC to Mercy in return for cancellation

of the Promissory Note and Deed of Trust, with the further intention that the Property shall be donated at a later date to the City for use as a public park; and containing an emergency clause.

4. COUNCIL BILL NO. 2014-410- AN ORDINANCE for return of the title to the 8.78 + acres located within the former Mercy Site ("Property") with said Property being legally described in the attached Exhibit A being returned by JRC to Mercy in return for cancellation of the Promissory Note and Deed of Trust, with the further intention that the Property shall be donated at a later date to the City for use as a public park, and containing an emergency clause.

5. COUNCIL BILL NO. 2014-411 - 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.

6. COUNCIL BILL NO. 2014-412 - 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.

7. COUNCIL BILL NO. 2014-618 - 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.

8. COUNCIL BILL NO. 2014-619 - 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.

11. Ordinances – First Reading

1. 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.

12. Ordinances – Second Reading and Third Reading

13. Unfinished Business

14. New Business

1. Declare excess surplus property for the annual auction.

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

3. News from the PIO Officer

4.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.

Notice posted at 4:30p.m. on this the 11th day of September, 2014. (RSMo 610.020)

PRESENTATIONS

1. Update on the Joe Becker Stadium Renovations

CITIZENS REQUESTS

CITY OF JOPLIN MISSOURI

REQUEST TO ADDRESS COUNCIL

Date: 9-9-14

TO: Joplin City Council members:

I would like to address the Joplin City Council at the 9-15-14 (date) meeting on the following subject:

Joplin Sports Authority

RECEIVED
SEP - 9 2014
OFFICE OF CITY CLERK
CITY OF JOPLIN MISSOURI

Name: PHIL STIGNETT (Please print)

Address: 2206 E. 10th St. Joplin

Daytime Phone: 438-6520

Phone No.: 417-623-3712

Hogelin, Barbara

From: noreply@civicplus.com
Sent: Wednesday, September 10, 2014 6:11 AM
To: Gollhofer, Barbara; Hogelin, Barbara
Subject: Online Form Submittal: Request to Address Council

If you are having problems viewing this HTML email, click to view a Text version.

Request to Address Council

Persons wishing to address City Council regarding an issue not on the City Council meeting agenda should complete this form and submit it prior to the start of the city council meeting, which is 6:00 p.m. You also have the option of printing this form and emailing, faxing, mailing or hand-delivering the form to the City Clerk's office (alternative contact information located at the bottom of this form).

At the council meeting, when your name is called, approach the podium and state your name and address clearly for the record. You will have five (5) minutes to give your comments.
PLEASE NOTE: No outside electronic devices are allowed to be used on city equipment. If you need to present a visual or have handouts, you must bring your own hard copy of the materials. Please provide 12 copies.

Date of Meeting to Address Council:*	9/15/2014
I would like to address the Joplin City Council on the following subject:*	I would like to come before the Board members to ask permission to use Dover Hill as a zombie spook trail in October. Thank you.
Name:*	Heather Sprinkle
Street Address:*	886 B, N. Tree Top Ln
City:*	Joplin
State:*	MO
Zip Code:*	64801
Contact Phone #:*	417-540-1892

To contact the City Clerk's office: 602 S. Main Street, Joplin, MO 64801. Fax: 417-625-4710. Email: bhogelin@joplinmo.org.

For further information, please call the city clerk's office at 417-624-0820 ext. 220.

* indicates required fields.



The following form was submitted via your website: Request to Address Council

Blank: Blank

Date of Meeting to Address Council:: 9/15/2014

I would like to address the Joplin City Council on the following subject:: I would like to come before the Board members to ask permission to use Dover Hill as a zombie spook trail in October.

CONSENT AGENDA

CITY OF JOPLIN

CITY COUNCIL MEETING

MINUTES September 2, 2014

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

ROLL CALL – Motion by Mr. Woolston, Second by Ms. Colbert-Kean to excuse Mr. Seibert. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Shaw, Stanley and Woolston. 8. Nays: 1, Scearce.

INVOCATION - read by Assistant City Clerk Barbara Gollhofer

FLAG SALUTE – led by Ms. Colbert-Kean

PRESENTATIONS - Pam Tillery of the MO State Auditor's office informed Council how the city audit will be conducted. She indicated they would cover everything, including making sure the city is complying with state laws; reviewing expenses relating to the 2011 tornado, and checking internal controls. She also indicated the auditors could go to a department to see exactly how the department operates. At the end of the audit review they will report their findings in a closed session with the city council, then release the findings to the public.

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

PUBLIC HEARINGS
PUBLIC HEARINGS PROCEDURES - read by Assistant City Clerk Barbara Gollhofer.
Proponents of the issue will be asked to present their information, then the opponents will be asked to testify and then rebuttal testimony may be allowed by the Council. Approach the podium and state your name and address clearly for the record. 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.

PUBLIC HEARING FOR COUNCIL BILL NO. 2014-268

ACTION

Mayor Pro tem Morris Glaze opened the Public Hearing
Kyle Denham, appeared on behalf of this request.

Charles Loftis, 2012, appeared in opposition to this request.

Judy Lytle, appeared in opposition to this request.

The Public Hearing was closed.

Mr. Woolston introduced Council Bill No. 2014-268. Motion by Mr. Woolston, Second by Mr. Stanley, to Pass Council Bill No. 2014-268 on First Reading and Advance to Second Reading. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Bill was read as being 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.

PUBLIC HEARING FOR COUNCIL BILL NO. 2014-269

ACTION

Mayor Pro tem Morris Glaze opened the Public Hearing

Christine Bushyhead, appeared on behalf of this request.

Rick Rohlfing, appeared on behalf of this request.

No one appeared in opposition to this request.

The Public Hearing was closed.

Mr. Scearce introduced Council Bill No. 2014-269. Motion by Mr. Scearce, Second by Mr. Shaw, to Pass Council Bill No. 2014-269 on First Reading and Advance to Second Reading. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Bill was read as being 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.

CONSENT AGENDA - Motion by Mr. Woolston, Second by Mr. Scearce, to Approve the Consent Agenda. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Seibert, Shaw, Stanley and Woolston. 9. Nays: 0.

Minutes of the August 18, 2014 Council Meeting

Minutes of the August 25, 2014 Special Council Meeting

COUNCIL BILL NO. 2014-022 -AN ORDINANCE re-adopting Chapter 2, Administration, of the Joplin City Code, Section 2-107, "Financial interest disclosure", requiring certain officials and employees of the City of Joplin to file Financial Interest Disclosure Statements as described herein. Ordinance NO. 2014-137

RESOLUTIONS

ORDINANCES-EMERGENCIES

Mr. Stanley introduced Council Bill No. 2014-452. Motion by Mr. Stanley, Second by Mr. Scearce, to Adopt Council Bill No. 2014-452. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-138

AN ORDINANCE approving an Assistance Amendment by and between the U.S. Environmental Protection Agency (EPA), and the City of Joplin, Missouri, for a term commencing December 15, 2011 and running through December 14, 2015, for the amount of Two Million Five Hundred Thousand Dollars and no Cents ($2,500,000.00), to support soil testing and remediation activities associated with tornado response; and, authorizing the Interim City Manager to execute the same by and on behalf of the City of Joplin, Missouri; and, containing an emergency clause.

Mr. Woolston introduced Council Bill No. 2014-453. Motion by Mr. Woolston, Second by Mr. Scearce, to Adopt Council Bill No. 2014-453. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-139

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 up to Six Hundred Forty-Four Thousand, Three Hundred Ninety-Four Dollars and no Cents ($644,394.00), to enable the Health Department to provide nutritional assistance and education to residents of Jasper County, authorizing the Interim City Manager to execute the same by and on behalf of the City of Joplin, Missouri; and, containing an emergency clause.

Dr. Rosenberg introduced Council Bill No. 2014-615. Motion by Dr. Rosenberg, Second by Mr. Stanley, to Adopt Council Bill No. 2014-615. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-140

AN ORDINANCE authorizing and approving the City of Joplin to purchase a four story training tower from WHP Training towers, for the amount of Six Hundred Ninety-Eight Thousand, Nine hundred and Seventy Dollars, Zero Cents ($698,970.00); authorizing the Interim City Manager to execute a Purchase Order by and on behalf of the City of Joplin; and, containing an emergency clause.

Mr. Shaw introduced Council Bill No. 2014-616. Motion by Mr. Shaw, Second by Mrs. Lewis, to Adopt Council Bill No. 2014-616. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Council Bill was declared Adopted and entitled Ordinance No. 2014-141

AN ORDINANCE approving an Agreement governing cooperation between the National Weather Service (NWS), for the provision of the National Oceanic and Atmospheric Administration (NOAA) and the City of Joplin, MO to facilitate operation of a National Weather Radio (NWR) station at 602 S. Main Street, Joplin, MO; and concerning the preservation of property, health, and safety relating to public improvement: and, containing an emergency clause.

ORDINANCES – FIRST READING

Mr. Scearce introduced Council Bill No. 2014-166. Motion by Mr. Scearce, Second by Mr. Shaw, that Council Bill No. 2014-166 be Passed on First Reading and Advance to Second and Third Reading. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Council Bill was read as being 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.

Mr. Shaw introduced Council Bill No. 2014-617. Motion by Mr. Shaw, Second by Mr. Stanley, that Council Bill No. 2014-617 be Passed on First Reading and Advance to Second and Third Reading. Voting in favor were Council Members: Colbert-Kean, Glaze, Lewis, Rosenberg, Scearce, Shaw, Stanley and Woolston. 8. Nays: 0. Absent: 1, Seibert.

The Council Bill was read as being 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.

ORDINANCES – SECOND READING AND THIRD READING

UNFINISHED BUSINESS

NEW BUSINESS

Announcements from the PIO OFFICER

Due to the Labor Day wind storm damage, residents are welcome to bring their tree limbs and branches to the City's tree limb processing site at 1702 North Schifferdecker Avenue from Tuesday, September 2 to Saturday, September 6 from 8 a.m. to 2 p.m. The site will continue to be open next week, Monday, September 8 to Saturday, September 13 from 8 a.m. to 2 p.m. The drop-off site is located six tenths of a mile north of Belle Center Road on the west side of Schifferdecker Avenue. This free drop off service is for Joplin residents only. Professional contractors will not be allowed to dump.

The City will also continue the monthly drop-off day at the Schifferdecker site on Saturday, September 20 from 8 a.m. to 2 p.m.

The City of Joplin Street Department is currently engaged in removing tree limbs that are blocking city streets.

Joplin residents should also note that the City's *residential trash service* through Republic Services allows yard waste removal on their regular trash pick-up day. Limbs must be cut to a maximum of four (4) feet and bundled. Bundles shall be no heavier than 50 pounds. The diameter of each tree limb shall be no larger than four (4) inches. For customer service, call Republic Services at 800-431-1507.

Normally, Joplin residents and landlords on the City's residential trash service may bring tree limbs, branches, and brush, for a fee, to the Republic Services Transfer Station on Old Route 66, in Galena, Kansas. However due to the volume of damage from this storm, residents are asked to bring tree limbs to the City's drop-off location.

For more information, call Mary Anne Phillips, City of Joplin Recycling Coordinator at 417-624-0820 Ext. 501; Lynden Lawson, Assistant Director of Public Works Director for Operations at 417-624-0820 Ext. 560; or the Public Works Center at 417-624-0820 Ext. 564.

Mr. Shaw mentioned he had attended a Memorial service this afternoon for James Conway who was the founder of Life Choices and had been with them for many years.

Mayor Pro Tem Glaze thanked everyone for attending tonight's meeting and for everyone watching from home. He thanked the staff that was in attendance at tonight's meeting. He appreciated Wallace Bajjali for closing on the Coke building.

There being no further business to come before Council the meeting adjourned at 7:15 pm.

Respectfully submitted,

Barbara Gollhofer

Barbara Gollhofer
Assistant City Clerk

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 2, 2014

Item: COUNCIL BILL NO. 2014-166
Originating Department: PUBLIC WORKS - MAPS

Attachments: 1) Copy of Grant Offer (Application for State Operating Assistance)
2) Copy of Grant Agreement
3) Copy of Ordinance

Department Head: Nicholas A. Heatherly Date: 8/20/14
Finance Department: Leslie Haase Date: 8-25-14
City Attorney: Peter C. Edwards Date: 8/14/14
Interim City Manager: Samuel L. Anselm Date: 8/25/14

Recommended Action: Authorization of an Application to the Missouri Department of Transportation for state funds to be used for operating assistance for the Metro Area PublicTransit System.

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. During the last City fiscal year, these services provided 140,609 total rides. The majority of MAPS & Trolley riders are elderly, disabled, or have no personal transportation available. The system operates Monday through Saturday.

Discussion: 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. These FTA funds require a local match to qualify. The funds being offered by the State of Missouri are unique in that they do not require local matching funds. The State is offering $4,386 in grant funds, which is a $375.00 reduction from the funds paid in the State's fiscal 2014. The Council approved this grant in August by passing Council Bill #2014-154. MODOT's legal department has since noticed an error in the form of the agreement and they now require the City to execute the agreement using the revised form.

Recommendation: Staff recommends that the City apply for these funds and enter into an agreement with the Missouri Department of Transportation for their use in operating the MAPS and Sunshine Lamp Trolley systems.

CCO Form: TC09
Approved: 06/96 (RMH)
Revised: 12/12 (MWH)
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
PUBLIC TRANSIT OPERATING
ASSISTANCE GRANT AGREEMENT

THIS AGREEMENT is entered into between the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Joplin (hereinafter, "Grantee").

WITNESSETH:

WHEREAS, the purpose of this Agreement is to provide financial assistance to the Grantee as appropriated from the State Transportation Fund and to set forth the conditions upon which the assistance will be provided;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations in this Agreement, the parties agree as follows:

(1) SCOPE OF WORK: The Grantee shall provide general public transportation in accordance with the "Public Transportation Budget and Service Statement" which is attached and made a part of this Agreement as Attachment A.

(2) AMOUNT OF GRANT: The Commission awards the Grantee the sum of Four Thousand Three Hundred Eighty-Six dollars ($4,386) during the period from July 1, 2014, to June 30, 2015.

(3) PERFORMANCE OF AGREEMENT: The Grantee shall immediately notify the Commission in writing of any condition or event which may significantly affect its ability to perform the required activities in accordance with the provisions of this Agreement.

(4) RETENTION AND AUDIT OF RECORDS:

(A) The Grantee shall maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its representatives during the period of this Agreement and any extension thereof, and for three (3) years after the date of final payment made under this Agreement.

(B) The Grantee shall submit to the Commission such data, reports, documents, and other information relating to the Grantee's activities as the Commission may require at any time.

(C) At any time during or after the grant period provided in this Agreement, the Commission may inspect, copy and audit all records possessed by or available to the Grantee, which may be pertinent to this Agreement. If the Commission notifies the Grantee of its specific intention to inspect, copy or audit any of these records, then the Grantee shall retain all of the records pertinent to this Agreement until the Commission notifies the Grantee that it has completed its inspection, copying or audit.

(5) THIRD PARTY CONTRACTS:

(A) Prior to execution by either party, the Grantee shall submit to the Commission for review, comment and approval all contracts for services included in the Public Transportation Budget and Service Statement to be provided to the Grantee by a third party.

(B) The Commission shall not be liable to contractors or subcontractors of the Grantee or any other person not a party to this Agreement in connection with the performance of the project.

(6) PAYMENTS:

(A) Limitations on Commission Contribution: Funds made available to the Commission and the Grantee are subject to appropriations made by the General Assembly. In the event state funds available to the Commission are reduced so that the Commission is incapable of completely satisfying its obligations to all the Grantees for the current state fiscal year, the Commission may recompute and reduce this grant. When added to federal operating assistance funds available and applied to the same operating period, the maximum Commission payment on any monthly or quarterly request shall not cause the total of state and federal operating assistance to exceed the amount of operating assistance for which the Grantee would have qualified in federal funds had additional federal funds been available.

(B) Progress Payments: Progress payments, based upon actual allowable costs, for not less than one (1) month and for no more than three (3) months may be made upon receipt of an itemized invoice from the Grantee in an appropriate format approved by the Commission. The itemized invoice shall be reviewed by the Commission prior to payment and must include a certification that costs have been incurred in the performance of the Agreement and a record of the actual costs. Any costs deemed ineligible for reimbursement by the Commission in accordance with the terms of this Agreement shall be deducted from the itemized invoice before payment is made. Any rejected or unaccepted costs shall be borne by the Grantee.

(C) Availability of Funds: The Commission's duty to pay the Grantee as provided in this Agreement is subject to the availability of funds appropriated by the Missouri General Assembly to and from the State Transportation Fund and any subsequent directives mandated by the Governor regarding the withholding of appropriations.

(7) ASSIGNMENT: The Grantee shall not assign, transfer or delegate any interest in this Agreement, or its performance of any work required by this Agreement, without the prior written consent of the Commission.

(8) 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.

(9) RIGHT OF COMMISSION TO TERMINATE AGREEMENT: Upon written notice to the Grantee, the Commission may suspend or terminate all or part of the financial assistance provided for in this Agreement when the Grantee is, or

has been, in violation of any of the terms of this Agreement.

(10) COMMISSION'S REPRESENTATIVE: The Commission's chief engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(11) NONDISCRIMINATION CLAUSE: The Grantee shall comply with all state and federal statutes applicable to the Grantee relating to nondiscrimination, including, but not limited to, Chapter 213, RSMo; Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*); and with every applicable provision of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*).

(12) 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 this Agreement.

(13) 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 respecting its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(14) NONSOLICITATION: The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Grantee, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

(15) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment or supplemental agreement signed and approved by the duly authorized representatives of the Grantee and the Commission.

(16) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(17) LACK OF WAIVER: In no event shall payment of grant funds to the Grantee by the Commission constitute or be construed as a waiver by the Commission of any breach of covenants, or any default which may exist on the part

of the Grantee, and the making of any such payment by the Commission while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Commission with respect to such breach or default.

(18) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the Grantee:

_____

_____

_____

Facsimile No.:_____

(B) To the Commission:

_____

_____

_____

Facsimile No.: 573-751-6555

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the last date written below.

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

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

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

_____
Director, Multimodal Operations

Attest:

_____
Secretary to the Commission

Approved as to Form:

_____
Counsel for the Commission

GRANTEE

By _____

Title _____

Attest:

By _____

Title _____

Approved as to Form:

_____
Counsel

_____
Ordinance Number (if applicable)

Attachment A

Application

Missouri State Transit Assistance Program

Applicant Agency Name: Street and Mailing Address: City, State (Missouri), Zip+4 Code	City of Joplin 602 S. Main Joplin, MO 64801
Agency Contact Person - Name Contact Person: e-mail Address Contact Person: Work Phone Contact Person: Fax Number	Robert Lolley rlolley@joplinmo.org 417-625-4793 417-625-4747

Eligibility Criteria: (Check All That Apply):

(If operating both urbanized and rural transit service, submit separate applications)

☑	A City
☐	A City Transit Authority
☐	A City Utilities Board
☐	An Interstate Transit Authority (as defined in 94.600 RSMo)
☐	An Intrastate Transportation Authority
☐	A recipient / direct recipient of FTA Sec. 5307 urbanized formula funds
☐	A sub-recipient of FTA Section 5311 non-urbanized formula funds

Operating and Capital Costs for Operating Public Transit Service in Missouri

Costs / Year	2011	2012	2013
Transit Operating Costs	$886,586	$1,100,985	$941,051
Transit Capital Costs	$383,587	$261,064	$246,571
Total: Transit Operating + Capital Costs	$1,270,173	$1,362,049	$1,187,622

Past and Projected Annual Passenger Ridership in Missouri (unlinked trips):

2011	130,809		
2012		155,058	
2013			140,609
2015 Projected			147,000

Agency's Missouri Transit Service Area Population: Urbanized: 84,807 Rural:

Annual Vehicle Miles Operated;	2011	2012	2013
	285,293	352,234	355,137
Cost per Mile (divide total cost by miles)	$4.45	$3.87	$3.34

(Complete remainder of application on back of form)

Cost per Passenger (divide total cost by ridership)	2011	2012	2013
	$9.71	$8.78	$8.45

Description of Proposed Year 2015 Public Transit Service in Missouri

Days of Transit Operation:	Monday-Saturday, no Sunday service
Weekday Hours of Operation:	6am-6pm
Saturday Hours of Operation:	8:30am-4pm
Sunday Hours of Operation:	None

Amount of Annual Local Effort or Tax Support for Transit:

2011	2012	2013
356,946	$475,542	$408,048

Description of local financial effort or local tax support for appliant's public transit service:

City of Joplin funds 20% Capital Match and 50% Operations Match with a local Transportation Sales Tax.

Applicant Agency Authorized Signature:	Date:
Robert Kelley	4/9/14

Submit completed and signed application to:

Transit Section - Multimodal Operations
Missouri Department of Transportation
P.O. Box 270
Jefferson City, MO 65102-0270
or FAX to: (573) 526-4709
or e-mail to: Transit@modot.mo.gov

For Technical Assistance: Transit@modot.mo.gov

Tele: (573) 751-2523

Form located at:
http://www.modot.mo.gov/othertransportation/transit/transitapplicationsreportsprograms.htm

(Version 2014-02-24)

COUNCIL BILL NO. 2014-166 ORDINANCE NO.

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.

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

Section 1. That the City of Joplin, Missouri, shall make Application to the Missouri Department of Transportation for state funds in the amount of $4,386 to be used for operating assistance for the Metro Area PublicTransit and Sunshine Lamp Trolley Systems;

Section 2. That the City of Joplin, Missouri, understands that such funds, if granted, do not require a local match.

Section 3. That the City Manager is hereby authorized and directed to execute said Application and Agreement on behalf of the City of Joplin, Missouri, and to submit said documents to the Missouri Department of Transportation.

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: September 2, 2014

Item: COUNCIL BILL NO. 2014-268
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: 8/19/14
City Attorney: Peter C. Edwards PE Date: 8/19/14
Interim City Manager: Samuel L. Anselm Date: 8/25/14
Board or Commission: Planning and Zoning Commission MDW Date: 8/11/2014

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

SUMMARY/REQUEST:
Case 030-14: 2615 East 20th Street – A request to rezone property from District R-1 (Single-Family Residential) to District C-1 PD (Neighborhood Commercial – Planned Development) for future planned commercial development – Dr. Kimberly Wood.

STAFF SUMMARY:
The proposed rezoning is for the development of a 4,500 square foot commercial office building.

Access Management: The site will have one point of access from 20th Street. Future cross access is shown to the west. The owner plans on developing a future building to the east, which was rezoned and approved in 2012. The site has also reserved land along 20th Street for future infrastructure improvements, including enough space for a proposed bike/pedestrian trail. A pedestrian connection from 20th Street to the building entrance is shown on the site plan.

Parking: A total of 24 parking spaces have been provided, including 2 ADA spaces.

Building Design & Materials: The site will contain a 4,875 square foot building. The exterior of the building will be stone veneer. The design of the building is similar to what was approved in 2012 on the property to the east, in which the applicant was pursuing a Tuscan-look to the development.

Landscaping and Open Space: The site has provided required landscaping, including street and parking lot trees. Interior parking islands include parking lot trees and shrubs.

Buffering: A 6' vinyl privacy fence with landscaping will be installed along the north property line to screen the commercial property from adjacent residential property.

Staff recommends approval of Case 030-14.

PLANNING & ZONING COMMISSION TESTIMONY:
Mr. Kyle Denham, PLJBD Architects, appeared representing Dr. Wood. She previously purchased the property immediately to the east, which was rezoned to District C-1-PD. She was able to acquire this additional piece of property which gives her enough property to complete her future development. She would like to rezone the property she just acquired to be consistent with the north side of 20th Street in this area.

Mr. Smith asked about the estimated timeframe for construction. Mr. Denham replied if the property is rezoned, construction will begin as soon as the design work is complete.

Mr. Smith stated that after Dr. Wood's property to the east was rezoned, it sat vacant for a long time. Mr. Denham stated she had some health issues but is now ready to move her practice to this area.

Mr. Duncan asked if Dr. Wood is just proceeding with construction on the parcel in this request, of if she is proceeding with construction on both parcels. Mr. Denham replied she wants to proceed on this parcel first, with her clinic being on this parcel. In the near future, she will begin developing a separate building on the property to the east.

Mr. Duncan discussed Dr. Wood's previous plans for her office on the property to the east but asked if it is now her intention to have her office on the property on this request. Mr. Denham replied that is correct. She originally wanted a two-story building with a walk-out design, but the slope of the site really didn't allow for that walk-out basement style design. She is now looking at two one-story buildings.

PUBLIC COMMENT:
Mr. Robert Sheldon, Jr., 2017 South Florida Avenue, Joplin, appeared in opposition to the request. He and his wife Julie built back in the tornado zone using ICF technology for its efficiency and its safety.

Mr. Sheldon stated that his home was an expensive undertaking for him and his wife. Prior to the tornado, this was a typical residential neighborhood that was close to areas that were already zoned commercial. When he purchased his property, the Planning and Zoning staff informed him that this area would never be zoned commercial. Then someone developed the idea that 20th Street should be used for mixed residential and commercial usage based on tax revenue.

Mr. Sheldon thought the City should protect the residents and not support anything commercial wanting to locate in a residential area. If the zoning changes, and residents leave for a quieter neighborhood outside the city, they're not in the city contributing to the tax base. If residents are protected, they're more likely to remain, with the city collecting taxes from them and from businesses establishing in areas already zoned commercial.

Mr. Sheldon understood grant funding is available for people who want to move back into the tornado zone, telling him the area is blighted. The long-term residents who anchor an area move out of that area, with the area not typically becoming nicer. He expressed concern about a parking lot across the street with the possibility of more lights and bright signs advertising businesses. The churches on 20th Street and businesses on Range Line Road have signage and parking lot lighting on all night, with that bright light reflecting into his back yard. He really sees a medical practice that needs to locate in a medical area and leave the residents alone.

Mr. Smith asked Mr. Sheldon where he resides, and he replied at 2017 South Florida in the large gray house with the tower.

Mr. Smith asked Mr. Sheldon if he wasn't in the area that was notified by letter, and he replied no. Mr. Bolander did not believe Mr. Sheldon's property is within 185 feet of the property in this request.

Mrs. Julie Sheldon just learned about this request through some neighbors along Alabama Avenue.

Protest petitions were received from Mr. and Mrs. Sheldon and from Judy Lytle, 2103 Alabama Avenue.

Z&P Meeting: August 11, 2014
City Council Meeting: September 2, 2014

STAFF PLANNING REPORT
Rezoning

CASE 030-14:

A request to rezone from District R-1 (Single-Family Residential) to District C-1 PD (Neighborhood Commercial – Planned Development) for property located at 2615 E. 20th Street for future planned commercial development.

APPLICANT: Dr. Kimberly Wood

LOCATION: 2615 E. 20th Street

REQUESTED ZONING: C-1 PD (Neighborhood Commercial – Planned Development)

CORRIDOR: 20th Street – Site Plan Required

EXISTING CONDITIONS:

Zoning	Land Use	Property Size
R-1 (Single-Family)	Vacant (Former Single-Family)	100' x 130' / .30 acres

SITE CONTEXT:

	North	East	South	West
Existing Zoning	R-1	C-1 PD	R-1	C-1 PD
Land Use	Vacant (Former Single-Family)	Vacant (Former Single-Family)	Vacant (Former Single-Family)	Vacant (Former Single-Family)

FUTURE LAND USE:

This site is located along the 20th Street corridor and is eligible for rezoning subject to site plan review and approval.

TRANSPORTATION:

Streets with access	Classification	Right-of-way width
20th Street	Minor Arterial	85'

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 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 4,500 square foot commercial office building.

Access Management: The site will have one point of access from 20th Street. Future cross access is shown to the west. The owner plans on developing a future building to the east, which was rezoned and approved in 2012. The site has also reserved land along 20th Street for future infrastructure improvements, including enough space for a proposed bike/pedestrian trail. A pedestrian connection from 20th Street to the building entrance is shown on the site plan.

Parking: A total of 24 parking spaces have been provided, including 2 ADA spaces.

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the building will be stone veneer. The design of the building is similar to what was approved in 2012 on the property to the east, in which the applicant was pursuing a Tuscan-look to the development.

Landscaping and Open Space: The site has provided required landscaping, including street and parking lot trees. Interior parking islands include parking lot trees and shrubs.

Buffering: A 6' vinyl privacy fence with landscaping will be installed along the north property line to screen the commercial property from adjacent residential property.

Staff recommends approval of Case 030-14.

ENCLOSURES:

Site plan

Landscape plan

Building elevations

CITY OF JOPLIN, MISSOURI
REZONING APPLICATION FORM

RECEIVED 7-2-14.

For Office Use Only
Case No.: 0730-14
Filing Fee: $350.00
Date Advertised: 07-27-14
Date Notices Sent 07-28-14
Public Hearing Date: 08-11-14

Return Form to:
Planning / Community Development Specialist
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

APPLICANT: DR. KIMBERLY WOOD PHONE: 624.4701
ADDRESS: 819 E. 32ND STREET ZIP: 64804
OWNER: Same PHONE: Same
ADDRESS: Same ZIP: Same
LOCATION OF PROPERTY: 2615 E. 20TH
LEGAL DESCRIPTION: See attached

Present Zoning R.1 Requested Zoning: C.1 PD Acreage: 0.3A (13,200 S.F.)
Present Use of Property: VACANT- FORMERLY A SINGLE FAMILY RESIDENCE

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	RESIDENTIAL	R.1
South	RESIDENTIAL	R.1
East	COMMERCIAL	C1.PD
West	COMMERCIAL	C1.PD

CHARACTER OF THE NEIGHBORHOOD: 20TH STREET CORRIDOR IS TRANSFORMING INTO COMMERCIAL

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? If yes, explain: NO

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 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.

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: 20TH
2. Classification of Street(s):
   Arterial X Collector _____ Local _____
3. Right-of-Way Width: 95'
4. Will turning movements caused by the proposed use create an undue traffic hazard?
   NO

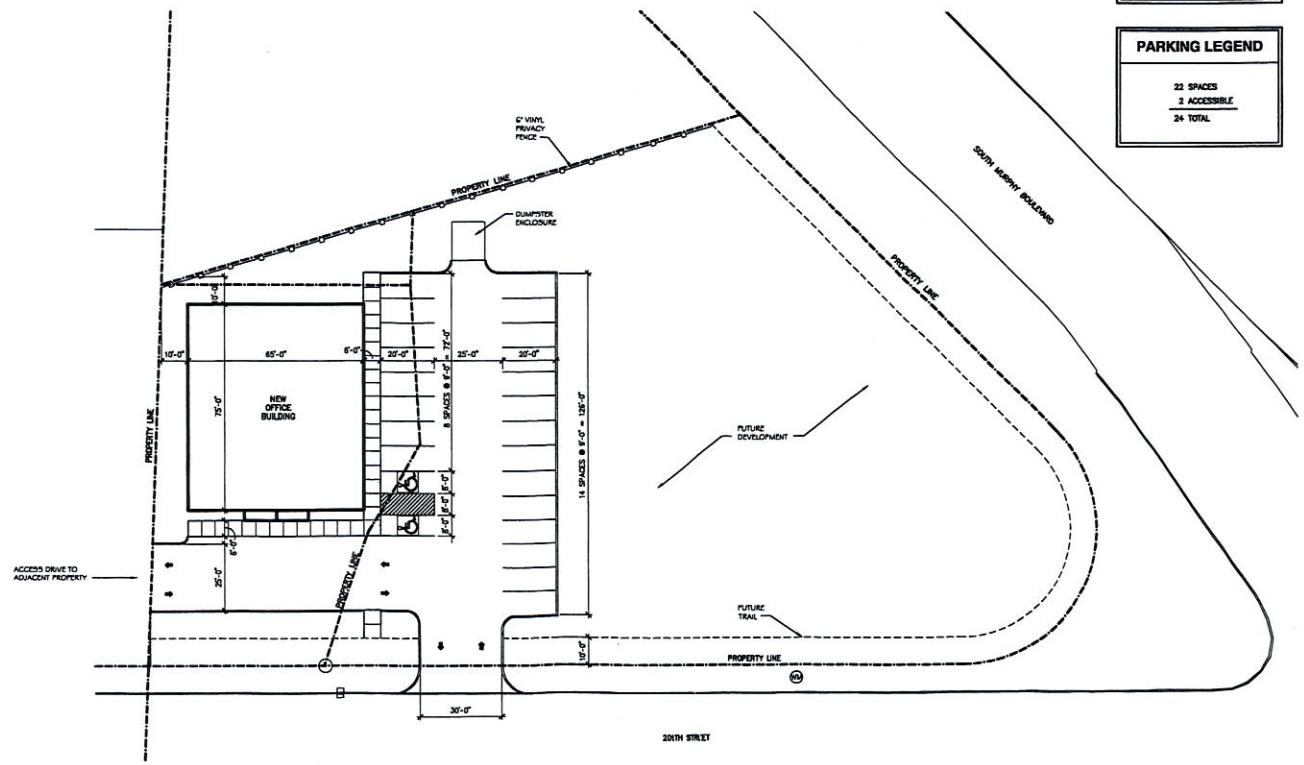
IS PLATTING OR REPLATTING REQUIRED TO PROVIDE FOR:

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:

SIGNATURE: [signature] DATE: JULY 1, 2014
BY: E. KYLE DENHAM
TITLE: PRESIDENT

(Note: By signing this application you are signifying that you are either the legal owner of the subject property or are a legal representative of the owner or owners of the subject property.)



SITE PLAN

SCALE 1" = 20'-0"

PATTERSON
LATIMER
JONES
BRANNON
DENHAM
ARCHITECTURE | INTERIORS | PLANNING
Phone : 417-624-4004
Fax : 417-624-4022
E-mail: contact@pljbd.com

Consultant

A New Office
FOR
Dr. Kimberly Wood
JOPLIN, JASPER COUNTY, MISSOURI

20th and Murphy Blvd.
Joplin, Jasper County,
Missouri

E. Kyle Denham
ARCHITECT A-6748

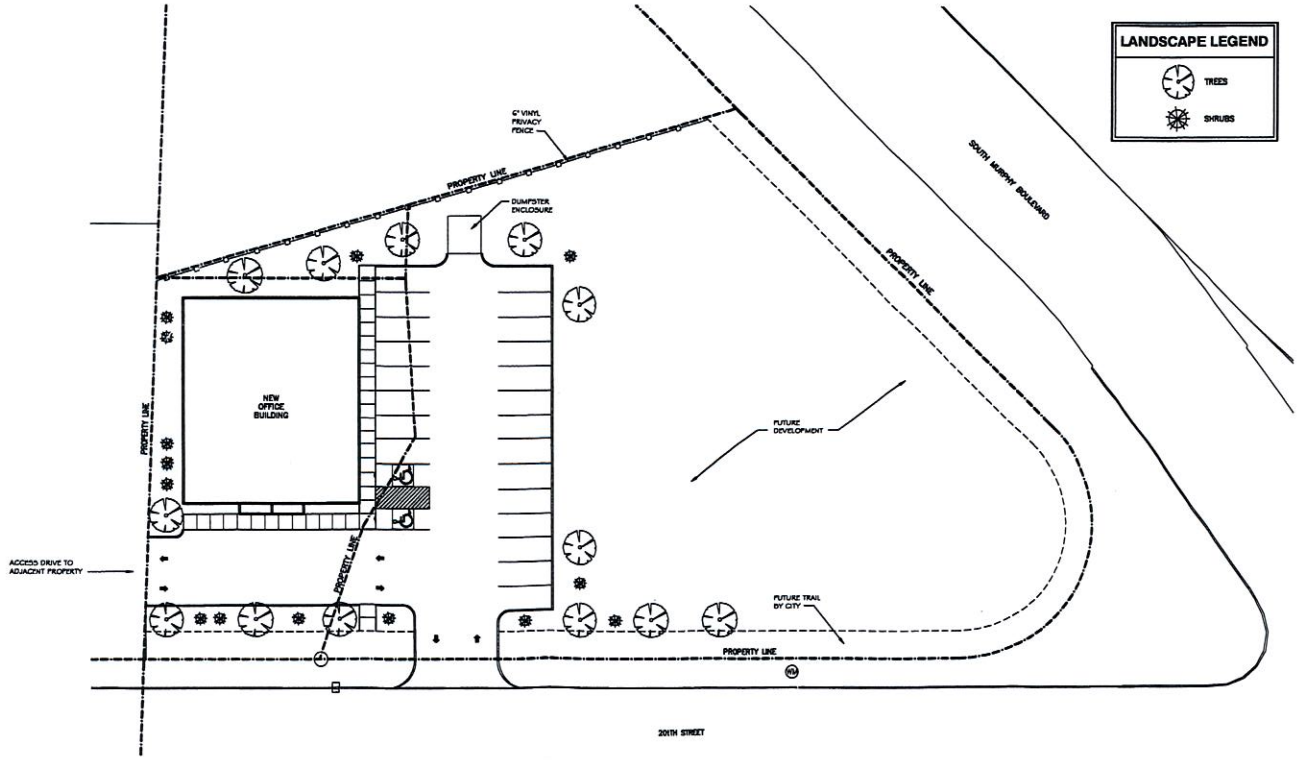
DATE
July 2014

DRAWN BY:	CHECKED BY:
TRB	EKD

REVISIONS

PROJECT NUMBER
09-2012-08

SHEET NUMBER
A1.1



LANDSCAPE PLAN

SCALE 1" = 20'-0"

PATTERSON LATIMER JONES BRANNON DENHAM
ARCHITECTURE · INTERIORS · PLANNING
Phone : 417-624-4004
Fax : 417-624-4022
E-mail: contact@pljbd.com
Consultant

A New Office
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JOPLIN, JASPER COUNTY, MISSOURI

20th and Murphy Blvd.
Joplin, Jasper County,
Missouri

E. Kyle Denham
ARCHITECT A-5742

DATE
July 2014

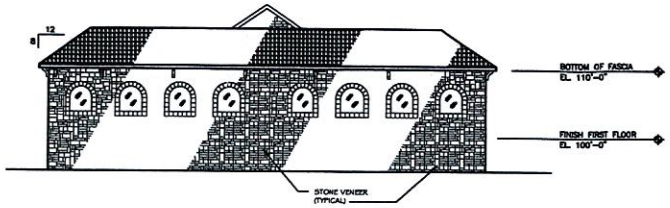
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REVISIONS

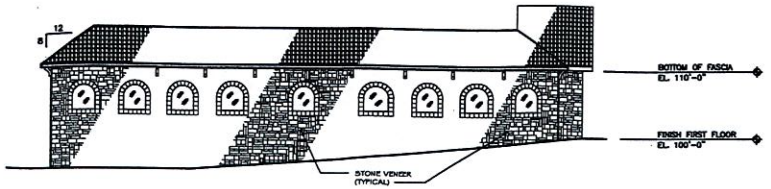
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09-2012-08

LANDSCAPE PLAN

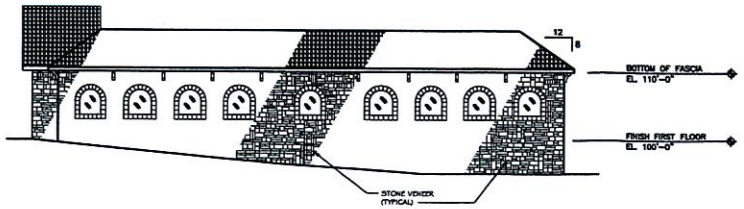
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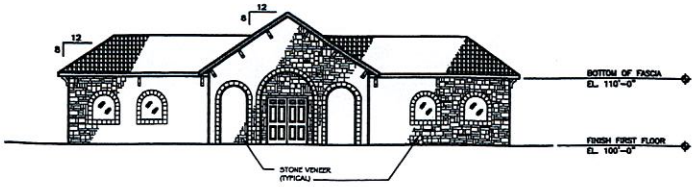
NORTH ELEVATION
SCALE 1/8" = 1'-0"



WEST ELEVATION
SCALE 1/8" = 1'-0"



EAST ELEVATION
SCALE 1/8" = 1'-0"



SOUTH ELEVATION
SCALE 1/8" = 1'-0"

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Consultant

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July 2014

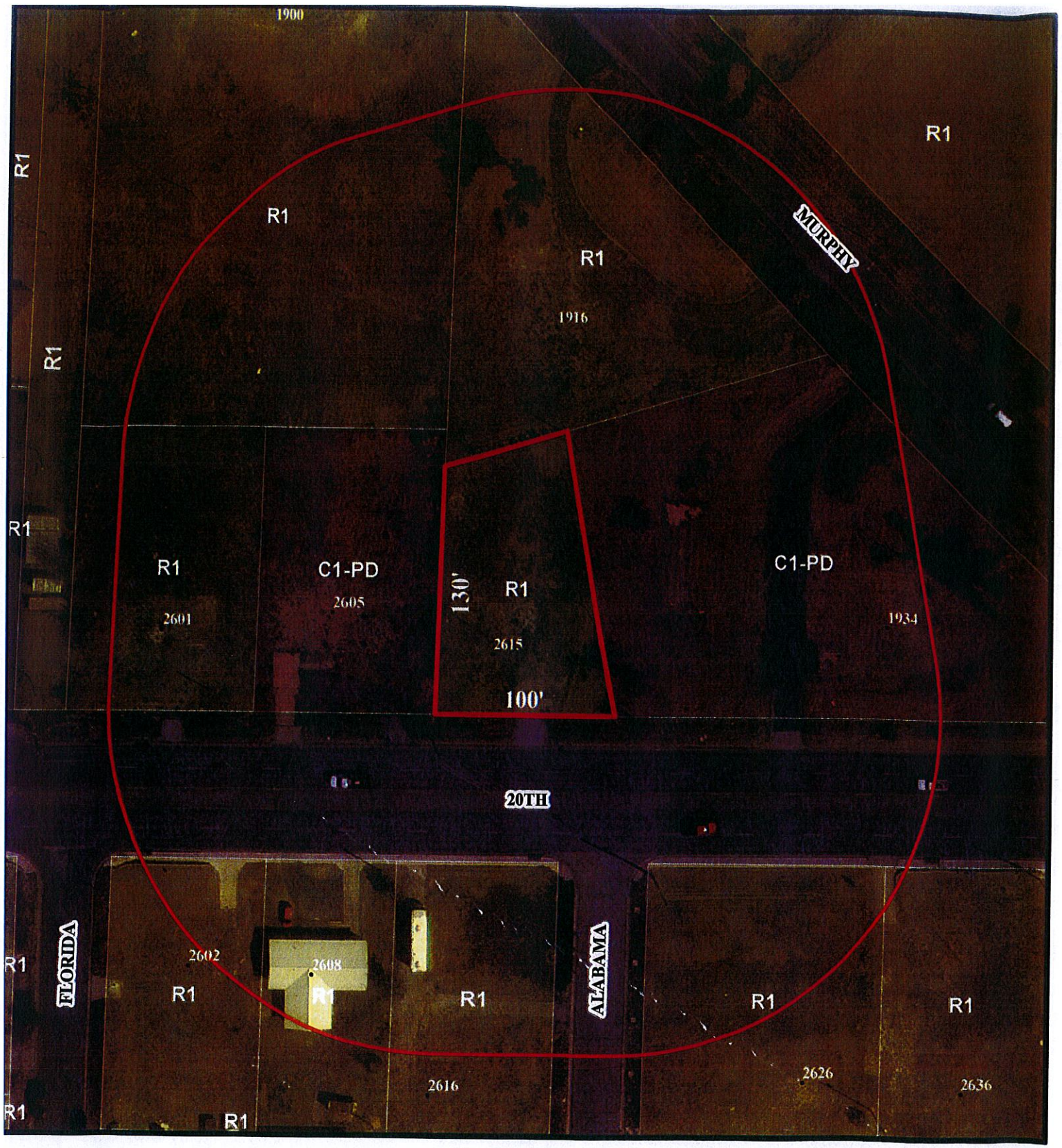
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REVISIONS

PROJECT NUMBER
09-2012-08

EXTERIOR ELEVATIONS

SHEET NUMBER
A3.1



Case 030-14: A request to rezone from District R-1 (Single-Family Residential) to District C-1 PD (Neighborhood Commercial - Planned Development) for property located at 2615 E. 20th Street for future planned commercial development. - Dr. Kimberly Wood

N

Case 030-14: 2615 East 20th Street – A request to rezone property from District R-1 (Single-Family Residential) to District C-1 PD (Neighborhood Commercial – Planned Development) for future planned commercial development – Dr. Kimberly Wood.

Mr. Eastman opened the public hearing for Case 030-14.

Mr. Kyle Denham, PLJBD Architects, 303 South Main Street, Joplin, appeared representing Dr. Wood. She previously purchased the property immediately to the east, which was rezoned to District C-1-PD. She was able to acquire this additional piece of property which gives her enough property to complete her future development. She would like to rezone the property she just acquired to be consistent with the north side of 20th Street in this area.

Mr. Eastman asked for questions from the commissioners.

Mr. Smith asked about the estimated timeframe for construction. Mr. Denham replied if the property is rezoned, construction will begin as soon as the design work is complete.

Mr. Smith stated that after Dr. Wood's property to the east was rezoned, it sat vacant for a long time. Mr. Denham stated that she had some health issues and wasn't able to proceed at that point, but she is now ready to move her practice to this area.

Mr. Duncan asked if Dr. Wood is just proceeding with construction on the parcel in this request, of if she is proceeding with construction on both parcels. Mr. Denham replied she wants to proceed on this parcel first, with her clinic being on this parcel. In the near future, she will begin developing a separate building on the property to the east.

Mr. Duncan discussed Dr. Wood's previous plans for her office on the property to the east but asked if it is now her intention to have her office on the property on this request. Mr. Denham replied that is correct. She originally wanted a two-story building with a walk-out design, but the slope of the site really didn't allow for that walk-out basement style design. She is now looking at two one-story buildings.

Mr. Eastman asked for comments from the audience.

Mr. Robert Sheldon, Jr., 2017 South Florida Avenue, Joplin, appeared in opposition to the request. He and his wife Julie built back in the tornado zone because he has lived at this address for almost 30 years. He had the old farmhouse from the subdivision and dreamed of building a nice house on the big lot. He built back using ICF technology, which is a new building style using Styrofoam blocks backfilled with concrete. He built back with this technology for its efficiency and its safety.

Mr. Sheldon stated this two-story Queen Anne house was an expensive undertaking for him and his wife. He stated that prior to the tornado, this was a typical residential neighborhood. It was close to work and close enough to areas that were already zoned commercial. When he purchased his property, the Planning and Zoning staff informed him that this area would never be zoned commercial. Then someone developed the idea that 20th Street should be used for mixed residential and commercial usage based on tax revenue.

Mr. Sheldon doesn't know anyone buying into the philosophy that residents thrive next to commercial zoning. He thought the City should protect the residents and not support anything commercial wanting to locate in a residential area. If there's profit to be made, commercial businesses will find places already zoned commercial to establish themselves. If the zoning changes, and residents leave for a quieter neighborhood outside the city, they're not in the city contributing to the tax base. If residents are protected, they're more likely to remain, with the city collecting taxes from them and from businesses establishing in areas already zoned commercial.

Mr. Sheldon understood there are $30,000 grants available to people who want to move back into the tornado zone, telling him the area is blighted. He stated that the long-term residents who anchor an area move out of that area, with the area not typically becoming nicer. He expressed concern about a parking lot across the street with the possibility of more lights and bright signs advertising businesses. The two churches west of his home have signage that pulsate all night. Businesses along Range Line Road have signage and parking lot lighting on all night, with that bright light reflecting into his back yard.

Mr. Sheldon stated that Dr. Wood is a 59-year old woman with four existing office locations already. He really sees a medical practice that needs to locate in a medical area and leave the residents alone. He would like to trust the local officials doing the right thing and spending his time working in his garage rebuilding things that were damaged in the tornado or working on projects involving his hobbies.

Mr. Smith asked Mr. Sheldon where he resides, and he replied at 2017 South Florida in the large gray house with the tower.

Mr. Smith asked Mr. Sheldon if he wasn't in the area that was notified by letter, and he replied no.

Mr. Bolander did not believe Mr. Sheldon's property is within 185 feet of the property in this request.

Mrs. Julie Sheldon just learned about this request through some neighbors along Alabama Avenue.

Mr. Eastman asked for additional comments from the audience, and none were received. He then closed the public hearing for Case 030-14. Protest petitions were received from Mr. and Mrs. Sheldon and from Judy Lytle, 2103 Alabama Avenue.

MR. DUNCAN MOVED, SECONDED BY MR. RAMSOUR, THAT CASE 030-14 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. DERMOTT, MR. DUNCAN, MR. EASTMAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE"; AND WITH MR. BROWN BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 030-14
Dr. Kimberly Wood
(P & Z Recommended Approval)

COUNCIL BILL NO. 2014-268 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from District R-1 and including in District C-1-PD property as described below and located at 2615 East 20th Street 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-1-PD:

All of a tract of land described as follows: Commencing at a point 210 feet East and 30 feet North of the Southwest corner of the Southwest Quarter of the Southeast Quarter of Section 12, thence North 1 degree 59 minutes East parallel to the West line of the Southeast Quarter of Section 12, 150 feet, thence East 92 feet, thence South 3 degrees 35 minutes East 58.22 feet, thence South 30 degrees 40 minutes West 37 feet, thence South 18 degrees 24 minutes West 63.20 feet to the North line of 20th Street, thence West and parallel to the South line of Southeast Quarter of Section 12, 62 feet to the point of beginning, being part of the Miscellaneous Tract No. 12, in Section 12, Township 27, Range 33, in the City of Joplin, Jasper County, Missouri, and Beginning at a point 209.04 feet East and 30 feet North of the Southwest Corner of the Southeast Quarter of Section 12, Township 27, Range 33, and from that point measuring North 1 degree, 59 minutes East a distance of 150 feet to the point of beginning, thence East 92 feet, thence North 1 degree 59 minutes East 27.34 feet, thence Southwesterly 96.88 feet to the point of beginning, being a part of Miscellaneous Tract No. 12, Section 12, Township 27, Range 33, in the City of Joplin, Jasper County, Missouri.

Section 2. That the City Clerk is hereby ordered to file this ordinance with the Zoning District Map maintained in her office and to note the changes herein provided 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: September 2, 2014

Item: COUNCIL BILL NO. 2014-269
Originating Department: PLANNING & COMMUNITY DEVELOPMENT

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

Public Works Director: Nicholas A. Heatherly — Date: 8/19/14
City Attorney: Peter C. Edwards — Date: 8/19/14
Interim City Manager: Samuel L. Anselm — Date: 8/25/14
Board or Commission: Planning and Zoning Commission — Date: 8/11/2014

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

SUMMARY/REQUEST:
Case 031-14: Approximately between 24th and 26th Streets, Maiden Lane and McCoy Avenue – A request to rezone property from Districts C-O PD (Non-Retail – Planned Development), C-1 (Neighborhood Commercial), and C-1 PD (Neighborhood Commercial – Planned Development) to District C-3 (Commercial) for future retail-commercial development – Walmart Real Estate Business Trust.

STAFF SUMMARY:
The proposed rezoning is for future retail-commercial development. The applicant is proposing to develop a 42,000 square foot Walmart Neighborhood Market on the property. The primary reason for requesting a C-3 zoning district is to permit the development of a gas station as part of the development. The attached preliminary site plan shows a gas station fronting Maiden Lane. The main entrance for the development will be from Maiden Lane, with a rear entrance along McCoy Avenue. Access is not anticipated from 26th Street, unless cross-access through another property is provided. The overall development will be similar to the recently completed Walmart Neighborhood Market at 7th Street and St. Louis Avenue.

Walmart has selected the site based on the complementary land uses nearby, including residential and office. The properties are located near a major intersection where additional residential and office development is anticipated in the near future. In addition to the rebuilding areas, the southwest Joplin area continues to experience new residential development, especially south of 32nd Street. There are currently no full-service grocery stores south of 20th Street and west of Main Street in Joplin.

Staff recommends approval of Case 031-14.

PLANNING & ZONING COMMISSION TESTIMONY:

Mr. Rick Rohlfing, appeared representing BFA Consultants-Engineers-Surveyors from Washington, Missouri. They are the site engineers for Walmart on this proposed project. They feel this is a great opportunity for a second neighborhood market store in the community.

This property is bounded by Maiden Lane, West 26th Street, and McCoy Avenue and will be an assemblage of several parcels of land currently containing many different commercial zones. Walmart is proposing the rezoning of all these properties to District C-3 to fit their proposed use,. Their traffic engineers are looking at the widening of Maiden Lane and the monument signage at Cunningham Pool. They plan to realign the two entrances. Walmart has agreed to assume the expenses for moving the entrance so the monument can stay at its current location.

The store will be almost identical to the store that recently opened on Seventh Street. The store on Seventh Street has a left entrance, with the proposed store on having a right entrance. The parking lot will contain the same lighting, with the landscaping exceeding the City codes.

The main entrance will be off Maiden Lane, with that entrance being realigned with the entrance to Cunningham Pool's parking lot area. There will also be an entrance at the northwest corner off McCoy Avenue. Both entrances will accommodate truck deliveries. The fueling facility will be near Maiden Lane, with those trucks entering off McCoy. The other trucks will enter the facility from Maiden Lane.

The developers are working with the City staff to provide adequate stormwater detention, as well as water quality. All utilities are available on the site, with no major utility improvements being necessary. Walmart has not purchased the land at this time and does not purchase land until they have secured all of their approvals for the property. Mr. Rohlfing discussed the time schedule and would like to solicit construction bids in December of this year.

Mr. Eastman if the existing ditch will be rerouted. Mr. Rohlfing replied that the ditch bisecting the northwest corner of the property will be rerouted. A 24-inch pipe coming from the street will be a separate storm sewer that will not be part of the on-site detention. That will be bypassed around the northwest to the west side of the property. They propose a fully enclosed conveyance system so the ditch will no longer be open once it enters underground back the 30-inch culvert that currently drains under McCoy Avenue.

Mr. Eastman asked about the northbound left-turn lane and if Maiden Lane is currently five lanes. Mr. Bolander stated it is only four lanes, but there are plans to widen Maiden Lane.

Mr. Rohlfing stated that Maiden Lane will contain five lanes when it is widened. Their traffic study shows that a traffic signal is not needed once Maiden Lane is widened.

Mr. Duncan asked about the zoning for the neighborhood market on Seventh Street. Mr. Bolander thought C-3-PD zoning was approved, but Mr. Rohlfing stated that no rezoning was actually required on that. He stated the zoning was C-2 with a small portion being zoned C-1.

Mr. Eastman stated that gas is not sold at Walmart's facility on Seventh Street and asked about gas sales on Maiden Lane. Mr. Rohlfing stated as part of Walmart's plan submittal for their

Seventh Street facility, the gas is approved, but Walmart decided not to build the gas station at this time. They own an open lot between the store and St. Louis Avenue and may use that for gas sales in the future. The location of the gas station on Maiden Lane is currently zoned C-1-PD.

Mr. Smith expressed concern about anything being allowed in District C-3 being developed if the Walmart store is not constructed. He asked about rezoning to a planned district. Walmart officials discussed the planned district with the City staff, who did not see a need for the planned district.

Mr. Bolander stated the planned district does not control the use, so all the uses allowed in District C-3 are permitted whether the property is zoned as a planned district or not. The advantage of the planned district is being more creative on their design if the commissioners feel there is a need to protect a certain area.

Mr. Eastman asked Mr. Rohlfing if the other due diligence has been done on the property. He stated the geotechnical, environmental, and traffic work is complete. Work on the architectural plans will begin within the next week. By the time Walmart has received full approval by the City Council, the architect will have been fully engaged.

Mr. Rohlfing asked how many City Council readings this request will take. Mr. Bolander there be two hearings before the City Council, with the second and third reading being read together at the same meeting. The public hearing will take place during the first meeting in September, with the request being placed on second and third reading during the second meeting in September.

Mr. Cortez asked if the residents west of McCoy Avenue received letters notifying them of this request, and Mr. Bolander replied that the Joplin Housing Authority received a letter. Staff has received calls from residents wanting a grocery store who were very supportive of this request.

PUBLIC COMMENT:
Ms. Christine Bushyhead appeared representing MKL, PC, which is the law firm representing Walmart. She discussed the criteria by which the Planning and Zoning Commission makes their decisions. These arguments include the character of the neighborhood, the consistency with the Comprehensive Plan, the adequacy of public utilities and other needed public services, the suitability of the uses of the property the area, the compatibility of the proposed district classification with the neighborhood, and whether the proposed amendment provides a disproportionately great loss to the individual land owners nearby relative to the public gain.

The adjacent neighborhood to the proposed zoning is primarily commercial with existing multi-family zoning, being the higher intensity residential zoning for the area. It is consistent with the Comprehensive Plan and the ordinances of the City. The necessary utilities are available.

The proposed development is an assemblages of properties which include an interior lot, and additional parcels with direct access, making it more conducive to the type of zoning Walmart is requesting, and the land use being requested. Inclusion of the additional parcels with direct access to the minor arterial and collector streets contributes to the economic viability of the site.

The C-3 uses proposed are also allowed in District C-2, which is really more focused and actually is entitled the central business district use. Walmart asks for the commercial district C-3 use which would allow the grocery, pharmacy, gas sales, and liquor sales there at that location.

The location of a Walmart neighborhood market on this interior parcel near the intersection of McCoy Avenue and 26th Street will provide economic activity beneficial to some of those already commercially zoned lots that aren't developed in the office and retail classifications and present opportunities for additional development in that area.

Ms. Bushyhead believes that Walmart complies with the City of Joplin zoning ordinances and meet the City's criteria to make this an inviting project with C-3 zoning at this location. They respectfully request approval of this application by the commissioners.

Mr. Cortez asked Mr. Bolander if beginning the construction of the neighborhood market during early 2015 will accelerate the City's plans to widen Maiden Lane in this specific area to assist with the construction of this new Walmart market store. Mr. Bolander did not believe so, since the Maiden Lane widening is on a set time schedule. The City will work closely to make sure no changes need to be made to Walmart's plans in the future, but they will be working closely with the City's traffic engineers to take the Maiden Lane widening project into account.

Z&P Meeting: August 11, 2014
City Council Meeting: September 2, 2014

STAFF PLANNING REPORT
Rezoning

CASE 031-14:

A request to rezone from Districts C-O PD (Non-Retail – Planned Development), C-1 (Neighborhood Commercial), and C-1 PD (Neighborhood Commercial – Planned Development) to District C-3 (Commercial) for future retail-commercial development.

APPLICANT: Walmart Real Estate Business Trust

LOCATION: Approx. between 24th & 26th Streets, Maiden Lane and McCoy Avenue

REQUESTED ZONING: C-3 (Commercial)

CORRIDOR: N/A

EXISTING CONDITIONS:

Zoning	Land Use	Property Size
C-O PD, C-1, C-1 PD	Vacant (former commercial), undeveloped	5.813 acres

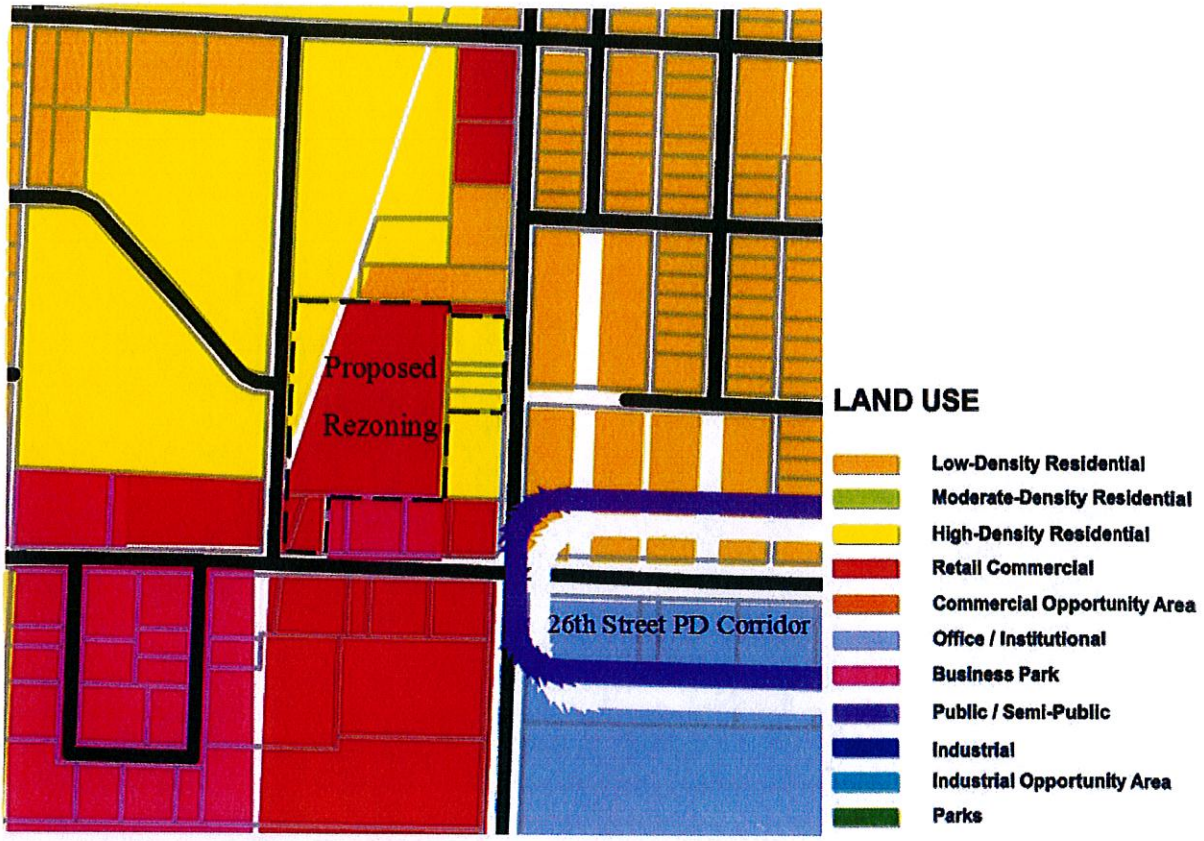
SITE CONTEXT:

	North	East	South	West
Existing Zoning	R-1, C-1	C-1 PD, C-2 PD, R-1	C-O PD, C-1	R-3 PD, C-1 PD
Land Use	Undeveloped	Commercial, Cunningham Park	Office, vacant (former commercial, office)	Multi-family residential, vacant (former commercial)

FUTURE LAND USE:

This site is located near the intersection of 26th Street and Maiden Lane, which has a mixture of uses. The 2012 Future Land Use Map has a majority of the site designated as commercial, with a few parcels designated as high-density residential. The subject property is not within the 26th

Street Planned Development Overlay, which terminates on the east side of Maiden Lane/McClelland Boulevard.



TRANSPORTATION:

Streets with access	Classification	Right-of-way width
Maiden Lane	Minor Arterial	75'
26th Street	Collector	70'
McCoy Avenue	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 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 future retail-commercial development. The applicant is proposing to develop a 42,000 square foot Walmart Neighborhood Market on the property. The primary reason for requesting a C-3 zoning district is to permit the development of a gas station as part of the development. The attached preliminary site plan shows a gas station fronting Maiden Lane. The main entrance for the development will be from Maiden Lane, with a rear entrance along McCoy Avenue. Access is not anticipated from 26th Street, unless cross-access through another property is provided. The overall development will be similar to the recently completed Walmart Neighborhood Market at 7th Street and St. Louis Avenue.

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Staff recommends approval of Case 031-14.

ENCLOSURES:

Preliminary site plan

Preliminary landscape plan

RECEIVED 7-3-14

REZONING APPLICATION FORM

Return Form to:
Planning / Community Development Specialist.
Joplin City Hall
602 South Main Street
Joplin, Missouri 64801
417-624-0820 Ext. 511
FAX 417-625-4738

For Office Use Only
Case No.: 031-14
Filing Fee: $350.00
Date Advertised: 07-27-14
Date Notices Sent: 07-28-14
P&Z Date: 08-11-14
City Council Date: 09-02-14

APPLICANT: Walmart Real Estate Business Trust — PHONE: 816-994-3509
ADDRESS: 2001 SE 10th Street, SWDC, Bentonville, AR — ZIP: 72716
EMAIL: christinebushyhead@mkllaw.com
OWNER: Ox, LLC — PHONE: ——
ADDRESS: 1501-A W. 10th Street, Joplin, MO — ZIP: 64801
EMAIL: ——
OWNER: Gary M. Garvin and Robert D. Garvin — PHONE: ——
ADDRESS: 1515 Main Street, Joplin, MO — ZIP: 64804
EMAIL: ——
LOCATION OF PROPERTY: Near the NE corner of the intersection of McCoy and 26th Street
LEGAL DESCRIPTION: See Attached

Present Zoning C-1, C1-PD, CO-PD Requested Zoning: C-3 Acreage: 5.813
Present Use of Property: Vacant, Parking Lot
Proposed Use of Property: Walmart Neighborhood Market

SURROUNDING LAND USE AND ZONING:

	Land Use	Zoning
North	Vacant	R-1, C-1
South	Vacant, Vet Clinic, Retail	CO-PD, 26th Street, C2-PD
East	Vacant, Vet Clinic, Maiden ROW	C2-PD
West	Vacant, Multifamily, Commercial, McCoy ROW	R3-PD, C1-PD

CHARACTER OF THE NEIGHBORHOOD: Mixed use commercial and multifamily

RELATIONSHIP TO EXISTING ZONING PATTERN:

1. Would proposed change create a small, isolated district unrelated to surrounding districts?
   No, commercially zoned property adjacent to site
2. Are there substantial reasons why the property cannot be used in accord with existing zoning? Yes
   If yes, explain: The interior parcel is set back in the second tier from the intersection of McCoy and 26th Street with the only access onto a local street, McCoy.

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 (INCLUSIVE OF BOTH OWNERSHIPS).
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: N/A
   ___ Site Plan ___ Landscape Plan ___ Building Elevations

TRAFFIC CONDITIONS:

1. Street(s) with Access to Property: McCoy, 26th Street and Maiden
2. Classification of Street(s):
   Minor Arterial Maiden Collector 26th Street Local McCoy
3. Right-of-Way Width: 75 feet; 70 feet; 50 feet; respectively.
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? Lot consolidation will be required.
2. Properly Sized Street Right-of-Way? N/A
3. Drainage Easements? Yes
4. Utility Easements:
   Electricity? Yes
   Gas? Yes
   Sewers? Yes
   Water? Yes
5. Additional Comments: Not at this time

UNIQUE CHARACTERISTIC OF PROPERTY AND ADDITIONAL COMMENT:
Property receives storm water from adjacent properties which will be addressed.

SIGNATURE: Christine T. Bushyhead DATE: 7/2/14

BY: Christine T. Bushyhead

TITLE: MKL, PC

WMREBT
Rezoning Application Requirement

A Statement describing the reasoning for the rezoning, the impact of the proposed change, including 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

The Applicant is requesting the rezoning of 5.813 acres of land comprised of multiple parcels with a variety of zoning districts of C-1, C1-PD and CO-PD to C-3 Commercial District. The C-3, Commercial District zoning, will permit the following uses related to the operation of the proposed Walmart Neighborhood Market: food/grocery retail sales, neighborhood retail sales, drive in – drive thru facilities, gas and fuel sales, and packaged liquor sales. The proposed change in zoning is consistent with the area's mixed uses in the zoning districts of CO-PD, C2-PD, C-1, R3-PD, and a small corner of R-1 (with no development) surrounding the subject property. The transportation network present to serve this C-3 use is a local street, McCoy, a minor arterial, Maiden, and collector street, 26th Street. The adjacent uses of multifamily and office have complementary commercial activity with a grocery store, which is the primary land use in the proposed development. The Walmart Neighborhood Market is designed to locate in just these types of mixed use environments.

According to the Joplin Zoning Regulations, the purpose and intent of C-3, commercial district, is to permit and regulate those business and commercial uses which are appropriately located on or near major traffic arteries.

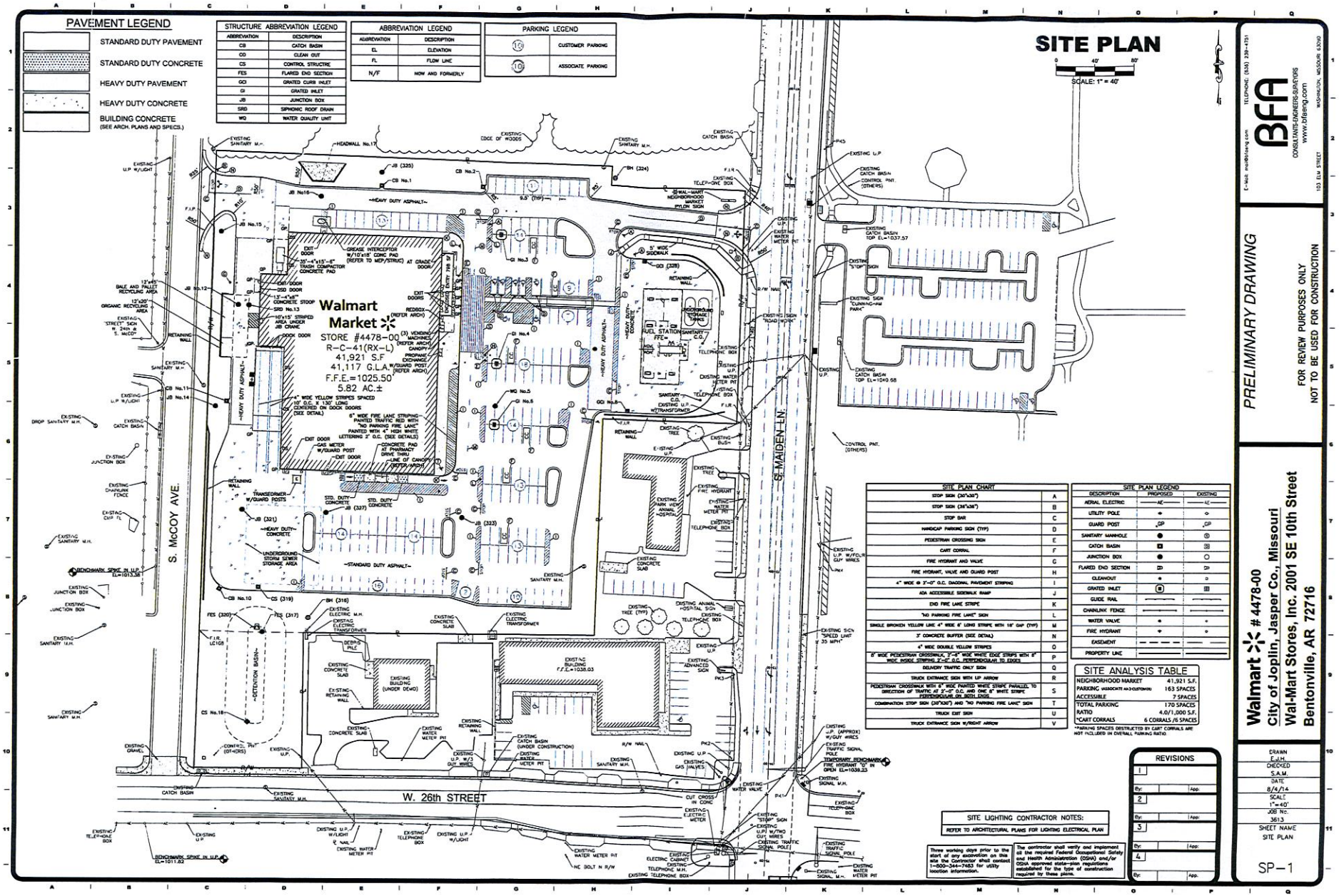
According to the Joplin Zoning Regulations, in order to recommend, approve or disapprove a proposed zoning district amendment, the Planning Commission shall make findings to determine whether the application is found to be compatible using the following criteria. Please note the Applicant's comments related thereto:

A. *Character of the neighborhood.*
   The adjacent neighborhood to the proposed rezoning is primarily commercial with existing multifamily zoning which is the higher intensity residential land use as well, similar to commercial.
B. *Consistency with the Comprehensive Plan and ordinances of the City of Joplin*
   The proposed development is consistent with the City's comprehensive plan for commercial development and the ordinances of the City.
C. *Adequacy of public utilities and other needed public services.*
   The necessary utilities are available and adequate for the proposed development.
D. *Suitability of the uses to which the property has been restricted under its existing zoning.*
   The proposed development is an assemblage of properties which include an interior lot, and additional parcels with direct access to the minor arterial and collector streets adjacent to the land area of the Application. Without the assemblage of properties which will provide this access, the larger parcel currently zoned CO-PD will continue to be difficult to development since this parcel's only access is a local category road with only 50 foot of right of way. It is the inclusion of the additional parcels immediately adjacent to the minor arterial and collector streets, that contributes toward the economic viability

of the site; however, the additional costs related to acquiring additional parcels to make development happen here, requires a denser land use than non-retail office, institutional or high rise multifamily development which are the uses CO-PD contemplates. The market demand to date has not produced a CO-PD development.

E. *Compatibility of the proposed district classification with nearby properties.*
The C-3 uses proposed are also allowed in C-2, Central Business District. The C-2 zoning classification under the current Joplin zoning regulations applies to the Central Business District only. So although on its face the C-3 zoning classification may appear more intense than adjacent properties, nearly all the proposed uses in this application are allowed in C-1 and C-2, except that gas and fuel sales are not permitted by right in C-1 zones.

F. *Whether the proposed amendment provides a disproportionately great loss to the individual land owners nearby relative to the public gain.*
The location of a Walmart Neighborhood Market on this interior parcel near the intersection of McCoy and 26th Street, will provide economic activity beneficial to the City in real property and sales tax revenues, and beneficial to the immediately adjacent commercially zoned property as new commercial users begin to look for opportunities to develop on the other commercially zoned properties as the economic activities increase with the services provided by the Walmart Neighborhood Market.


SITE PLAN
SCALE: 1" = 40'
PAVEMENT LEGEND
STANDARD DUTY PAVEMENT
STANDARD DUTY CONCRETE
HEAVY DUTY PAVEMENT
HEAVY DUTY CONCRETE
BUILDING CONCRETE
(SEE ARCH. PLANS AND SPECS.)
STRUCTURE ABBREVIATION LEGEND
ABBREVIATION LEGEND
PARKING LEGEND
Walmart Market
STORE #4478-00
R-C-41(RX-L)
41,921 S.F
41,117 G.L.A
F.F.E.=1025.50'
5.82 AC.±
S. McCOY AVE.
S. MAIDEN LN.
W. 26th STREET
SITE PLAN CHART
SITE PLAN LEGEND
SITE ANALYSIS TABLE
NEIGHBORHOOD MARKET 41,921 S.F.
PARKING (ASSOCIATE AND CUSTOMER) 163 SPACES
ACCESSIBLE 7 SPACES
TOTAL PARKING 170 SPACES
RATIO 4.0/1,000 S.F.
*CART CORRALS 6 CORRALS /6 SPACES
*PARKING SPACES OBSTRUCTED BY CART CORRALS ARE NOT INCLUDED IN OVERALL PARKING RATIO
SITE LIGHTING CONTRACTOR NOTES:
REFER TO ARCHITECTURAL PLANS FOR LIGHTING ELECTRICAL PLAN
Three working days prior to the start of any excavation on this site the Contractor shall contact 1-800-344-7483 for utility location information.
The contractor shall verify and implement all the required Federal Occupational Safety and Health Administration (OSHA) and/or OSHA approved state-plan regulations established for the type of construction required by these plans.
REVISIONS
PRELIMINARY DRAWING
FOR REVIEW PURPOSES ONLY
NOT TO BE USED FOR CONSTRUCTION
BFA
CONSULTANTS-ENGINEERS-SURVEYORS
WWW.bfaeng.com
103 ELM STREET
WASHINGTON, MISSOURI 63090
TELEPHONE (636) 239-4757
E-Mail: mail@bfaeng.com
Walmart # 4478-00
City of Joplin, Jasper Co., Missouri
Wal-Mart Stores, Inc. 2001 SE 10th Street
Bentonville, AR 72716
DRAWN E.M.M.
CHECKED S.A.M.
DATE 8/6/14
SCALE 1"=40'
JOB No. 3613
SHEET NAME SITE PLAN
SP-1

Walmart # 4478-00

City of Joplin, Jasper Co., Missouri

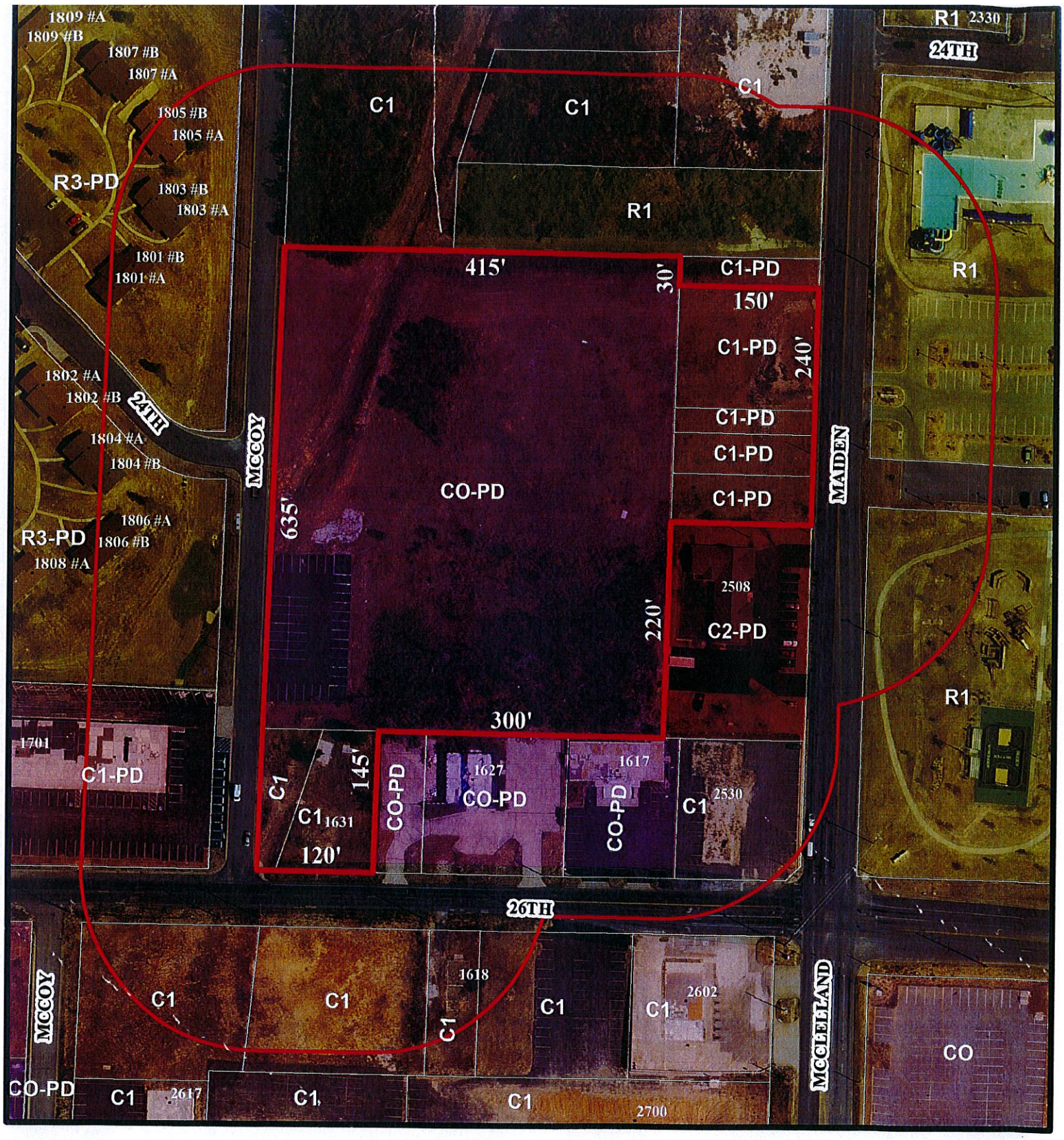
Wal-Mart Stores, Inc. 2001 SE 10th Street

Bentonville, AR 72716

L-1

REVISIONS BY

Landscape TECHNOLOGIES



0 125 250 500 750 1,000 Feet

Case 031-14: A request to rezone from Districts C-O PD (Non-Retail Commercial - Planned Development), C-1 (Neighborhood Commercial) and C-1 PD (Neighborhood Commercial - Planned Development) to District C-3 (Commercial) for property located generally between 24th and 26th Streets, Maiden Lane and McCoy Avenue for future retail-commercial development. - Walmart Real Estate Business Trust

N

Case 031-14: Approximately between 24th and 26th Streets, Maiden Lane and McCoy Avenue – A request to rezone property from Districts C-O PD (Non-Retail – Planned Development), C-1 (Neighborhood Commercial), and C-1 PD (Neighborhood Commercial – Planned Development) to District C-3 (Commercial) for future retail-commercial development – Walmart Real Estate Business Trust.

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Mr. Rohlfing stated that Maiden Lane will contain five lanes when it is widened. Their traffic study shows that a traffic signal is not needed once Maiden Lane is widened. He also discussed roadway improvements on West 26th Street.

Mr. Duncan asked about the zoning for the neighborhood market on Seventh Street. Mr. Bolander thought C-3-PD zoning was approved, but Mr. Rohlfing stated that no rezoning was actually required on that. He stated the zoning was C-2 with a small portion being zoned C-1.

Mr. Eastman stated that gas is not sold at Walmart's facility on Seventh Street and asked about gas sales on Maiden Lane. Mr. Rohlfing stated as part of Walmart's plan submittal for their Seventh Street facility, the gas is approved, but Walmart decided not to build the gas station at this time. They own an open lot between the store and St. Louis Avenue and may use that for gas sales in the future. The location of the gas station on Maiden Lane is currently zoned C-1-PD.

Mr. Smith expressed concern about anything being allowed in District C-3 being developed if the proposed Walmart neighborhood store is not constructed. He asked about rezoning to a planned district. Walmart officials discussed the planned district with the City staff, who did not see a need for the planned district.

Mr. Bolander stated the planned district does not control the use, so all the uses allowed in District C-3 are permitted whether the property is zoned as a planned district or not. The advantage of the planned district is being more creative on their design if the commissioners feel there is a need to protect a certain area.

Mr. Eastman asked Mr. Rohlfing if the other due diligence has been done on the property. He stated the geotechnical, environmental, and traffic work is complete. Work on the architectural plans will begin within the next week. By the time Walmart has received full approval by the City Council, the architect will have been fully engaged. They typically wouldn't close on a piece of property until they have all the approvals and they are ready to build.

Mr. Rohlfing asked how many City Council readings this request will take. Mr. Bolander there be two hearings before the City Council, with the second and third reading being read together at the same meeting. The public hearing will take place during the first meeting in September, with the request being placed on second and third reading during the second meeting in September.

Mr. Cortez asked if the residents west of McCoy Avenue received letters notifying them of this request, and Mr. Bolander replied that the Joplin Housing Authority received a letter. Staff has received calls from residents wanting a grocery store who were very supportive of this request.

Mr. Eastman asked for comments from the audience.

Ms. Christine Bushyhead appeared representing MKL, PC, which is the law firm representing Walmart. Her address is 2600 Grand, Kansas City, Missouri 64108. She made their arguments regarding the criteria by which the Planning and Zoning Commission makes their decisions. These arguments include the character of the neighborhood, the consistency with the

Comprehensive Plan, the adequacy of public utilities and other needed public services, the suitability of the uses of the property the area, the compatibility of the proposed district classification with the neighborhood, and whether the proposed amendment provides a disproportionately great loss to the individual land owners nearby relative to the public gain.

Ms. Bushyhead stated that the adjacent neighborhood to the proposed zoning is primarily commercial with existing multi-family zoning, being the higher intensity residential zoning for the area. It is consistent with the Comprehensive Plan and the ordinances of the City. The necessary utilities are available.

The proposed development is an assemblages of properties which include an interior lot, and additional parcels with direct access, making it more conducive to the type of zoning Walmart is requesting, and the land use being requested. Inclusion of the additional parcels with direct access to the minor arterial and collector streets contributes to the economic viability of the site.

The C-3 uses proposed are also allowed in District C-2, which is really more focused and actually is entitled the central business district use. Walmart asks for the commercial district C-3 use which would allow the grocery, pharmacy, gas sales, and liquor sales there at that location.

The location of a Walmart neighborhood market on this interior parcel near the intersection of McCoy Avenue and 26th Street will provide economic activity beneficial to some of those already commercially zoned lots that aren't developed in the office and retail classifications and present opportunities for additional development in that area.

Ms. Bushyhead believes that Walmart complies with the City of Joplin zoning ordinances and meet the City's criteria to make this an inviting project with C-3 zoning at this location. They respectfully request approval of this application by the commissioners.

Mr. Cortez asked Mr. Bolander if beginning the construction of the neighborhood market during early 2015 will accelerate the City's plans to widen Maiden Lane in this specific area to assist with the construction of this new Walmart market store. Mr. Bolander did not believe so, since the Maiden Lane widening is on a set time schedule. The City will work closely to make sure no changes need to be made to Walmart's plans in the future, but they will be working closely with the City's traffic engineers to take the Maiden Lane widening project into account.

Mr. Eastman asked for additional comments from the audience, and none were received. He then closed the public hearing for Case 031-14.

MR. SMITH MOVED, SECONDED BY MR. CORTEZ, THAT CASE 031-14 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. DERMOTT, MR. DUNCAN, MR. EASTMAN, MR. RAMSOUR, AND MR. SMITH VOTING "AYE"; AND WITH MR. BROWN BEING ABSENT (6 IN FAVOR, 1 ABSENT).

P & Z Case 031-14
Walmart Real Estate Business Trust
(P & Z Recommended Approval)

COUNCIL BILL NO. 2014-269 **ORDINANCE NO.**

AN ORDINANCE amending Ordinance No. 2004-256, passed by the Council of the City of Joplin, Missouri, November 15, 2004, by removing from 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.

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

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

A tract of land being all of Lots 80 thru 83 and 109 of Ludwigs First Addition to the City of Joplin recorded on October 13, 1947 in Book 7, Pages 1 and 1A of the Jasper County Recorder of Deeds Office and being part of Miscellaneous Tract 14 in Section 16, all being part of the Northeast Quarter of Section 16, Township 27 North, Range 33 West of the 5th P.M., City of Joplin, Jasper County, Missouri to wit: Commencing at the East Quarter Corner of said Section 16, thence along the south line of the Northeast Quarter of said Section 16 North 89 degrees 20 minutes 42 seconds West 588.35 feet to a point; thence leaving said south quarter section line North 02 degrees 03 minutes 23 seconds East 23.51 feet to the north right of way line of 26th Street at the point of beginning; thence North 02 degrees 03 minutes 23 seconds East 645.29 feet to a set iron rod; thence South 88 degrees 20 minutes 21 seconds East 408.00 feet to the west line of a Drainage Easement per said addition; thence along said west easement line South 02 degrees, 01 minutes 30 seconds West 20.60 feet to a set iron rod at the Northwest Corner of said Lot 80; thence leaving said easement line along the north line of said Lot 80 and the south line of said easement South 88 degrees 01 minutes 30 seconds East 150.00 feet to the Northeast Corner of said Lot 80, also being on the west right of way line of Maiden Lane; thence leaving said line along the east line of said Lots 80 thru 83 and said west right of way line South 02 degrees 01 minutes 30 seconds West 242.00 feet to a set iron rod at the Southeast Corner of said Lot 83, also being the Northeast Corner of Lot 84 of said addition; thence leaving said line along the south line of said Lot 83 and the north line of said Lot 84 North 88 degrees 01 minutes 30 seconds West 150.00 feet to a set iron rod at the Southwest Corner of said Lot 83, also being the Northwest Corner of said Lot 84; thence leaving said line along the west line of Lots 84 thru 86 of said addition South 02 degrees 00 minutes 37 seconds West 223.93 feet to a set iron rod at the Northeast Corner

of Lot 114 of said addition, also being the Northwest Corner of said Lot 86; thence leaving said line along the north line of Lots 114 thru 110 of said addition North 89 degrees 35 minutes 08 seconds West 300.07 feet to a set iron rod at the Northwest Corner of said Lot 110, also being the Northeast Corner of said Lot 109; thence leaving said line along the west line of said Lot 110 and the east line of said Lot 109 South 00 degrees 33 minutes 36 seconds West 150.00 feet to a found iron rod at the Southeast Corner of said Lot 109, also being the Southwest Corner of said Lot 110, also being on the north right of way line of said 26th Street; thence leaving said line along said north right of way line and the south line of said Lot 109 North 89 degrees 29 minutes 24 seconds West 112.33 feet to the point of beginning, containing 5.813 acres. Subject to any and all easements, restrictions, conditions, etc. of record.

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

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this the _____ day of _____, 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: September 2, 2014

ITEM: Council Bill No. 2014-617. This Council Bill approves the Joplin Convention & Visitor Bureau's (JCVB) Grant distribution for FY2015 relating to special events, festivals and celebrations.

ORIGINATING DEPARTMENT: Convention and Visitors Bureau
ATTACHMENTS: Council Bill No. 2014-617.

DEPARTMENT HEAD:	Patrick W. Tuttle	DATE: 8/25/14
INTERIM CITY MANAGER:	Sam Anselm	DATE: 8/26/14
CITY ATTORNEY:	Peter C. Edwards PE	DATE: 8/25/14
FINANCE DEPARTMENT:	Leslie Haase LH	DATE: 8-25-14

INTRODUCTION:

This Council Bill approves the Joplin Convention & Visitor Bureau's (JCVB) Grant distribution for FY2015 special events, festivals and celebrations. Funding comes from a portion of the Occupational License Tax (JCVB Hotel/Motel tax) monies collected resulting from Ordinance No. 2000-048 as authorized by City of Joplin voters on November 7, 2000.

SUMMARY:

The purpose of this Grant Program is to assist qualified organizations with the promotion of tourism activities striving to directly increase hotel/motel occupancy and create positive image building for Joplin. Qualifying applicants must meet the following criteria:

- Not-For-Profit and For Profit organizations may apply;
- Events must be held between November 1, 2014 & October 31, 2015;
- Events must be held within 20 miles of Joplin city limits;
- Events must be open to the general public.

On July 15, 2014, the Joplin Convention & Visitors Bureau (JCVB) Advisory Board held a meeting to review and discuss applications submitted for the FY2015 Special Event Grant offered through the JCVB. Following the review, the Board listened to presentations from each of the thirteen applicants that included a 5-minute presentation and 5-minute question and answer period.

Funding requests from the thirteen applications totaled $221,400. Grant funds available for this program are capped at $100,000.

Taking into consideration many factors including application, presentation, tourism draw, community development, potential room nights, growth potential, previous funding and reporting standards, and overall appeal.

Scoring Criteria: Applications are worth a total of 100 points with a minimum of 60 points required to be eligible for funding. Applications will be scored and ranked by the total number of points they receive.

The Joplin Convention & Visitors Bureau Advisory Board respectfully submits the following funding recommendations for your approval:

1) **Historic Murphysburg's DickensFest, December 12-14, 2015.** Requested = $19,250, **Recommended = $13,140.** This will be the fifth year for funding for this event. DickensFest has grown and developed into a strong December event and a part of the JCVB "Holiday Experience" marketing. This year the event will include indoor activities inside the Scottish Rite Cathedral. The JCVB Board feels the event is beneficial for the community and tourism, offering a unique activity during the off-season. FY15 funding is recommended to support the event's Entertainment budget and Marketing efforts.

2) **MSSU Diversity Committee's Martin Luther King Day of Service, January 19-21, 2015.** Requested = $4,500, **Recommended = $4,500.** This event was supported by the JCVB for the first-time in 2014 through the Community Event Grant. As one of the most recognized MLK events in the region, the FY15 grant funding will help bring a noted speaker to Joplin, which in turn helps grow attendance. FY15 funding is recommended to support the Speaker's Fees and regional Marketing.

3) **George A. Spiva Center for the Arts' PhotoSpiva, March 7-May 3, 2015.** Requested = $19,348.40, **Recommended = $12,000.** This is a nationally known photo competition. The Board feels the marketing for this event always builds a positive image of Joplin and attracts attention from all across the nation. FY15 funding is recommended to support the event's Marketing efforts outside a 50 mile radius.

4) **Active Lifestyle's Joplin Memorial Half, May 15-16, 2015.** Requested = $20,000, **Recommended = $14,000.** Previously known as the Boomtown Run, this event continues to demonstrate rapid growth and development. Transitioning to a Memorial Run, using the OKC Memorial Half as a template to honor those who lost their lives on May 22, 2011. There is a fundraising component to this event but the Board felt the local fitness draw and room nights generated warrants grant support. FY15 funding is recommended to support the event's Race Timing and Marketing; through print and electronic means.

5) **Rufus Racing's Summer Roundup Triathlon Weekend, June 27 & 28, 2015.** Requested = $20,000, **Recommended = $12,000.** As a regional sanctioned USTA event, this annually sold out triathlon in 2014 drew participants from 24 states. Each year, Rufus Racing grows what they hope will become the Midwest's premiere triathlon. FY15 funding is recommended to support the event's Marketing; through print and electronic means, and Awards and Prizes.

6) **Wildcat Glades Conservation & Audubon Center's Shoal Creek Water Festival, August 8, 2015.** Requested = $16,295, **Recommended = $4,000.** This event is held on a weekend when regional lodging is nearly sold out – during Marian Days. However, with greater focus on the water activities, such as the Cardboard Boat Races and water conservation the event does create some tourism interest. FY15 funding is recommended to support the event's Marketing effort and Prize Money.

7) **Joplin Disc Golf Club's 10th Annual Four States Open, September 18-20, 2015.** Requested = $20,000, **Recommended = $14,800.** 2015 will mark the 10th annual Four State Open. The event organizers are consistent, not only in reporting, but also in the efforts to develop new aspects of the event that will continue to encourage overnight stays. FY15 funding is recommended to support the event's Prize Money bank which is the primary draw for attracting the nation's top disc golf players to the event. Due to the over-whelming request for grant funding for FY15, the JCVB Board could not fully fund the requested $15,800 in Prize Money and asked the JCVB director to solicit support for the $1,000 balance from the Joplin Sports Authority board on the Club's behalf.

8) **Four State Trucks & Chrome Shop Mafia's, Guilty by Association, September 25-26, 2015.** Requested = $20,000, **Recommended = $20,000.** This event has received Community Event Grant funding over the past two years. As a premier trucking event truckers are drawn to Joplin from all over the nation and account for a high number of track-able room nights. A convoy through Joplin and a downtown truck show are popular community draw and fill downtown restaurants. This event scored the highest among all 13 events. FY15 funding is recommended to support the event's Marketing efforts and Downtown Activities.

9) **MSSU Alumni Association's MSSU Homecoming Celebration, October 6-10, 2015.** Requested = $8,677, **Recommended = $5,560.** This group has received grant funds for the past eight years and has shown that such funding has helped grow attendance and room nights. Their request and grant support has typically been the printing and postage for Save-the-Date cards and invitations. FY15 funding is recommended to support the Printing and Postage of the event invitations.

10) Joplin Festival Company's St Patrick's Day Parade and Festival, March 14-17, 2015. Requested = $16,666, Recommended = $0. This event did not score high enough to be considered for funding.

11) Joplin Festival Company's Wild Joplin Days, March 26-28, 2015. Requested = $18,888, Recommended = $0. This event did not score high enough to be considered for funding.

12) Joplin Festival Company's Joplin Jazz in June Festival, June 18-20, 2015. Requested = $19,999, Recommended = $0. This event did not score high enough to be considered for funding.

13) Joplin Festival Company's Oktoberfest, October 1-3, 2015. Requested = $17,777, Recommended = $0. This event did not score high enough to be considered for funding.

RECOMMENDATION:

The JCVB Advisory Board and Staff recommend the Joplin City Council approve the funding recommendation of $100,000 and that Grants be awarded for the nine (9) events described above.

ATTACHMENTS:

Grant Application summary and event snapshot (16 pages).

(Continuation of Green Sheet for Council Bill No. 2014-617 approving the Joplin Convention & Visitors Bureau (JCVB) Special Event Grant distribution in FY2015 for special events, festivals and celebrations.)

SUMMARY

IN CALENDAR ORDER

1) HISTORIC MURPHYSBURG'S, DICKENSFEST, DECEMBER 12-14, 2014
REQUESTED = $19,250, RECOMMENDED = $13,140
- Petting Zoo Exhibit, $1,350
- ~~Horse/Carriage & Train Ride, $1,500~~
- Marketing (Poster Printing and Facebook), $3,000
- Entertainment Performers/Shows, $6,500
- Interactive Theatrical Entertainment, $1,000
- ~~Tents/Stages/Sound Production/Misc. Supplies, $1,000~~
- Facility Rentals – Scottish Rite Cathedral ~~& John Wise House, $4,900~~ ($1,290)

2) MSSU DIVERSITY COMMITTEE, MARTIN LUTHER KING DAY OF SERVICE, JANUARY 19-21, 2015
REQUESTED = $4,500, RECOMMENDED = $4,500
- Speakers Fee, $1,800
- Marketing & Publicity, $2,700

3) SPIVA CENTER FOR THE ART'S, PHOTOSPIVA 2015, MARCH 7-MAY 3, 2015
REQUESTED = $19,348.40, RECOMMENDED = $12,000
- Marketing (Placed Ads), ~~$10,680~~ ($10,000)
- Marketing (Print), ~~$2,893.40~~ ($2,000)
- ~~Misc. Support, $2,200~~
- ~~Web Site Update, $980~~
- ~~Juror Related Expenses, $2,595~~

4) ACTIVE LIFESTYLES EVENTS, JOPLIN MEMORIAL HALF, MAY 15-16, 2015
REQUESTED = $20,000, RECOMMENDED = $14,000
- Marketing (Print), $4,500
- Marketing (Electronic-*Facebook & Constant Contact*), $1,000
- Chip Timing, $8,500
- ~~Awards, $3,500~~
- ~~Racer ID (Bibs), $2,500~~

5) RUFUS RACING'S, SUMMER ROUNDUP TRIATHLON WEEKEND, JUNE 27-29, 2015
REQUESTED = $20,000, RECOMMENDED = $12,000
- Marketing (Print), $7,600
- Marketing (Facebook), $400
- ~~Web Site, $3,000~~
- ~~Chip Timing, $2,000~~
- ~~Racer ID (bibs, caps, numbers), $1,500~~
- ~~Family Activities (inflatables), $500~~
- Awards and Prizes, ~~$5,000~~ ($4,000)

6) WILDCAT GLADES CONSERVATION & AUDUBON CENTER, SHOAL CREEK WATER FESTIVAL, AUGUST 8, 2015
REQUESTED = $16,295, RECOMMENDED = $4,000
- ~~Marketing (Billboards), $3,000~~
- ~~Marketing (Ad Placement), $4,570~~
- ~~Marketing (TV, Cable), $75~~
- Marketing (Online), ~~$1,600~~ ($1,000)
- ~~Marketing (Print), $450~~
- ~~Entertainment, $1,050~~
- Prize Money, ~~$3,650~~ ($3,000)
- ~~Rental Equipment, $6,936~~

7) JOPLIN DISC GOLF CLUB, 10TH ANNUAL FOUR STATE OPEN, SEPTEMBER 18-20, 2015
REQUESTED = $20,000, RECOMMENDED = $14,800
- ~~Marketing (Magazine), $700~~
- ~~Marketing (Facebook), $500~~
- Prize Money, ~~$15,800~~ ($14,800)
- ~~Web Design/Maintenance, $1,500~~
- ~~Reception Venue, $500 x2 + Band, $500 = $1,500~~

8) FOUR STATE TRUCKS/CHROME SHOP MAFIA'S, GUILTY BY ASSOCIATION, SEPTEMBER 25-26, 2015
REQUESTED = $20,000, RECOMMENDED = $20,000
- Marketing (Print), $6,100
- Marketing (Ad Placement), $10,000
- Downtown Activities, $3,900

9) MSSU ALUMNI ASSOCIATION'S, MSSU HOMECOMING CELEBRATION, OCTOBER 6-10, 2015
REQUESTED = $8,677, RECOMMENDED = $5,560
- ~~*Homecoming Save the Date Cards*:~~
- ~~Printing, Labeling, Postage, $2,865~~
- *Homecoming Invitations*:
- Printing, Labeling, Postage, $5,273
- ~~*Reunion Save the Date Cards*:~~
- ~~Printing, Labeling, Postage, $244~~
- *Reunion Invitations Letter*:
- **Printing, Labeling, Postage, ~~$295~~ ($287)**

10) JOPLIN FESTIVAL COMPANY'S, ST PATRICK'S DAY PARADE & FESTIVAL, MARCH 14-17, 2015
REQUESTED = $16,666, RECOMMENDED = $0
- ~~Marketing (Print), $1,000~~
- ~~Marketing (Radio), $1,000~~
- ~~Marketing (Social), $1,000~~
- ~~Entertainment/Attractions/Exhibits/Prize Money, $13,666~~

11) JOPLIN FESTIVAL COMPANY'S, WILD JOPLIN DAYS, MARCH 26-28, 2015
REQUESTED = $18,888, RECOMMENDED = $0
- ~~Marketing (Print), $1,000~~
- ~~Marketing (Radio), $1,000~~
- ~~Marketing (Social), $1,000~~
- ~~Entertainment/Attractions/Exhibits/Prize Money, $15,888~~

12) JOPLIN FESTIVAL COMPANY'S, JOPLIN JAZZ IN JUNE FESTIVAL, JUNE 18-20, 2015
REQUESTED = $19,999, RECOMMENDED = $0
- ~~Marketing (Print), $2,000~~
- ~~Marketing (Radio), $2,000~~
- ~~Marketing (Social), $1,000~~
- ~~Entertainment/Attractions/Exhibits/Prize Money, $14,999~~

13) JOPLIN FESTIVAL COMPANY'S, OKTOBERFEST, OCTOBER 1-3, 2015
REQUESTED = $17,777, RECOMMENDED = $0
- ~~Marketing (Print), $1,000~~
- ~~Marketing (Radio), $1,000~~
- ~~Marketing (Social), $1,000~~
- ~~Entertainment/Attractions/Exhibits/Prize Money, $14,777~~

ORGANIZATION:	Historic Murphysburg Preservation, Inc.
EVENT:	DICKENSFEST V
EVENT DATE:	December 12-14, 2014
EVENT LOCATION:	Historic Murphysburg, Joplin
PROJECTED ATTENDANCE:	10,000
ESTIMATED # OF ROOM NIGHTS:	40
ESTIMATED # OF DAY TRIPPERS:	9,000 (also with Holiday Experience)
TARGET AUDIENCE:	Families, couples, tourists, artists, school groups, seniors
MARKET ORIGIN OF ATTENDEES:	4 States Region and Beyond
AMOUNT REQUESTED:	$19,250
PORTION OF BUDGET:	49%
FUNDS REQUESTED FOR:	Petting Zoo Exhibit, $1,350 ~~Horse/Carriage & Train Ride, $1,500~~ Marketing (Poster Printing and Facebook), $3,000 Entertainment Performers/Shows, $6,500 Interactive Theatrical Entertainment, $1,000 ~~Tents/Stages/Sound Production/Misc. Supplies, $1,000~~ Facility Rentals – Scottish Rite Cathedral ~~& John Wise House, $4,900~~ ($1,290)
FUNDING HISTORY:	FY14 S.E. Grant - $13,540 FY13 S.E. Grant - $19,400 FY12 S.E. Grant - $20,000 FY11 S.E. Grant - $12,500
SOCIAL MEDIA PROGRAM:	Facebook & Web Site
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 78.9/100 Board Recommendation: $13,140

ORGANIZATION:	MSSU Diversity Committee
EVENT:	MARTIN LUTHER KING DAY OF SERVICE
EVENT DATE:	January October 20-25, 2015
EVENT LOCATION:	MSSU Campus & Community Projects
PROJECTED ATTENDANCE:	200-300 with 250 @ Breakfast
ESTIMATED # OF ROOM NIGHTS:	5-10
ESTIMATED # OF DAY TRIPPERS:	100-150
TARGET AUDIENCE:	Local, Tulsa, Springfield, NW AR
MARKET ORIGIN OF ATTENDEES:	Student, Faculty, and Community
AMOUNT REQUESTED:	$4,500
PORTION OF BUDGET:	44%
FUNDS REQUESTED FOR:	Speakers Fee, $1,800 Marketing & Publicity, $2,700
FUNDING HISTORY:	JCVB supported in FY14 @ $3,200
SOCIAL MEDIA PROGRAM:	
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 78.5/100 Board Recommendation: $4,500

ORGANIZATION:	George A. Spiva Center for the Arts
EVENT:	PHOTOSPIVA 2015
EVENT DATE:	March 7 – May 3, 2015
EVENT LOCATION:	Spiva Center for the Arts
PROJECTED ATTENDANCE:	2,000
ESTIMATED # OF ROOM NIGHTS:	10-15
ESTIMATED # OF DAY TRIPPERS:	150
TARGET AUDIENCE:	All ages, social-economic backgrounds and interests
MARKET ORIGIN OF ATTENDEES:	Kansas City, Springfield, Tulsa, Kansas, NW Arkansas
AMOUNT REQUESTED:	$19,348.40
PORTION OF BUDGET:	35%
FUNDS REQUESTED FOR:	Marketing (Placed Ads), ~~$10,680~~ ($10,000) Marketing (Print), ~~$2,893.40~~ ($2,000) ~~Misc. Support, $2,200~~ ~~Web Site Update, $980~~ ~~Juror Related Expenses, $2,595~~
FUNDING HISTORY:	FY14 S.E. Grant - $14,860 FY13 S.E. Grant - $18,019.12 FY12 S.E. Grant - $7,500 FY11 S.E. Grant - $7,500 FY10 C.E. Grant - $2,500
SOCIAL MEDIA PROGRAM:	Facebook and Web Site
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 81.5/100 Board Recommendation: $12,000

ORGANIZATION:	Active Lifestyle Events
EVENT:	JOPLIN MEMORIAL HALF
EVENT DATE:	May 15-16, 2015
EVENT LOCATION:	Joplin (Half-Marathon and 5K)
PROJECTED ATTENDANCE:	2,600
ESTIMATED # OF ROOM NIGHTS:	200
ESTIMATED # OF DAY TRIPPERS:	780
TARGET AUDIENCE:	Half Marathon running community
MARKET ORIGIN OF ATTENDEES:	Runners from 28 states, Washington DC and 1 foreign country participated in 2014.
AMOUNT REQUESTED:	$20,000
PORTION OF BUDGET:	11.6%
FUNDS REQUESTED FOR:	Marketing (Print), $4,500 Marketing (Electronic-*Facebook & Constant Contact*), $1,000 Chip Timing, $8,500 ~~Awards, $3,500~~ ~~Racer ID (Bibs), $2,500~~
FUNDING HISTORY:	FY14 S.E. Grant - $20,000 FY13 S.E. Grant - $19,500 FY12 S.E. Grant - $20,000 FY11 S.E. Grant - $10,000 (as Boomtown Run) FY10 S.E. Grant - $10,000 (as Boomtown Run) FY09 S.E. Grant - $10,567 (as Boomtown Run)
SOCIAL MEDIA PROGRAM:	Facebook and Web Site
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 89.2/100 Board Recommendation: $14,000

ORGANIZATION:	Rufus Racing, LLC
EVENT:	SUMMER ROUNDUP TRIATHLON
EVENT DATE:	June 27-28, 2015
EVENT LOCATION:	Scroggs Lake (near Jasper)
PROJECTED ATTENDANCE:	350 racers, 400 spectators
ESTIMATED # OF ROOM NIGHTS:	100
ESTIMATED # OF DAY TRIPPERS:	400
TARGET AUDIENCE:	Triathlon Athletes
MARKET ORIGIN OF ATTENDEES:	CA, TX, DE, WY, GA, IL, OK, KS, MO , AR, WI, IA, FL, OH, FL, TN, CO, NM, NY, NV, NE
AMOUNT REQUESTED:	$20,000
PORTION OF BUDGET:	Approximately 30%
FUNDS REQUESTED FOR:	Marketing (Print), $7,600 Marketing (Facebook), $400 ~~Web Site, $3,000~~ ~~Chip Timing, $2,000~~ ~~Racer ID (bibs, caps, numbers), $1,500~~ ~~Family Activities (inflatables), $500~~ Awards and Prizes, ~~$5,000~~ ($4,000)
FUNDING HISTORY:	FY14 S.E. Grant - $12,500 FY13 S.E. Grant - $12,625 FY12 S.E. Grant - $7,500 FY11 S.E. Grant - $7,500 FY10 C.E. Grant - $2,500
SOCIAL MEDIA PROGRAM:	Facebook
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	USA Triathlon Sanctioned. Scored Avg 82.2/100 Board Recommendation: $12,000

ORGANIZATION:	Wildcat Glades Conservation & Audubon Center
EVENT:	SHOAL CREEK WATER FESTIVAL
EVENT DATE:	August 8, 2015
EVENT LOCATION:	Wildcat Park
PROJECTED ATTENDANCE:	2,100
ESTIMATED # OF ROOM NIGHTS:	100
ESTIMATED # OF DAY TRIPPERS:	2,000
TARGET AUDIENCE:	General, with emphasis on families, water/nature and cardboard boat racers.
MARKET ORIGIN OF ATTENDEES:	Four states region
AMOUNT REQUESTED:	$16,295
PORTION OF BUDGET:	97%
FUNDS REQUESTED FOR:	~~Marketing (Billboards), $3,000~~ ~~Marketing (Ad Placement), $4,570~~ ~~Marketing (TV, Cable), $75~~ Marketing (Online), ~~$1,600~~ ($1,000) ~~Marketing (Print), $450~~ ~~Entertainment, $1,050~~ Prize Money, ~~$3,650~~ ($3,000) ~~Rental Equipment, $6,936~~
FUNDING HISTORY:	FY14 S.E. Grant - $10,020 FY10 C.E. Grant - $5,000
SOCIAL MEDIA PROGRAM:	
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 69.5/100 Board Recommendation: $4,000

ORGANIZATION:	Joplin Disc Golf Club
EVENT:	10TH ANNUAL FOUR STATES OPEN
EVENT DATE:	September 18-20, 2015
EVENT LOCATION:	McClelland Park, Joplin & Morse Park, Neosho
PROJECTED ATTENDANCE:	270
ESTIMATED # OF ROOM NIGHTS:	100
ESTIMATED # OF DAY TRIPPERS:	50
TARGET AUDIENCE:	Disc Golf enthusiast
MARKET ORIGIN OF ATTENDEES:	Joplin, Tulsa, Texas, St Louis, Illinois (professional tour level as well).
AMOUNT REQUESTED:	$20,000
PORTION OF BUDGET:	60.66%
FUNDS REQUESTED FOR:	~~Marketing (Magazine), $700~~ ~~Marketing (Facebook), $500~~ Prize Money, ~~$15,800~~ ($14,800) ~~Web Design/Maintenance, $1,500~~ ~~Reception Venue, $500 x2 + Band, $500= $1,500~~
FUNDING HISTORY:	FY14 S.E. Grant - $9,500 FY13 S.E. Grant - $13,300 FY12 S.E. Grant - $9,750 FY11 C.E. Grant - $5,000 FY10 C.E. Grant - $3,650
SOCIAL MEDIA PROGRAM:	Facebook
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 78.9/100 Board Recommendation: $14,800 Solicit JSA Board for $1,000 balance to fully fund

ORGANIZATION:	Four State Trucks – Chrome Shop Mafia
EVENT:	GUILTY BY ASSOCIATION – TRUCK SHOW AND CONVOY
EVENT DATE:	September 25-26, 2015
EVENT LOCATION:	Joplin, MO (Near Petro Truck Stop and Downtown)
PROJECTED ATTENDANCE:	10,000 – 12,000 (300 trucks)
ESTIMATED # OF ROOM NIGHTS:	920
ESTIMATED # OF DAY TRIPPERS:	400
TARGET AUDIENCE:	Truckers, clients and the general public.
MARKET ORIGIN OF ATTENDEES:	Attracting from the nation-wide client base. Plus local residence are invited to attend.
AMOUNT REQUESTED:	$20,000 (total budget $119,000)
PORTION OF BUDGET:	13%
FUNDS REQUESTED FOR:	Marketing (Print), $6,100 Marketing (Ad Placement), $10,000 Downtown Activities, $3,900
FUNDING HISTORY:	5th year for event FY14 C.E. Grant - $4,500 FY13 C.E. Grant - $2,700
SOCIAL MEDIA PROGRAM:	Web & Social
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 95.3/100 Board Recommendation: $20,000

(Continuation of Green Sheet for Council Bill No. 2014-617 approving the Joplin Convention & Visitors Bureau (JCVB) Special Event Grant distribution in FY2015 for special events, festivals and celebrations.)

ORGANIZATION:	MSSU Alumni Association
EVENT:	MISSOURI SOUTHERN HOMECOMING 2015
EVENT DATE:	October 6-10, 2015
EVENT LOCATION:	MSSU Campus
PROJECTED ATTENDANCE:	5,000 through all events
ESTIMATED # OF ROOM NIGHTS:	50
ESTIMATED # OF DAY TRIPPERS:	500+
TARGET AUDIENCE:	5,500 current students, 28,000 alumni and 2,500 friends of MSSU
MARKET ORIGIN OF ATTENDEES:	Alumni of MSSU
AMOUNT REQUESTED:	$8,677
PORTION OF BUDGET:	45% of budget is represented by grant request
FUNDS REQUESTED FOR:	~~*Homecoming Save the Date Cards*~~: ~~Printing, Labeling, Postage, $2,865~~ *Homecoming Invitations*: Printing, Labeling, Postage, $5,273 ~~*Reunion Save the Date Cards*~~: ~~Printing, Labeling, Postage, $244~~ *Reunion Invitations Letter*: Printing, Labeling, Postage, ~~$295~~ ($287)
FUNDING HISTORY:	FY14 S.E. Grant - $9,580 FY 13 S.E. Grant - $3,000 FY12 S.E. Grant - $10,330 FY11 S.E. Grant - $5,171 FY10 S.E. Grant - $7,500 FY08 S.E. Grant - $2,000 FY07 S.E. Grant - $5,000 FY06 S.E. Grant - $5,000
SOCIAL MEDIA PROGRAM:	Yes (Web & Social)
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 85.4/100 Board Recommendation: $5,560

(Continuation of Green Sheet for Council Bill No. 2014-617 approving the Joplin Convention & Visitors Bureau (JCVB) Special Event Grant distribution in FY2015 for special events, festivals and celebrations.)

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ORGANIZATION:	Joplin Festival Company
EVENT:	ST PATRICK'S DAY PARADE AND FESTIVAL
EVENT DATE:	March 14-17, 2015
EVENT LOCATION:	Downtown Joplin
PROJECTED ATTENDANCE:	9,000
ESTIMATED # OF ROOM NIGHTS:	75
ESTIMATED # OF DAY TRIPPERS:	8,000
TARGET AUDIENCE:	Couples, Groups of Singles and Families
MARKET ORIGIN OF ATTENDEES:	Local, SW MO, Mid-MO, NW AR, Eastern KS & OK, Springfield
AMOUNT REQUESTED:	$16,666
PORTION OF BUDGET:	49%
FUNDS REQUESTED FOR:	~~Marketing (Print), $1,000~~ ~~Marketing (Radio), $1,000~~ ~~Marketing (Social), $1,000~~ ~~Entertainment/Attractions/Exhibits/Prize Money, $13,666~~
FUNDING HISTORY:	None, new event
SOCIAL MEDIA PROGRAM:	Facebook
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 49.6/100 Board Recommendation: $0

ORGANIZATION:	Joplin Festival Company
EVENT:	WILD JOPLIN DAYS
EVENT DATE:	March 26-28, 2015
EVENT LOCATION:	Downtown Joplin
PROJECTED ATTENDANCE:	8,000
ESTIMATED # OF ROOM NIGHTS:	55
ESTIMATED # OF DAY TRIPPERS:	7,000
TARGET AUDIENCE:	Families, Children, Couples, Groups of Singles
MARKET ORIGIN OF ATTENDEES:	Local, SW MO, Mid-MO, NW AR, Eastern KS & OK, Springfield
AMOUNT REQUESTED:	$18,888
PORTION OF BUDGET:	49%
FUNDS REQUESTED FOR:	~~Marketing (Print), $1,000~~ ~~Marketing (Radio), $1,000~~ ~~Marketing (Social), $1,000~~ ~~Entertainment/Attractions/Exhibits/Prize Money, $15,888~~
FUNDING HISTORY:	None, new event
SOCIAL MEDIA PROGRAM:	Facebook
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 46.9/100 Board Recommendation: $0

(Continuation of Green Sheet for Council Bill No. 2014-617 approving the Joplin Convention & Visitors Bureau (JCVB) Special Event Grant distribution in FY2015 for special events, festivals and celebrations.)

ORGANIZATION:	Joplin Festival Company
EVENT:	JOPLIN JAZZ IN JUNE FESTIVAL
EVENT DATE:	June 18-20, 2015
EVENT LOCATION:	Downtown Joplin
PROJECTED ATTENDANCE:	10,000
ESTIMATED # OF ROOM NIGHTS:	99
ESTIMATED # OF DAY TRIPPERS:	9,000
TARGET AUDIENCE:	Professional Individuals/Couples 27-57
MARKET ORIGIN OF ATTENDEES:	Local, SW MO, Mid-MO, NW AR, Eastern KS & OK, Springfield
AMOUNT REQUESTED:	$19,999
PORTION OF BUDGET:	49%
FUNDS REQUESTED FOR:	~~Marketing (Print), $2,000~~ ~~Marketing (Radio), $2,000~~ ~~Marketing (Social), $1,000~~ ~~Entertainment/Attractions/Exhibits/Prize Money, $14,999~~
FUNDING HISTORY:	None, new event
SOCIAL MEDIA PROGRAM:	Facebook
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 45.4/100 Board Recommendation: $0

ORGANIZATION:	Joplin Festival Company
EVENT:	OKTOBERFEST
EVENT DATE:	October 1-3, 2015
EVENT LOCATION:	Downtown Joplin
PROJECTED ATTENDANCE:	9,000
ESTIMATED # OF ROOM NIGHTS:	75
ESTIMATED # OF DAY TRIPPERS:	8,000
TARGET AUDIENCE:	Couples, Groups of Singles and Families
MARKET ORIGIN OF ATTENDEES:	Local, SW MO, Mid-MO, NW AR, Eastern KS & OK, Springfield
AMOUNT REQUESTED:	$19,999
PORTION OF BUDGET:	49%
FUNDS REQUESTED FOR:	~~Marketing (Print), $1,000~~ ~~Marketing (Radio), $1,000~~ ~~Marketing (Social), $1,000~~ ~~Entertainment/Attractions/Exhibits/Prize Money, $14,777~~
FUNDING HISTORY:	None, new event
SOCIAL MEDIA PROGRAM:	Facebook
TYPE GRANT REQUEST:	Community Grant: ☐ Special Event Grant ■
CVB STAFF RECOMMENDATION:	
SPECIAL INSTRUCTIONS/NOTES:	Scored Avg 50.4/100 Board Recommendation: $0

COUNCIL BILL NO. 2014-617 ORDINANCE NO.

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.

WHEREAS, the voters of the City of Joplin approved an increase in the Occupational License Tax for transient sleeping accommodations at an election held on November 7, 2000; and,

WHEREAS, pursuant to the provisions of Ordinance No. 2000-148, a portion of said funds are to be utilized for festivals or celebrations intended to attract visitors from the region to the City and other related activities in the City; and,

WHEREAS, the Convention & Visitors Advisory Board established an application procedure and reviewed the applications of numerous organizations, and, have recommended to the Council that certain festivals or celebrations and other events be funded utilizing a portion of said proceeds; and,

WHEREAS, after having a Public Hearing thereon, as required by said ordinance, the Council of the City of Joplin desires to utilize a portion of the proceeds from said tax in accordance with the recommendations of the Convention & Visitors Advisory Board.

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

Section 1. That the Application of Historic Murphysburg's, DickensFest, (December 12-14, 2014) in the amount of Thirteen Thousand, One Hundred and Forty Dollars ($13,140); MSSU Diversity Committee's, Martin Luther King Day of Service (January 19-21, 2015) in the amount of Four Thousand, Five Hundred Dollars ($4,500); Spiva Center for the Art's, PhotoSpiva 2015 (March 7-May 3, 2015) in the amount of Twelve Thousand Dollars ($12,000); Active Lifestyles Events', Joplin Memorial Half (May 15-16, 2015) in the amount of Fourteen Thousand Dollars ($14,000); Rufus Racing's, Summer Roundup Triathlon Weekend (June 27-29, 2015) in

the amount of Twelve Thousand Dollars ($12,000); Wildcat Glades Conservation & Audubon Center's, Shoal Creek Water Festival (August 8, 2015) in the amount of Four Thousand Dollars ($4,000); Joplin Disc Golf Club's, 10th Annual Four State Open (September 18-20, 2015) in the amount of Fourteen Thousand, Eight Hundred Dollars ($14,800); Four State Trucks/Chrome Shop Mafia's, Guilty By Association (September 25-26, 2015) in the amount of Twenty Thousand Dollars ($20,000), and MSSU Alumni Association's, MSSU Homecoming Celebration (October 6-10, 2015) in the amount of Five Thousand, Five Hundred and Sixty Dollars ($5,560), for utilization of FY2015 Festivals and Celebrations support pursuant to Ordinance No. 2000-148, as authorized by the voters on November 7, 2000, be and the same are hereby approved.

Section 2. That the City Manager is hereby authorized and directed to execute appropriate Agreements, by and on behalf of the City of Joplin, with each said organization for the expenditure of said funds in accordance with the recommendation of the Joplin Convention & Visitors Bureau, and, in accordance with Ordinance No. 2000-148.

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

I hereby certify that a sufficient amount is available in the CVB Fund, Account No. 105-4080-560-7505, to pay the grant amounts awarded.

Leslie Haase, Director of Finance

RESOLUTIONS

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

Item: CDBG -- Disaster Recovery Round 2 Partial Action Plan #2
Originating Department: Planning & Community Development

Attachments: 1) CDBG-DR Round 2 Partial Action Plan #2
2) Resolution No. 2014-017

Department Head: Nick Heatherly — Date: 9/8/14
Planning & Community Development Director: Troy Bolander T.B. — Date: 9-8-14
Finance Department: Leslie Haase — Date: 9-9-14
City Attorney: Peter Edwards — Date: 9/9/14
Interim City Manager: Sam Anselm — Date: 9/9/14

Recommended Action: Approval of Resolution No. 2014-017

INTRODUCTION:

The following is a resolution that authorizes the filing of Partial Action Plan #2 as an amendment to the Initial Action Plan submitted on September 13, 2013 to the U.S. Department of Housing and Urban Development (HUD) for the Second Round of the City of Joplin's Community Development Block Grant Disaster Recovery (CDBG-DR) Program.

DISCUSSION:

This Plan describes activities proposed for the second Partial Action Plan and the addition of approximately $14,240,000 of the approximate $113 million grant funds. A summary of the activities is listed below:

1)	Sanitary Sewer (Design & Construction Phase 2)	$ 2,000,000.00
2)	Mercy Public Park	3,200,000.00
3)	Infrastructure Activities (Street Improvements)	6,500,000.00
4)	Planning and Administration	2,040,000.00
	TOTAL	**$13,740,000.00**

This plan was developed by City Staff through a review of pre and post-disaster plans for community needs. All activities included in this Partial Action Plan have been presented to Council for consideration prior to the submittal of this Partial Action Plan.

In addition, this plan was posted on the City's website and a 7 day public comment period was observed beginning on September 8, 2014 to solicit public comments regarding the proposed activities. Any comments received will be brought forward to City Council on September 15, 2014

and then forwarded to HUD with the Action Plan. Once projects are in the Action Plan, the city has two years to expend the disaster funds. As additional projects are ready to move forward, the partial Action Plan must be amended to include the projects. Upon approval by HUD of the Second Partial Action Plan and subsequent grant agreement, the City will have committed approximately $22.4 million total to date. Under the federal regulations dictating the use of this round of CDBG disaster recovery funds, all of the projects must be listed in the Action Plan by September of 2017 and the entire $113 million must be expended two years later in 2019.

RECOMMENDATION:

City staff recommends approval of this Resolution.

COMMUNITY DEVELOPMENT BLOCK GRANT

DISASTER RECOVERY- ROUND II ($113M)



PARTIAL ACTION PLAN #2 FOR

THE CITY OF JOPLIN

Supplemental CDBG Disaster Recovery
Authorized by the Disaster Relief Appropriations Act, 2013
(Public Law 113-2)
U.S. Department of Housing and Urban Development
Docket No. FR-5696-N-03
[Federal Register: May 29, 2013 (Volume 78, Number 103)]

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I. UNMET NEEDS

On May 22, 2011 the City of Joplin was struck with a massive EF-5 multiple-vortex tornado that impacted one-third of the community, with physical losses exceeding $3 billion and resulting in 161 deaths. Since the disaster, the community's residents have demonstrated the dedication to recover and rebuild. The CDBG-DR program provides communities with resources to address a wide range of post-disaster community development needs, and the City of Joplin has outlined in this Partial Action Plan how the community will use its second allocation to support recovery from this event.

The following needs assessment and proposed allocation is based on the best currently available data and may be adjusted during a future amendment to the Action Plan.

HOUSING IMPACT AND UNMET NEEDS

The majority of the property in Joplin that was affected by the May 22, 2011 tornado was residential property that contained a variety of single and multi-family units as well as owner and renter-occupied dwellings. Because the tornado touched down on the west-side of the City, and indiscriminately tore through neighborhoods, residents of all demographic and income statuses were affected.

Within this specific Action Plan, no discrete housing activities are planned. However, the City continues to investigate potential housing activities, which may be included in future Action Plans, to support the rebuilding of the community. Ongoing housing activities are detailed within existing Action Plans previously prepared and submitted.

INFRASTRUCTURE IMPACT AND UNMET NEEDS

The City's previous round of CDBG-DR funding was allocated to infrastructure based on the immediate assessment of public infrastructure and infrastructure systems that were damaged due to the May 22nd tornado. Since that time, additional assessments have been conducted to update the unmet infrastructure needs inside the tornado-affected area. In furthering the effort to ensure that the tornado-affected area is as attractive as possible to returning and new residents, these projects will be developed to ensure that all residents will have the benefit of infrastructure that will enhance their quality of life and protect property. These projects will include repairs necessary due to direct storm damage, repairs due to damage from recovery efforts, and projects designed to further enhance systems to attract residents to repopulate the area.

Mercy Public Park

In response to the destruction of the St. John's Regional Medical Center at 26th & McClelland, Mercy Health System is rebuilding a 600,000 square-foot hospital at a new location that will serve Joplin's growing healthcare needs. As a visionary project to heal the original 50 acre site of the destroyed hospital, Mercy developed conceptual plans to create a chapel garden over a 10+ acre portion of the original site. Mercy has indicated they would like to donate an additional 18+ acres to the City of Joplin to develop as a passive public park to enhance the adjacent Cunningham Park and newly constructed Irving Elementary School and provide a public amenity

to the tornado damaged area.

Creating such a reflective public space addresses the needs identified within the Citizen Advisory Recovery Plan whereby the citizens requested to develop a community mind-set that values environmental sustainability, develops links between different types of parks, demographics, and natural areas to encourage recreational opportunities, while creating a place to memorialize victims of the disaster, increase community gathering spaces, and ensure adjacent LMI residents have access to open spaces in rebuilding neighborhoods.

The proposed park is located within a LMI neighborhood destroyed by the tornado. The park will promote accessible facilities and healthy behaviors for area residents, and provide direct access to park facilities and features for the LMI area affected by the tornado.

Sanitary Sewer
As with storm sewers, the tornado and ensuing heavy equipment caused significant damage to the manhole and sanitary sewers across the tornado recovery area.

All EDR area sanitary sewers were videoed, measured, and rated between 1 and 5; 1 being the best condition and 5 being the worst condition. We extrapolated those rankings and percentages across the entire tornado area. We estimated approximately $12 million will be needed for repairing the category 3 and above lines which are comprised of approximately 444,000 linear feet of Sanitary Sewer.

Infrastructure (Street Improvements)

Storm Sewers
The tornado and ensuing heavy equipment caused significant damage to the manhole and storm sewers across the tornado recovery area. In addition, storm debris resulted in blocked drains and significant water damage caused erosion and collapse of areas.

Staff surveyed our existing storm water system and estimated replacement costs on undersized, damaged, or otherwise inadequate lines and inlets. Thirty-four projects identified consist of existing priority drainage problems and are largely made up of needed residential neighborhood drainage improvements with a smaller number of improvements at street intersections and commercial areas. Stormwater projects will be completed prior to paving activity to minimize damage to new pavement.

Curb & Gutter
Staff code enforcement officers surveyed the area to determine extent of tornado damage and ensuing heavy equipment damage to curbs and gutter due to debris removal. Roughly 700,000 linear feet of curb and gutter is damaged. Staff have determined that the least invasive approach is to partially remove the curb and replace with an S-Curb, or a stand-up curb in lieu of removing and replacing the entire curb and gutter. This will expedite the process and result in less disturbance on areas already paved.

Sidewalks

Staff analyzed city aerials and determined which areas of the tornado area had sidewalks on both sides, one side, or none. Pre-tornado, there were 658,096 feet in the tornado area that did not have sidewalks, 321,120 feet that had sidewalk on both sides, and 38,178 feet that only had sidewalk on one side.

Staff code enforcement officers surveyed the area that had sidewalk on one or both sides to determine condition. After the survey, it was determined that there are 116,193 feet in the tornado area that were severely damaged and needed immediate replacement. Added to the 658,096 feet without sidewalks and the 38,178 feet to add a sidewalk on both sides in areas with only one sidewalk, we have a need of 812,467 feet of sidewalk to be installed or replaced in the tornado area.

Streets

Staff have evaluated the entire tornado damaged area and determined the appropriate measures for repairing our roadways. Many of these areas are in need of substantial infrastructure work and sustained greater damage during the cleanup due to catastrophic damage to area structures, resulting in intensive debris removal operations from associated heavy equipment. Next year we will use CDBG funds to focus on "improving" the pavement condition in the LMI area, making the most efficient usage of these monies by allowing some other infrastructure work such as storm water to proceed in advance of paving the streets—this will eliminate having to excavate freshly paved areas. A coordinated approach is being taken with storm and sanitary sewers construction to minimize damage and ensure completion prior to paving activity.

ECONOMIC IMPACT AND UNMET NEEDS

The path of the May 22, 2011 tornado also crossed several commercial corridors in the City of Joplin which had a large effect on the local economy. There were 553 businesses destroyed or severely damaged during the tornado, and approximately 90 percent, or 500 businesses, are back in operation. Thirty businesses have indicated that they will not rebuild/reopen.

Within this specific Action Plan, no discrete economic development activities are planned. However the City continues to investigate potential economic development activities, which may be included in future Action Plans, to support the rebuild of the community. Ongoing economic development activities are detailed within existing Action Plans previously prepared and submitted.

CONNECTION BETWEEN UNMET NEEDS AND ALLOCATION

The three categories of Housing, Infrastructure, and Economic Need were individually discussed at the beginning of this document. The City has evaluated the needs in these three categories and determined the greatest amount of need to be in the public infrastructure category. Additionally, an unmet public service need has been identified that needs to be addressed. The City does strongly believe, however, that if the recovery of one of these sectors occurred in an isolated way, the community would not have a healthy, sustainable recovery.

Although the City has identified the activities above, it is anticipated that future projects will be identified and included in future Partial Action Plans that will assist in providing housing, infrastructure, and economic development resources to the residents that will encourage a repopulation of the tornado area. The City is focused on efficiently and effectively providing as much funding as possible to make this portion of the community an area that will attract residents now and in the future.

II. PLANNING EFFORTS

LAND USE PLANS FOR MITIGATION

Land use plans and decisions cannot be made to mitigate risk of future tornado damage due to their lack of causation based on geographic location. Where a flood can generally be tied to a floodplain or at least proximity to a water source, tornadoes may strike any location. Following the May 22nd tornado, Joplin does realize the need to use this opportunity to re-evaluate land uses that occur in other hazard prone areas such as flood plains. Joplin has taken steps in the form of educating the public and working with other public entities, and has even started the process for application of Hazard Mitigation Grant Program funds to purchase property and ensure a more suitable land use is achieved.

During the Citizens Advisory Recovery Team (CART) process, a large outcome of these public participation forums was the desire for trails and green-spaces. These forums became a great tool to educate the public with the concept that placement of green-spaces and potential trails were ideal for floodplain areas. The placement of floodplains in Joplin has been utilized to co-locate parks in the past, and the idea of extending the system along these areas was heavily promoted both by the citizens and for the citizens during this process. For property owners that do choose to build in the floodplain, the City will continue to follow its floodplain management ordinances which meet the FEMA standards for this type of activity.

COORDINATED PLANNING

Joplin had the advantage of being offered assistance through FEMA's Emergency Support Function 14, Long Term Community Recovery. In Joplin, this process culminated in the form of the Citizens Advisory Recovery Team (CART). This was a volunteer advisory board composed of local leaders from all sectors of the community. The importance of the CART was that it was a citizen-driven process that resulted in a list of recovery projects that was presented to the appropriate governmental/elected boards.

All of the projects that are included in this Action Plan are taken directly from either the CART Next Steps plan or are a derivation of projects suggested in that plan. These recommended projects were the result of numerous Town Hall meetings, public-comment booths at community events, and a CART website using virtual town-hall technology, and the numerous sub-committee meetings of citizen volunteers with passion in the areas of: Economic Development, Schools and Public Facilities, Housing and Neighborhoods, and Infrastructure and Environment.

The CART Next Steps plan has been continuously implemented through many different avenues. One of the most important local and regional planning efforts that built on the success of the CART plan is Joplin's Comprehensive Plan. The City of Joplin was due for a Comprehensive Plan update shortly after the May 22nd tornado, and the CART process was used as a springboard to ensure that the City's new comprehensive plan effectively leveraged the opportunities

presented by the tragedy as well as respecting the efforts of the citizens that were put forth in the CART plan.

City staff attempted to incorporate as many goals of the CART plan into the Comprehensive Plan as possible. The two documents, although separate, are completely complimentary and coordinated. The projects presented in this Action Plan were born in the CART process and further refined in the Comprehensive Planning process. This process included additional citizen participation with general public meetings, sessions with the Planning & Zoning Commission, and sessions with the Joplin City Council.

The City updated its Comprehensive Plan in 2012 which took into consideration the CART recommendations as well as many other post-recovery efforts. The 2012 Comprehensive Plan will be used to guide development in the City for future years as there is a strong coordination between this CDBG-DR Action Plan and the 2012 Comprehensive Plan. The City is also an active member of the Joplin Area Transportation Study Organization, the MPO for the region, and coordination with this group has also been consistent.

LEVERAGING OF FUNDS

The City has made an effort to design the activities included in this plan to maximize the benefit that will be realized by Low-Moderate Income individuals. In doing this, the City identified projects that had recovery needs outside of LMI areas and has allocated other fund sources to as much of these areas as possible. In locations where projects may fall outside of LMI areas, the City has made every effort to secure other local, state, or other funding and resources that will be leveraged to complete the overall recovery in these activities.

USE OF QUALITY CONSTRUCTION METHODS & GREEN BUILDING

The City of Joplin currently operates under the International Building Code (IBC) of 2006 and is in the process of evaluating the update for IBC 2012. It is the normal practice of the City to update its standards every 6 years. In addition to evaluating the update for IBC 2012, the City of Joplin made a few additions to its effective code as a result of the May 22nd tornado. These measures include the mandatory use of "Hurricane Straps" used to make a stronger connection between all elements of the residential building from the foundation to the roof. The second addition was the mandatory filling of cells in the concrete block foundations at a higher frequency than previously allowed under the City's code.

The City's Plan does not include the construction or rehabilitation of residential buildings and the City does not anticipate adding these activities in the future. According to the current Needs Assessment, this has been addressed in the City's previous award. Because disaster recovery is an every-changing process, however, the City will ensure to include criteria and requirements for Green Building Standards and HUDS CPD Green Building Retrofit Checklist in any future residential activity according to the applicable CPD notices.

PLANS TO MINIMIZE DISPLACEMENT

The City will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 FRF 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG program.

III. PROGRAMATIC PROCEDURES

PROGRAM INCOME

The City of Joplin reserves the right to utilize up to 5% of Program Income received from these CDBG-DR activities as additional Administrative funds. Program Income will roll back into the project from which it is originated unless otherwise amended. Program Income is not expected from any of the activities listed in this plan.

MONITORING STANDARDS AND PROCEDURES

Non-duplication of benefits

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5155), as amended, prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which that person has received financial assistance under any other program or from insurance or from any other source. CDBG disaster recovery funds will not be used for activities for which funds have been received (or will be received) from FEMA; the SBA; other local, state, or federal programs; insurance; or recovery support from private charity organizations. However, CDBG funds may be used to provide assistance to the extent that a disaster recovery need has not been met by other sources. Applicants for assistance will be required to disclose all sources of assistance received or to be received on a provided certification form. This form will list FEMA, SBA, Insurance, and an "Other" category to ensure that all possible duplications are fully disclosed by the applicant.

Based on a comparison of the amount of assistance previously received and the amount of assistance requested by the applicant, the City and/or its subrecipients will determine the unmet needs before awarding assistance. The personnel responsible for this task will be the agency that is processing the applications. A statement is included in the Duplication of Benefits verifications that the applicant agrees to repay any assistance that is found to be duplicative.

Continual Quality Assurance

All recipients of CDBG-DR funding will be subject to monitoring conducted by both the City of Joplin staff and any administering agents hired by the City of Joplin. The City of Joplin plans to hire a consulting firm with extensive experience in administering CDBG-DR funds which will include a proven monitoring process bases on all applicable regulations. In the case that monitoring is needed before an external firm can be hired, the internal audit function outlined below will be applicable to any and all programs included in this Action Plan as deemed necessary by City of Joplin staff.

Internal Audit Function w/ responsible Audit staff

The City does not have an Internal Audit Function; however, the City and/or its CDBG-DR Grant Administer will perform subreceipient monitoring in accordance with program requirements. As part of this compliance and monitoring, subrecipients will be contacted according to the terms of their subrecipient agreements, to track progress of compliance issues and ensure timeliness. On-site monitoring visits and/or at-desk monitoring of files will be conducted according to the nature

and scope of the project. These monitoring events will address Exhibits 3-1 through 3-22 of the CPD Grantee Monitoring Handbook as applicable. Topics will include Eligibility, National Objective, Rehabilitation, Economic Development, Overall Management, Financial Management, Cost Allowability, Procurement, and review of Equipment Management. Not all topics will be monitored every year, but rather, these topics will be addressed according to the risk assessed by staff. Random monitoring will occur at a minimal of an annual basis based on risk of the current activities. Forms to verify LMI participation and/or benefit are collected based on the scope of each project.

SCHEDULE OF EVENTS – The usual schedule of events for CDBG monitoring visits will be as follows:

1. The CDBG Program Specialist schedules the monitoring visit by phone or e-mail contact with the subrecipient.
2. The on-site monitoring visit is conducted, and consists of the following:
   a. Conference
   b. Documentation, data gathering and analysis

A letter is sent to the subrecipient regarding the monitoring visit. The letter includes information about any problems discovered or discussed during the monitoring visit, as well as information that recognize the successes of the subrecipient. If the CDBG Program staff deems necessary, requests may be made of the subrecipient to ensure compliance with all applicable rules and regulations of the program.

PROCEDURES TO DETECT FRAUD, WASTE, AND ABUSE OF FUNDS

All activities must be conducted in compliance with applicable CDBG rules and regulations, as well as other applicable federal regulations such as OMB Circulars A-87, A-133, and 24 CFR Part 85 (Uniform Administrative Requirements). Subrecipients who have received $500,000 or more in federal funding during the preceding year will be required to submit an audit in accordance with OMB Circular A-133.

Efforts to mitigate fraud, abuse, and mismanagement include regular monitoring of activities, as described below. The City of Joplin, or other entity as assigned by the City of Joplin, will review expenditures, while independent auditors will audit activities for program and financial compliance. The City of Joplin reserves the right to take appropriate action in instances of non-compliance, fraud, and mismanagement including, but not limited to, disallowing ineligible costs, terminating contracts/agreements, and requiring repayment of funds.

As required under the Notice, the City of Joplin, or its assigned agent, will submit quarterly reports to HUD through the Disaster Recovery Grant Reporting (DRGR) system no later than 30 days following each calendar quarter.

INCREASING CAPACITY OF THOSE ADMINISTERING ACTIVITIES

The majority of Administration funds available under the CDBG-DR program will be made

available to the firm that is hired to administer the entire CDBG-DR program for the City of Joplin. This organization that is chosen to administer grants is encouraged to attend trainings that will increase the efficiency with which projects are completed.

The City has reserved funding in the Administration funds for local costs. These funds have been used to create additional CDBG Manager positions to increase the local capacity and it is possible that this funding could be used to add staff if determined necessary in the future.

The City of Joplin has also received funds from the Economic Development Administration to hire a staff planner. The Disaster Planner (EDA position) will also be dedicated to providing assistance to recovery efforts which will include the projects that are funded by the CDBG-DR funds. This additional assistance to administering groups will increase the capacity of all groups involved.

SUBSTANTIAL AMMENDMENT

The following events will be considered substantial amendments to the Action Plan for Disaster Recovery:

- The addition or deletion of any activity described in the Plan;
- A change in the planned beneficiaries of an activity, and
- A change to the scope of the project that would result in the allocation of reallocation of more than $1,000,000.

Substantial amendments must be approved by the Joplin City Council. For substantial amendments, Joplin will post the amendment on its web-page and will be prepared to receive comments for a period of 7 days. Following the public notice period, proposed amendments will then be submitted to the HUD Kansas City Field Office for review. For minor amendments, the City of Joplin will inform the Kansas City Field Office and update projects within the DRGR system. Finalized minor amendments will be posted on the City's website.

IV. PROGRAM DESCRIPTIONS

MERCY PUBLIC PARK

Program/Activity Details

Administering Entity:	City of Joplin
Budget:	$ 3,200,000
Geographic Area:	City of Joplin; Tornado Area
Applicant Eligibility:	N/A; Public Facilities and Infrastructure Improvements
Beneficiary Eligibility:	Low-Moderate Income, Area Benefit
Start/End Dates:	November 2014 – May, 2016
Performance Outcomes:	Construction of walking trails, open green space, limited amenities, drive access, and parking areas

Basis for Allocation

In support of its vision to heal the site of the previous hospital, CDBG-DR funds for the Mercy Public Park will support the creation of a public park that will provide a variety of amenities to service multiple beneficiaries as detailed below. This park will provide continuity to the existing public park, school system, and proposed Mercy development within the immediate area.

In response to the destruction of the St. John's Regional Medical Center at 26th & McClelland, Mercy Health System is rebuilding a 600,000 square-foot hospital at a new location that will serve Joplin's growing healthcare needs. As a visionary project to heal the original 50 acre site of the destroyed hospital, Mercy developed conceptual plans to create a chapel garden over a portion of the original site. Mercy has indicated they would like to donate a portion of the tract to the City of Joplin to develop as a passive public park to enhance the adjacent Cunningham Park and newly constructed Irving Elementary School to provide a public amenity in the tornado damaged area. The City's public park plans would include such amenities as: open green space, trails, and benches to serve as a continual transition between Cunningham Park and Irving Elementary School.

Creating such a space addresses the needs identified within the CART plan whereby the community requested to develop a community mind-set that values environmental sustainability, links between different types of parks and natural areas to encourage recreational opportunities, increase community gathering spaces, and ensure residents have access to open spaces in rebuilding neighborhoods.

The northern tracts of the proposed park are located in a high percentage LMI area (approximately 60%). The park would also service an adjacent proposed senior living center and could include recreational features that would complement the proposed Autism Center – promoting accessible facilities, healthy behaviors across different community residents with various needs, and increasing access to community features for the nearby LMI community.

CDBG Eligibility and National Objective

This Activity is eligible under 03F Parks, Recreational Facilities and will utilize the National

Objective of Low-Moderate Income Area Benefit.

Long-term Recovery from Specific Disaster
Our future goal is to continue increasing the amount and access to open public spaces to meet the City's redevelopment objectives as identified by the community within the CART plan and as part of the overall redevelopment. In particular, this park provides continuity between the existing Cunningham Park, proposed Mercy Garden, and existing Irving Elementary. This project also compliments the proposed Senior and Autism Centers.

SANITARY SEWER IMPROVEMENTS (DESIGN & CONSTRUCTION PHASE 2)

Program/Activity Details

Administering Entity:	City of Joplin
Budget:	$ 2,000,000
Geographic Area:	City of Joplin; Tornado Area
Applicant Eligibility:	N/A; Public Facilities and Infrastructure Improvements
Start/End Dates:	November 2014 – November 2016
Performance Outcomes:	Design and construction of sewer and manhole structures

Basis for Allocation
As with storm sewers, the tornado and ensuing heavy equipment activity caused significant damage to the manhole and sanitary sewers across the tornado recovery area.

The City has an annual capital program that repairs and replaces sanitary sewers. The annual budget is $1.5 million, which is currently being used primarily to clean and TV the entire system as per DNR bypass elimination plan and for I&I reduction projects in portions of the Turkey Creek collection system that have the highest metals levels as a requirement of the operating permit for Turkey Creek WWTP. All EDR area sanitary sewers were videoed, measured, and rated from 1-5, 1 being best condition and 5 being the worst condition. Staff extrapolated those rankings and percentages across the entire tornado area. Using comparable bids from a neighboring town, the cost was calculated at approximately $12 million for repairing the category 3 and above lines. Estimates and ranking scale, as well as the sewers in the tornado area, are included as a part of this work.

CDBG Eligibility and National Objective
This Activity is eligible under 03J, Water and Sewer Improvements, and will utilize the National Objectives of Low and Moderate Income Area and Slum and Blight Area. In neighborhoods where the census data indicates the Census Block Groups are eligible to receive LMA assistance, this will be used. For those areas that will not qualify under that National Objective, Slum and Blight will be used based on the conditions created by the tornado damage.

Long-term Recovery from Specific Disaster
This project will dramatically improve sanitary sewer service as well as reduce Infiltration and Inflow (I/I). Having an upgraded and modernized sewer system reduces I/I and also extends the life of our treatment plants, as well as reduces the number of sewer backups into citizens'

households after large rain events. The City will have a well mapped system with a ranking to identify future preventative maintenance needs. This upgrade to the City's system will position the community in better compliance with state regulation.

PUBLIC INFRASTRUCTURE IMPROVEMENTS (STREET IMPROVEMENTS)

Program/Activity Details

Administering Entity:	City of Joplin
Budget:	$ 6,500,000.00
Geographic Area:	City of Joplin; Tornado Area
Applicant Eligibility:	N/A; Public Infrastructure Improvements
Start/End Dates:	November 2014 – November 2016
Performance Outcomes:	Ongoing infrastructure design and initial construction

In support of the City's ongoing efforts to rebuild its infrastructure, CDBG-DR funds for street improvements also includes storm-water improvements, curb and gutter improvements, sidewalk and ADA ramp improvements, as well as streetscaping opportunities.

Street Improvements

Basis for Allocation

In support of the City's ongoing efforts to rebuild its infrastructure, CDBG-DR funds for the street improvements will support the engineering design activities necessary to reconstruct these major infrastructure surface elements within the disaster-affected area.

Prior to the May 22nd tornado, the city's asphalt program primarily consisted of a two-pronged approach. Firstly, the City was divided into 7 zones which received a microsurfacing treatment on a rotational basis. Secondly, more severely distressed pavement received annual asphalt mill and overlay until the funds are expended for the year.

Many roadways were severely damaged from the tornado and the associated cleanup. Due to the tornado, the City did not do any paving in 2011, so the City is currently using allocations from 2 years of the asphalt paving program, plus an additional $1 million dollars to install roughly $4.8 million dollars of paving in the tornado area, as well as other parts of the City.

City staff has evaluated the entire tornado damaged area and determined the appropriate measures for repairing our roadways. Many of these areas are in need of substantial infrastructure work and sustained greater damage during the cleanup due to catastrophic damage to area structures, resulting in intensive debris removal operations and associated heavy equipment activity. The City plans to use CDBG-DR funds to focus on "improving" the pavement condition in the LMI area, making the most efficient usage of these monies by allowing some other infrastructure work such as stormwater to proceed in advance of paving the streets—this will eliminate having to excavate freshly paved areas. A coordinated approach is being taken with storm and sanitary sewers construction to minimize damage and ensure completion prior to paving activity.

With initial funding sources available in FY2013 and the associated reconstruction program, approximately 25% of City streets can be surface treated. Now, because the CDBG-DR area is being removed for 2013 and moved to FY 2014 and combined with our annual maintenance money, this will add approximately an additional 10% of roadway to total 35%. These are all streets that will require more work than just an overlay.

CDBG Eligibility and National Objective
This Activity is eligible under 03K, Street improvements, and will utilize the National Objective of Low and Moderate Income Area and Slum and Blight Area. For those areas that will not qualify under that National Objective, Slum and Blight will be used based on the conditions created by the tornado damage.

Long-term Recovery from Specific Disaster
This project will dramatically improve roadways in the city with the majority of improvements within the tornado area. Having a quality roadway network is critical for the creation of an accessible and enjoyable community and helps attract citizens to the City. Smoother roads reduce tire wear, increase fuel efficiency, lower emissions, enhance safety to vehicles and pedestrians alike, and will also help with stormwater drainage.

Storm Water System

Basis for Allocation
Storm-water improvements will support the engineering design activities necessary to reconstruct these major infrastructure utilities within the disaster-affected area.

The tornado and ensuing heavy equipment activity caused significant damage to the manhole and storm sewers across the tornado recovery area. In addition, storm debris resulted in blocked drains and significant water damage caused erosion and collapse of areas.

The City has an annual capital program that repairs and replaces system storm sewers with an annual budget of $96,185.00 annually. Staff surveyed our existing storm water system and estimated replacement costs on undersized, damaged, or otherwise inadequate lines and inlets. The total estimated cost for this project is $14.97 million. Thirty-four projects identified consist of existing priority drainage problems and are largely made up of needed residential neighborhood drainage improvements with a smaller number of improvements at street intersections and commercial areas. Stormwater projects will be completed prior to paving activity to minimize damage to new pavement.

CDBG Eligibility and National Objective
This Activity is eligible under 03K, Street Improvements; 03J, Water/Sewer Improvements; and 03L, Sidewalks. The Activity will utilize the National Objective of Low and Moderate Income Area and Slum and Blight Area. In neighborhoods where the census data indicates the Census Block Groups are eligible to receive LMA assistance, this will be used. For those areas that will not qualify under that National Objective, Slum and Blight will be used based on the conditions created by the tornado damage.

Long-term Recovery from Specific Disaster
This project will dramatically improve identified residential and commercial concerns by getting the stormwater off streets quicker and into upgraded conduits, and provides appropriate detention areas for stormwater. The areas identified have deteriorated or were damaged by the tornado and need repair/replacement in order to provide the appropriate amount of service to the areas. Handling the water prior to it backing up streams and onto properties also helps alleviate sanitary sewer issues as well as property flooding. Stormwater flooding can cause significant damage, erosion to property, as well as potential life threatening issues. This project will enhance the targeted neighborhoods by significantly mitigating flooding and reducing stormwater on roadways and properties as quickly and efficiently as possible.

Curb and Gutter

Basis for Allocation
In support of the City's ongoing efforts to rebuild its infrastructure, CDBG-DR funds for the curb and gutter improvements will support the engineering design activities necessary to reconstruct these major infrastructure surface elements within the disaster-affected area.

Staff code enforcement officers surveyed the area to determine extent of tornado damage and ensuing heavy equipment damage to curbs and gutter due to debris removal. Roughly 700,000 linear feet of curb and gutter is damaged. Staff has the least invasive approach is to partially remove the curb and replace with an S-Curb, or a stand-up curb in lieu of removing and replacing the entire curb and gutter. This will expedite the process and result in fewer disturbances on areas already paved. The estimated cost for saw cutting, removal and replacement of curb is $20/linear foot.

CDBG Eligibility and National Objective
This Activity is eligible under 03K, Street Improvements, and will utilize the National Objective of Low and Moderate Income Area and Slum and Blight Area. In neighborhoods where the census data indicates the Census Block Groups are eligible to receive LMA assistance, this will be used. For those areas that will not qualify under that National Objective, Slum and Blight will be used based on the conditions created by the tornado damage.

Long-term Recovery from Specific Disaster
Following construction, this project will dramatically improve aesthetics of streets and private property frontage while improving stormwater capture and management through neighborhoods and commercial areas. Improving the stormwater capture as well as directing it appropriately, helps us with our permitting, not only for stormwater, but efficient stormwater management reduces Infiltration and Inflow (I&I) in the sanitary sewer system as well, thus having a significant cumulative effect and cost benefit.

Sidewalk and ADA Ramps

Basis for Allocation

In support of the City's ongoing efforts to rebuild its infrastructure, CDBG-DR funds for the sidewalk and ADA ramp improvements will support the engineering design activities necessary to reconstruct these major infrastructure surface elements within the disaster-affected area.

Staff analyzed city aerials and determined which areas of the tornado area had sidewalks on both sides, one side, or none. Pre-tornado, there were 658,096 feet in the tornado area that did not have sidewalks, 321,120 feet that had sidewalk on both sides, and 38,178 feet that only had sidewalk on one side.

Staff code enforcement officers surveyed the area that had sidewalk on one or both sides to determine condition. After the survey, it was determined that there are 116,193 feet in the tornado area that were severely damaged and needed immediate replacement. Added to the 658,096 feet without sidewalks and the 38,178 feet to add a sidewalk on both sides in areas with only one sidewalk, we have a need of 812,467 feet of sidewalk to be installed or replaced in the tornado area. At $20/Lineal Foot this highlights $16,249,340 needed for sidewalks.

In addition, almost every ADA ramp surveyed is not in compliance and most intersections do not have ramps at all. There are 416 intersections in LMI areas, each with 4 corners providing 1,664 ADA ramps needed. At $2000/ramp gives us $3,328,000 needed for ADA ramps inside the LMI area.

This will maximize our CDBG-DR usage in the tornado area for ADA. The other ramps outside the LMI areas will be done with the curb and gutter money from the state. A significant number of street curb and gutters were heavily damaged during the debris removal process and will be replaced through this process as well.

CDBG Eligibility and National Objective
This Activity is eligible under 03K, Street Improvements and will utilize the National Objective of Low and Moderate Income Area and Slum and Blight Area. In neighborhoods where the census data indicates the Census Block Groups are eligible to receive LMA assistance, this will be used. For those areas that will not qualify under that National Objective, Slum and Blight will be used based on the conditions created by the tornado damage.

Long-term Recovery from Specific Disaster
This project will dramatically improve the quality of life as sidewalks are the backbone of a multi-modal pedestrian access network to the new trails through neighborhoods to major retail and commercial destinations and services. Having newly installed sidewalks and modernized ADA compliant ramps at intersections conforms to the newly adopted *Comprehensive Plan 2012* and also meets the needs expressed by residents as identified in the Citizens Advisory Recovery Team's *Implementation Next Steps*.

Land Acquisition / Row / Easement

Basis for Allocation
The May 2011 tornado destroyed most of the City's existing infrastructure. As the City of Joplin is redeveloping the damaged areas, there are some related easements and right-of-way

acquisitions that will also be needed for the various infrastructure projects the City is undertaking as a part of their recovery efforts.

CDBG Eligibility and National Objective
The eligibility of this activity is under 03J, 03K and 03L for comprehensive street improvements. In neighborhoods where the census data indicates the Census Block Groups are eligible to receive LMA assistance, this will be used. For those areas that will not qualify under that National Objective, Slum and Blight will be used based on the conditions created by the tornado damage.

Long-term Recovery from Specific Disaster
Acquiring needed easements and right-of-way supports the City's goal to "build back better" and increases the chances for local businesses to locate successfully in the neighborhood. This project will promote complete streets by allowing for adequate sidewalk widths, ADA complaint facilities and aid in promoting multi-modal pedestrian activities and linkages through the City. By continuing to advance the 'build it back better' goal, the City will continue to support the sense of community which has developed after the disaster,

PROGRAM ADMINISTRATION & PLANNING

Program/Activity Details

Administering Entity:	City of Joplin
Budget:	$ 2,040,000 (Combined 20% Maximum)
Geographic Area:	City of Joplin; Tornado Area
Applicant Eligibility:	N/A
Start/End Dates:	Ongoing
Performance Outcomes:	Support grant management and execution

Administration

Basis for Allocation
All of the projects and activities under the CDBG-DR program require administrative and support services for the management and participation necessary to formulate, implement and evaluate the City's CDBG-DR program. These activities have included in the past and will include in the future preparation of action plans, citizen participation, preparation of required reporting, monitoring of grant expenditures, eligibility reviews, and other tasks as per HUD guidance.

Planning

Basis for Allocation
All of the projects that are included in this Action Plan are taken directly from either the Citizens Advisory Recovery Team (CART) Next Steps plan or are a derivation of projects suggested in

that plan. These recommended projects were the result of numerous Town Hall meetings, public-comment booths at community events, and a CART website using virtual town-hall technology, and the numerous sub-committee meetings of citizen volunteers with passion in the areas of: Economic Development, Schools and Public Facilities, Housing and Neighborhoods, and Infrastructure and Environment.

The CART Next Steps plan has been continuously implemented through many different avenues. One of the most important local and regional planning efforts that built on the success of the CART plan is Joplin's Comprehensive Plan. The City of Joplin updated its Comprehensive Plan in 2012. City staff attempted to incorporate as many goals of the CART plan into the Comprehensive Plan as possible. The two documents, although separate, are completely complimentary and coordinated.

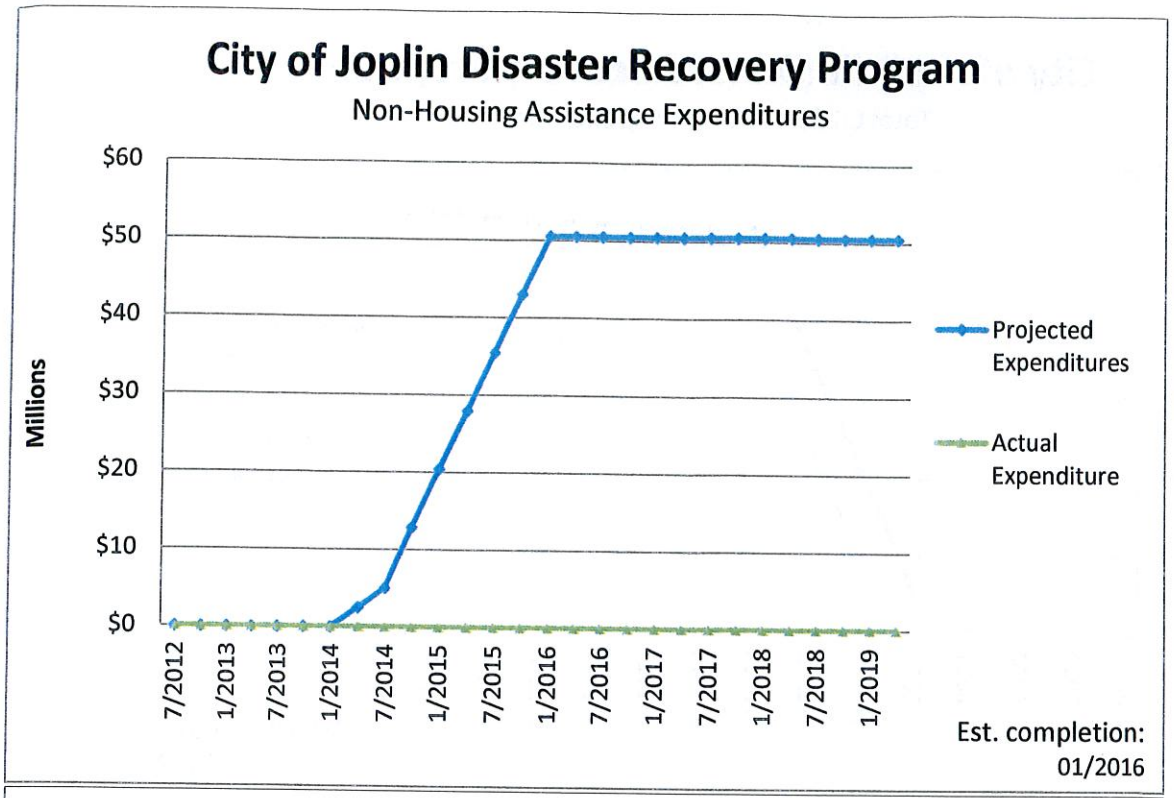
Through the CDBG-DR program, the City will seek additional funding to perform additional eligible activities that will further develop, update, and refine the overall program planning. These funds are intended for use in the following eligible categories as outlined in 24 CFR 5270.205: comprehensive plans, community development plans, functional plans, land use and urban environmental design, economic development, capital improvement plans, and other required planning activities not explicitly listed herein.

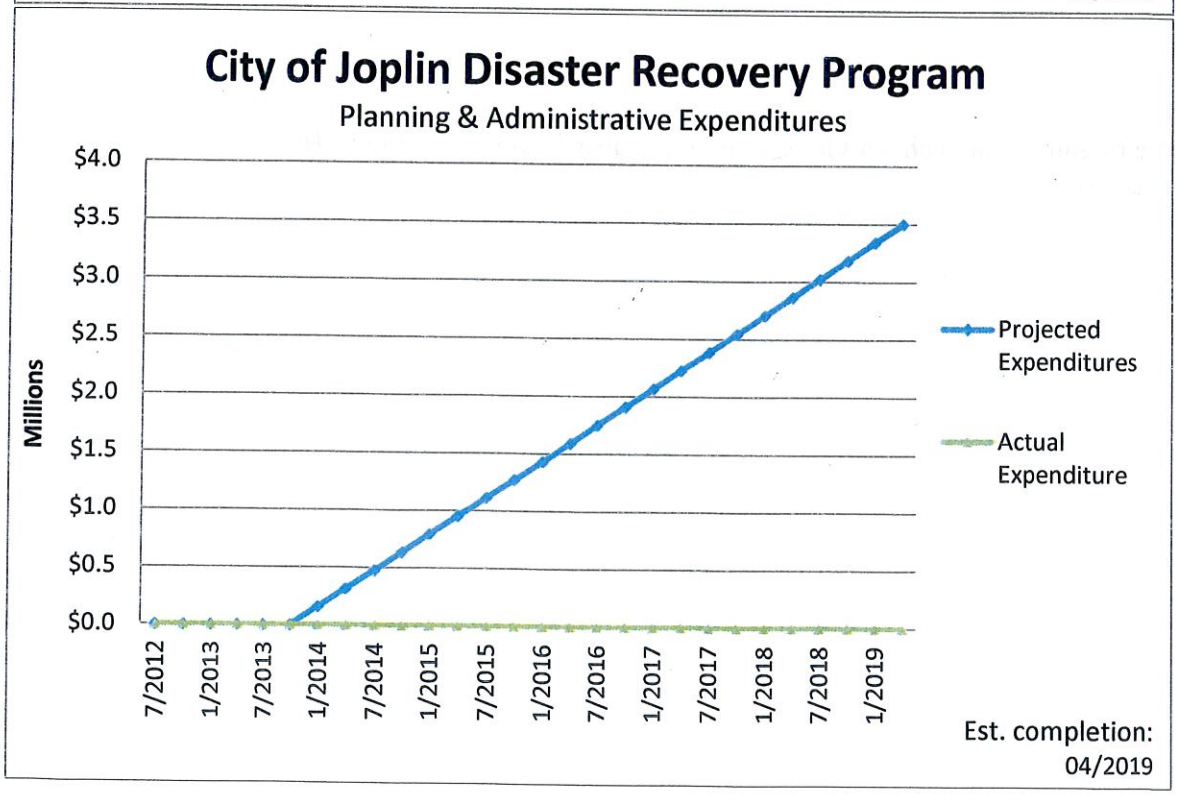
CDBG Eligibility
These activities are eligible under Program Administration and Planning.

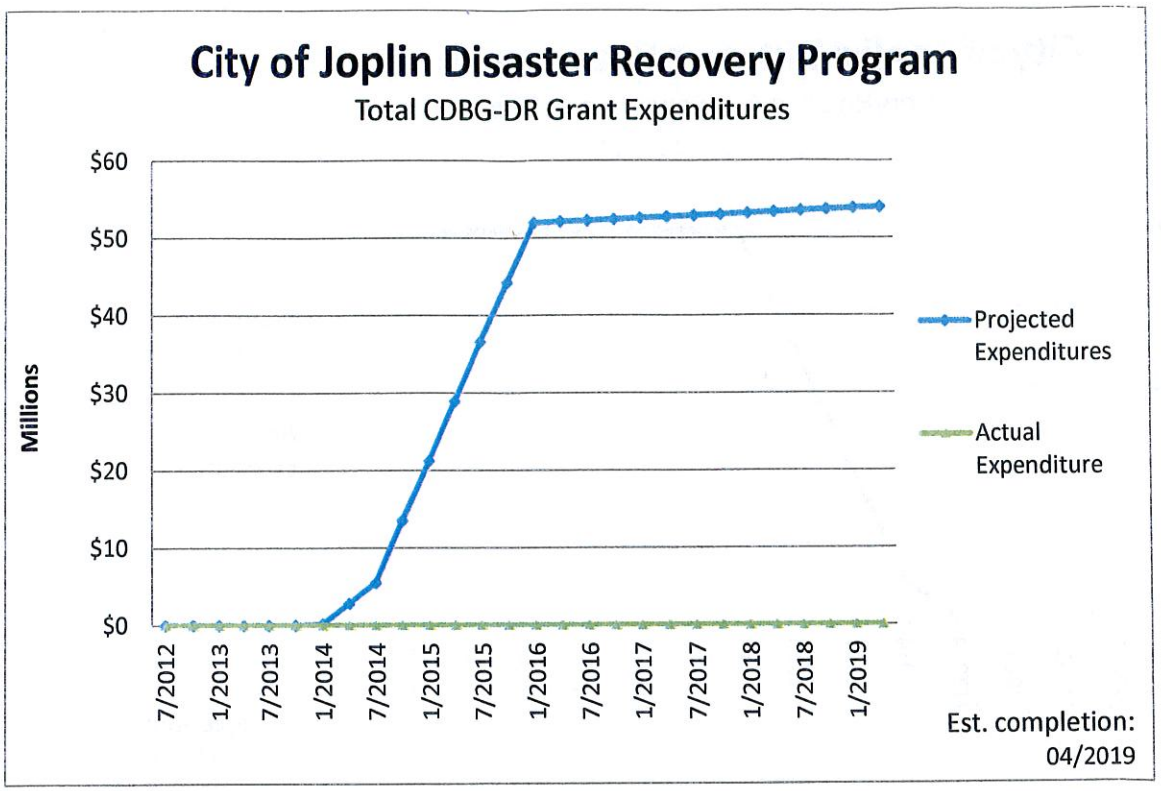
V. PERFORMANCE SCHEDULES

The following tables illustrate the approximate projected expenditures based on HUDs recommendations of Non-housing, and Administration categories. The City does not anticipate funding any Housing activities with this round of funding.

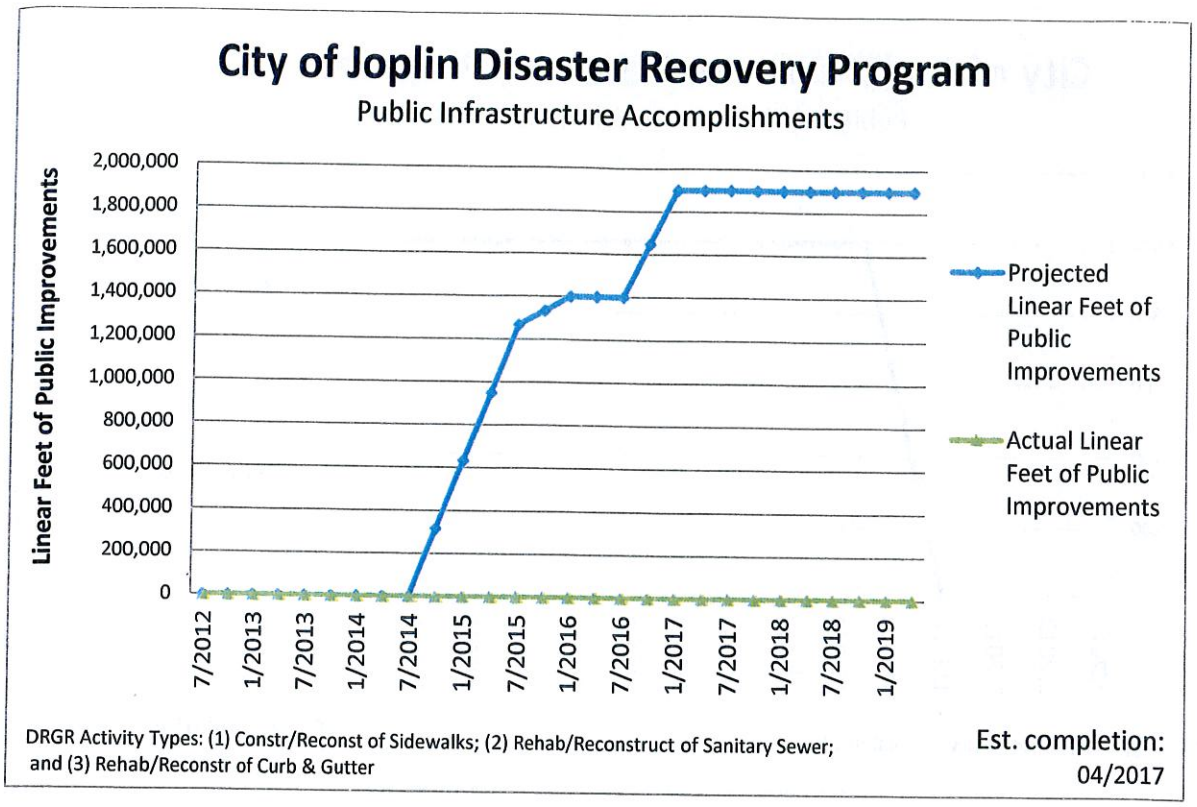
<CITY TO UPDATE ORIGINAL GRAPHS>

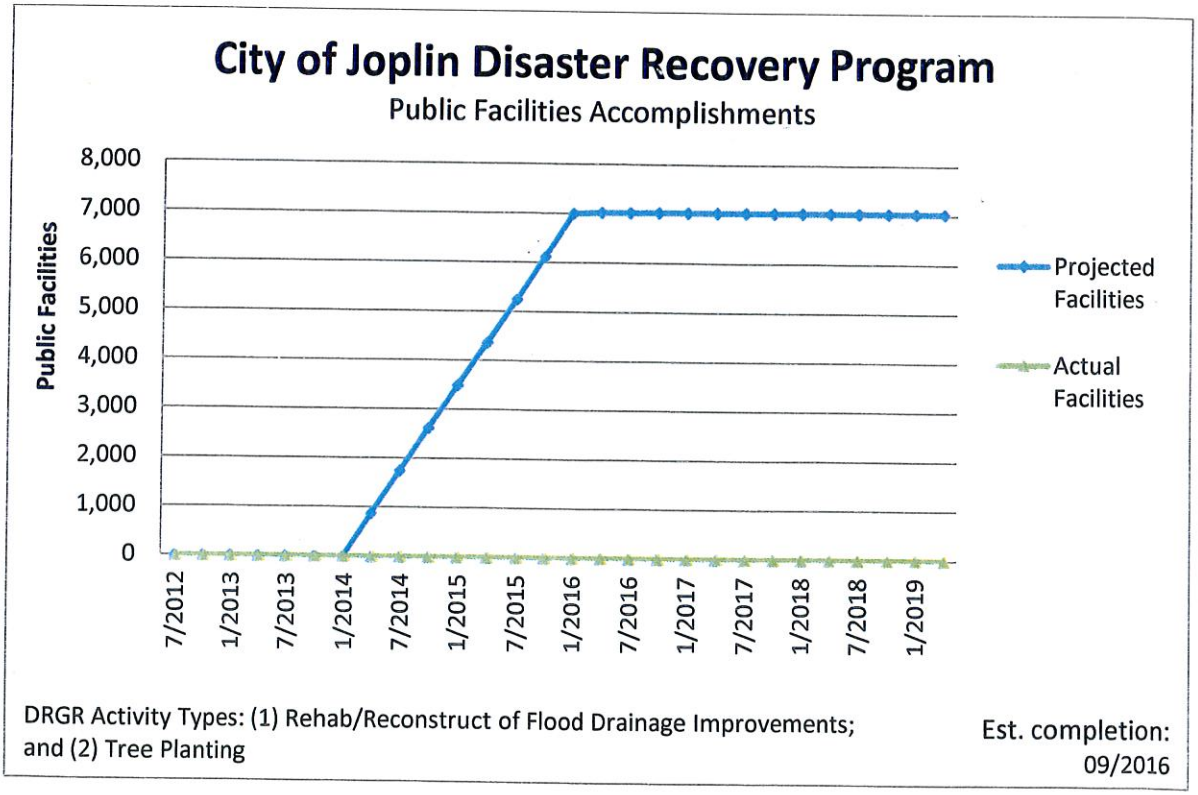

City of Joplin Disaster Recovery Program
Non-Housing Assistance Expenditures
Millions
$60
$50
$40
$30
$20
$10
$0
7/2012
1/2013
7/2013
1/2014
7/2014
1/2015
7/2015
1/2016
7/2016
1/2017
7/2017
1/2018
7/2018
1/2019
Projected Expenditures
Actual Expenditure
Est. completion: 01/2016

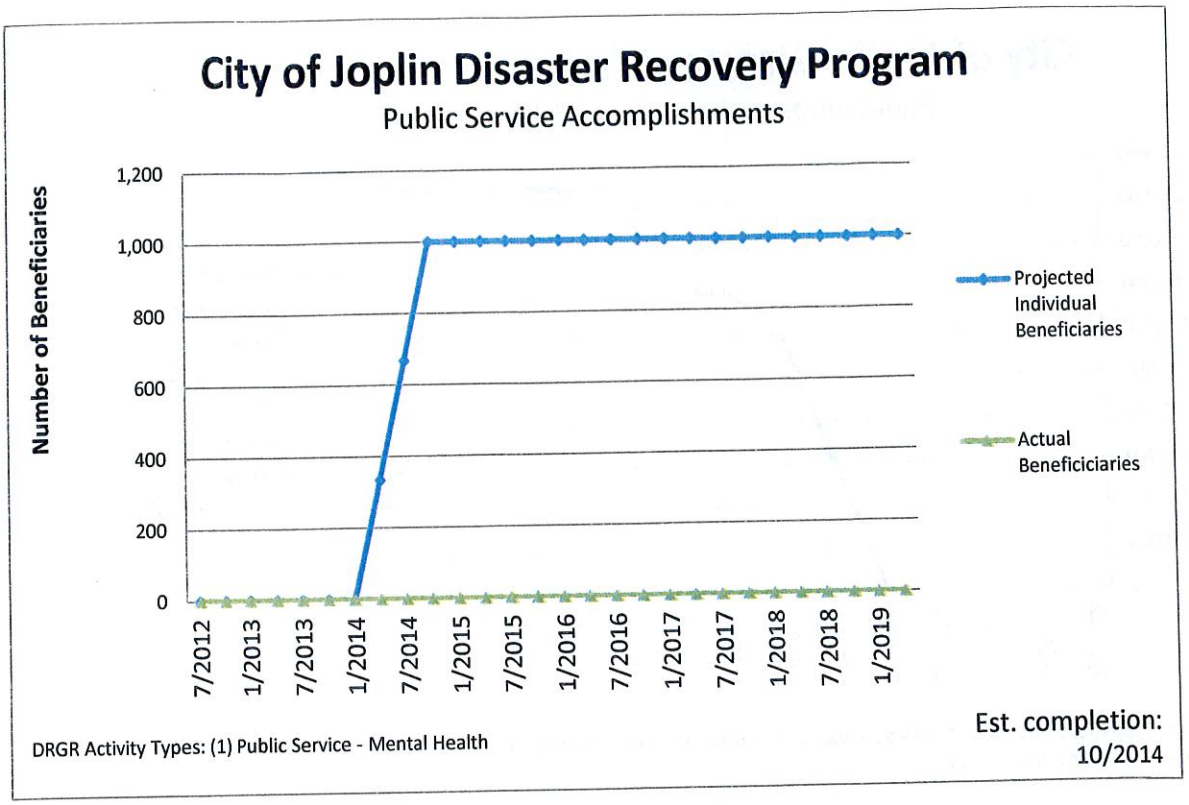

City of Joplin Disaster Recovery Program
Planning & Administrative Expenditures
Millions
$4.0
$3.5
$3.0
$2.5
$2.0
$1.5
$1.0
$0.5
$0.0
7/2012
1/2013
7/2013
1/2014
7/2014
1/2015
7/2015
1/2016
7/2016
1/2017
7/2017
1/2018
7/2018
1/2019
Projected Expenditures
Actual Expenditure
Est. completion: 04/2019



The outcome measures for each activity grouping are also found according to HUDs recommendations.


City of Joplin Disaster Recovery Program
Public Infrastructure Accomplishments
Linear Feet of Public Improvements
2,000,000
1,800,000
1,600,000
1,400,000
1,200,000
1,000,000
800,000
600,000
400,000
200,000
0
7/2012
1/2013
7/2013
1/2014
7/2014
1/2015
7/2015
1/2016
7/2016
1/2017
7/2017
1/2018
7/2018
1/2019
Projected Linear Feet of Public Improvements
Actual Linear Feet of Public Improvements
DRGR Activity Types: (1) Constr/Reconst of Sidewalks; (2) Rehab/Reconstruct of Sanitary Sewer; and (3) Rehab/Reconstr of Curb & Gutter
Est. completion: 04/2017


City of Joplin Disaster Recovery Program
Public Facilities Accomplishments
Public Facilities
8,000
7,000
6,000
5,000
4,000
3,000
2,000
1,000
0
7/2012
1/2013
7/2013
1/2014
7/2014
1/2015
7/2015
1/2016
7/2016
1/2017
7/2017
1/2018
7/2018
1/2019
Projected Facilities
Actual Facilities
DRGR Activity Types: (1) Rehab/Reconstruct of Flood Drainage Improvements; and (2) Tree Planting
Est. completion: 09/2016


City of Joplin Disaster Recovery Program
Public Service Accomplishments
Number of Beneficiaries
1,200
1,000
800
600
400
200
0
7/2012
1/2013
7/2013
1/2014
7/2014
1/2015
7/2015
1/2016
7/2016
1/2017
7/2017
1/2018
7/2018
1/2019
Projected Individual Beneficiaries
Actual Beneficiciaries
DRGR Activity Types: (1) Public Service - Mental Health
Est. completion: 10/2014

VI. BUDGET

COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY
ROUND II PARTIAL ACTION PLAN #2 BUDGET

Activities	
Mercy Public Park	$ 3,200,000.00
Sanitary Sewer (Design & Construction Phase 2)	$ 2,000,000.00
Public Infrastructure Improvements (Street Improvements)	$ 6,500,000.00
Sub Total	**$ 11,700,000.00**
Economic Development	
Sub Total	**$ 0.00**
Housing Activities	
Sub Total	**$ 0.00**
Program Administration Activities*	
City of Joplin Administrative Costs	$ 255,000.00
Description: Pro-rata share of salary and benefits of Planning/ Community Development staff plus overhead including supplies, rent, etc.	
Consultant Administrative Costs	$ 255,000.00
Description: Negotiated Administrative cost to allow for the hiring of a consulting firm to manage the majority of the grant admin and activities. (5% maximum)	
Program Planning Activities*	
Planning Costs	$ 1,530,000.00
Description: Funds to be used for eligible planning activities, (15% maximum)	
Sub Total	**$ 2,040,000.00**
TOTAL BUDGETED CDBG-DR AWARD (of $113,276,000.00)	**$ 13,740,000.00**

* These initial allocations are based on the best data currently available and reflect projections of need to support the grant program. It can be anticipated there will be future adjustments based on actual experience once programs are implemented; however, neither planning nor administrative expenses will surpass their statutory caps.

VII. PUBLIC COMMENT

The City of Joplin provided prominent posting on the City's official website beginning on August 9, 2013 indicating written comments would be accepted through August 19th at 5pm. The City also presented the activities and funding amounts for the entire $113 Million allocation to the Joplin City Council and to the general public on the Council Meeting on June 17, 2013 and July 1, 2013.

Comments received from XXXX during the City's 7-day comment period. A summary of the comments and the City's Response are noted below.

< CITY TO PROVIDE COMMENT SUMMARY FOLLOWING PERIOD >

VIII. ACCESSIBILITY OF PLAN

The City of Joplin will make this plan available to all individuals including those with disabilities and those that are non-English speaking. Services will be provided upon request. Requests can be made by contacting our ADA Coordinator at 624-0820, Ext 210, or the City Clerk's Office at 624-0820, Ext 220. Kindly give us forty-eight (48) hour notice to arrange for the aids or service. TTD Number: (417) 625-4774.

IX. CERTIFICATIONS AND SF-424

The necessary SF-424 and Certifications required for these CDBG-DR funds are attached to this document and can be found in Appendix A.

Appendix A - CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the Disaster Recovery Action Plan, the jurisdiction certifies that:

A. Affirmatively Further Fair Housing -- The jurisdiction will affirmatively further fair housing, which means it will conduct an analysis of impediments to fair housing choice within the jurisdiction, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and actions in this regard. In addition, the grantee certifies that agreements with subrecipients will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).

B. Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR 24; and it has in effect and is following a residential anti-displacement and relocation assistance plan required under section 104(d) of the Housing and Community Development Act of 1974, as amended, in connection with any activity assisted with funding under the CDBG program.

C. Lobbying Certification – The Grantee certifies that its compliance with restriction on lobbying required by 24 CFR party 87, together with disclosure forms, if required by part 87.

D. State and Local Laws – The grantee certifies that the Action Plan for Disaster Recovery is authorized under State and local law (as applicable) and that the grantee, and any entity or entities designated by the grantee possess (es) the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

E. Consistency with Action Plan – The grantee certifies that activities to be undertaken with funds under this notice are consistent with its Action Plan.

F. Acquisition and Relocation – The grantee certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for in this Notice.

G. Section 3 – The grantee certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U. S. C. 1701u), and implementing regulations at 24 CFR part 135.

H. Public Participation – The grantee certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant).

I. Use of Funds – The grantee certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas for which the President declared a major disaster in the aftermath of Hurricane Sandy, pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*).

(2) With respect to activities expected to be assisted with CDBG disaster recovery funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate income families.

(3) The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the grant amount is expended for activities that benefit such persons.

(4) The grantee will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (A) Disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

J. Civil Rights -- The grantee certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

K. Excessive Force -- The grantee certifies that it has adopted and is enforcing the following policies:
(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and
(2) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location that is the subject of such nonviolent civil rights demonstrations within its jurisdiction.

L. Capacity -- Each unit of local government receiving a direct award under this Notice certifies that it (and any subrecipient or administering entity) has the capacity to carry out disaster recovery activities in a timely manner; or the State or unit of local government will develop a plan to increase capacity where such capacity is lacking.

M. Special Flood Hazard Area -- The grantee certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain, in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source for this provision is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

N. Lead-based Paint -- The grantee certifies that its activities concerning lead-based paint will comply with the requirements of 24 CFR part 35, subparts A, B, J, K, and R.

O. Applicable Laws -- The grantee certifies that it will comply with applicable laws.

P. Financial Controls – The grantee certifies that it has reviewed the requirements of this Notice and requirements of Public Law 113-2 applicable to funds allocated by this Notice, and that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds, to maintain comprehensive websites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

_____ _____

Signature/Authorized Official Date

_____

Title

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.

WHEREAS, on May 22nd, 2011, an EF-5 tornado caused catastrophic damage to a significant portion of the City of Joplin; and

WHEREAS, there were thousands of households affected by the tornado; and

WHEREAS**,** the U. S. Department of Housing and Urban Development (HUD) provides assistance to communities that experience extreme disaster recovery circumstances; and

WHEREAS, the City of Joplin has been allocated $113,276,000.00 in CDBG-DR grant assistance in response to the loss of housing, infrastructure, and economic impacts caused by the tornado on May 22nd, 2011; and

WHEREAS**,** the U. S. Department of Housing and Urban Development (HUD) allows for the submission of Partial Action Plans to assist communities in complying with the two-year expenditure requirement for these funds; and

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

Section 1. That the City of Joplin file a Second Partial Action Plan for the City of Joplin's Community Development Block Grant Disaster Recovery Program according to Attachment A with the U.S. Department of Housing and Urban Development.

Section 2. That the City Manager of the City of Joplin is hereby authorized and directed to execute said Standard Form 424 to allow submission of the Second Partial Action Plan, or substantially similar in form, for and on behalf of the City of Joplin.

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

Michael Siebert, Mayor

ATTEST:

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Peter Edwards, City Attorney

ORDINANCES

EMERGENCY

City of **JOPLIN** City Council Agenda Item

REQUESTED COUNCIL MEETING DATE: September 15, 2014
ITEM: Council Bill No. 2014-024 authorizing the City of Joplin to enter into an Agreement with Crossland Construction, Inc., for Crossland Construction to provide the design and to do the construction on the Joe Becker Stadium project.

ORIGINATING DEPARTMENT: Legal Department
ATTACHMENTS: Council Bill No. 2014-024; Exhibit "A" – Agreement.

DEPARTMENT HEAD:	Peter C. Edwards PE	Date: 9/12/14
FINANCE DEPARTMENT:	Leslie Haase	Date: 9-12-14
INTERIM CITY MANAGER:	Sam Anselm	Date: 9/12/14
PARKS & RECREATION:	Chris Cotten	Date: 9/12/14

INTRODUCTION:

This Council Bill authorizes and approves an Agreement (Design & Build Agreement) between the City of Joplin and Crossland Construction, Inc., regarding the renovation of the Joe Becker Stadium.

DISCUSSION:

The attached Council Bill approves an Agreement between the City and Crossland Construction relating to the City utilizing Crossland as a Design-Build Contractor because this is a time sensitive project. Crossland will be utilizing architectural services of Corner Greer Architects. The current budget for this project is $4,723,704. This amount includes a five percent (5%) contingency amount. A general budget is attached to the Agreement as well as some conceptual drawings of the stadium.

RECOMMENDATION:

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

PCE:ab
attachments

COUNCIL BILL NO. 2014-024 **ORDINANCE NO.**

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.

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

Section 1. That the City enter into an Agreement by and between the City of Joplin and Crossland Construction, Inc., dealing generally with the design and construction of the Joe Becker Stadium project located generally at 1301 E. 3rd Street in Joplin, a true and accurate copy of the Agreement, or Agreement in substantially similar form, being attached hereto as Exhibit "A".

Section 2. That the Interim City Manager is hereby authorized to execute said Agreement for and on behalf of the City of Joplin.

Section 3. That this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12(6) of the Home Rule Charter of the City of Joplin, Missouri, and, the same shall be in full force and effect immediately from and after its adoption and approval. Specifically, this Ordinance authorizes the City of Joplin to commence the renovation project on the Joe Becker Baseball Stadium. Due to the time sensitivity of this project, it is important that the design and construction begin on the Stadium project so that the renovation can be completed in a timely manner.

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

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

THIS AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER (this "Agreement") is made and entered into this ___ day of _____, 2014, by and between the City of Joplin, Missouri, a municipal corporation organized under the laws of the State of Missouri ("Owner") and Crossland Construction, Inc., a corporation organized and existing under the laws of the State of Kansas("Design-Builder").

RECITALS

A. **WHEREAS**, Owner desires Design-Builder to furnish or provide the design and to construct the project generally described on **Exhibit A** in accordance with the Contract Documents described below (the "Project"); and

B. **WHEREAS**, Design-Builder is an organization with extensive experience in furnishing or providing the design and construction services necessary to successfully complete projects of the type and scope of the Project and Design-Builder is ready, willing and able to perform the Work set forth in the Contract Documents described below.

NOW THEREFORE, in consideration of the mutual covenants hereafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Design-Builder, intending to be bound, do hereby agree as follows:

ARTICLE 1
THE WORK

1.1 Design-Builder shall furnish or provide all Design Professional Services and all Construction, including the performance or the furnishing of supervision, labor, equipment, materials, tools, supplies, incidentals, operations and activities required by the Contract Documents, or reasonably inferable by the Design-Builder therefrom, as necessary to produce the results intended by the Contract Documents, in a safe, expeditious, orderly and workmanlike manner. The Work includes providing or furnishing the total design and construction of the Project and is the result of performing or furnishing Design Professional Services and Construction.

ARTICLE 2
CONTRACT TIMES

2.1 All time limits for Milestones, Substantial Completion, and Final Completion are of the essence of the Contract.

2.2 Design-Builder shall commence the Work on the date set forth in the Notice to Proceed, subject to any access limitations set forth in the Owner's Criteria.

2.3 Provided that Design-Builder has received a notice to proceed by not later than September 15, 2014, Design-Builder shall achieve Substantial Completion of the entire Work on or before March 31, 2015.

2.4 Provided that Design-Builder has received a notice to proceed by not later than September 15, 2014, Design-Builder shall achieve Final Completion of the entire Work on or before April 30, 2105.

2.5 If Design-Builder has not received a notice to proceed by September 15, 2014, Design-Builder shall be entitled to a day-for-day extension of the Substantial and Final Completion dates and the liquidated damages provision will similarly be extended. Further, if Design-Builder has not received a notice to proceed by the end of September 2014, the dates for Substantial and Final Completion and liquidated damages provision will be reasonably re-negotiated by the parties.

2.6 Design-Builder recognizes that time is of the essence of this Agreement and that Owner will suffer damages if the Work is not completed within the times specified in Paragraphs 2.3 and 2.4 above, plus any extensions thereof allowed in accordance with the General Conditions. Design-Builder recognizes the delays, expenses and difficulties in proving the actual loss suffered by Owner if the Work, or designated portions thereof, are not completed by the required times. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay, but not as a penalty, Design-Builder shall pay Owner Two Thousand Five Hundred Dollars ($2,500.00) for each day that expires after the time specified in Paragraph 2.3 for Substantial Completion of the entire Work until the Work is substantially complete. Design-Builder shall pay Owner Two Thousand Five Hundred Dollars ($2,500.00) for each day that expires after the time specified in Paragraph 2.4 for Final Completion of the entire Work until the Work is finally complete.

2.7 Owner may deduct liquidated damages described in Paragraph 2.5 from any unpaid amounts then or thereafter due the Design-Builder under the Contract Documents. Any liquidated damages not deducted from any unpaid amounts due the Design-Builder shall be payable to Owner at the demand of Owner.

ARTICLE 3
CONTRACT SUM

3.1 Owner shall pay Design-Builder for completion of the Work in strict accordance with the Contract Documents the total sum of One Hundred Thirteen Thousand Seven Hundred Thirty Dollars $113,730.00, which is Two and One-Half Percent (2.5%) of cost of the total Work performed by Design Builder, as outlined specifically in the Budget attached hereto as Exhibit B ("Contract Sum").

ARTICLE 4
PAYMENTS

4.1 Design-Builder shall submit Applications for Payment in accordance with Article 9 of the General Conditions. Owner shall make progress payments and final payment on account of the Contract Sum in accordance with the General Conditions of the Contract Between Owner and Design-Builder. The schedule of values which will be used in evaluating Applications for Payment as set forth in the General Conditions is attached hereto as **Exhibit D**.

ARTICLE 5
DESIGN-BUILDER'S REPRESENTATIONS

5.1 In order to induce Owner to enter into this Agreement, Design-Builder makes the following representations:

.1 Design-Builder has examined and carefully studied the Contract Documents and the other related data.

.2 Design-Builder has visited the Project site and become familiar with and satisfied itself as to the general, local, and Project site conditions that may affect cost, progress, performance, or furnishing of the Work.

.3 Design-Builder is familiar with and has satisfied itself as to all federal, state and local laws, statutes, regulations, and ordinances that may affect the cost, progress, performance and furnishing of the Work.

.4 In the event that a specific requirement of the Project conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner. Design-Builder has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities and utilities) at or contiguous to the Project site, or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder and safety precautions and programs incident thereto. Design-Builder does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work for the Contract Sum, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

.5 Design-Builder is aware of the general nature of any work to be performed by Owner and others at the Project site that relates to the Work as indicated in the Contract Documents.

.6 Design-Builder has correlated the information known to Design-Builder, information and observations obtained from visits to the Project site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

.7 Design-Builder has the full power and authority to make, execute, deliver, furnish and perform the Work hereunder and has authorized the undersigned to bind it to this Contract and the Contract Documents.

ARTICLE 6
ENUMERATION OF CONTRACT DOCUMENTS

6.1 The Contract Documents which comprise the Contract between Owner and Design-Builder concerning the Work, consist of the following:

.1 This Agreement and all exhibits thereto. The Exhibits to this Agreement consist of the following:

(a) **Exhibit A** – General Description of Project;

(b) **Exhibit B** – Schedule of Values - Budget;

(c) **Exhibit C** – Architect's Preliminary Drawings;

(d) **Exhibit D** – Owner's Criteria as defined in Paragraph 1.1.30 of the General Conditions.

.2 The General Conditions, which shall be General Conditions of the Contract Between Owner and Design-Builder;

.3 Design-Builder's Performance Bond and Payment Bond; and

.4 The following documents which will be prepared, issued or delivered after the date of this Agreement:

(a) Notice to Proceed

(b) Modifications to the Contract Documents executed after the date of this Agreement;

(c) Drawings as defined in Paragraph 1.1.20 of the General Conditions; and

(d) Specifications as defined in 1.1.35 of the General Conditions.

6.2 The Contract Documents are hereby incorporated herein by reference. There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented by a Modification.

ARTICLE 7
MISCELLANEOUS

7.1 The General Conditions of the Contract Between Owner and Design-Builder are referred to herein as the General Conditions. Terms used in this Agreement which are defined in the General Conditions will have the meanings indicated therein.

7.2 Owner and Design-Builder each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

7.4 Any provision as part of the Contract Documents held to be void or unenforceable under law shall be deemed stricken, and all remaining provision shall continue to be valid and binding upon Owner and Design-Builder, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

7.3 **IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and year first above written.

ATTEST:

_____
City Clerk

CITY OF JOPLIN, MISSOURI
"Owner"

By: _____

Printed Name _____

Title:_____

APPROVED AS TO FORM AND EFFECTIVE UPON CERTIFICATION OF DIRECTOR OF FINANCE

I do hereby certify that the above contract or order is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore.

_____
City Attorney

_____
Director of Finance

Address for giving notices:

City of Joplin, Missouri
602 S. Main
Joplin, Missouri 64801

Designated Representative:

Name: Samuel Anselm
Title: Interim City Manager

CROSSLAND CONTRUCTION, INC.
"Design-Builder"

By:_____

Printed Name: Curt Crossland

Title: Principal

Address for giving notices:
Crossland Construction, Inc.
833 Southeast Ave.
Columbus, KS 66725

Designated Representative:
Name: Curt Crossland
Title: Principal

EXHIBIT A

GENERAL DESCRIPTION OF PROJECT

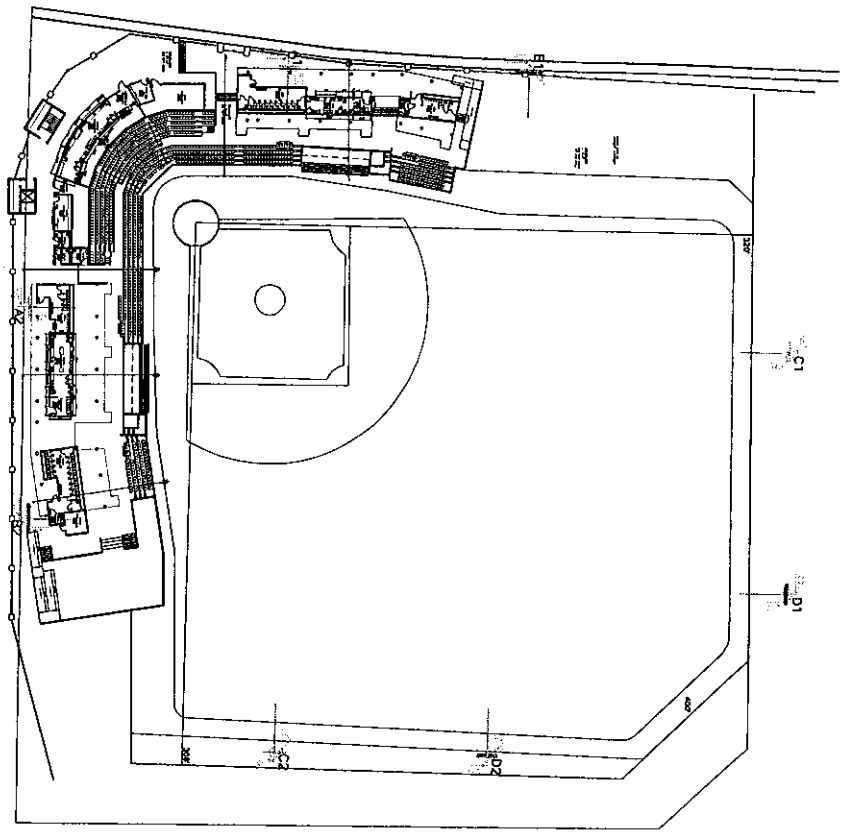
EXHIBIT B
SCHEDULE OF VALUES - BUDGET

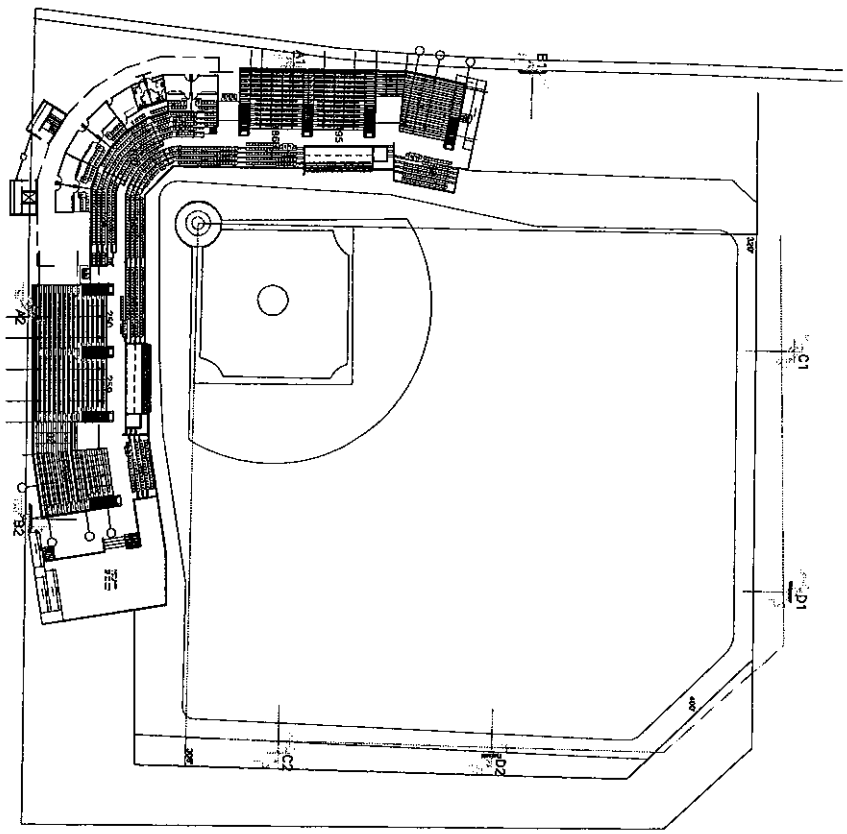
Project:	Joe Becker Stadium Remodel		
Bid Date:		REVISION 005	
Architect:	Corner Greer & Associates	9/15/2014	
		2400 seats	
SF:	15,000	$ 4,723,704	
Div	Description	Base Bid	Sub/Supplier
1000	General Conditions	$ 200,000	budget
1	Testing	$ 10,000	budget
015000	Temp Fence	$ 5,000	budget
01	Staking	$ 3,000	budget
01	Photos	$ 1,000	budget
	Crosslines Remodel (8000 sf)	$ 114,000	work by city forces
02	Demo Existing bleachers, concrete and building	$ -	BY CITY
31	Construction Entrances	$ 60,000	budget
31	Erosion Control	$ -	"
311010	Site Preparation outside fields	$ -	"
312010	Earthwork outside fields	$ -	"
31	Topsoil Replace	$ -	"
32	Base at Asphalt	$ -	BY CITY
321216	Asphalt Paving	$ -	BY CITY
32	Pavement Markings	$ -	BY CITY
32	Outfield Fence - 760 lf @ $45	$ 34,200	budget
323119	Decorative Metal Fences and Gates - 800 lf @ $90	$ 72,000	budget
116810	Field Netting	$ 20,000	budget
	Import Topsoil	$ 20,000	budget
329200	Turf and Grasses	$ -	"
329300	Plants	$ -	"
32	Irrigation Sleeves	$ -	"
328410	Irrigation	$ -	"
321373	Sidewalks	$ 126,000	budget
32	Entry Plaza concrete - 4500 sf allowance	$ -	"
321373	Curb & Gutter	$ -	BY CITY
033000	Cast-In-Place Concrete	$ 240,000	budget
032000	Concrete Reinforcement	$ 24,000	budget
032000	CMU Reinforcement	$ 20,000	budget
042000	Unit Masonry	$ 258,000	budget
04	Masonry Fence Columns	$ 36,000	budget
051200	Structural Steel	$ 120,000	budget
052100	Steel Joist Framing	$ -	"
053100	Steel Deck	$ -	"
055213	Steel Railings	$ -	"
05	Steel Erection	$ 48,000	budget
61000	Rough Carpentry	$ 12,000	budget
62000	Finish Carpentry	$ 12,000	budget
064020	Interior Architectural Woodwork	$ 56,000	budget
06	Stainless Steel countertops	$ -	"
071800	Water Repellants	$ 15,000	budget
071400	Fluid Applied Waterproofing	$ -	"
071713	Below Grade Waterproofing	$ -	"
079005	Joint Sealants	$ -	"
075400	Standing Seam Roofs	$ 80,000	budget
076200	Sheet Metal Flashing and Trim	$ -	"
07	Siding at Suites	$ 17,000	budget
085113	Aluminum Windows	$ 10,000	budget
108090	Ticket Window Assembly	$ 8,000	budget

081113	Hollow Metal Doors And Frames	$ 42,000	budget
087100	Door Hardware	$ -	"
083313	Coiling Counter Doors - 7 ea	$ 28,000	budget
083620	Full View Aluminum Overhead Doors - 6 ea	$ 18,000	budget
092116	Gypsum Board Assemblies	$ 60,000	budget
099000	Painting and Coating	$ 40,000	budget
09	Sealed Concrete Floor	$ 4,000	budget
096790	Resilient Base & Acc.	$ 4,000	budget
09	Carpet Tile in suites	$ 5,100	budget
101000	Visual Display Boards	$ 500	budget
102114	Toilet Compartments	$ 57,000	budget
102800	Toilet Accessories	$ 9,500	budget
101400	Signage	$ 2,000	budget
104400	Fire Protection Specialties	$ 1,000	budget
107500	Flagpoles	$ 3,000	budget
10	Flagpole Install	$ -	"
11	Foodservice Equipment	$ 100,000	budget
131250	Permanent Grandstands	$ 950,000	Hanson budget
13	Fixed Seating	$ -	"
13	Grandstand Footings	$ 10,000	budget
13	Shade Structure		nic
142100	Elevator	$ 53,000	Thyssen budget
211000	Fire Supression	$ 30,000	budget
33	Fire Line	$ 50,000	budget
33	Domestic Water Line	$ -	"
33	Domestic Water Meter	$ -	BY CITY
33	Irrigation Meter	$ -	BY CITY
33	Sanitary Sewer Mains	$ -	BY CITY
33	Sanitary Sewer Yard Lines	$ 20,000	budget
220000	Plumbing to 5' out	$ 172,000	budget
230500	HVAC	$ 96,000	budget
265668	Exterior Athletic Lighting	$ 277,000	Musco budget
26	Concrete Bases for Athletic Lighting	$ -	"
260000	Electrical	$ 180,000	budget
26	Generator	$ 30,000	budget
283111	Fire-Alarm System	$ 8,500	budget
26	Assisted Listening	$ 2,000	budget
274100	Public Address System / AV	$ 10,000	budget
	Contingency	$ 194,190	5.000%
	AE Fees	$ 200,000	SET
	Civil Fees	$ 45,200	SET
	Purchase of Crosslines	$ 226,000	SET
	Subtotal	$ 4,549,190	Sub-Total
	Design Build FEE	$ 113,730	2.50%
	State Tax exempt	$ -	
	Insurance	$ 28,910	0.62%
	Building Permit	$ -	BY CITY
	Bond	$ 31,874	0.68%
	GRAND TOTAL	$ 4,723,704	GRAND TOTAL
		$ 314.91	Cost / S.F.
Bid Tab	Company	Base Bid	Days

EXHIBIT C

ARCHITECTS PRELIMINARY DRAWINGS AND PLANS





PRELIMINARY - NOT FOR CONSTRUCTION - 09/11/14

SHEET NO.	A100
SHEET	PLANS
ISSUE DATE	MONTH 00, 2014

IMPROVEMENTS for:

JOE BECKER STADIUM

JOPLIN, MISSOURI

rev no	rev date	revision description

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CGA ARCHITECTURE & PLANNING
ALL RIGHTS RESERVED

DATE: 00/00/14
ARCHITECT: CHAD CREER, AIA
CA: 2009032804
NO: 2006031

- PRELIMINARY - NOT FOR CONSTRUCTION, PERMITTING, BIDDING OR IMPLEMENTATION

CGA architecture planning design
Creer Creer & Associates, Inc.
1701 Wyandotte
Kansas City, MO 64108
p 417.206.3134
f 417.206.3135

EXHIBIT D

OWNER'S CRITERIA FOR THE PROJECT AS DESCRIBED IN PARAGRAPH 1.1.30 OF THE GENERAL CONDITIONS

GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

CITY OF JOPLIN, MISSOURI
602 S. Main St.
Joplin, Missouri 64801

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GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

As used in the Contract Documents, the following terms shall have the meanings indicated in this Section 1.1 which are applicable to both the singular and plural thereof and refer to the parties designated in these definitions.

1.1.1 **Addenda** -- Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.

1.1.2 **Agreement** -- The written agreement between Owner and Design-Builder covering the work.

1.1.3 **Application for Payment** -- The form which is to be used by Design-Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

1.1.4 **Asbestos** -- Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.1.5 **Bonds** -- Performance and payment bonds and other instruments of security required by the Contract Bonds.

1.1.6 **Change Directive** -- A written order signed by Owner as described in Section 7.3 of the General Conditions.

1.1.7 **Change Order** -- A written instrument signed by Owner and Design-Builder as described in Section 7.2 of the General Conditions.

1.1.8 **Construction** -- The performing or furnishing of supervision, labor, tools, supplies, incidentals, operations and activities; the furnishing and incorporating of materials and equipment into the Work; and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

1.1.9 **Construction Subagreement** -- A written agreement between Design-Builder and a construction contractor for provision of Construction.

1.1.10 **Contract Documents** -- The Contract Documents consist of those items as designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

1.1.11 **Contract Sum** -- The lump sum identified in Paragraph 3.1 of the Agreement to be paid by Owner for the satisfactory completion of Work in strict accordance with the Contract Documents.

1.1.12 **Contract Times** -- The dates by which: (a) Design-Builder is to achieve Substantial Completion of the entire Work or any designated portions thereof; and (b) Design-Builder is to achieve Final Completion of the entire Work.

1.1.13 **Contract** -- The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior representations or agreements, either written or oral. The Contract may be amended or modified only by a written Modification.

1.1.14 **Day** -- The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

1.1.15 **Defective** -- An adjective which when modifying the term Construction refers to Construction that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged by someone for whom Design-Builder is responsible prior to Owner's final payment

1.1.16 **Design-Builder** -- The entity whom Owner has entered into the Agreement. The term Design-Builder shall also include Design-Builder's authorized representative.

1.1.17 **Design Subagreement** -- A written agreement between Design-Builder and a Design Professional for provision of Design Professional Services.

1.1.18 **Design Professional** -- A duly licensed individual or entity engaged by Design-Builder to perform or furnish Design Professional Services to the Project.

1.1.19 **Design Professional Services** -- Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as services provided by or for licensed design professionals during the Construction.

1.1.20 **Drawings** -- Those portions of the Construction Documents prepared by or for Design-Builder consisting of

drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the Work.

1.1.21 **Final Completion** -- When the Work has been completed in strict accordance with the terms and conditions of the Contract Documents, including all punch list items, to the reasonable satisfaction of Owner, that all documents and information required by the Contract Documents have been submitted to Owner by Design-Builder, and the entire balance of the Contract Sum is due and payable to Design-Builder. The term "finally complete" or "finally completed" shall refer to Final Completion.

1.1.22 **Hazardous Condition** -- The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that there is a danger to persons or property.

1.1.23 **Hazardous Waste** -- The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. Section 6903).

1.1.24 **Laws and Regulations; Laws or Regulations** -- All applicable federal, state, municipal and local laws, statutes, rules, regulations, ordinances, codes, orders, requirements, interpretations and all revisions or amendments thereto and all orders, requirements or interpretations of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

1.1.25 **Liens** -- Charges, security interests, liens, or encumbrances upon real property or personal property.

1.1.26 **Modifications** -- A Modification is (1) a written amendment to the Contract signed by both parties; (2) a Change Order; or (3) a written order for a minor change in the Work issued by Owner pursuant to Section 7.4 of the General Conditions. All other documents and technical reports are not Contract Documents, including without limitation, the documents listed on Exhibit B to the executed Agreement and the documents referred to in Paragraph 1.2.5 of these General Conditions.

1.1.27 **Notice to Proceed** -- A written notice given by Owner to Design-Builder fixing the date on which the Contract Times will commence to run and on which Design-Builder shall start to perform the Work.

1.1.28 **Owner's Representative** -- A person designated in writing to act as Owner's representative with respect to Design-Builder's performance of the Work. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and make decisions with respect to performance of the Work.

1.1.29 **Owner** -- The City of Joplin, Missouri with an address of 602 S. Main St., Joplin, Missouri 64801.

1.1.30 **Owner's Criteria** -- The documents, drawings and/or graphic or written materials attached as Exhibit F to the Agreement concerning Owner's criteria and requirements for the Project, including design objectives and constraints, space, capacity, performance, flexibility and expandability requirements.

1.1.31 **PCBs** -- Polychlorinated biphenyls.

1.1.32 **Petroleum** -- Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit) and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

1.1.33 **Project** -- The total design and construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.1.34 **Radioactive Material** -- Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011, *et seq.*) as amended from time to time.

1.1.35 **Specifications** -- Those portions of the Construction Documents prepared by or for Design-Builder and approved in writing by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Construction and certain administrative details applicable thereto.

1.1.36 **Subcontractor** -- An individual or entity other than a Supplier or a licensed Design Professional having a direct contract with Design-Builder for the performance of a part of the Work. The term Subcontractor shall also mean any individual entity other than a Supplier or a licensed Design Professional who has a contract with a Subcontractor or any lower-tier Subcontractor for performance of a part of the Work.

1.1.37 **Substantial Completion** -- The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

1.1.38 **Supplier** -- A manufacturer, fabricator, supplier, distributor, materialman or vendor having a contract with Design-Builder or with any Subcontractor or lower-tier Subcontractor to furnish materials or equipment to be incorporated in the Work.

1.1.39 **Work** -- All Design Professional Services and all Construction, including the performance or the furnishing of supervision, labor, equipment, materials, tools, supplies, incidentals, operations and activities required by the Contract Documents, or reasonably inferable by the Design-Builder therefrom, as necessary to produce the results intended by the Contract Documents, in a safe, expeditious, orderly and workmanlike manner. The Work includes providing the total design and construction of the Project strictly complying with the Contract Documents and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

1.2 INTENT

1.2.1 It is the intent of the Contract Documents to describe a complete Project to be designed and constructed in strict accordance with the Contract Documents. Any Design Professional Services, Construction and Work that may reasonably be inferred from the Contract Documents as necessary to produce the intended results will be performed or furnished by Design-Builder whether or not specifically called for. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

1.2.2 In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and Laws and Regulations, Design-Builder shall: (1) provide the better quality or greater quantity of Work; or (2) comply with the more stringent requirement; either or both in accordance with Owner's reasonable interpretation.

1.2.3 When words or phrases which have a well-known technical or construction industry meaning are used in the Contract Documents, unless otherwise defined by the Contract Documents, such words or phrases shall be interpreted in accordance with that meaning.

1.2.4 The reference portions of all documents and publications (such as manuals, handbooks, codes, standards and specifications) issued by any technical society, trade or professional organization or association, or regulatory or governmental authority which are cited in the Contract Documents for the purpose of establishing requirements applicable to equipment, materials or workmanship under this Contract, shall be deemed to be incorporated into the Contract Documents, in accordance with the following:

.1 Wherever reference is made to any such document, the Design-Builder shall comply with the requirements set out in the edition specified in the Contract Documents, or if not specified, the latest edition or revision thereof, as well as the latest amendment or supplement thereto, in effect on the date of the execution of the Agreement, except as modified by, as otherwise provided in, or as limited to type, class or grade, by the Contract Documents. In the event that any provision of such reference document or standard conflicts with or is inconsistent with the provisions of the Contract Documents, the Design-Builder shall comply with the more stringent requirement or better quality or greater quantity of Work.

.2 No provision of any such reference document or standard shall be effective to change the responsibilities of Owner or its consultants, agents and employees from those set forth in the Contract Documents, nor to assign to any of them any responsibility, duty or authority for safety precautions or procedures or to supervise or direct the performance of the Work.

1.2.5 Any data provided by Owner to Design-Builder concerning lot size, ground elevations, present obstructions on or near the site, locations and depths of sewers, conduits, pipes, wires, position of sidewalks, curbs, pavements, and similar items, and the contents, contour or nature of ground and subsurface conditions have been obtained from sources Owner believes reliable, but Owner does not represent or warrant that this information is accurate or complete.

1.3 EXECUTION OF AGREEMENT

1.3.1 Execution of the Agreement by the Design-Builder is a representation that the Design-Builder has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Design-Builder represents that it has performed its own investigation and examination of the Project site and its surroundings and satisfied itself before entering into this Contract as to:

.1 Conditions bearing upon transportation, disposal, handling and storage of materials;

.2 The availability of labor, materials, equipment, water, electrical power, utilities and roads;

.3 Uncertainties of weather, river stages, flooding and similar characteristics of the site;

.4 Conditions bearing upon security and protection of material, equipment and Work in progress;

.5 The form and nature of the Project site, including the surface and sub-surface conditions based upon a reasonable investigation that Design-Builder made or had the opportunity to perform;

.6 The extent and nature of Work and materials necessary for the execution of the Work and the remedying of any defects therein; and

.7 The means of access to the site and the accommodations it may require.

1.3.2 Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site, except to the extent that the City self performs work at the site. The Design-Builder shall be solely responsible for providing a safe place for the performance of the Work. Owner shall not be required to make any adjustment in either the Contract Sum or Contract Times in connection with any failure by the Design-Builder or any Subcontractor or Supplier to comply with the requirements of Paragraph 1.3.1.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, or (2) the title of numbered articles and identified references to Sections, Paragraphs, Subparagraphs and Clauses in this document.

1.5 INTERPRETATION

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

1.6 OWNERSHIP OF DOCUMENTS

1.6.1 All electronic data, documents, graphic displays, designs, drawings, specifications, plans, models, computer-assisted design documents, computer discs, diskettes, and reports which contain information relating to Design-Builder's performance hereunder or which are originated and prepared for Owner pursuant to this Agreement (the "Documents") regardless of any disputes between Owner and Design-Builder, a copy of which shall be given to the Owner upon completion of the Project. Design-Builder shall secure appropriate Design Subagreements with each of its Design Professionals so that each Design Professional will agree to the obligations set forth in this Paragraph 1.6.1.

1.6.2 Accordingly, Owner shall have the right to use, duplicate and disclose in whole, or in part, the Documents and to authorize others to do so for any proper purposes relating to the Project, including but not limited to completion of the Project, additions to the Project and maintenance of the Project. If Owner uses the Documents for any other purposes it shall do so at its own risk and expense.

ARTICLE 2

DESIGN-BUILDER

2.1 DESIGN PROFESSIONAL SERVICES

2.1.1 Design-Builder shall perform or furnish all Design Professional Services and related services in all phases of the Project. The design of the Project prepared or furnished by Design-Builder shall satisfy and comply with Owner's Criteria. The design of the Project performed or furnished by Design-Builder hereunder shall strictly comply with all Laws and Regulations. The design documents provided by Design-Builder, including Preliminary Design Documents and Construction Documents, shall be provided in Auto CAD Map 2000 format as well as hard copy format.

2.1.2 Design-Builder recognizes, agrees and accepts that Owner is relying upon it for the complete and total design, development, implementation and administration of the design of the Project. It is agreed by Design-Builder and Owner that despite the specific listing of the Design Professional Services below, it is the intent of Design-Builder and Owner that the Design Professional Services under this Agreement include the complete and total design, development, implementation and administration of the design of the Project.

2.1.3 Design-Builder shall review all information and documents provided by Owner, including Owner's Criteria, and if Design-Builder discovers or should reasonably discover that any information is inadequate, incorrect, misleading and/or Design-Builder needs additional information to perform or furnish the Design Professional Services, Design-Builder shall promptly notify Owner in writing.

2.1.4 Design-Builder represents that it has carefully studied all information and documents provided to Design-Builder by Owner, including Owner's Criteria, and Design-Builder has reported or will report in writing to Owner any errors, inconsistencies or omissions discovered. Except as to any errors, inconsistencies or omissions reported to Owner in writing, Design-Builder represents that the requirements of the Project provided by Owner are sufficiently complete and detailed for Design-Builder to perform or furnish Design Professional Services and comply with the requirements of the Contract Documents.

2.1.5 Design-Builder shall perform or furnish an analysis of key design considerations, key programmative considerations, code or regulatory considerations, and site and utility constraints and limitations.

2.1.6 Design-Builder shall research and prepare a code, permits and approvals study for the Project. Design-Builder shall research and identify all applicable Laws and Regulations, consult with all governmental agencies having jurisdiction over the Project, and attend meetings with such agencies in order to obtain all permits and approvals for the Project.

2.1.7 Design-Builder shall obtain such geotechnical and related information which is necessary to complete the Work in accordance with the Contract Documents. Design-Builder shall be responsible for analyzing, evaluating and interpreting such geotechnical and related information.

2.1.8 Design-Builder shall obtain surveying services and related information which is necessary to complete the Work in accordance with the Contract Documents. Design-Builder shall be responsible for analyzing, evaluating and interpreting such surveying and related information.

2.1.9 Design-Builder shall be responsible for obtaining all information, tests, data and professional services necessary to complete the Work in accordance with the Contract Documents.

2.1.10 Design-Builder shall prepare Preliminary Design Documents for review by Owner. The Preliminary Design Documents shall consist of drawings, outline specifications and other documents to illustrate and describe the scope, relationships, forms, size and appearance of the Project, including but not limited to the architectural, structural, mechanical, electrical, civil, landscape, interior, fire protection and life safety requirements for the Project. Design-Builder shall furnish the Preliminary Design Documents to Owner and review them with Owner.

2.1.11 After review by Owner of the Preliminary Design Documents, Design-Builder shall prepare Construction Documents based upon the reviewed Preliminary Design Documents. The Construction Documents shall consist of Drawings, Specifications and other documents setting forth in detail the requirements for the construction of the Project, including but not limited to the architectural, structural, mechanical, electrical, civil, landscape, interior, fire protection and life safety requirements for the Project. Design-Builder shall be responsible for properly preparing final civil engineering calculations, final structural engineering calculations, final mechanical engineering calculations, and final electrical engineering calculations in the connection with the preparation and development of the Construction Documents.

2.1.12 The Construction Documents shall be in strict compliance with all applicable Laws and Regulations and shall satisfy Owner's requirements for the Project as set forth in the Owner's Criteria.

2.1.13 The Construction Documents shall be sufficient for Design-Builder to obtain all governmental permits, licenses, authorizations and consents to perform and complete the Work. Design-Builder shall meet and consult with all governmental entities having jurisdiction over the Project necessary for Design-Builder to obtain all permits, licenses, authorizations and consents necessary for the performance and completion of the Work. Design-Builder shall make necessary revisions to Drawings and Specifications and other documents required by any federal, state, municipal or local governmental agencies having jurisdiction over the Project. In developing the design of the Project, Design-Builder shall give consideration to:

.1 User safety;

.2 Maintenance and operational costs;

.3 Contemplated expansion or desired flexibility for the Project;

.4 Possible energy conservation measures; and

.5 Schedule constraints.

2.1.14 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

2.1.15 Owner's review of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the Owner's Criteria. Neither Owner's review nor disapproval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner or diminish, reduce or limit Design-Builder's obligations under the Contract.

2.1.16 At the request of Owner, Design-Builder shall certify from time to time to Owner or the designee(s) of Owner as to the following:

.1 The then-current status of the Project;

.2 That the design documents prepared by Design-Builder comply with all applicable Laws and Regulations including, but not limited to, the Americans With Disabilities Act and all applicable handicapped access design requirements; and

.3 Such other facts and circumstances as Owner may reasonably require.

2.1.17 Upon completion of the Work, Design-Builder agrees to certify to Owner and other persons designated by Owner that the Work has been performed in compliance with applicable Laws and Regulations and the Contract Documents.

2.1.18 Design-Builder shall correct or revise, at its own cost and expense, any errors or deficiencies in the Design Professional Services performed under this Agreement. The acceptance or approval of any of the Design Professional Services by Owner shall not relieve Design-Builder of the responsibility for strictly complying with the terms of the Contract Documents or subsequent correction of such errors or deficiencies, unless and only to the extent Owner has knowingly waived such correction requirements in writing.

2.1.19 Design-Builder shall provide such services to initially start up, test, adjust and balance all equipment and systems and provide training to Owner's personnel in the operation and maintenance of the equipment and systems.

2.1.20 The Design Professional Services shall be performed by duly licensed, qualified and competent architects, engineers and other professionals selected and paid by Design-Builder. Design-Builder represents and warrants that such architects, engineers and other professionals shall be properly licensed, registered or certified in the State of Missouri to provide professional design services. The contractual and professional obligations of such professional persons or entities shall be undertaken and performed in the interests of Design-Builder and Owner.

2.1.21 Nothing contained herein shall be deemed to create any contractual relationship between Owner and any third party, and nothing in the Contract Documents shall give any third party any claim or cause of action against Owner; however, it is understood and agreed that Owner is an intended third-party beneficiary of all contracts for design, engineering or professional services or any Design Subagreement between Design-Builder and third parties. Design-Builder shall incorporate the provisions and obligations of this Paragraph 2.1.21 into its Design Subagreements. It is acknowledged and agreed by Design-Builder that the requirements of this Paragraph shall in no manner waive or release Design-Builder from any of its obligations under the Contract Documents or vary any of the terms of the Contract Documents.

2.2 SUPERVISION AND SUPERINTENDENCE OF CONSTRUCTION

2.2.1 The Design-Builder shall supervise, inspect and direct the Construction, using the Design-Builder's best skill and attention to provide the Construction in accordance with the Contract Documents. The Design-Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of Construction. The Design-Builder shall supply sufficient and competent supervision and personnel, and sufficient material, plant, and equipment to prosecute the Construction with diligence to insure completion thereof within the Contract Times specified in the Contract Documents. Design-Builder shall be responsible for assuring that the Construction strictly complies with the Contract Documents and Design-Builder shall keep Owner advised as to the quality and progress of Construction.

2.2.2 The Design-Builder shall be represented at the site by a competent superintendent from the beginning of the Construction until its final acceptance. The superintendent for the Design-Builder shall exercise general supervision over all on site Work. Design-Builder's designated representative disclosed in writing to Owner shall have decision-making authority for the Design-Builder. Communications given to Owner's designated representative shall be binding as if given to the Design-Builder.

2.2.3 The Design-Builder shall establish and maintain a permanent bench-mark to which access may be had during progress of the Work, and Design-Builder shall establish all lines and levels, and shall be responsible for the correctness of such. Design-Builder shall protect the established benchmarks and horizontal and vertical control points. Design-Builder shall be fully responsible for all layout work for the proper location of Work in strict accordance with the Contract Documents. The Design-Builder shall establish and maintain alignment and grades, including the setting of all stakes, ranges, grid lines and other appurtenance facilities. Design-Builder shall carefully protect and maintain such stakes and keep the same uncovered for examination during the progress of the Work. Before starting construction on the site, the Design-Builder shall provide written assurances certifying that the monuments or markers which delineate the site boundaries are placed in the correct position and that the proposed new construction and site development work, as staked-out by the Design-Builder, are wholly within the limits of Owner's leasehold interest or right-of-way. Design-Builder shall be responsible for the accurate replacement of any boundary

markers which are disturbed, removed or destroyed by Design-Builder or anyone for whom it is responsible, during the performance of the Work.

2.2.4 The Design-Builder shall be responsible for the shoring required to protect its work or adjacent property and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.

2.2.5 The Design-Builder shall maintain, at its own cost and expense, adequate, safe and sufficient walkways, platforms, scaffolds, ladders, hoists and all necessary, proper, and adequate equipment, apparatus, and appliances useful in carrying on the Work and which are necessary to make the place of Work safe and free from avoidable danger, and as may be required by safety provisions of applicable Laws and Regulations.

2.2.6 During the performance of the Work, the Design-Builder shall be responsible for providing and maintaining warning signs, lights, signal devices, barricades, guard rails, fences, and other devices appropriately located on site which shall give proper and understandable warning to all persons of danger of entry onto land, structure, or equipment.

2.2.7 Design-Builder shall be responsible to Owner for acts or omissions of the Design-Builder's representatives, agents and employees, Design Professionals, Subcontractors, Suppliers and their representatives, agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Design-Builder, Design Professionals, Subcontractors or Suppliers.

2.2.8 Design-Builder shall be responsible for inspection of portions of the Work already performed to determine that said portions are in proper condition to receive subsequent Work.

2.2.9 The Design-Builder shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents by tests or inspections or approvals, if any, required or performed by persons other than the Design-Builder.

2.2.10 Design-Builder shall be responsible for arranging scheduling and coordinating the work of utility owners in relocating or removing utility systems, equipment and/or lines necessary to perform and proceed with the Work and Design-Builder shall be responsible for paying all charges of utility owners for relocating or removing such utility systems, equipment and/or lines.

2.3 LABOR, EQUIPMENT AND MATERIALS

2.3.1 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

2.3.2 The Design-Builder shall endeavor to only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Design-Builder shall take all measures to minimize the likelihood of any strike, work stoppage or other labor disturbance. If the Work is to be performed by trade unions, the Design-Builder shall make all reasonable arrangements to reconcile, without delay, damage or cost to Owner and without recourse to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the Work of any particular trade. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive. Notwithstanding any other provision contained herein and superseding any contrary term expressed herein or in any of the Contract Documents, Design-Builder agrees that in the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute (collectively referred to as "Disruption") at the Project site, whether that Disruption is in connection with Design-Builder, a Subcontractor or Supplier, or Owner, Design-Builder will take all reasonable measures so that the Work required herein will continue. Whenever Design-Builder has knowledge that any actual or potential Disruption or labor dispute is delaying or threatens to delay the timely performance of the Project, Design-Builder shall immediately notify Owner in writing.

2.3.3 If, after execution of the Contract, the Design-Builder desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the Design-Builder may do so in writing and setting forth the following:

.1 Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;

.2 Reasons the substitution is advantageous and necessary, including the benefits to Owner and the Work in the event the substitution is acceptable;

.3 The adjustment, if any, in the Contract Sum, in the event the substitution is acceptable;

.4 The adjustment, if any, in the Contract Times and the construction schedule in the event the substitution is acceptable; and

.5 An affidavit stating that: (a) the proposed substitution conforms to and meets all of the Contract Documents, except as specifically disclosed and set forth in the affidavit; and (b) the Design-Builder accepts the warranty and correction obligations in connection with the proposed substitution as originally required by the Contract Documents. Proposals for substitutions shall be submitted to Owner in sufficient time to allow Owner no less than ten (10) working days for review. No substitution will be considered or allowed without the Design-Builder's submittal of complete substantiating data and information as stated herein.

2.3.4 Substitutions and alternates may be rejected without explanation in Owner's sole discretion and will be considered only under one or more of the following conditions:

.1 Required for compliance with interpretation of code requirements or insurance regulations then existing;

.2 Unavailability of specified products, through no fault of the Design-Builder;

.3 Material delivered fails to comply with the Contract Documents;

.4 Subsequent information discloses inability of specified products to perform properly or to fit in designated space;

.5 Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required; or

.6 When in the judgment of Owner, a substitution would be substantially to Owner's best interests, in terms of cost, time, or other considerations.

2.3.5 Design-Builder shall provide and pay for supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper furnishing, performance, testing, start-up and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work. Design-Builder shall arrange for and pay all fees and charges for installation of meters and other devices and connection to existing outside services and utilities necessary for the Work. Design-Builder shall pay for bills for utilities for the Design-Builder's use and consumption of utilities until Final Completion. Design-Builder shall provide an office and maintain the office for use by Design-Builder. The office shall be removed when directed by Owner. Design-Builder shall provide heat, air conditioning, ventilation, other environmental controls and shall take all actions necessary to protect all Work, materials and equipment against injury, damage or loss from theft, weather, vandalism, wetness, flood, temperature and humidity conditions, dust and other adverse conditions.

2.3.6 All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If required by Owner, Design-Builder shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Subcontractor or Supplier, except as otherwise provided in the Contract Documents.

2.4 DESIGN-BUILDER'S WARRANTY

2.4.1 In addition to all other warranties implied by law or expressed in the Contract Documents or elsewhere, the Design-Builder warrants to Owner that:

.1 The materials and equipment furnished under the Contract will be of good and suitable quality, free from defects in material and workmanship not permitted or required by the Contract Documents, new, and in strict conformance with the Contract Documents; and

.2 The Work will be executed in a good and workmanlike manner, free of defects in material and workmanship not permitted or required by the Contract Documents, and in strict conformance with the Contract Documents.

2.4.2 The above warranties are not intended as a limitation, but are in addition to, and not in lieu of, all other express warranties set forth in this Contract and such other warranties as are implied by law, or expressed by the Contract Documents or elsewhere. The Design-Builder shall be liable for the satisfaction and full performance of the warranties set forth herein.

2.4.3 Design-Builder shall assign to Owner all manufacturer, supplier or installer warranties upon Final Completion of the Work.

2.4.4 Design-Builder's obligation to perform and complete the Work in strict accordance with the Contract Documents shall be absolute. None of the following shall constitute an acceptance of Work that is not in strict accordance with the Contract Documents or a release of Design-Builder's obligation to perform the Work in strict accordance with the Contract Documents:

.1 Observations or inspections by or on behalf of Owner;

.2 Approval of any progress or final payment by Owner;

.3 The issuance of a certificate of Substantial or Final Completion or any payment to Design-Builder under the Contract Documents;

.4 Use or occupancy of the Work or any part thereof by Owner;

.5 Any acceptance by Owner; or

.6 Any inspection, test or approval by others.

2.5 LAWS, PERMITS, FEES AND NOTICES

2.5.1 The Design-Builder shall, without additional expense to Owner, comply with all applicable Laws and Regulations applicable to Design-Builder's performance of the Work. Design-Builder shall provide and give notices required by any applicable Laws and Regulations bearing on performance of the Work. Owner shall not be responsible for monitoring Design-Builder's compliance with any applicable Laws or Regulations. The Design-Builder shall defend, indemnify and hold harmless Owner as a result of failing to comply with any Laws or Regulations.

2.5.2 The Design-Builder shall secure and pay for all permits, governmental fees, licenses, bonds and inspections necessary for the proper execution and completion of the Work, including, without limitation, all building permits, whether or not required at the time of the award of the Contract. Design-Builder shall provide Owner copies of all such permits and licenses. All connection charges, assessments or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be Design-Builder's responsibility.

2.5.3 The Design-Builder shall procure and obtain all bonds required of the Owner or the Design-Builder by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Design-Builder shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Design-Builder shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

2.6 TAXES

2.6.1 Design-Builder shall pay all sales, consumer, use and other similar taxes required to be paid by Design-Builder in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. However, certain purchases by the Design-Builder of materials incorporated in or consumed in the construction of the Project are exempt from certain sales taxes pursuant to RSMo 144.062. The Design-Builder shall be issued a Project Tax Exemption Certificate for this Project to obtain the benefits of RSMo 144.062.

2.6.2 Any excess resalable tangible personal property or materials which were purchased for the Project under this Project Tax Exemption Certificate but which were not incorporated into or consumed in the construction of the Project shall either be returned to the Supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on applicable tax returns and paid by such purchasing party not later than the due date of the purchasing party's Missouri sales or use tax return following the month in which it was determined that the materials were not used in the Project.

2.7 DESIGN-BUILDER'S SCHEDULES

2.7.1 The Design-Builder, within fifteen (15) days after execution of the agreed scope of work, shall prepare and submit for Owner's information Design-Builder's schedule for the Work and shall set forth interim dates for completion of various components of the Work and Milestone Dates as defined herein. The schedule shall not exceed time limits under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project, and shall provide for expeditious and practicable execution of the Work. The Design-Builder shall conform to the most recent schedules approved by Owner.

2.7.2 The construction schedule shall be in a detailed format satisfactory to Owner which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth

dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). If Owner has a reasonable objection to the schedule submitted by Design-Builder, the construction schedule shall be promptly revised by the Design-Builder. Any failure to object or any acceptance or approval of any schedule by Owner will neither impose on Owner responsibility for sequencing, scheduling or progress of the Work nor interfere with or relieve Design-Builder from Design-Builder's full responsibility therefor. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the schedule and shall promptly advise Owner of any delays or potential delays. The accepted schedule shall be updated to reflect actual conditions. Design-Builder shall submit written progress reports and updated schedules to Owner with each Application for Payment showing actual progress of the Work compared with the scheduled and planned progress. In the event any schedule or progress report indicates any delays for which Design-Builder is responsible, the Design-Builder shall propose an alternative plan to correct the delay, including overtime and/or additional labor and equipment and/or expediting delivery of materials, if necessary. In no event shall any progress report or schedule constitute an adjustment in the Contract Times, any Milestone Date or the Contract Sum unless any such adjustment is agreed to in writing by Owner and authorized pursuant to Change Order. Owner's acceptance or approval of any schedule shall not be deemed to confirm or establish that the schedule is a reasonable plan for performing the Work.

2.7.3 In the event Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion set forth in the most recent approved construction schedule for reasons Design-Builder is responsible, Owner shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, provided however that Design-Builder shall be responsible, in its discretion, for determining the appropriate corrective measures, including, without limitation: (1) working additional shifts or overtime; (2) supplying additional manpower, equipment, facilities; (3) expediting delivery of materials; and (4) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the most recent construction schedule approved by Owner. Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Design-Builder's compliance with the schedule and the Contract Times. The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by Owner under or pursuant to this Paragraph 2.7.3. Owner may exercise the rights furnished Owner under or pursuant to this Paragraph 2.7.3 as frequently as Owner deems necessary to ensure that the Design-Builder's performance of the Work will comply with any Milestone Date or completion date or the Contract Times.

2.8 DOCUMENTS AT THE SITE

2.8.1 The Design-Builder shall maintain at the Project site for Owner one record copy of the Drawings, Specifications, Change Orders and other Modifications, executed by all parties, in good order and marked currently to record changes and selections made during Construction. These documents shall be available to Owner and shall be delivered to Owner upon completion of the Work.

2.8.2 Design-Builder shall maintain at the Project site, and shall make available to Owner, one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the Construction. The prints for Record Drawing use will be a set of "blue line" prints of the Drawings. Design-Builder shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (1) deviations from the Drawings made during construction; (2) details in the Work not previously shown; (3) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (4) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (5) such other information Owner may reasonably request. Upon Final Completion of the Work, Design-Builder shall deliver all Record Drawings to Owner for approval. If not approved, Design-Builder shall make the revisions requested by Owner. Final payment and any retainage shall not be due and owing to Design-Builder until the final Record Drawings marked by Design-Builder as required above are delivered to Owner.

2.9 OPERATING INSTRUCTIONS AND SERVICE MANUALS

2.9.1 At least one (1) week prior to the Design-Builder's notice that the Work is finally complete, the Design-Builder shall provide to Owner a total of four (4) volumes of operating instructions and service manuals, containing the following:

.1 Start-up and Shut-down Procedures: Provide a step-by-step write up of all major equipment. When Supplier's printed start-up, trouble shooting and shut-down procedures are available, they may be incorporated into the operating manual for reference;

.2 Operating Instructions: Written operating instructions shall be included for the efficient and safe operation of all equipment;

.3 Equipment List: List of all major equipment as installed shall include

model number, capacities, flow rate, and name-plate data;

.4 Service Instructions: Design-Builder shall provide the following information for all pieces of equipment:

(a) Recommended spare parts including catalog number and name of local Suppliers or factory representative;

(b) Belt sizes, types, and lengths;

(c) Wiring diagrams;

.5 Supplier's Certificate of Warranty: Supplier's certificates of warranty shall be obtained for all major equipment. Warranty shall be obtained for at least one year from the date of Final Completion. Where a longer period is required by the Contract Documents, the longer period shall govern; and

.6 Parts catalogs: For each piece of equipment furnished on the Project, a parts catalog or similar document shall be provided which identifies the components by number for replacement ordering.

2.9.2 The documents set forth in Paragraph 2.9.1 shall be bound into volumes of standard 8½" x 11" hard binders. Large drawings too bulky to be folded into 8½" x 11" shall be separately bound or folded and in brown envelopes, cross-referenced and indexed with the manuals. The documents set forth in Paragraph 2.9.1 shall identify the Project, the project number, and include the name and address of the Design-Builder and major Subcontractors and Suppliers who were involved with the activity described in that particular manual.

2.10 USE OF SITE

2.10.1 The Design-Builder shall limit operations and storage of material to the area within the Project limit lines shown on Drawings, except as necessary to connect to exiting utilities. Design-Builder shall not encroach on neighboring property, and shall exercise caution to prevent damage to existing structures.

2.10.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Design-Builder.

2.10.3 Design-Builder shall not permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design-Builder subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

2.10.4 Other than signage required by applicable law or regulation, no project signs shall be erected without the written approval of Owner.

2.10.5 The Design-Builder shall ensure that the Work is at all times performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Design-Builder shall not interfere with the occupancy or beneficial use of: (1) any areas and buildings adjacent to the site of the Work; or (2) the Work in the event of partial occupancy. Design-Builder shall assume full responsibility for any damage to the property comprising the Project or to Owner or an occupant of any adjacent land or areas resulting from the performance of the Work.

2.10.6 Design-Builder shall, and in accordance with any regulations or site rules presented by Owner, use only designated site entrances and roadways or use temporary entrances and roadways constructed by Design-Builder.

2.11 CUTTING AND PATCHING

2.11.1 The Design-Builder shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

2.11.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Design-Builder shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor. The Design-Builder shall not unreasonably withhold from Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. The Design-Builder shall not patch or cut existing Work or Work in progress without the written approval of the Owner.

2.11.3 Only tradespersons skilled and experienced in cutting and patching shall perform such Work.

2.12 ROYALTIES AND PATENTS

2.12.1 The Design-Builder shall pay all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation in the Work

of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. To the fullest extent permitted by Laws and Regulations, Design-Builder shall indemnify and hold harmless Owner from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner.

2.13 INDEMNIFICATION

2.13.1 To the fullest extent permitted by law, the Design-Builder shall defend, indemnify, and hold harmless Owner and Owner's agents, officials, employees, and representatives (hereafter collectively referred to as the "Indemnitees") from and against claims, damages, penalties and civil fines unless expressly prohibited by law, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from: (1) the performance of the Work; (2) the negligence of the Design-Builder, a Subcontractor, a Supplier, a Design *Professional, any person or entity directly or indirectly* employed by Design-Builder, a Subcontractor, a Supplier, or a Design Professional or any person or entity for whose acts they may be liable; (3) a violation of any Laws or Regulations, regardless of whether or not such claim, damage, loss, or expense is caused in part by the negligent acts or omissions or other fault of any of the Indemnitees except that Design-Builder shall not be responsible to the extent of negligence finally found attributable to the Indemnitees. The Design-Builder's obligations hereunder are in addition to and shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that any of the Indemnitees may possess. If one or more of the Indemnitees demand performance by the Design-Builder of obligations under this Paragraph 2.13.1 or other provisions of the Contract Documents and if Design-Builder refuses to assume or perform, or unreasonably delays in assuming or performing Design-Builder's obligations, Design-Builder shall pay each Indemnitee who has made such demand its respective attorneys' fees, costs, and other expenses incurred in enforcing this provision. The defense and indemnity required herein shall, however, be a binding obligation upon Design-Builder whether or not an Indemnitee has made such demand. Even if a defense is successful to a claim or demand for which Design-Builder is obligated to defend and indemnify the Indemnitees from under this Paragraph, Design-Builder shall remain liable for all costs of defense.

2.13.2 In claims against any person or entity indemnified under this Section 2.13 by an employee of the Design-Builder, a Design Professional, Subcontractor, Supplier, any person or entity directly or indirectly employed by them or any person or entity for whose acts they may be liable, the indemnification obligation under this Section 2.13 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, a Design Professional, a Subcontractor or a Supplier or any person or entity employed by them or any person or entity for whose acts they may be liable under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

2.14 REMOVAL AND CLEANING UP

2.14.1 The Design-Builder shall keep the Project site and surrounding areas free from accumulation of waste materials, rubbish, debris, and dirt resulting from the Work and shall clean the Project site and surrounding areas. The Design-Builder shall be responsible for the cost of clean up and removal from premises. The building and premises shall be kept clean, safe, in a workmanlike manner, and in compliance with OSHA standards at all times. At completion of the Work, Design-Builder shall remove from and about the Project site tools, construction equipment, machinery and surplus materials. If Design-Builder fails to comply with the provisions of this paragraph, Owner may do so and the cost thereof shall be charged to the Design-Builder.

ARTICLE 3

OWNER

3.1 INFORMATION AND SERVICES REQUIRED OF OWNER

3.1.1 When requested in writing by the Design-Builder, information under Owner's control, which are reasonably necessary for Design-Builder to perform the Work, will be furnished by Owner.

3.2 OWNER'S RIGHT TO STOP THE WORK

3.2.1 If the Design-Builder fails to correct Work which is not in strict accordance with the requirements of the Contract Documents or fails to carry out Work in strict accordance with the Contract Documents, Owner may order the Design-Builder to immediately stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work will not give rise to a duty on the part of Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

3.3 OWNER'S RIGHT TO CARRY OUT THE WORK

3.3.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of a written notice from Owner to correct such default or neglect (or for correction, which by its nature, cannot be reasonably completed within seven (7) days, fails to commence correction within such seven (7) day period and thereafter fails to diligently pursue correction to completion), Owner may, without prejudice to other remedies Owner may have, correct such default or neglect. In such case, Owner will have the right to deduct from payments then or thereafter due Design-Builder the cost of correcting such deficiencies, including compensation for the additional design services and expenses made necessary by such default or neglect. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

3.3.2 Builder shall be given thirty (30) days to complete punchlist items following substantial completion. In the event the Design-Builder has not satisfactorily completed all items on the Punch List by the date required for Final Completion, Owner reserves the right to complete the Punch List without further notice to Design-Builder or its surety. In such case, Owner shall be entitled to deduct from payments then or thereafter due Design-Builder the cost of completing the Punch List items, including compensation for additional design services. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the difference to Owner.

3.4 EXTENT OF OWNER'S RIGHTS

3.4.1 The rights stated in this Article 3 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

3.4.2 In no event shall Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted Owner in the Contract Documents.

ARTICLE 4

CLAIMS

4.1 GENERAL

4.1.1 A Claim is a demand or assertion by Design-Builder seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of any time or requirements, including the Contract Times, or any other relief with respect to the terms of the Contract. The term "Claim(s)" also includes demands and assertions of Design-Builder arising out of or relating to the Contract Documents, including Claims based upon breach of contract, or other cause for Contract Modification. Claims must be made by written notice. Design-Builder shall have the responsibility to substantiate Claims.

4.1.2 Claims by Design-Builder must be made promptly, and no later than within twenty one (21) days after occurrence of the event giving rise to such Claim or after Design-Builder is aware of such Claim, whichever is later. Claims must be made by written notice. Such notice shall include a detailed statement setting forth all reasons for the Claim and an estimate of amount of additional money and additional time claimed by Design-Builder. The notice of Claims shall also strictly comply with all other provisions of the Contract Documents. Design-Builder shall not be entitled to rely upon any grounds or basis for additional money or additional time not specifically set forth in the written notice of Claim. When the information concerning actual claimed costs and the Claimed impacts to the Contract Times are available, Design-Builder shall substantiate its claim within twenty one (21) days after the information is available. All Claims not made in the manner provided herein shall be deemed waived and of no effect. Design-Builder shall furnish Owner such timely written notice of any Claim provided for herein, including, without limitation, those in connection with alleged concealed or unknown conditions, and shall cooperate with Owner in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim.

4.1.3 Pending final resolution of a Claim, the Design-Builder shall proceed diligently with performance of the Contract.

4.2 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.2.1 If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating

the reasons. If Design-Builder disputes the Owner's determination or recommendation, Design-Builder may proceed as provided in Section 4.6 below.

4.3 CLAIM FOR ADDITIONAL COST

4.3.1 If the Design-Builder wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. In addition to all other requirements for notice of a Claim, said notice shall detail and itemize the amount of all Claims and shall contain sufficient data to permit evaluation of same by Owner. No such Claim shall be valid unless so made. If the Design-Builder believes additional cost is involved for reasons including, but not limited to: (1) a written interpretation of the requirements of the Contract Documents; (2) an order by Owner to stop the Work where the Design-Builder was not at fault; (3) a written order for a minor change in the Work; (4) termination of the Contract by Owner; (5) Owner's suspension of the Work; or (6) other reasonable grounds, such Claim shall be filed in accordance with the procedure established herein and by other provisions of the Contract Documents.

4.4 CLAIMS FOR ADDITIONAL TIME

4.4.1 If the Design-Builder wishes to make a Claim for an increase in the Contract Times, written notice as provided herein shall be given. In addition to other requirements for notice of a Claim, Design-Builder shall include an estimate of the probable effect of delay upon the progress of the Work.

4.4.2 If abnormal weather conditions are the basis for a Claim for additional time, such Claim shall be documented by the Design-Builder by data acceptable to Owner substantiating that weather conditions were abnormal for the period of time in question, and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction. Requests for extension of the scheduled Completion Date(s) or Milestone Dates due to adverse weather conditions shall include climatological reports for the months involved, plus a report indicating the average precipitation, temperature, and other climatological data for the past five (5) years from the nearest official United States Weather Service reporting office. The ten-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which Design-Builder would normally expect to encounter.

4.5 INJURY OR DAMAGE TO PERSONS OR PROPERTY

4.5.1 If an employee of Design-Builder, Supplier or Subcontractor suffers injury or damage to person or property because of an alleged act or omission of Owner or a separate Design-Builder or any of their agents, or of others for which they may be legally liable, Design-Builder shall give Owner written notice of such injury or damage, whether or not insured, within a reasonable time not exceeding twenty-four (24) hours after first observance. The notice shall provide sufficient detail to enable Owner to investigate the matter.

4.6 RESOLUTION OF CLAIMS AND DISPUTES

4.6.1 Owner will review Claims and take one or more of the following preliminary actions within a reasonable time of receipt of a Claim: (1) request additional supporting data from the Design-Builder, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

4.6.2 If a Claim has not been resolved, the Design-Builder shall, within ten (10) days after Owner's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested, (2) modify the initial Claim, or (3) notify Owner that the initial Claim stands.

4.6.3 If a Claim has not been resolved after consideration of the foregoing and of further information presented by the Design-Builder, the Design-Builder shall have the right to file an action as set forth in Paragraph 13.8.7.

ARTICLE 5

DESIGN PROFESSIONALS, SUBCONTRACTORS AND SUPPLIERS

5.1 AWARD OF SUBAGREEMENTS

5.1.1 It is acknowledged and agreed that prior to the date of the execution of this Agreement, Design-Builder disclosed the identity of each proposed Design Professional and certain proposed Subcontractors and Suppliers. Within ten (10) days from the date of the Agreement Design-Builder shall notify Owner if it desires to substitute a disclosed Design Professional, a Subcontractor or a Supplier. Design-Builder shall not engage any Design Professional, Subcontractor or Supplier, whether initially or as a substitute, against whom Owner has a reasonable objection. Regardless of whether Owner has provided Design-Builder any objections to a Design Professional, Subcontractor or Supplier previously disclosed prior to the date of the Agreement, Owner shall have the right to object to such Design Professional, Subcontractor or Supplier after the date of the Agreement.

5.1.2 If Owner has a reasonable objection to a proposed Design Professional, Subcontractor or Supplier, whether initially or as a substitute, Owner will promptly notify Design-Builder in writing of Owner's reasonable objection after allowing for a reasonable period of investigation. If Owner has a reasonable objection to any proposed Design Professional, Subcontractor or Supplier,

whether initially or as a substitute, Design-Builder shall propose another Design Professional, Subcontractor or Supplier to whom Owner has no reasonable objection. If the proposed but rejected Design Professional, Subcontractor or Supplier was reasonably capable of performing the Work, the Contract Sum and Contract Times shall be increased or decreased by the difference, if any, occasioned by the change, and an appropriate Change Order shall be issued before commencement of the Design Professional's, Subcontractor's or Supplier's Work. However, no increase in the Contract Sum or Contract Times shall be allowed for such change unless the rejected Design Professional, Subcontractor or Supplier was reasonably capable of performing the Work and Design-Builder has acted promptly and responsively in submitting the information required herein.

5.1.3 The Design-Builder represents and warrants that no Design Professional, Subcontractor or Supplier has been debarred, declared ineligible or suspended or proposed for debarment, declared ineligible or voluntarily excluded from participating in projects by any federal, state or local governmental department or agency. In the event a Design Professional, Subcontractor or Supplier has been or is proposed for debarment, suspension or declared ineligible or voluntarily excluded from participating in the projects set forth above, Owner shall have the right in its absolute discretion to: (1) stop all Work until such person or entity is removed by Design-Builder from participating in this Project; or (2) immediately terminate this Contract. The rights provided to Owner under this clause are in addition to all other rights Owner may possess as provided for by law or as provided for in the Contract Documents. Design-Builder shall not be entitled to any adjustment in the Contract Sum or Contract Times if a Design Professional, Subcontractor or Supplier as described in this Paragraph is utilized for the Project.

5.1.4 The Design-Builder shall be responsible to Owner for all acts, defaults, and omissions of all Design Professionals, Subcontractors and Suppliers and other persons and entities performing or furnishing any of the Work under a direct or indirect contract with Design-Builder. Design-Builder shall be solely responsible for scheduling and coordinating Design Professionals, Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design-Builder, shall require all Design Professionals, Subcontracts, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with Owner through Design-Builder.

5.1.5 Design-Builder shall be solely responsible for scheduling and coordinating Subcontractors, Design Professionals, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design-Builder. Design-Builder shall require all Subcontractors, Design Professionals, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with Owner through Design-Builder.

5.2 SUBAGREEMENT RELATIONS

5.2.1 All services performed or provided to and material and equipment supplied to Design-Builder by a Design Professional, Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design-Builder and the Design Professional, Subcontractor or Supplier which specifically binds the Design Professional, Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Each Design Subagreement and Construction Subagreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by each Design Professional, Subcontractor and Supplier so that subcontracting thereof will not prejudice such rights.

5.2.2 All Design Subagreements and Construction Subagreements shall contain provisions whereby Subcontractor or Supplier waives all rights against Owner, Design-Builder, and all other additional insureds for all losses and damages caused by, arising out of, or resulting from any causes of loss to the extent covered by property or builder's risk insurance coverage required of Design-Builder in the Contract Documents. If insurers on any such policies require separate waiver forms to be signed by a Design Professional, Subcontractor or Supplier, Design-Builder shall obtain the same.

5.3 CONTINGENT ASSIGNMENT OF SUBAGREEMENTS

5.3.1 Each Design Subagreement and Construction Subagreement is hereby assigned by the Design-Builder to Owner provided that:

.1 Assignment is effective only after termination of the Contract by Owner for cause pursuant to Section 13.1 and only for those agreements which Owner accepts by notifying the Design Professional, Subcontractor or Supplier in writing; and

.2 Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.3.2 Each Design Subagreement and Construction Subagreement shall specifically provide that Owner shall only be responsible to the Design Professional, Subcontractor or Supplier for those obligations of the Design-Builder that accrue subsequent to Owner's exercise of any rights under this conditional assignment.

ARTICLE 6

CONSTRUCTION BY SEPARATE CONTRACTORS

6.1 SEPARATE CONTRACTORS

6.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces and/or to award separate contracts in connection with other portions of the Project or other construction or operations on the site. Design-Builder shall fully cooperate and coordinate its Work with any separate contractors engaged by Owner to avoid or mitigate interferences or delays.

6.1.2 It shall be the duty of Design-Builder and each separate contractor, as well as all Suppliers and Subcontractors, to communicate and cooperate with each other in order to schedule Work, locate storage facilities, and coordinate their respective operations, in a manner that will permit the Design-Builder and the separate contractor to work in harmony and coordinate their activities so that the Work may be completed in the manner and within the time specified in the Contract Documents.

6.1.3 The construction schedule and progress schedule of the Design-Builder for the Work shall be submitted to any separate contractor as necessary to permit coordination of the applicable progress schedules.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Design-Builder shall afford any separate contractor reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with those of the separate contractor.

6.2.2 If the timely and proper execution or results of Design-Builder's Work depends upon the work of any separate contractor, Design-Builder shall maintain and keep itself informed of the progress and details of the work performed by the separate contractor through scheduling and attending job coordination meetings, communication with the separate contractor and inspection of such work of the separate contractor. Design-Builder shall promptly report, in writing, to Owner any delays, defects or deficiencies in the work of others that would hinder, delay or prohibit Design-Builder from completing the Work in strict accordance with the Contract Documents. Design-Builder's failure to so report in writing shall constitute an acceptance of such other work as timely, fit and proper for integration with Design-Builder's Work.

6.2.3 Design-Builder shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate such other work. Design-Builder shall not endanger any work of others by cutting, excavating or otherwise altering the work of others and will only cut or alter the work of others with the written consent of Owner and the others whose work will be affected.

6.2.4 If Design-Builder or any separate contractor refuses to cooperate with the instructions and reasonable requests of each other in the overall coordinating of the Work, Owner may take such appropriate action and issue such instructions as in its judgment may be required to avoid unnecessary and unwarranted delay. Design-Builder shall comply with such instructions and actions of Owner. Nothing contained herein shall create any express or implied duty of Owner to coordinate or schedule the Work.

6.2.5 Design-Builder shall not delay any separate contractor by neglecting to perform its Work at the proper time. Design-Builder shall be required to coordinate its Work with any separate contractor so as to afford separate contractor a reasonable and safe opportunity for execution of their work. Any costs caused by delays or improperly timed activities or defective construction shall be borne by the party responsible therefore.

6.2.6 Design-Builder shall be responsible for damage to Owner's or any separate contractor's property caused by Design-Builder or its employees, subcontractors, agents and invitees.

6.2.7 In the event Design-Builder is delayed or damaged by the activities, fault, negligent acts or omissions, delays or improperly timed activities, or defective construction of any separate contractor or person or entity for whose acts or omissions the separate contractor may be liable, Design-Builder agrees to solely pursue the separate contractor for compensation as a result of such activities, fault, negligent acts or omissions, delays or improperly timed activities, or defective construction. Design-Builder shall be considered a third party beneficiary of any contract between Owner and any separate contractor for the Project solely for the purpose of recovering damages from such separate contractor which are caused by the activities, fault, negligent acts or omissions, delays or improperly timed activities, or defective construction of such separate contractor or any person or entity for whose acts or omissions such separate contractor may be liable.

6.2.8 Design-Builder shall be responsible for any damages of any separate contractor caused by the, fault, negligent acts or omissions, or improperly timed activities, or defective construction of Design-Builder or of any person or entity for whose acts or omissions Design-Builder is liable. Design-Builder acknowledges that such separate contractors shall be considered third party beneficiaries of this Contract for the sole purpose of allowing any separate contractors the right to directly recover damages from Design-Builder which are caused by the fault, negligent acts or omissions, or improperly timed activities, or defective construction of Design-Builder or of any person or entity for whose acts or omissions Design-Builder may be liable.

6.2.9 Should Design-Builder cause any damage to any separate contractor, Design-Builder shall promptly attempt to settle with such separate contractor in good faith. Design-Builder shall defend, indemnify and hold harmless Owner, and its officials, agents, representatives and employees from and against losses and damages (including but not limited to fees of engineers, architects, attorneys and other professionals and court or other dispute resolution costs) arising out of or resulting from any claim or action brought by a separate contractor to the extent caused by or based upon Design-Builder's performance of the Work.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Design-Builder, separate contractors and Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may clean up and allocate the cost among those responsible as Owner determines, in its reasonable discretion, to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES IN THE WORK

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

7.1.2 A Change Order shall be based upon agreement between Owner and Design-Builder; a Change Directive may be issued by Owner and may or may not be agreed to by the Design-Builder; an order for a minor change in the Work may be issued by the Owner alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument signed by Owner and Design-Builder, stating their agreement upon all of the following:

.1 A change in the Work;

.2 The amount of the adjustment in the Contract Sum, if any; and

.3 The extent of the adjustment in the Contract Times, if any.

7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

7.2.3 Methods used in determining adjustments to the Contract Sum shall be those listed in Paragraph 7.3.3.

7.2.4 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Times and construction schedule. In the event a Change Order increases the Contract Sum, Design-Builder shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

7.3 CHANGE DIRECTIVES

7.3.1 A Change Directive is a written order signed by Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Times, or both. Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Times being adjusted accordingly.

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

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

.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 Unit prices stated in the Contract Documents or subsequently agreed upon, provided that if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that the application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or

Design-Builder, the applicable unit prices shall be equitably adjusted;

.3 Cost to be determined in a manner and agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Paragraph 7.3.6.

7.3.4 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or Contract Times.

7.3.5 A Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Times or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, allowance for overhead and profit as set forth in Section 7.5. In such case, and also under Paragraph 7.3.3, the Design-Builder shall keep and present, in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Paragraph 7.3.6 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, and additional costs of supervision and field office personnel directly attributable to the change;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed and rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.3 Additional costs of professional services, including payments made by Design-Builder to Design Professionals or Subcontractors for Work performed or furnished by Design Professionals or Subcontractors;and

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

7.3.7 The term "Cost of the Work" shall not include costs due to the negligence of Design-Builder, a Design Professional, Subcontractor or Supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

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

7.3.9 Pending final determination of the total cost of a Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article 4.

7.3.10 When Owner and Design-Builder agree to adjustments in the Contract Sum and Contract Times, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on Design-Builder. The Design-Builder shall carry out such written orders promptly.

7.5 AGREED OVERHEAD AND PROFIT RATES

7.5.1 For any adjustments to the Contract Sum which are based on other than the unit prices method, the Design-Builder agrees to charge, and accept, as payment for

overhead and profit, the following percentages of costs attributable to the change in the Work:

.1 For costs incurred under Paragraph 7.3.6.1, the Design-Builder's fee shall be ten percent (10%);

.2 For costs incurred under Paragraph 7.3.6.2, the Design-Builder's fee shall be ten percent (10%);

.3 For costs incurred under Paragraph 7.3.6.3, the Design-Builder's fee shall be ten percent (10%); .

.4 For costs incurred under Paragraph 7.3.6.4, the Design-Builder's fee shall be ten percent (10%).

7.5.2

ARTICLE 8

TIME

8.1 PROGRESS AND COMPLETION

8.1.1 The Contract Times is the period of time set forth in the Contract Documents, including any authorized adjustments, required for Substantial Completion of the entire Work or a designated portion thereof and Final Completion of the entire Work. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Design-Builder confirms that the Contract Times is a sufficient period for performing the Work in its entirety.

8.2 DELAY IN COMPLETION

8.2.1 The Design-Builder shall be liable for the liquidated damages set forth in the Agreement in the event it fails to achieve Substantial Completion, within the time specified in the Agreement, and/or fails to achieve Final Completion of the entire Work within the time specified in the Agreement.

8.2.2 All time limits stated in the Contract, including without limitation, the Contract Times and the Milestone Dates are of the essence of the Contract. However, if the Design-Builder is delayed at any time in the commencement or progress of the Work by any act or neglect of Owner or of a separate contractor of Owner, by changes ordered in the Work, by fire, unavoidable casualties, riot, civil commotion, embargo or similar events, by abnormal weather conditions or any other causes beyond Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Contract Documents, or by other causes which Owner reasonably determines may justify delay, then the Contract Times shall be extended for a reasonable time to the extent such delay would otherwise prevent Design-Builder from achieving Substantial Completion and/or Final Completion within the Contract Times except to the extent that the Work is, was, or would have been delayed by any other cause for which the Design-Builder is not entitled to an extension in the Contract Times under the Contract Documents

8.2.3 The Design-Builder further acknowledges and agrees that adjustments in the Contract Times will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been reasonably anticipated, by the Design-Builder, (2) could not be limited or avoided by the Design-Builder's timely notice to Owner of the delay, , and (3) is of a duration not less than one (1) day. Delays attributable to and within the reasonable control of Design-Builder, a Design Professional, Subcontractor or Supplier shall not justify an extension of the Contract Times. It is further agreed that Owner shall in no manner be liable to Design-Builder for costs or damages arising out of delays beyond the control of both parties.

8.2.4 If the Design-Builder submits a progress report or any schedule indicating, or otherwise expressing an intention to achieve completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Times, no liability of Owner to the Design-Builder for any failure of the Design-Builder to so complete the Work shall be created or implied. Further, the Design-Builder acknowledges and agrees that even if Design-Builder intends or is able to complete the Work prior to the Contract Times, it shall assert no Claim and Owner shall not be liable to Design-Builder for any failure of the Design-Builder, regardless of the cause of the failure, to complete the Work prior to the Contract Times.

8.3 LIQUIDATED DAMAGES

8.3.1 Owner may deduct from the Contract Sum and retain as liquidated damages, and not as penalty or forfeiture, the sum stipulated in the Agreement.

8.3.2 Owner shall certify the date of Substantial Completion.

8.3.3 Liquidated damages or any matter related thereto shall not relieve the Design-Builder or its surety of any responsibility or obligation under this Contract.

8.3.4 Design-Builder and Owner waive claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

1. Damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for

loss of management or employee productivity or of the services of such persons; and

2. Damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

Nothing contained in this section shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

PAYMENT AND COMPLETION

8.4 CONTRACT SUM

8.4.1 The Contract Sum is stated in the Agreement and is the total amount payable by Owner to the Design-Builder for the satisfactory performance of the Work under the Contract Documents.

8.5 SCHEDULE OF VALUES

8.5.1 The schedule of values allocated to various portions of the Work, is attached to the Agreement as Exhibit D. This schedule, unless objected to by Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The values set forth in such schedule shall not be used in any manner as fixing a basis for additions to or deletions from the Contract Sum.

8.5.2 If the Schedule of Values is used, but later found improper for any reason, including but not limited to the reason that the Schedule of Values exhibits "front-loading" of the value of the Work, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

8.6 APPLICATIONS FOR PAYMENT

8.6.1 Design-Builder shall submit to Owner an itemized Application for Payment in a form approved by Owner for Work completed in accordance with the Schedule of Values. Such application shall be notarized and supported by such data substantiating the Design-Builder's right to payment as Owner may require, such as copies of requisitions from Subcontractors and Suppliers, and reflecting retainage as provided for herein.

8.6.2 Such applications may not include requests for payment of amounts the Design-Builder does not intend to pay to a Design Professional, Subcontractor or Supplier because of a dispute or other reason.

8.6.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to Owner:

.1 Design-Builder's updated schedule and a progress report setting forth in detail the actual progress to date (in terms of percent complete) and the scheduled or planned progress, a listing of the value of material on hand included in the Application and other data specified in the Specifications;

.2 Weekly employee payrolls for Design-Builder and all Subcontractors. Each Application for Payment shall be accompanied by a certified copy of employee payrolls, submitted on Federal Form WH-347 and covering the Work performed during the time covered by the Application. No payment will be due and no Application for Payment processed by the Owner until all pertinent payroll documents have been completed and approved;

.3 A current Design-Builder's receipt and partial release in the form approved by Owner and acknowledged sworn statement showing all Design Professionals, Subcontractors and/or Suppliers with whom the Design-Builder has entered into a Design Subagreement or Construction Subagreement, the amount of each such subcontract, the amounts which have been paid to all Design Professionals, Subcontractors and Suppliers, the amount requested for any Design Professional, Subcontractor and Supplier in the requested progress payment, and the amount to be paid to a Design Professional, Subcontractor or Supplier from such progress payment, together with similar sworn statements from all such Design Professionals, Subcontractors and Suppliers;

.4 Duly executed receipt and partial releases in the form approved by Owner from all Design Professionals, Subcontractors and Suppliers establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such

entities or persons in any previous Application for Payment; and

.5 All information and materials required to comply with the requirements of the Contract Documents or reasonably requested by Owner.

8.6.4 Owner shall not be obligated to make any progress payments until the Design-Builder has provided Owner:

.1 Certificate(s) of insurance or policies as required herein;

.2 A signed copy of the Agreement;

.3 Evidence that performance and payment bonds have been purchased as required herein;

.4 An approved Schedule of Values;

.5 An approved construction schedule;

.6 List of Design Professionals, Subcontractors and Suppliers; and

.7 Other documents and certifications required by the Contract Documents.

8.6.5 Progress payments shall be made on account of materials and equipment delivered to the site and incorporated in the Work. No payments will be made for materials and equipment stored at the Project site but not yet incorporated into the Work except as provided in Paragraph 9.3.6. No payments will be made for materials and equipment stored off site.

8.6.6 If approved in writing by Owner, progress payments may be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Any approval by Owner for payment for materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work shall be conditioned upon Design-Builder's demonstrating that such materials and equipment are adequately protected from weather, damage, vandalism and theft and that such materials and equipment are properly stored.

8.6.7 The Application for Payment shall constitute a representation by the Design-Builder to Owner that the Work has progressed to the point indicated; the quality of the Work covered by the Application for Payment is in accordance with the Contract Documents; and the Design-Builder is entitled to payment in the amount requested.

8.6.8 Design-Builder warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time for payment. Design-Builder further warrants that upon submittal of an Application for Payment all Work for which payments have been received from Owner shall be free and clear of Liens in favor of Design-Builder, Design Professionals, Suppliers, Subcontractors or other persons or entities making a claim by reason of having provided labor, materials or equipment relating to the Work.

8.7 DECISIONS TO WITHHOLD APPROVAL

8.7.1 Owner may refuse to pay the whole or any part of the amount of any Application for Payment, or because of subsequent inspections or tests, nullify any previous payment, to the extent that it is reasonably necessary to protect Owner from loss because:

.1 Defective Work not remedied or damage to completed Work;

.2 Failure to supply sufficient skilled workers or suitable materials;

.3 Third party claims filed or reasonable evidence indicating probable filing of such claims;

.4 Failure of the Design-Builder to make payments properly to Design Professionals, Subcontractors or Suppliers for services, labor, materials or equipment;

.5 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.6 Damage to Owner or a separate Design-Builder caused by Design-Builder;

.7 Reasonable evidence that the Work will not be completed within the Contract Times or an unsatisfactory rate of progress made by Design-Builder;

.8 Design-Builder's failure to comply with applicable Laws or Regulations; or

.9 Failure to carry out the Work in strict accordance with the Contract Documents.

8.7.2 When the above reasons for withholding approval are removed, approval will be made for amounts previously withheld.

8.8 PROGRESS PAYMENTS

8.8.1 Based upon Applications for Payment submitted to Owner and by the Design-Builder, Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Contract Documents.

8.8.2 Applications for Payment shall be submitted to Owner not later than the tenth (10^{th}) day of the month. The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the previous month.

8.8.3 Owner shall make payment to Design-Builder for the amounts certified and approved by Owner not later than thirty (30) days after Owner's receipt of a proper Application for Payment.

8.8.4 Based on the Schedule of Values submitted by Design-Builder, Applications for Payment submitted by Design-Builder shall indicate the percentage of completion of each portion of Design-Builder's Work as of the end of the period covered by the Application for Payment.

8.8.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completed of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of five percent (5%) for the Project;

.2 Subtract the aggregate of previous payments made by Owner; and

.3 Subtract amounts, if any, for which Owner has withheld or nullified an approval.

8.8.6 The Design-Builder shall promptly pay each Design Professional, Subcontractor and Supplier, upon receipt of payment from Owner, the amount paid to the Design-Builder on account of such Design Professional's, Subcontractor's or Supplier's portion of the Work, reflecting percentages actually retained from payments to the Design-Builder on account of each Design Professional's, Subcontractor's or Supplier's portion of the Work. The Design-Builder shall, by appropriate agreement with each Design Professional, Subcontractor or Supplier, require each Design Professional, Subcontractor or Supplier to make payments to lower-tier Design Professionals, Subcontractors and Suppliers in similar manner.

8.8.7 Owner shall have no obligation to pay or to see to the payment of money to a Design Professional, Subcontractor, Supplier or a laborer or employee of a Design Professional, Subcontractor, Supplier or Design-Builder except to the extent required by law. Retainage provided for by the Contract Documents are to be retained and held for the sole protection of Owner, and no other person, firm or corporation shall have any claim or right whatsoever thereto.

8.8.8 Any payment by Owner, or partial or entire use or occupancy of the Project by Owner, shall not constitute acceptance of Work not in accordance with the Contract Documents.

8.9 FAILURE OF PAYMENT

8.9.1 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Contract Documents, such payment by Design-Builder shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Design-Builder fails to promptly make any payment due Owner, or Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, Owner shall have an absolute right to offset such amount against the Contract Sum and may, in Owner's sole discretion, elect either to: (1) deduct an amount equal to that to which Owner is entitled from any payment then or thereafter due the Design-Builder from Owner; or (2) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that to which Owner is entitled.

8.10 SUBSTANTIAL COMPLETION

8.10.1 Substantial Completion is the stage in the progress of the Work as defined in Paragraph 1.1.37.

8.10.2 When Design-Builder considers the Work ready for its intended use, Design-Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design-Builder as incomplete) and request that Owner issue a Certificate of Substantial Completion. Promptly thereafter, Owner and Design-Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design-Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design-Builder a Certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment, provided, however, Design-Builder shall complete or correct any Work necessary to achieve Final Completion regardless of whether such Work is set forth on such list. At the time of delivery of the Certificate of Substantial Completion, Owner will deliver to Design-Builder a written determination as to division of

responsibility pending final payment between Owner and Design-Builder with respect to security, protection of construction, maintenance, heat, utilities, and insurance.

8.10.3 Owner will have the right to exclude Design-Builder from the Site after the date of Substantial Completion, but Owner will allow Design-Builder reasonable access to complete or correct items on the list of items to be completed or necessary to achieve Final Completion.

8.10.4 At the date of Substantial Completion of the entire Work, Design-Builder may submit an Application for Payment subject to the terms and provisions of the Contract Documents, in the total amount of the Contract Sum less two hundred percent (200%) of the value of any incomplete Work. Subject to the terms and provisions of the Contract Documents, Owner shall pay such Application for Payment in accordance with the terms and provisions of the Contract Documents.

8.11 PARTIAL OCCUPANCY OR USE

8.11.1 Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the property insurer and authorized by public authorities, if any, having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is complete, provided Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat, utilities, damage to the Work and insurance. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by Owner.

8.11.2 Immediately prior to such partial occupancy or use, Design-Builder and Owner shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

8.12 FINAL COMPLETION AND FINAL PAYMENT

8.12.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Owner will promptly make such inspection and, when Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, Owner will promptly issue a final certificate and approval for payment; otherwise, Owner will return Design-Builder's final Application for Payment to Design-Builder, indicating in writing the reasons for refusing to approve and certify final payment, in which case Design-Builder shall make the necessary corrections and resubmit the Application. Submission of a final Application for Payment shall constitute a further representation by Design-Builder that the conditions precedent to the Design-Builder's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Design-Builder to Owner as part of the final Application for Payment. Owner shall not be obligated to make final payment until all warranties and guarantees in compliance with the Contract Documents have been received by Owner.

8.12.2 Neither final payment nor remaining retainage shall become due until the Design-Builder submits to the Owner: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid and satisfied together with final lien releases from all Design Professionals, Subcontractors and Suppliers; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety to final payment; (5) data establishing payment or satisfaction of obligations, such as receipts, releases and waivers, to the extent and in such form as may be designated by Owner; (6) reproducible record and marked-up drawings in reproducible Auto-CAD 2000 Map format as well as a reproducible hard copy; (7) a certification that all Punch List work has been completed; (8) all applicable maintenance and operating instructions and warranties and guarantees have been received by Owner; (9) subject to final payment, a final release of Owner by Design-Builder relating to any and all claims related to the Project; (10) a certification that all operating systems and equipment, have passed all tests required by the Contract Documents; and (11) all documents required by the Contract Documents have been provided to the Owner.

8.12.3 Final Payment constituting the entire unpaid balance of the Contract Sum due, including the amount of remaining retainage, shall be paid by Owner to the Design-Builder within thirty (30) days after Owner's receipt of a proper final Application for Payment which satisfies all the requirements of the Contract Documents and Owner's receipt of all information and documents..

8.12.4 The acceptance by Design-Builder of its final payment shall be and operate as a release of all claims of Design-Builder against Owner for all things done or furnished or relating to the Work and for every act or alleged neglect of Owner arising out of the Work.

8.12.5 No payment under this Contract, including but not limited to progress payments and the final payment,

shall constitute acceptance by Owner of any Work or act not in accordance with the requirements of the Contract Documents.

ARTICLE 9

PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY PRECAUTIONS AND PROGRAMS

9.1.1 The Design-Builder shall be solely responsible for initiating, maintaining, enforcing and supervising all safety precautions and programs in connection with the performance of the Work. The Design-Builder shall at all times conduct operations under this Contract in a manner to avoid the risk of bodily harm to persons or risk of damage to any property on or near the Project site. The Design-Builder shall promptly take precautions which are necessary and adequate against conditions created during the progress of the Design-Builder's activities hereunder which involve a risk of bodily harm to persons or a risk of damage to property. The Design-Builder shall continuously inspect Work, materials, and equipment to discover and identify any such conditions. The Design-Builder shall comply with applicable safety laws, standards, codes, and regulations applicable to the Work, specifically, but without limiting the generality of the foregoing, with rules, regulations, and standards adopted pursuant to the Williams-Steiger Occupational Safety and Health Act of 1970 and applicable amendments.

9.2 SAFETY OF PERSONS AND PROPERTY

9.2.1 The Design-Builder, in connection with the Work, shall take necessary precautions for the safety of, and shall provide necessary protection measures to prevent damage, injury, or loss to:

.1 Employees on the Work and other persons who may be affected by the Work, including, without limitation, employees of separate contractors;

.2 The Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

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

9.2.2 The Design-Builder shall promptly rebuild, repair or restore Work and materials which have been damaged or destroyed from any causes for which Design-Builder is responsible before Final Completion, and shall bear the expense thereof. The Design-Builder shall provide security and drainage and erect temporary structures as reasonably necessary to protect the Work and materials from damage. The foregoing obligations are in addition to the Design-Builder's obligations under Section 2.13.

9.2.3 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise the highest degree of care and carry on such activities under supervision of properly qualified personnel. Design-Builder shall notify, in writing, Owner and all persons affected by Design-Builder's use of explosives, hazardous materials or equipment, or unusual methods of construction, and Design-Builder further agrees to defend, indemnify and hold Owner, its agents, representatives and employees harmless from any claims, damages or expenses, including reasonable attorneys' fees, arising out of Design-Builder's use or storage of explosives or other hazardous materials or equipment or unusual construction methods.

9.2.4 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury, or loss.

9.2.5 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and programs, and notifying owners and users of adjacent sites and utilities.

9.2.6

9.2.7 The Design-Builder shall designate a responsible member of the Design-Builder's organization at the site whose duty shall be the prevention of accidents and the maintaining, enforcing and supervising of safety precautions and programs. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to Owner. The Design-Builder shall hold regularly scheduled safety meetings to instruct Design-Builder's, Subcontractor's and Supplier's personnel on safety practices, accident avoidance and prevention, and the Project safety program initiated by Design-Builder. The Design-Builder shall furnish safety equipment, and enforce the use of such equipment by Design-Builder's, Subcontractor's and Supplier's employees.

9.2.8 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

9.3 HAZARDOUS MATERIALS

9.3.1 Design-Builder shall not be required to perform any Work relating to Asbestos, PCBs, Petroleum,

Hazardous Waste or Radioactive Material which are not shown or indicated in the Drawings or Specifications or identified in the Contract Documents within the scope of the Work.

9.3.2 In the event Design-Builder is not required to perform Work relating to the materials and encounters on the Project site material reasonably believed to be Asbestos, PCB, Petroleum, Hazardous Waste or Radioactive Material, Design-Builder shall immediately stop Work in the area affected thereby and report the condition to Owner in writing. Design-Builder shall not be responsible for the release of any Asbestos caused by the acts or omissions of Owner or any separate contractor of Owner. Owner shall promptly consult with Design-Builder concerning the necessity for retaining a qualified expert to evaluate such hazardous condition or take corrective action, if any. The Work in the affected area shall be resumed in the absence of Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials or when any such materials are rendered harmless. The term "rendered harmless" shall mean that levels of such materials are less than any applicable exposure standards, including but not limited to OSHA regulations. Owner shall also provide any special conditions under which the Work may be safely resumed. If Owner and Design-Builder cannot agree to entitlement to or the amount or extent of an adjustment, if any, in the Contract Sum or Contract Times as a result of such Work stoppage or such special conditions under which Work is to be safely performed, Design-Builder shall submit a Claim pursuant to the provisions of Article 4.

9.3.3 If Design-Builder refuses to resume such Work on a reasonable belief that the affected area is unsafe, then Owner may, in its sole discretion, order such portion of the Work that is in connection with such condition or in such affected area to be deleted from the Work. In such event, the Contract Sum and Contract Times, or both, shall be equitably reduced as a result of deleting such portion of the Work. Owner may have such deleted portion of the Work performed by others in accordance with Article 6.

9.3.4 If Design-Builder or any person or entity it is responsible brings to the Project site any hazardous material, toxic material or any material regulated by any Laws and Regulations, Design-Builder shall notify Owner in writing and Design-Builder shall comply with all applicable Laws and Regulations relating thereto and shall comply with all environmental quality standards, limitations and permit requirements promulgated thereunder, including without limitation federal, state and local air quality standards for fugitive dust control, prevention of surface and ground water contamination and hazardous and other waste disposal practices and procedures. Design-Builder shall utilize the highest degree of care in handling such materials and in taking all necessary precautions and measures to prevent any spills of such materials. If Owner is determined by any federal, state or local governmental agency, department, board or commission, or in any judicial proceeding to have violated any Laws or Regulations as a result of Design-Builder's negligent acts or omissions, the Design-Builder shall defend, indemnify and hold harmless Owner, from any and all prosecutions, payment of any and all fines or penalties, the cost of abatement or remediation and reasonable attorneys' and experts' fees.

9.3.5 Design-Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers of the site in accordance with all applicable Laws and Regulations.

9.4 EMERGENCIES

9.4.1 The Design-Builder shall promptly report in writing to Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner.

ARTICLE 10

INSURANCE AND BONDS

10.1 DESIGN-BUILDER'S INSURANCE

10.1.1 Design-Builder shall secure from the date of the Agreement and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Design-Builder, Owner and others against all hazards or risks of loss described below.

10.2 COMMERCIAL GENERAL LIABILITY

10.2.1 Design-Builder shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than Two Million Dollars ($2,000,000) per occurrence. Such CGL insurance shall be on an occurrence basis.

10.2.2 The CGL insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Design-Builder's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to property of others, including loss of use resulting therefrom, arising out of any operations or activities of the Design-Builder, its agents, or any Subcontractors or Suppliers or by anyone directly or indirectly employed by any of them.

10.2.3 The CGL insurance required herein shall include premises, operations, independent Design-Builders, products-completed operations, personal injury and

advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. In particular, and not by way of any limitation, the CGL insurance shall cover the Design-Builder's indemnity obligations contained in the Contract Documents.

10.2.4 There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.

10.2.5 Owner, shall be endorsed as an "additional insured" under the CGL policy. The CGL policy shall also contain a "Separation of Insureds" provision. If Design-Builder's CGL policy does not contain a "Separation of Insureds" provision, Design-Builder's CGL policy shall be endorsed to provide cross-liability coverage.

10.2.6 Design-Builder waives all rights against Owner, and its officials, representatives, agents and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

10.3 AUTOMOBILE LIABILITY

10.3.1 Design-Builder shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Design-Builder against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than Two Million Dollars ($2,000,000) combined single limit for bodily injury and property damage per accident. Owner, shall be endorsed as an "additional insured" under the policy.

10.3.2 Design-Builder waives all rights against Owner and its officials, representatives, agents and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder

10.4 WORKERS' COMPENSATION INSURANCE

10.4.1 Design-Builder shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Design-Builder from claims for injury, sickness, disease or death of Design-Builder's employees or statutory employees. The insurance policies required hereunder shall include an "all states" or "other states" endorsement. In case any Work is sublet, Design-Builder shall require any Subcontractor or Supplier to provide the insurance coverages required under this Section 10.4.

10.4.2 Design-Builder's workers' compensation insurance coverage shall be in compliance with all applicable Laws, including the statutes of the State of Missouri. Design-Builder's employers' liability coverage limits shall not be less than $500,000 each accident for bodily injury by accident or $500,000 each employee for bodily injury by disease.

10.4.3 Design-Builder waives all rights against Owner and its officials, representatives, agents and employees for recovery of damages to the extent these damages are covered by the workers' compensation and/or employers' liability insurance required hereunder.

10.5 DESIGN LIABILITY INSURANCE

10.5.1 Design-Builder shall maintain from the date of the Agreement and for a period of at least three (3) years after the date of Final Completion insurance covering claims arising out of the performance or furnishing of Design Professional Services and any other design services under this Contract and for claims arising out of allegations of errors, omissions or negligent acts in connection with the performance or furnishing Design Professional Services and any other design services under this Contract. The policy required by this shall have a minimum policy limit of Two Million Dollars ($2,000,000.00).

10.5.2 Design-Builder shall require each Design Professional engaged by Design-Builder to each separately provide from the date of the Agreement and for a period of three (3) years from the date of Final Completion professional errors and omissions liability insurance covering the Design Professional Services for the Project with policy limits of not less than One Million Dollars ($1,000,000.00).

10.6 GENERAL REQUIREMENTS FOR LIABILITY INSURANCE COVERAGES

10.6.1 All insurance coverages shall be provided by insurance companies that are duly licensed to conduct business in the State of Missouri as an admitted carrier. The form and content of all insurance coverages provided by Design-Builder are subject to the approval of Owner. All required coverages shall be obtained and paid for by Design-Builder. Any approval of the form, content or insurance company by Owner shall not relieve the Design-Builder from the obligation to provide the coverages required herein.

10.6.2 All insurance coverage procured by the Design-Builder shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "XII" in the Best's Insurance Guide, latest

edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Insurance coverages required hereunder shall not be subject to a deductible amount on a per-claim basis of more than $10,000.00 and shall not be subject to a per-occurrence deductible of more than $25,000.00. Insurance procured by Design-Builder covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

10.6.3 All insurance required hereunder shall provide that the insurer's cost of providing the insureds a defense and appeal, including attorneys' fees, shall be supplementary and shall not be included as part of the policy limits but shall remain the insurer's separate responsibility. Design-Builder shall cause its insurance carriers to waive all rights of subrogation against Owner, and its, officials, representatives, agents and employees.

10.6.4 The Design-Builder shall furnish Owner with certificates, policies or binders which indicate the Design-Builder and Owner are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Owner contemporaneously with Design-Builder's execution of the Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Owner."

10.6.5 With respect to all insurance coverages required to remain in force and affect after final payment, Design-Builder shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with Design-Builder's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner.

10.6.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract Documents shall be a condition precedent to Design-Builder's exercise or enforcement of any rights under the Contract Documents.

10.6.7 Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract Documents, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Design-Builder shall not be construed as a waiver of Design-Builder's obligations to maintain the insurance required by the Contract Documents.

10.6.8 Owner shall have the right to terminate the Contract if Design-Builder fails to maintain the insurance required by the Contract Documents.

10.6.9 If Design-Builder fails to maintain the insurance required by the Contract Documents, Owner shall have the right, but not the obligation, to purchase said insurance at Design-Builder's expense. If Owner is damaged by Design-Builder's failure to maintain the insurance required by the Contract Documents, Design-Builder shall bear all reasonable costs properly attributable to such failure.

10.6.10 By requiring the insurance set forth herein and in the Contract Documents, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Design-Builder.

10.6.11 If Design-Builder's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.

10.6.12 If a part of the Work hereunder is to be sublet, the Design-Builder shall: (1) cover any and all Subcontractors and Suppliers in its insurance policies; (2) require each Subcontractor and Supplier to secure insurance which will protect said Subcontractor and Supplier against all applicable hazards or risks of loss designated in accordance with Article 11 hereunder; and (3) require each Subcontractor and Supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate with any insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

10.7 BUILDER'S RISK INSURANCE

10.7.1 The Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the State of Missouri, as an admitted carrier, builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form and in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work. The insurance shall apply on a replacement cost basis.

10.7.2 The insurance as required in Paragraph 10.7.1 shall name as insureds, Owner, Design-Builder and all Subcontractors and Suppliers. The insurance policy shall contain a provision that the insurance will not be canceled, allowed to expire or materially changed until at least thirty (30) days prior written notice has been given to Owner.

10.7.3 The insurance as required in Paragraph 10.7.1 shall cover the entire Work, including reasonable compensation for design services and expenses made necessary by an insured loss. Insured property shall include portions of the Work located away from the site but intended for use at the site, and shall also cover portions of the Work in transit, including ocean transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. The policy shall cover the cost of removing debris, including

demolition as may be made legally necessary by the operation of any law, ordinance or regulation.

10.7.4 The insurance required by Paragraph 10.7.1 shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party, except those perils customarily excluded, provided however, the policy shall insure, without limitation, at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, windstorm, earthquake, flood, frost, water damage, windstorm and freezing.

10.7.5 If there are any deductibles applicable to the insurance required by Paragraph 10.7.1 Design-Builder shall pay any part of any loss not covered because of the operation of such deductibles.

10.7.6 The insurance as required in Paragraph 10.7.1shall be maintained in effect until the earliest of the following dates:

.1 The date which all persons and organization who are insureds under the policy agree in writing that it shall be terminated;

.2 The date on which final payment of this Contract has been made by Owner to Design-Builder; or

.3 The date on which the insurable interests in the property of all insureds other than Owner have ceased.

10.7.7 Owner and Design-Builder waive all rights against: (1) each other and any of their suppliers, subcontractors and design professionals of any tier, agents and employees, each of the other; and (2) separate contractors described in Article 6, if any, and any of their subcontractors, suppliers, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 10.7 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. Owner or Design-Builder, as appropriate, shall require of their consultants, separate contractors described in if any, and the subcontractors, suppliers, design professionals, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, was at fault or was negligent in causing the loss and whether or not the person or entity had an interest in the property damaged.

10.7.8 A loss insured under Design-Builder's property insurance shall be adjusted by Owner in good faith and made payable to Owner for the insureds, subject to requirements of the Contract Documents. The Design-Builder shall pay Suppliers and Subcontractors of any tier their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, require Suppliers and Subcontractors of any tier to make payments to their sub-subcontractors and suppliers in a similar manner.

10.7.9 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

10.8 PERFORMANCE BOND AND PAYMENT BOND

10.8.1 The Design-Builder shall procure and furnish a Performance Bond and a Payment Bond in the form approved by Owner, in an amount equal to one hundred percent (100%) of the Contract Sum, as well as adjustments to the Contract Sum. The Performance Bond shall secure and guarantee Design-Builder's faithful performance of the Work, including but not limited to Design-Builder's obligation to correct defects after final payment has been made as required by the Contract Documents. Owner shall be the named obligee under the Performance Bond. The Payment Bond shall secure and guarantee payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract. These Bonds shall be in effect through the duration of the Contract plus the Correction Period as required by the Contract Documents.

10.8.2 The bonds required hereunder shall be executed by a responsible surety licensed in the State of Missouri, and which is named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff, Bureau of Government Financial Operations, U.S. Treasury Department. The Design-Builder shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of this power of attorney indicating the monetary limit of such power.

10.8.3 If the surety of any bond furnished by Design-Builder is declared bankrupt or becomes insolvent or its right to conduct business in the State of Missouri is terminated, or it ceases to meet the requirements of this paragraph, Design-Builder shall within ten (10) days substitute another bond and surety, both of which must be

acceptable to Owner. If Design-Builder fails to make such substitution, Owner may procure such required bonds on behalf of Design-Builder at Design-Builder's expense.

10.8.4 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Design-Builder shall promptly furnish a copy of the bonds to such person or entity.

10.8.5 The Design-Builder shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; and (3) request for final payment. Owner shall be notified by the Design-Builder, in writing, of all communications with the surety. Owner may, in Owner's sole discretion, inform surety of the progress of the Work, any defects in the Work, or any defaults of Design-Builder under the Contract Documents and obtain consents as necessary to protect Owner's rights, interest, privileges and benefits under and pursuant to the Bonds issued in connection with the Work.

ARTICLE 11

UNCOVERING AND CORRECTION OF THE WORK

11.1 UNCOVERING THE WORK

11.1.1 Design-Builder shall notify Owner in writing of its intent to cover up the Work before covering the Work. If a portion of the Work is covered contrary to Owner's request or to requirements specifically expressed in the Contract Documents, it shall, if required in writing by the Owner be uncovered for the Owner's inspection and be replaced at the Design-Builder's expense without change in the Contract Times.

11.1.2 If a portion of the Work has been covered for which Design-Builder failed to advise the Owner in writing as set forth in Paragraph 11.1.1 , Design-Builder shall uncover the Work for the Owner's inspection and such Work shall be replaced at the Design-Builder's expense without change in the Contract Sum or Contract Times. If a portion of the Work has been covered which the Owner has not specifically requested to observe, prior to its being covered, and after written notice has been provided, Owner may request to see such Work, and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to Owner unless the request that the Work be uncovered is based upon the existence of prior defective Work which provides Owner reasonable cause to believe that additional defective Work may be found in which event Design-Builder shall be responsible for the payment of all costs to uncover and replace such Work. If such Work is not in accordance with the Contract Documents, the Design-Builder shall pay such costs without change in the Contract Sum or Contract Times.

11.2 CORRECTION OF THE WORK

11.2.1 Owner shall have the right to reject Work not in strict compliance with the requirements of the Contract Documents. The Design-Builder shall promptly correct Work rejected by Owner for failing to strictly conform to the requirements of the Contract Documents, whether observed before or after final completion and whether or not fabricated, installed, or completed. If Work has been rejected by Owner, Owner shall have the right to require the Design-Builder to remove it from the Project site and replace it with Work that strictly conforms to the requirements of the Contract Documents regardless if such removal and replacement results in "economic waste." Design-Builder shall pay all claims, costs, losses and damages caused by or resulting from the correction, removal or replacement of defective Work, including but not limited to, all costs of repair or replacement of Work of others. The Design-Builder shall bear costs of correcting, removing and replacing such rejected Work, including additional testing and inspections and compensation for the design services and expenses made necessary thereby. If prior to the date of final payment, the Design-Builder, a Supplier or Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Design-Builder shall cause such item to be restored to the condition required by the Contract Documents at no expense to Owner.

11.2.2 If, within twelve (12) months after the date of Final Completion of the Work or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found not to be in strict accordance with the requirements of the Contract Documents, the Design-Builder shall correct or remove and replace such defective Work, at Owner's discretion. Such twelve (12) month period is referred to as the "Correction Period." The obligations under this Paragraph11.2.2 shall cover any repairs, removal and replacement to any part of the Work or other property caused by the defective Work. Upon completion of any Work under or pursuant to this Paragraph 11.2.2 the twelve (12) month Correction Period in connection with the Work requiring correction or removal and replacement shall be renewed and recommenced.

11.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design-Builder nor accepted by Owner.

11.2.4 If the Design-Builder fails to correct nonconforming Work within a reasonable time, Owner may correct or remove it and replace such nonconforming or

defective Work. If the Design-Builder does not proceed with correction of such nonconforming or defective Work within a reasonable time fixed by written notice from Owner, Owner may remove it and store the salvageable materials or equipment at the Design-Builder's expense. If the Design-Builder does not pay the costs of such removal and storage within fifteen (15) days after written notice, Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design-Builder, including compensation for the design services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Design-Builder should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to Owner.

11.2.5 The Design-Builder shall bear the cost of correcting destroyed or damaged Work or property, whether completed or partially completed, of Owner or of others caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

11.2.6 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the twelve (12) month Correction Period as described in Paragraph 11.2.2 relates only to the specific obligation of the Design-Builder to correct, remove or replace the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations under the Contract Documents. The requirements of Article 11 are in addition to and not in limitation of any of the other requirements of the Contract for warranties or conformance of the Work to the requirements of the Contract Documents.

11.3 ACCEPTANCE OF NONCONFORMING WORK

11.3.1 Owner may accept Work which is not in accordance with the Contract Documents, instead of requiring its removal and correction, in its sole discretion. In such case, the Contract Sum will be adjusted as appropriate and equitable. Such adjustment shall be made whether or not final payment has been made. Nothing contained herein shall impose any obligation upon Owner to accept nonconforming or defective Work.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 NOTICES

12.1.1 All notices required to be given under the terms of this Contract shall be made in writing and shall be deemed to have been made and given if sent by registered or certified mail, postage prepaid or hand-delivered (hand delivery to include by air courier services such as Federal Express, Airborne Express, or Purolator or other reputable delivery service guaranteeing delivery and providing a receipt) to the party to receive such notice at the addresses specified below or to such other address as any party hereto may subsequently specify by written notice to the other party:

.1 If to Owner: Person and address contained in the Agreement; and

.2 If to Design-Builder: Address contained in the Agreement or the temporary office of Design-Builder at the site of the Project

12.2 RIGHTS AND REMEDIES

12.2.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

12.2.2 No action or failure to act by Owner will constitute a waiver of a right or duty afforded to Owner under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

12.2.3 The terms of this Contract and all representations, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Work and shall remain in effect so long as Owner is entitled to protection of its rights under applicable law, unless otherwise provided in this Agreement.

12.2.4 Design-Builder shall carry out the Work and adhere to the current construction schedule during all disputes or disagreements with Owner so long as Owner makes payments to Design-Builder of amounts not subject to a good faith dispute. Owner shall have no obligation to make any payment to Design-Builder which is subject to a good faith dispute. No Work shall be delayed or postponed pending resolution of any disputes or disagreements except as Owner and Design-Builder may otherwise agree to in writing.

12.3 TESTS AND INSPECTIONS

12.3.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by Laws and Regulations shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear related costs of tests, inspections, and approvals. The Design-Builder shall give Owner timely notice of when and where tests and inspections are to be made so Owner may observe the procedures

12.3.2 If Owner or public authorities determine that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, or required by Laws or Regulations, Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection, or approval by an entity acceptable to Owner and the Design-Builder shall give timely notice to Owner, of when and where tests and inspections are to be made so the Owner may observe such procedures. Owner will bear such costs except as provided in Paragraph 12.3.3.

12.3.3 If such procedures for testing, inspection, or approval under Paragraph 12.3.1 and/or 12.3.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Design-Builder shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the design services and expenses. In addition, if prior defective Work provides Owner a reasonable belief that additional defective Work may be found, the Design-Builder shall bear all costs of such procedures for testing, inspection and approval ordered by Owner regardless of whether such process reveals that Work is in compliance with the Contract Documents.

12.3.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Design-Builder and promptly delivered to Owner.

12.3.5 Design-Builder shall take all reasonably necessary actions to ensure that all tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. Required certificates of testing, inspection or approval shall be secured by Design-Builder and promptly delivered to Owner.

12.3.6 Design-Builder shall arrange for and pay for all costs of all testing required by the Contract Documents or any applicable Laws or Regulations for materials to be tested or certified at or on the place or premises of the source of the material to be supplied. Owner shall have the right to require testing of all materials at the place of the source of the material to be supplied if not required by the Contract Documents or any applicable Laws or Regulations. Owner shall bear the costs of such tests and inspections not required by the Contract Documents or by applicable Laws or Regulations unless such tests reveal failure of the portions of the Work to comply with the requirements established by the Contract Documents or if prior defective Work provides Owner with a reasonable belief that additional defective Work may be found, in which case Design-Builder shall be responsible for all costs of tests and inspections ordered by Owner, whether or not such tests or inspection reveals that Work is in compliance with the Contract Documents.

12.4 RECORDS

12.4.1 Owner, or any parties it deems necessary, shall have access to and the right to examine any accounting or other records of the Design-Builder involving transactions and Work related to this Contract for three (3) years after final payment or three (3) years after the final resolution of any ongoing disputes at the time of final payment. Suppliers and Subcontractors of any tier shall be required by Design-Builder to maintain records and to permit audits as required of Design-Builder herein.

12.5 SUCCESSORS AND ASSIGNS

12.5.1 The Design-Builder hereby binds itself, its partners, successors, assigns and legal representatives to Owner in respect to covenants, agreements and obligations contained in the Contract Documents. Neither Owner or Design-Builder shall assign this Contract as a whole without the written consent of the other. If Design-Builder attempts to make such an assignment without such consent, it shall be void and confer no rights on third parties, and Design-Builder shall nevertheless remain legally responsible for any consent by Owner to any assignment is conditioned upon Design-Builder entering into a written assignment which contains the following language: "it is agreed that the funds to be paid to the assignee under this assignment are subject to performance by the Design-Builder and to claims and to Liens for services rendered or materials supplied for the performance of the Work required in said Contract in favor of all persons, firms, and corporations rendering such services or supplying such materials."

12.6 PREVAILING WAGES

12.6.1 This Contract shall be based upon payment by the Design-Builder and its Subcontractors of wage rates not less than the prevailing hourly wage rate for each craft or classification of workman engaged on the Work as determined by the Labor and Industrial Relations Commission of Missouri on behalf of the Department of Labor and Industrial Relations. The Design-Builder shall comply with all requirements of the prevailing wage law of Missouri, RSMo. §§ 290.210 to 290.340, including the latest amendments thereto. The Design-Builder and each Subcontractor shall keep an accurate record showing the names, occupations, and crafts of all workmen employed, together with the number of hours worked by each workman and the actual wages paid to each workman. At

all reasonable hours, such records shall be open to inspection by the representatives of the Labor and Industrial Relations Commission of Missouri and Owner. The payroll records shall not be destroyed or removed from the state for at least two (2) years after completion of the Work. Throughout the life of this Contract, a copy of the wage determination and the rules promulgated by the Labor and Industrial Relations Commission of Missouri shall be displayed in at least four (4) conspicuous places on the Project under a heading of NOTICE, with the heading in letters at least one (1) inch high. Pursuant to RSMo. § 290.250, the Design-Builder shall forfeit to Owner as a penalty, Ten Dollars ($10.00) for each workman employed, for each calendar day, or portion thereof, such workman is paid less than the stipulated rates for any work done under the Contract, by Design-Builder or by any Subcontractor. After completion of the Work, and before final payment can be made under this Contract, the Design-Builder and each Subcontractor must file with Owner an affidavit of compliance stating that he has fully complied with the provisions and requirements of the prevailing wage law of Missouri. During the life of this Contract, the prevailing hourly rate of wages is subject to change by the Department of Labor and Industrial Relations or by court decision, as provided by law. Any such change shall not be the basis of any claim by the Design-Builder against Owner, nor will deductions be made by Owner against sums due the Design-Builder by reason of any such change.

12.6.2 The Design-Builder further agrees to comply with all applicable federal laws, statutes and regulations relating to and establishing prevailing wage rates. Where Missouri and Federal prevailing wage rates are applicable, the higher of the two will be paid by the Design-Builder.

12.6.3 Violations of the requirements of this Section 12.6.3 whether by the Design-Builder or its Subcontractors, will result in additional costs for Owner, including, but not limited to, costs of construction delays, of additional work for City staff, of added interest expense, of legal and litigation expense, and of delays in the levying of special assessments. The Design-Builder shall ensure that prevailing wage rates are paid and that Work is done by the correct category of worker both on this Contract and on all subcontracts. The cost to Owner of any particular violation is difficult to establish; in the event of the failure by the Design-Builder or any of its Subcontractors to pay wages as provided herein, Owner may deduct from the price specified in the Contract and may retain as liquidated damages, and not as a penalty, Thirty-Five Dollars ($35.00) per day per individual who is paid less than the prevailing wage, to approximate the investigative costs resulting to Owner from such violations. To approximate the cost of delay, including interest expense from delay in levying special assessments and issuing special assessment tax bills, additional liquidated damages, and not as a penalty, shall be paid in the amount of Five Hundred Dollars ($500.00) per day for any delay in closing out the Contract occasioned by failure to pay the prevailing wage. Such additional sum shall be collected, whether or not the work days on the Contract could be closed out. Action under this section shall be commenced by Owner giving a written notice to the Design-Builder. The notice shall set out the persons who are claimed to have been underpaid, and the days they are claimed to have been underpaid. The Design-Builder shall have ten (10) days, or such longer time as Owner shall allow, to respond to the allegation. Based on the information in the notice, the response by the Design-Builder and such additional information as Owner shall determine, Owner shall render its decision, in writing, giving the amount of liquidated damages owed, including any damages for occasioning a delay in closing out the Contract. This liquidated damage will be in addition to the liquidated damages specified in the Agreement.

12.7 BUY AMERICAN REQUIREMENTS

12.7.1 Pursuant to the Missouri Domestic Product Procurement (Buy American) Act, RSMo. §§ 34.350 to 34.359, any manufactured goods or commodities used or supplied either in the performance of this Contract or of any subcontract thereto shall be manufactured, assembled or produced in the United States unless one of the exceptions contained in that Act applies. The Design-Builder shall comply with such requirements and shall provide proof of compliance with this provision both at the time of bid and before any payment is made on the Contract. Pursuant to RSMo. § 71.140, preference shall be given to materials, products, supplies, provisions and all other articles produced, manufactured, compounded, made, or grown in the State of Missouri. The Design-Builder shall comply with such requirements and shall provide proof of compliance with this provision at the time of bid and before any payment is made on the Contract.

12.8 GENERAL PROVISIONS

12.8.1 The Contract Documents are the exclusive statement of the agreement of the parties with respect to its subject matter and the Contract Documents supersede and replace all prior agreements, discussions and representations, whether written or oral, relating to the subject matter hereof. The terms and provisions of the Contract Documents can only be amended, modified or supplemented pursuant to a written Modification as defined in Paragraph 1.1.26.

12.8.2 All headings, titles and paragraph captions are inserted in this Contract for convenience of reference only, are descriptive only and shall not be deemed to add or detract from or otherwise modify the meaning of the paragraphs.

12.8.3 Design-Builder acknowledges and agrees that time is of the essence of this Contract.

12.8.4 Design-Builder and Owner agree to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably

required to carry out the terms and provisions of the Contract Documents.

12.8.5 Any specific requirement in this Contract that the responsibilities or obligations of the Design-Builder also apply to a Subcontractor and Supplier is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor or Supplier in connection with any of the Design-Builder's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor or Supplier of any tier under the Contract Documents or the applicable agreement.

12.8.6 This Contract shall be interpreted, construed, enforced and regulated under and by the laws of the State of Missouri. Whenever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable Laws or Regulations. If, however, any provision of this Contract, or a portion thereof, is prohibited by Laws or Regulations or found invalid under any Laws or Regulations, only such provision or portion thereof shall be ineffective, without invalidating or affecting the remaining provisions of this Contract or valid portions of such provision, which are hereby deemed severable. Design-Builder and Owner further agree that in the event any provision of this Contract, or a portion thereof, is prohibited by Laws or Regulations or found invalid under any Laws or Regulations, this Contract shall be reformed to replace such prohibited or invalid provision or portion thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the prohibited or invalid provision.

12.8.7 In the event of any dispute or controversy between the parties, each agrees that the Circuit Court of Jasper County, Missouri shall have exclusive jurisdiction to determine all issues arising between them. Provided, however, if a dispute arises out of or relates to this Contract, or the breach thereof, and if the dispute cannot be settled through negotiations, the parties agree to try in good faith to settle the dispute by non-binding mediation under the Construction Industry Mediation Rules of the American Arbitration Association as a condition precedent to filing any action with the Circuit Court of Jasper County, Missouri. Such mediation shall be held in Joplin, Missouri.

12.8.8 To the fullest extent provided by Laws and Regulations, Design-Builder and Owner agree that they shall not be liable to each other for any special, indirect, incidental, or consequential damage whatsoever arising out of or relating to this Contract, unless otherwise provided for in this Agreement. Such special, indirect, incidental or consequential damages include, but are not limited to loss of profits, loss of savings or revenue, loss of anticipated profits, labor inefficiencies, idle equipment, home office overhead, and similar types of damages.

12.8.9 Nothing contained in this Contract or the Contract Documents shall create any contractual relationship with or cause of action in favor of a third party against Owner.

12.8.10 Any provision or provisions of this Contract to the contrary notwithstanding, Design-Builder and Owner intend that the relationship between Owner and Design-Builder shall be that of a project Owner and an independent Design-Builder. The terms "hereof," "herein," and "hereunder" and words of similar import shall be construed to refer to this Contract as a whole, and not to any particular paragraph, section or provision unless expressly so stated.

12.8.11 Should Owner be required to institute any action to enforce any of its rights set forth in the Contract Documents, then Owner shall be entitled to reimbursement from Design-Builder for all reasonable attorneys' fees and costs incurred in such action. In the event Design-Builder institutes any action against Owner and in the further event Owner prevails in such action, Design-Builder shall pay Owner the amount of Owner's reasonable attorneys fees and expenses incurred in such action.

12.8.12 Owner shall not be deemed to be in breach or in default of any of its obligations under the Contract unless Design-Builder has provided Owner a written notice of the claimed breach or default and Owner has failed to commence efforts to cure such breach or default within fourteen (14) days thereafter and has failed to cure such breach or default within a reasonable time thereafter.

12.8.13 Owner's total liability to Design-Builder and anyone claiming by, through or under Design-Builder for any claim, cost, loss, expense or damage caused in part by the fault of Owner and in part by the fault of Design-Builder or any other entity or person shall not exceed the percentage share that Owner's fault bears to the total fault of the Owner, Design-Builder and all other entities and persons as determined on the basis of comparative fault principles.

ARTICLE 13

TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY OWNER FOR CAUSE

13.1.1 In addition to other rights and remedies granted to Owner under the Contract Documents and by Laws or Regulations, Owner may terminate the Contract if the Design-Builder:

.1 Refuses or fails to supply enough properly skilled workers, superintendents, foremen or managers;

.2 Refuses or fails to supply sufficient or proper materials;

.3 Fails to make payment to Subcontractors or Suppliers for materials or labor in accordance with the respective agreements between the Design-Builder and the Subcontractors; or Suppliers;

.4 Disregards laws, ordinances, rules, or regulations or orders of a public authority having jurisdiction;

.5 Breaches any warranty or representations made by the Design-Builder under or pursuant to the Contract Documents;

.6 Fails to furnish Owner with assurances satisfactory to Owner evidencing the Design-Builder's ability to complete the Work in compliance with all the requirements of the Contract Documents;

.7 Fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than five (5) days, except as permitted under the Contract Documents;

.8 Fails to maintain a satisfactory rate of progress with the Work or fails to comply with approved progress schedules; or

.9 Violates in any substantial way any provisions of the Contract Documents.

13.1.2 When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner, terminate this Contract by delivering a written notice of termination to Design-Builder:

.1 Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

.2 Accept assignment of Design Subagreements and Construction Subagreements pursuant to Section 5.3; and

.3 Finish the Work by whatever reasonable method Owner may deem expedient.

13.1.3 The Design-Builder, in the event of a termination under Section 13.1, shall not be entitled to receive any further payments under the Contract until the Work is completed in its entirety. Then, if the unpaid balance under the Contract shall exceed all expenses of Owner in finishing the Work, including additional compensation for design services and expenses made necessary thereby, and other damages incurred by Owner, including but not limited to reasonable attorneys' fees, such excess will be paid to the Design-Builder; but, if such expenses and damages exceed the unpaid balance, the Design-Builder and its surety shall be liable for, and shall pay the difference to Owner. The obligation of the Design-Builder and its surety for payment of said amounts shall survive termination of the Contract.

13.1.4 In exercising Owner's right to secure completion of the Work under any of the provisions hereof, Owner shall have the right to exercise Owner's reasonable discretion as to the manner, methods, and reasonableness of costs of completing the Work.

13.1.5 The rights of Owner to terminate pursuant to Section 13.1 will be cumulative and not exclusive and shall be in addition to any other remedy provided by law or the Contract Documents.

13.1.6 Should the Design-Builder fail to achieve Final Completion of the Work within the Contract Times Owner may exercise its rights under Section 13.1.

13.2 SUSPENSION BY OWNER FOR CONVENIENCE

13.2.1 Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine.

13.2.2 An adjustment to the Contract Sum will be made for increases in the cost of performance of the Contract caused by suspension, delay or interruption. However, in the event of a suspension under this Section 14.2, Design-Builder hereby waives and forfeits any claims for payment of any special, indirect, incidental or consequential damages such as lost profits, loss of savings or revenue, loss of anticipated profits, idle labor or equipment, home office overhead, and similar type damages. No adjustment will be made to the extent:

.1 That performance is, was, or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder in whole or in part is responsible; or

.2 That an equitable adjustment is made or denied under another provision of this Contract.

13.3 TERMINATION FOR CONVENIENCE

13.3.1 Owner may, at any time, terminate the Contract in whole or in part for Owner's convenience and without cause. Termination by Owner under this Paragraph shall be by a notice of termination delivered to the Design-Builder specifying the extent of termination and the effective date.

13.3.2 Upon receipt of a notice of termination for convenience, the Design-Builder shall immediately, in accordance with instructions from Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

.1 Cease operation as specified in the notice;

.2 Place no further orders and enter into no further Design Subagreements or Construction Subagreements for services, materials, labor, services or facilities except as necessary to complete Work not terminated;

.3 Terminate all subcontracts and orders to the extent they relate to the Work terminated;

.4 Proceed to complete the performance of Work not terminated; and

.5 Take actions that may be necessary, or that Owner may direct, for the protection and preservation of the terminated Work.

13.3.3 Upon such termination, the Design-Builder shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with Owner's instructions and for all expenses incurred in settlement of terminated contracts with Subcontractors and Suppliers. The Design-Builder hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits, consequential damages and other economic losses.

13.3.4 Owner shall be credited for: (1) payments previously made to the Design-Builder for the terminated portion of the Work; (2) claims which Owner has against the Design-Builder under the Contract; and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Design-Builder that are part of the Contract Sum.

13.3.5 Upon determination by a court that termination of Design-Builder or its successor in interest pursuant to Section 13.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 13.3, and Design-Builder's sole and exclusive remedy for wrongful termination is limited to recovery of the payments permitted for termination for convenience as set forth in Paragraph 13.3.3.

"City"
CITY OF JOPLIN, MISSOURI, a
Municipal Corporation

By: _____
Samuel Anslem,
Interim City Manager

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards, City Attorney

"Contractor"
Crossland Construction

By: _____
Curt Crossland, Principal

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

Item: COUNCIL BILL NO. 2014-168
Originating Department: PUBLIC WORKS - Recycling

Attachments: 1) Solid Waste Service Agreement (Exhibit A)
2) Appendix A (Exhibit A)
3) Council Bill 2014-168
4) Bid Tabulation

Recycling Coordinator:	Mary Anne Phillips MAP	Date: Sept. 5, 2014
Department Head:	Nicholas A. Heatherly	Date: 9/5/14
Finance Department:	Leslie Haase LH	Date: 9-8-14
City Attorney:	Peter C. Edwards PE	Date: 9/8/14
Interim City Manager:	Samuel L. Anselm	Date: 9/5/2014

Recommended Action: Approval of Council Bill 2014-168 between the City of Joplin and Jordan Disposal.

Background: The City of Joplin entered into an agreement for solid waste collection with Deffenbaugh Industries on October 1, 2009. That agreement expires on September 30, 2014. Bids for a new agreement were received on August 14, 2014 from Jordan Disposal, Deffenbaugh Industries, Republic Services, and Waste Corporation, with Jordan Disposal having the lowest and best bid.

Discussion: This Council Bill approves an agreement for solid waste collection and disposal services with Jordan Disposal from specified city owned buildings and facilities as outlined in Appendix A. This new contract pricing is slightly lower than the current Deffenbaugh Industries agreement. The agreement is for one full year beginning October 1, 2014 and ending September 30, 2015 with the option of renewal upon mutual agreement for six (6) months. Either party shall be able to cancel the contract with 60 days written notice in the event that either party does not fulfill their obligations outlined in the terms of the agreement. The City reserves the right to change frequency of hauling, add containers, and or change container sizes throughout the contract period.

Recommendation: Staff recommends approval of Council Bill 2014-168 on an emergency basis.

COUNCIL BILL NO. 2014-168 ORDINANCE NO.

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.

WHEREAS, the City of Joplin buildings, facilities, and operations generate solid waste through the course of doing business and desires to contract for the proper collection, hauling and disposal of said solid waste; and

WHEREAS, the City's FY2013-2014 budget provides for "sanitation charges" and the FY2014-2015 budget provides for "sanitation charges"; and

WHEREAS, the current agreement with Deffenbaugh Industries expires on September 30, 2014, and the Public Works Department received bids on August 14, 2014 from Jordan Disposal, Deffenbaugh Industries, Republic Services, and Waste Corporation, with Jordan Disposal having the lowest and best bid.

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

Section 1. That the Solid Waste Service Agreement by and between the City of Joplin, Missouri, a Municipal Corporation, and Jordan Disposal, a true and accurate copy of the same being attached hereto and incorporated herein as "Exhibit A," be and the same is hereby approved.

Section 2. That the Interim City Manager is hereby authorized and directed to execute said Agreement by and on behalf of the City of Joplin, Missouri.

Section 3. That this Ordinance is an emergency within the meaning of Section 2.12 (1)(3) in that said ordinance provides for the immediate preservation of the public peace, property, health, safety or morals, and dealing with an appropriation, 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 council bill needs to be passed and accepted by the City Council so that the new agreement is effective October 1, 2014, in order to prevent a lapse in trash service.

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

"Exhibit A"

SOLID WASTE COLLECTION SERVICES FOR CITY OF JOPLIN FACILITIES

THIS AGREEMENT is hereby made and entered into this _____ day of _____, 2014, between the City of Joplin, Missouri, a Municipal Corporation (hereinafter referred to as "City") and Jordan Disposal, LLC (hereinafter referred to as "Contractor"), a Missouri Corporation.

NOW, THEREFORE, WITNESSETH: that for and in consideration of the mutual covenants and promises between the parties hereto, the parties do hereby agree as follows:

1. SOLID WASTE HAULING AND CONTAINERS. It is agreed that the Contractor shall collect the solid waste from designated Parks and Recreation operations, Justice Center, Police Sub-Station, Health Department, City Hall, Public Library, designated Airport operations, Central Garage, Sign Shop, five (5) Fire Stations, Turkey Creek Waste Water Treatment Plant, Shoal Creek Waste Water Treatment Plant, MAPS Administration Building, and any future facilities, and shall be priced and scheduled as described in *Appendix A.* Some Parks and Recreation operations shall be on a "seasonal" pickup schedule. It is also agreed that Contractor shall provide the containers as described in *Appendix A.* Contractor shall also provide a 40 yard roll-off container and collect the solid waste from this Nuisance Container located at the Public Works Center at a cost described in *Appendix A.* The contents will be miscellaneous bulky trash. A City employee will call when the container needs pulling. Should the City reinstate the leaf/grass clipping drop-off location or start a tree limb/brush drop-off location, hauling services for the thirty cubic yard (30 cy) leaf/grass/tree limb/brush roll-off containers shall be billed as described in *Appendix A.* These containers are owned by the City and will be emptied at the City of Joplin compost facility next to the Turkey Creek Waste Water Treatment Plant, the City's processing site at 1702 North Schifferdecker Avenue, or at a yet to be determined location. A City employee will call when the containers need pulling. Designated Airport Operations, and the Police Sub-Station shall have a 90/96 gallon polycart, with the price and schedule described in *Appendix A.*

2. TERM. This agreement between Contractor and the City shall be valid for one (1) full year starting October 1, 2014 and ending September 30, 2015 with the option of renewal upon mutual agreement for six (6) additional months. Either party shall be able to cancel the contract with 60 days written notice in the event that the other party does not fulfill their obligations outlined in the terms of the contract. The City reserves the right to change frequency of hauling, add containers, and or change container sizes throughout the contract period, per approved charges as described in *Appendix A.*

3. BILLING. Invoices for waste services shall be submitted to the City of Joplin Finance Department, 602 South Main Street, Joplin, Missouri 64801 based on completed services on a monthly basis. The City of Joplin will not pay in advance of services. Monthly invoices shall include location name, charges per each location serviced and details regarding the number of times that each location was serviced during the month, the size of the container at each location serviced, and the date of service per each location, etc. The City of Joplin will not pay for billing fees, environmental fees, fuel recovery fees, management fees, etc. It is further understood that the industry standard of 4.33 weeks in every calendar month will be used for billing purposes, except as indicated on *Appendix A.*

4. PERMITS AND LICENSES. The Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain the same in full force and effect.

5. INDEPENDENT CONTRACTOR. Contractor is an independent contractor and is a separate business entity apart from the City. The Contractor agrees to pay all necessary Federal Social Security taxes and all State and Federal taxes required by law, and at its own expense will cover all of its employees with Workers' Compensation Insurance as provided by law. Contractor further agrees to comply with all laws of the State of Missouri and the United States regarding the employment of persons. Contractor's agents and employees shall not be considered employees of the City and shall receive only those employee benefits provided by Contractor.

6. INSURANCE.

A. Worker's Compensation Insurance: Worker's Compensation coverage must be maintained in accordance with Missouri law.

B. Liability Insurance: The Contractor shall, during the term of this Agreement, and any extensions hereof maintain in full force and effect commercial general liability insurance policy and automobile liability insurance policy, which specifically covers all exposures incident to the Contractor's operations under this Agreement in the amount of not less than two million dollars ($2,000,000) for each person injured or killed, and in the amount of not less than two million dollars ($2,000,000) in the event of injury or death of two or more persons in any single accident, and in the amount of not less than one hundred thousand dollars ($100,000.00) for damage to property. Such policy may be written to allow the first five hundred dollars ($500.00) of liability for damage to property to be deductible. Should any such policy be cancelled, the director shall be notified of such cancellation by the insurance carrier in writing not less than ten days prior to the effective date of such cancellation, and provisions to that effect shall be incorporated in such policy, which shall also place upon the company writing the policy the duty to give such notice. The City of Joplin shall be listed as a "certificate holder" and policy shall name the City as an "additional insured" before starting work on the agreement.

7. TRANSFER OR SALE OF CONTRACT. No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or part by the Contractor without the express written consent of the City. The City shall have full discretion to approve or deny, with or without cause, any proposed assignment or assignment by the Contractor.

8. GUARANTY OF NONDISCRIMINATION. The Contractor agrees that during the life of the contract, the Contractor will not, within the State of Missouri, discriminate against any employee or applicant for employment because of race, color, creed, national origin or ancestry or sex and will include a similar provision in all subcontracts entered into for the performance thereof. The contract may be cancelled or terminated by the City and all money due or to become due may be forfeited for a second or subsequent violation of the terms or conditions of this paragraph.

9. GUARANTY OF FEDERAL WORK AUTHORIZATION PROGRAM. Contractor represents and agrees that it is enrolled and participating in the Federal Work Authorization Program ("FWAP") that ensures that all employees or agents have the legal right to work in the United States,

as defined in 8 U.S.C. 1324a (h) (3) and §RSMo 285.525, and that it will maintain this compliance for the entire duration of its contract with the City of Joplin. Contractor agrees that it does not knowingly employee any unauthorized alien in connection with the contracted services with the City. Contractor agrees to provide an Affidavit of Compliance stating that they are enrolled and participating in a FWAP, and that Contractor does not knowingly employee any unauthorized aliens in connection with the contracted services, upon execution of this Agreement. Contractor agrees to hold harmless and indemnify the City for any liability due to Contractor's failure to maintain compliance with FWAP or for violations of the Missouri Unauthorized Alien Workers Act.

10. GOVERNING LAW AND VENUE. This Agreement shall be governed by the laws of the State of Missouri. Any and all legal action necessary to enforce the Agreement will be held in Jasper County, Missouri, or in U.S. District Court for the Western District of Missouri, and the Agreement will be interpreted according to the laws of Missouri.

11. HEADINGS. The headings of paragraphs in this Agreement are for convenience only. The headings form no part of this Agreement and shall not affect its interpretation.

12. ENTIRE AGREEMENT. This Agreement (including any Exhibits, Attachments, or Addendums referenced herein) contains the entire understanding of the parties with respect to the subject matter hereof. It may not be altered or amended except by an agreement in writing signed by both parties.

13. WAIVER OR BREACH. Waiver of any provision of this Agreement or breach of this Agreement shall not thereafter be deemed to be a consent by the waiving party to any further waiver, modification or breach by the other party, whether new or continuing, of the same or any other covenant, condition or provision of this Agreement. Failure by one of the parties of this Agreement to assert its rights for any breach of this Agreement shall not be deemed a waiver of such rights. Should City be required to institute legal action to enforce any of its rights set forth in this Agreement, then City shall be entitled to reimbursement for all reasonable attorneys' fees and costs incurred as determined by the Court in any such cause of action.

14. SEVERABILITY. The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

15. REPRESENTATIONS. The signatories hereto represent and warrant that they have read this Agreement, that they are fully authorized in the capacities shown, that they understand the terms of this Agreement, and that they are executing the same voluntarily and solely for the consideration described herein.

CITY OF JOPLIN, MISSOURI
a Municipal Corporation (City)

By: _____
Samuel L. Anselm
Interim City Manager

JORDAN DISPOSAL, LLC
a Missouri Corporation (Contractor)

By: _____
Brian K. Jordan
Owner/General Manager

LOCATION	ADDRESS	CONTAINER QUANTITY	CONTAINER SIZE	FREQUENCY	COST PER PULL
Joplin Sports Complex	3301 W. 1st Street	1	4 CY	1/week	10.50
Joplin Sports Complex-Softball Field	3301 W. 1st Street	2	4 CY	1/week	10.50
Gabby Street Ballpark	S. Adele Ave. & W. 16th St	1	4 CY	1/week May-Sept	10.50
Joe Becker Stadium	1301 E. 3rd Street	1	4 CY	1/week	10.50
Ewert Ballpark	5th Street & School Avenue	1	4 CY	1/week May-Sept	10.50
Carver Day Care	520 School Avenue	1	2 CY	1/week June-Aug	7.50
Schifferdecker Pool	4th St & Schifferdecker Ave	2	4 CY	2/week May-Aug	10.50
Cunningham Pool	25th & Porter Avenue	1	4 CY	2/week May-Aug	10.50
Ewert Pool	7th & S. Murphy Boulevard	1	4 CY	2/week May-Aug	10.50
Memorial Hall	212 W. 8th Street	2	4 CY	1/week	10.50
Golf Course Maintenance	3302 W. 1st Street	1	4 CY	2/week April-Oct	10.50
Golf Course Maintenance	3302 W. 1st Street	1	4 CY	1/week Nov-March	10.50
Golf Course Club House	506 S Schifferdecker Ave	2	4 CY	2/week April-Oct	10.50
Golf Course Club House	506 S Schifferdecker Ave	2	4 CY	1/week Nov-March	10.50
Police Rifle Range	McClelland Blvd & Glendale Rd	1	2 CY	1/week	7.50
Parks Department Transfer	1301 West 2nd Street	5	4 CY	2/week April-Oct	10.50
Parks Department Transfer	1301 West 2nd Street	5	4 CY	.5/week Nov-March	10.50
Justice Center	303 E. 3rd Street	1	6 CY	3/week	12.50
Police Sub-Station	115 E. 34th Street	1	90 Gal Cart	1/week	2.50
Health Dept./WIC	321 E. 4th Street	1	4 CY	2/week	10.50
City Hall	602 S. Main Street	1	4 CY	1/week	10.50
Public Library	300 S. Main Street	1	2 CY	1/week	7.50
*Airport ATC Tower	600 N. Colonial Drive	1	2 CY	1/week	7.50
Airport Main Terminal	7331 Highway 43	1	6 CY	2/week	12.50
*Airport General Aviation Terminal	Highway 171	1	2 CY	1/week	7.50
Airport T-Hangers	Highway 171	12	90 Gal Cart	1/week	2.50
Airport General Aviation Terminal	Highway 171	2	90 Gal Cart	1/week	2.50
Central Garage (at PWC)	1301 W. 2nd Street	1	4 CY	1/week	10.50
Sign Shop (at PWC)	1301 W. 2nd Street	1	4 CY	1/week	10.50
Fire Station #2	2825 W. Junge Boulevard	1	2 CY	1/week	7.50
Fire Station #3	2727 Newman Road	1	2 CY	1/week	7.50
Fire Station #4	3402 S. Hearnes Boulevard	1	2 CY	1/week	7.50
Fire Station #5	3223 S. Texas Avenue	1	2 CY	1/week	7.50
Fire Station #6	5302 W. 32nd Street	1	2 CY	1/week	7.50
Fire Station #7	location to be determined	service to be determined			
Public Safety Training Facility	5102 N. Swede Lane	service to be determined			
Turkey Creek Waste Water Plant	3457 Eddy Lane	1	6 CY	3/week	12.50
Turkey Creek Waste Water Plant	3457 Eddy Lane	6	2 CY	3/week	7.50
Shoal Creek Waste Water Plant	2860 Apricot Drive	1	4 CY	3/week	10.50
MAPS Admin. Building	123 S. Main Street	1	2 CY	1/week	7.50
Nuisance Roll-Off at PWC	1301 W. 2nd Street	1	40 CY Roll-Off	As Needed	80 per pull & 40 per ton

**Leaves/Grass Clippings Collection or Tree Limbs/Brush Collection	collection location to be determined	qty. to be determined	City owned 30 CY RO	As Needed	60 per pull
Trash or Bulky Items Collection Event	collection location to be determined	qty. to be determined	City owned 30 CY RO	As Needed	65 per pull & 40 per ton

* Driver must have an airport personnel "escort"

** City owned containers used for yard waste collection hauled to Compost Facility or Tree Limb Processing Site

BID TABULATION SHEET - Calculated August 22, 2014

CITY OF JOPLIN SOLID WASTE SERVICES BID 2014-28 - APPENDIX A

LOCATION	QTY	SIZE	FREQUENCY	Jordan Monthly Cost	Deff Ind Monthly Cost	Republic Monthly Cost	WCA Monthly Cost	*4.33 weeks in a month Current Cost*
Joplin Sports Complex	1	4 CY	1/week	45.46	45.98	43.30	64.08	*45.98*
Joplin SC-Softball Field	2	4 CY	1/week	90.93	91.97	86.60	128.17	
Gabby Street Ballpark	1	4 CY	1/week May-Sept	45.46	45.98	43.30	64.08	
Joe Becker Stadium	1	4 CY	1/week	45.46	45.98	43.30	64.08	
Ewert Ballpark	1	4 CY	1/week May-Sept	45.46	45.98	43.30	64.08	
Carver Day Care	1	2 CY	1/week June-Aug	32.47	32.95	25.55	46.11	
Schifferdecker Pool	2	4 CY	2/week May-Aug	181.86	183.94	173.20	256.34	
Cunningham Pool	1	4 CY	2/week May-Aug	90.93	91.97	86.60	128.17	
Ewert Pool	1	4 CY	2/week May-Aug	90.93	91.97	86.60	128.17	
Memorial Hall	2	4 CY	1/week	90.93	91.97	86.60	128.17	
Golf Course Maintenance	1	4 CY	2/week April-Oct	90.93	91.97	86.60	128.17	
Golf Course Maintenance	1	4 CY	1/week Nov-March					
Golf Course Club House	2	4 CY	2/week April-Oct	181.86	183.94	173.20	256.34	
Golf Course Club House	2	4 CY	1/week Nov-March					
Police Rifle Range	1	2 CY	1/week	32.47	32.95	25.55	46.11	
Parks Department Transfer	5	4 CY	2/week April-Oct	454.65	459.85	433.00	640.84	
Parks Department Transfer	5	4 CY	.5/week Nov-March					
Justice Center	1	6 CY	3/week	162.37	195.11	155.88	210.44	*163.15*
Police Sub-Station	1	Cart	1/week	10.82	16.24	56.29	19.96	*11.56*
Health Dept./WIC	1	4 CY	2/week	90.93	91.97	86.60	128.17	*91.97*
City Hall	1	4 CY	1/week	45.46	45.98	43.30	64.08	*45.98*
Public Library	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
*Airport ATC Tower	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Airport Main Terminal	1	6 CY	2/week	108.25	130.07	103.92	140.29	*198.77*
*Airport GA Terminal	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Airport T-Hangers	12	Cart	1/week	129.90	194.85	675.48	239.53	*138.73*
Airport GA Terminal	2	Cart	1/week	21.65	32.47	112.58	39.92	*23.12*
Central Garage (at PWC)	1	4 CY	1/week	45.46	45.98	43.30	64.08	*45.98*
Sign Shop (at PWC)	1	4 CY	1/week	45.46	45.98	43.30	64.08	*45.98*
Fire Station #2	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Fire Station #3	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Fire Station #4	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Fire Station #5	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Fire Station #6	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Fire Station #7	service to be determined							
Public Safety Training Facility	service to be determined							
Turkey Creek WW Plant	1	6 CY	3/week	162.37	195.11	155.88	210.44	*163.15*
Turkey Creek WW Plant	6	2 CY	3/week	584.55	593.12	459.85	830.06	*593.12*
Shoal Creek WW Plant	1	4 CY	3/week	136.39	137.95	129.90	192.25	*137.95*
MAPS Admin. Building	1	2 CY	1/week	32.47	32.95	25.55	46.11	*32.95*
Nuisance Roll-Off at PWC	1	40 CY	1/month/1 ton	120.00	136.00	145.00	162.00	*106.00*
MONTHLY TOTAL during High Season				**$3,475.64**	**$3,694.78**	**$3,877.93**	**$4,923.20**	***$2,107.99***

Items below represent possible future service — Bid prices are listed below

**Leaves/Grass Clippings Collection or Tree Limbs/Brush Collection		30 CY	on demand	$60.00	$85.00	$100.00	$120.00	*N/A*
Trash or Bulky Items Collection Event		30 CY	on demand	$65/pull $40/ton	$85/pull $51/ton	$100/pull $45/ton	$120/pull $42/ton	*N/A*
				$105.00	$136.00	$145.00	$162.00	

BID FORM FOR CITY OF JOPLIN SOLID WASTE SERVICES

October 1, 2014 to September 30, 2015
Bid Package 2014-28

Company Name Jordan Disposal / Service

Authorized Representative's Name [signature]

CONTAINER SIZE	HAUL PRICE	TRASH DISPOSAL FEE PER TON
40 Cubic Yard Roll-Off	$ 80.00 each	$ 40.00 per Ton
City Owned 30 Cubic Yard Roll-Off	$ 65.00 each	$ 40.00 per Ton
2 Cubic Yard Dumpster	$ 7.50 each	
4 Cubic Yard Dumpster	$ 10.50 each	
6 Cubic Yard Dumpster	$ 12.50 each	
8 Cubic Yard Dumpster	$ 14.50 each	
90 or 96 Gallon Polycart	$ 2.50 each	

The price for the service below includes hauling a City-owned 30 cubic yard roll-off container of **yard waste** to compost facility or **tree debris** processing site

CONTAINER SIZE	PRICE PER PULL
30 Cubic Yard Roll-Off	$ 60.00 each

Documentation for Local Bidder Request enclosed — YES: X — NO: ____

MARK ON OUTSIDE OF ENVELOPE: "BID 2014-28 SOLID WASTE SERVICES 10:00 AM, AUGUST 14, 2014"

BID FORM FOR CITY OF JOPLIN SOLID WASTE SERVICES
October 1, 2014 to September 30, 2015
Bid Package 2014-28

Company Name Deffenbaugh Industries

Authorized Representative's Name Stephen Walker

CONTAINER SIZE	HAUL PRICE	TRASH DISPOSAL FEE PER TON
40 Cubic Yard Roll-Off	$85.00 each	$26.00 C&D/$51.00 MSW
City Owned 30 Cubic Yard Roll-Off	$85.00 each	$26.00 C&D/$51.00 MSW
2 Cubic Yard Dumpster	$7.61 each	
4 Cubic Yard Dumpster	$10.62 each	
6 Cubic Yard Dumpster	$15.02 each	
8 Cubic Yard Dumpster	$19.98 each	
90 or 96 Gallon Polycart	$3.75 each	

The price for the service below includes hauling a City-owned 30 cubic yard roll-off container of **yard waste** to compost facility or **tree debris** processing site

CONTAINER SIZE	PRICE PER PULL
30 Cubic Yard Roll-Off	$85.00 each

Documentation for Local Bidder Request enclosed X **YES** _____ **NO**

MARK ON OUTSIDE OF ENVELOPE: "BID 2014-28 SOLID WASTE SERVICES 10:00 AM, AUGUST 14, 2014"

BID FORM FOR CITY OF JOPLIN SOLID WASTE SERVICES

October 1, 2014 to September 30, 2015
Bid Package 2014-28

Company Name Republic Services

Authorized Representative's Name Tracy Ford

CONTAINER SIZE	HAUL PRICE	TRASH DISPOSAL FEE PER TON
40 Cubic Yard Roll-Off	$ 100.00 each	$ 45/ton
City Owned 30 Cubic Yard Roll-Off	$ 100.00 each	$ 45/ton
2 Cubic Yard Dumpster	$ 5.90 each	
4 Cubic Yard Dumpster	$ 10.00 each	
6 Cubic Yard Dumpster	$ 12.00 each	
8 Cubic Yard Dumpster	$ 16.00 each	
90 or 96 Gallon Polycart	$ 13.00 each	

The price for the service below includes hauling a City-owned 30 cubic yard roll-off container of **yard waste** to compost facility or **tree debris** processing site

CONTAINER SIZE	PRICE PER PULL
30 Cubic Yard Roll-Off	$ 100.00 each

Documentation for Local Bidder Request enclosed X YES _____ NO

MARK ON OUTSIDE OF ENVELOPE: "BID 2014-28 SOLID WASTE SERVICES 10:00 AM, AUGUST 14, 2014"

BID FORM FOR CITY OF JOPLIN SOLID WASTE SERVICES

October 1, 2014 to September 30, 2015
Bid Package 2014-28

Company Name WASTE CORPORATION

Authorized Representative's Name BRIAN PETERSON

CONTAINER SIZE	HAUL PRICE	TRASH DISPOSAL FEE PER TON
40 Cubic Yard Roll-Off	$ 120 each	$ 42
City Owned 30 Cubic Yard Roll-Off	$ 120 each	$ 42
2 Cubic Yard Dumpster	$ 10.65 each	
4 Cubic Yard Dumpster	$ 14.80 each	
6 Cubic Yard Dumpster	$ 16.20 each	
8 Cubic Yard Dumpster	$ 19.31 each	
90 or 96 Gallon Polycart	$ 4.61 each	

The price for the service below includes hauling a City-owned 30 cubic yard roll-off container of **yard waste** to compost facility or **tree debris** processing site

CONTAINER SIZE	PRICE PER PULL
30 Cubic Yard Roll-Off	$ 120 each

Documentation for Local Bidder Request enclosed ____ YES X NO

MARK ON OUTSIDE OF ENVELOPE: "BID 2014-28 SOLID WASTE SERVICES 10:00 AM, AUGUST 14, 2014"

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

Item: Donation Agreement between Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc. and the City of Joplin, Missouri.
Originating Department: Planning & Community Development

Attachments: 1) Agreement
2) Council Bill No. 2014-169

Department Head: Nick Heatherly	Date: 9/9/14
Planning & Community Development Director: Troy Bolander	Date: 9-9-14
Finance Department: Leslie Haase	Date: 9-9-14
City Attorney: Peter C. Edwards	Date: 9/9/14
Interim City Manager: Samuel L. Anselm	Date: 9/9/14

Recommended Action: Approval of Council Bill No. 2014-169

INTRODUCTION:

This Council Bill authorizes the City of Joplin to accept approximately 18 acres of real estate from Mercy Health Systems, subject to certain deed restrictions and for inclusion in a larger, multi-use development.

DISCUSSION:

This Council Bill authorizes the Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc., a Missouri not-for-profit corporation (***"Mercy"***), to donate the Property to the City of Joplin, Missouri, a Missouri municipal corporation (**"City"**), as identified in Exhibit A., subject to the understanding that the Property will be a portion of, and operate in conjunction with, a larger multi-use development (collectively, the ***"Memorial Site"***) commemorating the personal and civic tragedies sustained by the City of Joplin as a result of the May 22, 2011 tornado and the hope and strength of the community throughout the rebuilding and recovery thereafter. The real estate is being donated to the City subject to certain deed restrictions that encumber the property. This Council Bill accepts aforementioned property that the City is currently considering to be developed as a passive park and green space for public use to include trails, benches, landscaping, and other enhancements for the use and enjoyment of the citizenry.

RECOMMENDATION:

That this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12(6) of the Home Rule Charter of the City of Joplin, Missouri, and, the same shall be in full force and effect immediately from and after its adoption and approval.

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

DONATION AGREEMENT
(Tracts 5, 6 & 7)

THIS DONATION AGREEMENT (this ***"Agreement"***) is made and entered into effective as of the ____ day of _____, 2014, by and between Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc., a Missouri not-for-profit corporation (***"Donor"***) and the City of Joplin, Missouri, a Missouri municipal corporation (***"Donee"***).

RECITALS

A. Donee is a municipal corporation in Jasper County, Missouri.

B. Donor owns certain real property located in the City of Joplin of Jasper County, State of Missouri, which real property is more particularly described on Exhibit A, attached hereto and incorporated herein, together with any and all hereditaments and appurtenances thereunto belonging (collectively, the ***"Property"***), on which Donor operates certain hospital facilities.

C. On May 22, 2011, an EF-5 tornado struck Joplin, Missouri, causing substantial damage to Donor's hospital facilities located on the Property.

D. Donor desires to donate the Property to Donee, and Donee desires to accept donation of the Property, subject to the understanding that the Property will be a portion of, and operate in conjunction with, a larger multi-use development (collectively, the ***"Memorial Site"***) commemorating the personal and civic tragedies sustained by the City of Joplin as a result of the May 22, 2011 tornado and the hope and strength of the community throughout the rebuilding and recovery thereafter.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Donor and Donee hereby agree as follows:

ARTICLE 1.
DONATION OF THE PROPERTY

1.1 Donation of the Property. Upon the terms, covenants and conditions herein set forth, Donor agrees to donate to Donee the Property and all improvements located thereon, and Donee agrees to accept the donation of the Property from Donor.

1.2 Condition of Property.

1.2.1 *Property Information.* Donor shall provide to Donee, within five (5) business days following the execution of this Agreement, copies of Donor's most recently obtained Phase I Environmental Investigation report and geotechnical report

with respect to the Property, if any are available. Donor's delivery of such documents shall not be deemed or construed as a representation or warranty with respect to the contents thereof, and Donor expressly disclaims any such representations or warranties with respect to the accuracy of such reports.

1.2.2 *"AS IS" DONATION.* DONEE ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND ANY DOCUMENTS DELIVERED TO DONEE BY DONOR AT CLOSING, DONOR HAS NOT MADE, AND SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES REGARDING ANY ASPECT OF THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE VALUE, NATURE, QUALITY OR PHYSICAL CONDITION OF THE PROPERTY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY ACTIVITY OR USE WHICH DONEE OR ANY TENANT MAY CONDUCT THEREON, (D) THE COMPLIANCE OF THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR (G) COMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS. ADDITIONALLY, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED BY DONOR TO DONEE AT CLOSING, NO PERSON ACTING ON BEHALF OF DONOR IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF DONEE ACKNOWLEDGES THAT NO PERSON HAS MADE, ANY REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT REGARDING THE PROPERTY OR THE DONATION CONTEMPLATED HEREIN. DONEE ACKNOWLEDGES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, DONEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY DONOR. DONEE FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE DONATION OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" BASIS WITH ALL FAULTS. DONEE ASSUMES THE RISK THAT ADVERSE PAST, PRESENT OR FUTURE PHYSICAL CHARACTERISTICS AND CONDITIONS OF THE PROPERTY MAY NOT HAVE BEEN REVEALED BY DONOR'S DISCLOSURES OR DONEE'S INSPECTIONS OR INVESTIGATIONS OF THE PROPERTY. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE CLOSING OR ANY TERMINATION OF THIS AGREEMENT.

1.3 Pre-Closing Covenants, Restrictions and Easements. Donee expressly agrees to accept the Property, and acknowledges and agrees that at Closing the Property shall be subject to the following (collectively the "Permitted Exceptions"):

1.3.1 Permanent restrictions for the benefit of Donor prohibiting use of the Property for certain purposes (collectively, the ***"Use Covenants"***), as set forth in the form of special warranty deed by which the Property will be conveyed to Donee at Closing which is attached hereto as Exhibit B (the ***"Deed"***);

1.3.2 A Declaration of Restrictions on the portion of the Property sometimes identified as Tract 5, recorded on or about August 27, 2013, in book 2299 at page 1011, in the office of Recorder of Deeds of Jasper County, Missouri; and

1.3.3 An ingress, egress, access and parking easement over the currently paved areas of the Property, in the form attached hereto as Exhibit C.

1.4 Post-Closing Restrictions, Covenants and Easements. Donor and Donee acknowledge and agree that as of the Effective Date of this Agreement, Donor, Donee and the Joplin Schools, as the other anticipated final users of portions of the Memorial Site, are collectively working together to finalize documents which will in the future govern the operation and maintenance of the Memorial Site as a uniform development. Such documents are currently anticipated to include: (i) a Declaration of Easements, Covenants and Restrictions for the Memorial Site to be recorded in the real property records of Jasper County, Missouri (the ***"Declaration"***); (ii) a Plat for the Memorial Site to be recorded simultaneously with the Declaration (the ***"Plat"***); and (iii) Bylaws for the Association to be established pursuant to the Declaration (the ***"Bylaws"***). Donor and Donee further acknowledge and agree that in order to finalize and record the Declaration and Plat, all of the then existing owners of the Property within the Memorial Site, including Donee, shall be required to execute (and to cause any holder of a deed of trust encumbering the Property to execute), the Declaration and Plat. Donor hereby expressly covenants and agrees that upon finalization of the form of the Declaration and Plat and request by Donor, Donee shall promptly execute (and cause any holder of a deed of trust encumbering the Property to execute) the Declaration and Plat and shall take any and all other actions as may be reasonable necessary to cause the Property to be subjected to said Declaration and Plat and made a part of the Memorial Site subdivision to be formed by said instruments.

In addition to the requirements above, Donee expressly covenants and agrees to cooperate in good faith with Donor to grant to Donor, and its successors, assigns, agents, customers, invitees, licensees, employees, servants, and contractors, easement rights over additional portions of the Property for ingress, egress, access and parking for use of tract 4. In so doing, the parties shall strive to provide the greatest reasonable access and parking to disabled visitors to tract 4, and to ensure the fullest compliance with the Americans with Disabilities Act. Donee specifically agrees that upon such reasonable request, it will grant and execute easements for such purposes, in recordable form.

ARTICLE 2.
CLOSING DATE AND CLOSING

2.1 Closing. The consummation of the donation contemplated by this Agreement shall occur (the ***"Closing"***) at the offices of Abbey Title Company in Joplin, Missouri (the ***"Title Company"***) or at such other place as the parties may mutually agree, simultaneously with the execution of this Agreement, or on such other date as the parties may mutually agree (the ***"Closing Date"***).

2.2 Obligations at Closing.

2.2.1 *Donor's Deliveries.* At Closing, Donor shall execute, acknowledge (where necessary) and deliver to Donee or the Title Company, as appropriate, the following: (a) the Deed, subject to easements, conditions and restrictions of record, including but not limited to the Permitted Exceptions, and to taxes for the year of Closing (which shall be prorated as of the applicable Closing Date); (b) such other documents and instruments as may be required to give effect to this Agreement or as may be reasonably requested by the Title Company in connection with the performance of Donor's obligations hereunder; including execution and delivery of the Title Company's standard form of affidavit; and (c) possession of the Property.

2.2.2 *Donee's Deliveries.* Donee shall execute, acknowledge (where necessary) and deliver to Donor or the Title Company, as appropriate, such documents and instruments as may be reasonably required to give effect to this Agreement or as may be reasonably requested by the Title Company or Donor to evidence Donee's acceptance of the Property being conveyed at such Closing subject to the Permitted Exceptions and the performance of Donee's obligations hereunder. Donee shall be responsible for filing a certificate of value in respect of the Property being conveyed at such Closing with the office of the assessor for the county in which the Property is located.

2.3 Conditions to Closing.

2.3.1 *Donor Conditions.* Donor's obligation to convey the Property to Donee at the Closing shall be expressly conditioned upon and subject to the following: (a) Donee having obtained or obtaining (i) from a title company licensed to do business in the state of Missouri, a commitment in favor of Donee for an owner's policy of title insurance with respect to the Property, and (ii) at Closing, an owner's policy of title insurance with respect to the Property and stating an insured amount of at least $2,367,483.00 (the ***"Title Policy"***); and (b) Donee delivering all of the items required pursuant to Section 2.2.2 above.

2.3.2 *Donee Conditions.* Donee's obligation to close shall be expressly conditioned upon and subject to the following: (a) Donee having received or receiving the Title Policy in form and substance reasonably satisfactory to Donee, provided that inclusion of the Permitted Exceptions as exceptions to the coverage set forth therein may not constitute a failure of this condition; and (b) Donor delivering all of the items required pursuant to Section 2.2.1 above.

ARTICLE 3.
CLOSING COSTS AND ADJUSTMENTS

3.1 Closing Costs of Donor. At Closing, Donor shall pay the cost of recording and filing fees regarding the release of any deeds of trust or other security documents relating to any existing loans being released on the Property.

3.2 Closing Costs of Donee. At Closing, Donee shall pay the charges and costs of obtaining the Title Policy, the recording and filing fees regarding the Deed and any other necessary documents, and any other fees and closing costs relating to the Closing (including the cost of any escrow or closing fees charged by the Title Company).

3.3 Separate Expenses of Parties. Each party hereto shall be responsible for the payment of its respective attorneys' fees and all other costs and expenses of any kind or nature incurred by such party in connection with this Agreement, the Closing or the Property.

ARTICLE 4.
REPRESENTATIONS, COVENANTS AND WARRANTIES

4.1 Donor's Representation, Covenants and Warranties. Donor represents, warrants and covenants to Donee as follows, which representation and warranties shall be considered made as of the date hereof and as of the Closing Date:

4.1.1 *Donor's Authority.* Donor is a not for profit corporation organized and existing under the laws of the State of Missouri and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by Donor is fully authorized by all requisite authority; and no other consents by any other party are required for Donor to execute and deliver this Agreement and such other documents.

4.1.2 *Authority of Signatories; No Breach of Other Agreements.* The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Donor and the signatories of Donor hereto. To the actual knowledge of Donor, the performance by Donor of its obligations under the terms of this Agreement do not conflict in any material or adverse way with or result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which Donor is bound, and, to the actual knowledge of Donor, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Donor is subject.

4.1.3 *All Required Action Taken.* All action required pursuant to this Agreement and necessary to effectuate the donation contemplated herein has been or will be taken with reasonable promptness and in good faith by Donor and its representatives and agents.

4.2 Donee's Representations, Covenants and Warranties. Donee represents, warrants and covenants to Donor as follows, which representations and warranties shall survive Closing hereunder for the period provided below and shall inure to the benefit of Donor, its successors and assigns and shall be considered made as of the date hereof and as of the Closing Date:

4.2.1 *Donee's Authority.* Donee is a municipal corporation organized under the law of the State of Missouri, and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by Donee is fully authorized by all requisite authority; and no other consents by any other party are required for Donee to execute and deliver this Agreement and such other documents.

4.2.2 *Authority of Signatories; No Breach of Other Agreements.* The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Donee and the signatories of Donee hereto. To the actual knowledge of Donee, the performance by Donee of its obligations under the terms of this Agreement do not conflict in any material or adverse way with our result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which Donee is bound, and, to the actual knowledge of Donee, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Donee is subject.

4.2.3 *All Required Action Taken.* All action required pursuant to this Agreement and necessary to effectuate the donation contemplated herein has been or will be taken with reasonable promptness and in good faith by Donee and its representatives and agents.

ARTICLE 5.
RELEASE OF CLAIMS

5.1 Release of Claims. Donee hereby covenants and agrees to release and not to sue Donor, its officers, directors, attorneys, agents and employees (the ***"Released Parties"***) as a result of any and all claims regarding the condition of the Property, including any and all claims and causes of action existing as of the date of Donor's delivery of the Deed for the Property to Donee and any claims and causes of action thereafter created or enacted, whether at common law or by federal, state, county or municipal law or ordinance, including without limitation, any claims and causes of action relating to the presence in, on, under or near the Property, of any Hazardous Material (as defined below) or arising under any Environmental Laws. The provisions of this paragraph shall survive Closing and conveyance of the Property.

5.2 Definitions. The term ***"Hazardous Material"*** means any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (as defined below) as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic

substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, including any items defined as "Hazardous Materials" in 49 CFR 171.8, and any petroleum, polychlorinated biphenyls (PCBs), asbestos, radon, natural gas, natural gas liquids, liquefied Natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), and any other material of similar genre. The term ***"Environmental Laws"*** means any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of governmental authorities relating to the environment, or to any Hazardous Material or to any activity involving Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42. U.S.C. 6901 et seq., as amended (CERCLA), the Resource Conservation and Liability Act, as amended 42 U.S.C. 6901 et seq., the Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. 300f through 300j, as all of the foregoing may be amended from time to time.

ARTICLE 6.
NOTICE

6.1 Notice. Any notice or election required or permitted to be given or served by any party hereto upon any other will be deemed sufficiently given when delivered in person, or when deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, to such party at the respective addresses given below, or sent by telecopy to the fax numbers set forth below, provided that a confirming copy of the telecopy is promptly sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses given below and a copy of any notice or election given to either party shall be promptly delivered to the attorneys for such party at the addresses given below:

If to Donor:
Mercy Health
Attention: Ms. Nancy E. Bukovic
Executive Director-Counsel
14528 S. Outer Forty Drive, Suite 100
Chesterfield, Missouri 63017

With a copy to:
Lathrop & Gage LLP
Attention: Randell Wallace
910 E. St. Louis, Suite 100
Springfield, MO 65806

If to Donee:
City of Joplin
Attention: Peter Edwards
City Attorney
6025 S. Main St.
Joplin, Missouri 64801

With a copy to:

6.2 Effective Date; Change of Address. Each such notice or communication shall be deemed to have been delivered to the party to which addressed on the date the same is hand-delivered, if mailed when deposited in the United States Postal system, sent by registered or certified mail, return receipt requested, postage prepaid, as the case may be, properly addressed in the manner above provided, and shall be deemed to have been received by the party to which addressed, in the case of hand delivery, on the day it is delivered, or in the case of United States Mail, on the date of deposit in the United States Postal system. Any party may change its address for notice by delivering written notice of said change to the other party, in the manner above provided.

ARTICLE 7.
GENERAL PROVISIONS

7.1 Remedies. In the event of any breach or default by Donee hereunder, Donor shall be entitled to pursue any and all rights and remedies allowed at law or in equity. In the event of a breach or default of this Agreement by Donor occurring prior to Closing and resulting in a failure to close, Donee's sole and exclusive remedy shall be to terminate this Agreement, provided that Donee shall not exercise such remedy unless Donor has first been given written notice of the breach or default hereunder and it remains uncured following such notice for a period of thirty (30) days.

7.2 Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understanding or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

7.3 Duties for Performance. If the date for the performance of any act hereunder falls on a Saturday, Sunday or legal holiday, then the time for performance of such act shall be deemed extended to the next business day.

7.4 Survival. Except as otherwise expressly provided herein, the representations, warranties, covenants and agreements set forth in this Agreement shall survive (and shall be enforceable after) the Closing, and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7.5 Captions. The headings or captions of the articles, sections or paragraphs appearing in this Agreement are for convenience of reference only, are not a part of this Agreement and are not to be considered in the interpreting this Agreement.

7.6 Binding Effect. The Agreement shall become effective and shall be binding on the parties only after it has been signed by both Donee and Donor. This Agreement and all

covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The restrictions, covenants and easements set forth in the Deed shall burden and run with Property.

7.7 Controlling Law. This Agreement has been made and entered into under the laws of the State of Missouri, and said laws shall control the interpretation hereof.

7.8 Time of the Essence. Time is of the essence in the performance of this Agreement.

7.9 Counterparts. This Agreement may be executed in one or more counterparts which together shall constitute one and the same Agreement and shall be binding on the parties.

7.10 Assignment. Donee may not assign its interest in this Agreement prior to the Closing without the prior written consent of Donor which may be granted in Donor's sole and absolute discretion. Any assignment made in violation of this paragraph shall be null and void and of no force or effect.

7.11 Participation. Each of the parties has had the opportunity to participate in the negotiation and preparation of this Agreement, and expressly acknowledges such participation, and agrees that no rule construing contractual language against the party which drafted such language shall be applicable in connection with this Agreement.

7.12 Expense of Parties. In the event of litigation between the parties arising under or in connection with this Agreement, the prevailing party shall have the right to recover its reasonable attorneys' fees and expenses from the non-prevailing party. Except as otherwise specifically provided in this Agreement, each party hereto will pay and bear its own expenses and fees in connection with this Agreement and the donation contemplated hereby.

7.13 Effective Date. As used herein, the term ***"Effective Date"*** shall mean and refer to the date upon which this Agreement is executed by the last party to sign, as indicated by the dates set forth below opposite the signatures of Donee and Donor.

7.14 Exhibits. Any reference herein to any exhibit, addendum or attachment refers to the applicable exhibit, addendum or attachment attached to this Agreement, and all such exhibits, addenda or attachments shall constitute a part of this Agreement and are expressly incorporated herein by reference and made a part hereof.

7.15 Conflicts. In the event of a conflict between any provision of this Agreement and any provision of the Deed, the latter provision shall control to the extent of the conflict.

[Remainder of page intentionally left blank; signatures on succeeding page]

IN WITNESS WHEREOF, the parties have executed this Donation Agreement as of the dates set for below.

DONEE:

CITY OF JOPLIN, MISSOURI,
a Missouri municipal corporation

By: _____
Name: _____
Title: _____

Date: _____

DONOR:

MERCY HEALTH SOUTHWEST MISSOURI/KANSAS COMMUNITIES,
a Missouri not-for-profit corporation

By: _____
Name: _____
Title: _____

Date: _____

EXHIBIT A
to
Donation Agreement

Legal Description of Property

Tract 5 (City of Joplin – Museum Tract)

Former St. John's Mercy Campus
Joplin, Missouri
Tract 5 Description 08/12/13

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 436, and a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 450, all in the Jasper County Recorder's Office, Carthage, Missouri, and being more particularly described as follows:
COMMENCING at the Northwest corner of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 01 Degrees 59 Minutes 05 Seconds West along the West line of said Quarter Section, a distance of 74.36 feet; thence departing said West line South 88 Degrees 00 Minutes 55 Seconds East, a distance of 50.00 feet to the point of intersection of the East Right-of-Way line of McClelland Boulevard, as now established, and the South Right-of-Way line of 26th Street, as now established, said point being the POINT OF BEGINNING; thence South 88 Degrees 45 Minutes 33 Seconds East along said South Right-of-Way line, a distance of 1,080.74 feet to the Northwest corner of the tract of land described in the Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1285, at Page 317; thence departing said South Right-of-Way line South 02 Degrees 03 Minutes 17 Seconds West along the West line of said tract of land, a distance of 300.03 feet to the Southwest corner thereof; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 454.85 feet; thence South 01 Degrees 59 Minutes 09 Seconds West, a distance of 93.20 feet; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 625.52 feet to a point in the East Right-of-Way line of said McClelland Boulevard; thence North 01 Degrees 59 Minutes 05 Seconds East along said East Right-of-Way line, a distance of 393.22 feet to the POINT OF BEGINNING, and containing 382,458 square feet or 8.780 acres of land, more or less.

Tract 6 (City of Joplin – Designated Parking)

Former St. John's Mercy Campus
Joplin, Missouri
Tract 6 Description 08/12/13

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 2149, at Page 436, and being more particularly described as follows:
COMMENCING at the Northwest corner of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 01 Degrees 59 Minutes 05 Seconds West along the West line of said Quarter Section, a distance of 1042.14 feet; thence departing said West line South 88 Degrees 00 Minutes 55 Seconds East, a distance of 675.45 feet the POINT OF BEGINNING; thence North 01 Degrees 59 Minutes 09 Seconds East, a distance of 675.88 feet; thence South 88 Degrees 45 Minutes 33 Seconds East, a distance of 317.91 feet; thence South 02 Degrees 03 Minutes 17 Seconds West, a distance of 680.01 feet; thence North 88 Degrees 00 Minutes 55 Seconds West, a distance of 317.07 feet to the POINT OF BEGINNING, and containing 215,232 square feet or 4.941 acres of land, more or less.

Tract 7 (City of Joplin – Designated Parking)

Former St. John's Mercy Campus
Joplin, Missouri
Tract 7 Description 08/12/13

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 2149, at Page 436, and being more particularly described as follows:
COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 02 Degrees 03 Minutes 17 Seconds West along the East line of said Quarter Quarter, a distance of 75.02 feet to a point in the South Right-of-Way line of 26th Street, as now established, said point being the POINT OF BEGINNING; thence South 02 Degrees 03 Minutes 17 Seconds West along the East line of said Quarter Quarter, a distance of 614.50 feet to the Northwest corner of the tract of land described as Tract 1 of Parcel 1 in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Book 2149, at Page 436; thence departing said East line South 88 Degrees 41 Minutes 16 Seconds East along the North line of said tract of land, a distance of 38.52 feet to the West Right-of-Way line of Picher Avenue, as now established; thence along said West Right-of-Way line, along a non-tangent curve to the left having a Radius of 331.56 feet and whose Chord bears South 16 Degrees 01 Minutes 10 Seconds West, an Arc Length of 161.18 feet; thence continuing along said West Right-of-Way line South 02 Degrees 03 Minutes 22 Seconds West, a distance of 5.00 feet to the Northeast corner of the tract of land described in the Deed of Trust duly filed in the Jasper County Recorder's Office in Book 1202, at Page 1187; thence departing said West Right-of-Way line North 88 Degrees 54 Minutes 24 Seconds West along the North line of said tract of land, a distance of 326.95 feet to the Northwest corner thereof; thence North 02 Degrees 03 Minutes 17 Seconds East, a distance of 474.70 feet; thence South 88 Degrees 45 Minutes 33 Seconds East, a distance of 251.93 feet to the Southeast corner of the tract of land described in the Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1285, at Page 317; thence North 02 Degrees 03 Minutes 17 Seconds East along the East line of said tract of land, a distance of 300.03 feet to the Northeast corner thereof, said point being in said South Right-of-Way line of 26th Street; thence South 88 Degrees 45 Minutes 33 Seconds East along said South Right-of-Way line, a distance of 75.01 feet to the POINT OF BEGINNING, and containing 179,477 square feet or 4.120 acres of land, more or less.

EXHIBIT B
to
Donation Agreement

Deed

The space above this line is for Recorder's use only

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and entered into as of this _____ day of _____, 2014, by and between Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc., a Missouri not-for-profit corporation (***"Grantor"***), with a mailing address at Attention: Nancy Bukovic, Executive Director-Counsel, 14528 S. Outer Forty Drive, Suite 100, Chesterfield, Missouri, 63017, and City of Joplin, Missouri, a Missouri municipal corporation (***"Grantee"***) with a mailing address at 602 South Main St., Joplin, Missouri, 64801, Attention: Peter Edwards, City Attorney.

WITNESSETH, that the said Grantor, for and in consideration of the sum of One Dollar ($1.00) and other valuable considerations paid by the Grantee, the receipt and sufficiency of which are hereby acknowledged, does by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the Grantee the Real Estate situated in the County of Jasper, State of Missouri, described in Exhibit A attached hereto (the "***Property***").

EXCEPTING THEREFROM AND SUBJECT TO the following restrictions and rights which Grantor hereby reserves to itself, its successors and assigns:

1. The Grantee covenants and agrees that, at all times hereafter, it shall not permit or conduct, nor shall its successors or assigns permit or conduct, use of the property for any of the following purposes:

a. an abortion clinic or medical service type facility that includes the provision of abortion services or promotes the use of abortion services, sterilization, artificial insemination, assisted suicide and/or euthanasia;

b. a counseling service which recommends to its clients sterilization and the consideration of abortion as an alternative to carrying a pregnancy through birth;

c. the supply, prescribing or dispensing of any medicines, chemicals or instruments of any kind for use in any practice or procedure prohibited by paragraph (a) above, including but not limited to any abortifacient;

d. a political action group or similar organization of which a principal teaching or policy is the advocacy of abortion or right of free choice of an individual to elect abortion;

e. installation, maintenance or placing of any signs or other advertising on or about the Property that promotes or advocates abortion or right of free choice of an individual to elect abortion or euthanasia; or

f. an adult bookstore, x-rated movie theater, topless bar, or similar establishment, or any other obscene or pornographic performances or other activities.

As used herein, the term ***"abortion"*** shall include all forms of deliberate destruction of the human embryo or fetus at any time after the moment of fertilization. As used herein, the term ***"euthanasia"*** shall include any action or omission that of itself or by intention causes any human being of any age to die, whether or not such individual is suffering from any physical or mental abnormality, and whether or not such conduct is permitted or prohibited by any applicable law. Nothing herein shall require that the City prohibit or restrict freedom of speech on the property.

2. In addition to and without limitation of the restrictions set forth in Section 1 above, the Grantee covenants and agrees, on its own behalf and on behalf of its successors and assigns, to the following:

a. The Property shall not, at any time hereafter, be used for any Medical Facility. As used herein, the term ***"Medical Facility"*** shall mean any improvements (or space therein) that is used for the provision of any of the following services: inpatient or outpatient hospital or clinic services, ambulatory surgery center, sleep or other medical study laboratory, diagnostic imaging services, or patient treatment services (e.g., infusion or radiation therapy).

b. Prior to installation of any signage or graphics within the Property, the content of such signage and graphics, including all letters, text, logos, symbols, art and other graphics, shall be submitted for approval by Grantor in its sole discretion.

c. No signage or graphics shall be installed, constructed, maintained or permitted, at any time hereafter, which signage or graphics contains the logo or name, or a portion of the name, of any entity or organization which operates (i) any Medical Facility within twenty-five (25) miles of the Property, other than Grantor; or (ii) any of the uses described in Section 1 above.

3. Grantor's remedies for enforcement of Grantee's covenants and Grantor's rights set forth in Sections 1 & 2 above shall include but not be limited to any and all equitable remedies which may be appropriate, including injunctive relief and specific performance, and

Grantor shall be entitled to receive from Grantee its attorney's fees and other costs incurred as a result of such enforcement action.

TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said Grantee, and to the heirs and assigns of such party or parties forever.

The said Grantor hereby covenanting that said Grantor and the heirs, executors, administrators and assigns of such Grantor, shall and will WARRANT AND DEFEND the title to the premises unto the said Grantee, and to the heirs and assigns of such Grantee forever against the lawful claims of all persons claiming by, through, or under Grantor, but none other, excepting, however, the general taxes for the calendar year 2014 and thereafter, and special taxes becoming a lien after the date of this deed.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Special Warranty Deed as of the day and year first above written.

GRANTOR:

MERCY HEALTH SOUTHWEST, MISSOURI/KANSAS COMMUNITIES, a Missouri not-for-profit corporation

By: _____
Name: _____
Title: _____

GRANTEE:

CITY OF JOPLIN, Missouri, a Missouri municipal corporation

By: _____
Name: _____
Title: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____, personally known to me to be the _____ of Mercy Health Southwest Missouri/Kansas Communities, a Missouri not-for-profit corporation which is the Grantor, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ he/she signed and delivered the said instrument as _____ of said Missouri not-for-profit corporation, pursuant to authority given by the Board of Directors of said Missouri not-for-profit corporation, as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2014.

_____
Notary Public

My commission expires:

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____, personally known to me to be the _____ of City of Joplin, a Missouri municipal corporation which is the Grantee, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such _____ he/she signed and delivered the said instrument as _____ of said Missouri municipal corporation, pursuant to authority given by the City Council of said Missouri municipal corporation, as his/her free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2014.

_____
Notary Public

My commission expires:

EXHIBIT A
to
Special Warranty Deed

Legal Description of Property

Tract 5 (City of Joplin – Museum Tract)

Former St. John's Mercy Campus
Joplin, Missouri
Tract 5 Description 08/12/13

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 436, and a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 450, all in the Jasper County Recorder's Office, Carthage, Missouri, and being more particularly described as follows:
COMMENCING at the Northwest corner of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 01 Degrees 59 Minutes 05 Seconds West along the West line of said Quarter Section, a distance of 74.36 feet; thence departing said West line South 88 Degrees 00 Minutes 55 Seconds East, a distance of 50.00 feet to the point of intersection of the East Right-of-Way line of McClelland Boulevard, as now established, and the South Right-of-Way line of 26th Street, as now established, said point being the POINT OF BEGINNING; thence South 88 Degrees 45 Minutes 33 Seconds East along said South Right-of-Way line, a distance of 1,080.74 feet to the Northwest corner of the tract of land described in the Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1285, at Page 317; thence departing said South Right-of-Way line South 02 Degrees 03 Minutes 17 Seconds West along the West line of said tract of land, a distance of 300.03 feet to the Southwest corner thereof; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 454.85 feet; thence South 01 Degrees 59 Minutes 09 Seconds West, a distance of 93.20 feet; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 625.52 feet to a point in the East Right-of-Way line of said McClelland Boulevard; thence North 01 Degrees 59 Minutes 05 Seconds East along said East Right-of-Way line, a distance of 393.22 feet to the POINT OF BEGINNING, and containing 382,458 square feet or 8.780 acres of land, more or less.

Tract 6 (City of Joplin – Designated Parking)

Former St. John's Mercy Campus
Joplin, Missouri
Tract 6 Description 08/12/13

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 2149, at Page 436, and being more particularly described as follows:
COMMENCING at the Northwest corner of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 01 Degrees 59 Minutes 05 Seconds West along the West line of said Quarter Section, a distance of 1042.14 feet; thence departing said West line South 88 Degrees 00 Minutes 55 Seconds East, a distance of 675.45 feet the POINT OF BEGINNING; thence North 01 Degrees 59 Minutes 09 Seconds East, a distance of 675.88 feet; thence South 88 Degrees 45 Minutes 33 Seconds East, a distance of 317.91 feet; thence South 02 Degrees 03 Minutes 17 Seconds West, a distance of 680.01 feet; thence North 88 Degrees 00 Minutes 55 Seconds West, a distance of 317.07 feet to the POINT OF BEGINNING, and containing 215,232 square feet or 4.941 acres of land, more or less.

Tract 7 (City of Joplin – Designated Parking)

Former St. John's Mercy Campus
Joplin, Missouri
Tract 7 Description 08/12/13

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 2149, at Page 436, and being more particularly described as follows:
COMMENCING at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 02 Degrees 03 Minutes 17 Seconds West along the East line of said Quarter Quarter, a distance of 75.02 feet to a point in the South Right-of-Way line of 26th Street, as now established, said point being the POINT OF BEGINNING; thence South 02 Degrees 03 Minutes 17 Seconds West along the East line of said Quarter Quarter, a distance of 614.50 feet to the Northwest corner of the tract of land described as Tract 1 of Parcel 1 in the General Warranty Deed duly recorded in the Jasper County Recorder's Office in Book 2149, at Page 436; thence departing said East line South 88 Degrees 41 Minutes 16 Seconds East along the North line of said tract of land, a distance of 38.52 feet to the West Right-of-Way line of Picher Avenue, as now established; thence along said West Right-of-Way line, along a non-tangent curve to the left having a Radius of 331.56 feet and whose Chord bears South 16 Degrees 01 Minutes 10 Seconds West, an Arc Length of 161.18 feet; thence continuing along said West Right-of-Way line South 02 Degrees 03 Minutes 22 Seconds West, a distance of 5.00 feet to the Northeast corner of the tract of land described in the Deed of Trust duly filed in the Jasper County Recorder's Office in Book 1202, at Page 1187; thence departing said West Right-of-Way line North 88 Degrees 54 Minutes 24 Seconds West along the North line of said tract of land, a distance of 326.95 feet to the Northwest corner thereof; thence North 02 Degrees 03 Minutes 17 Seconds East, a distance of 474.70 feet; thence South 88 Degrees 45 Minutes 33 Seconds East, a distance of 251.93 feet to the Southeast corner of the tract of land described in the Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1285, at Page 317; thence North 02 Degrees 03 Minutes 17 Seconds East along the East line of said tract of land, a distance of 300.03 feet to the Northeast corner thereof, said point being in said South Right-of-Way line of 26th Street; thence South 88 Degrees 45 Minutes 33 Seconds East along said South Right-of-Way line, a distance of 75.01 feet to the POINT OF BEGINNING, and containing 179,477 square feet or 4.120 acres of land, more or less.

EXHIBIT C

Ingress, Egress, Access, and Parking Easement

COUNCIL BILL NO. **ORDINANCE NO.**

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..

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

Section 1. The agreement is by and among Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc., a Missouri not-for-profit corporation (***"Mercy"***), and the City of Joplin, Missouri, a Missouri municipal corporation (**"City"**), whereas Mercy Health Systems-Joplin Inc. will donate Property as described in Exhibit A to the City of Joplin as a public park.

Section 2. That the Interim City Manager, or his designee, is hereby authorized to execute said Agreement for and on behalf of the City of Joplin.

Section 3. That this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12(6) of the Home Rule Charter of the City of Joplin, Missouri, and, the same shall be in full force and effect immediately from and after its adoption and approval. Specifically, this Ordinance accepts the donation of property from Mercy Health Systems-Joplin Inc. to the City of Joplin in order to allow for public improvement planning and construction of a public park. It is important that these events take place so that the planning and construction can begin so that the improvements can be completed to meet certain deadlines.

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

_____

Michael L. Seibert, Mayor

ATTEST:

_____

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____

Peter Edwards, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

Item: Return of Property Agreement between Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc. and Joplin Redevelopment Corporation, Inc.

Originating Department: Planning & Community Development

Attachments: 1) Agreement
2) Council Bill No. 2014-410

Department Head: Nick Heatherly NH	Date: 9/8/14
Planning & Community Development Director: Troy Bolander T.B.	Date: 9-8-14
Finance Department: Leslie Haase LH	Date: 9-9-14
City Attorney: Peter C. Edwards PE	Date: 9/8/14
Interim City Manager: Samuel L. Anselm	Date: 9/9/14

Recommended Action: Approval of Council Bill No. 2014-410

INTRODUCTION:

This Council Bill authorizes the return of the real estate formerly known as the St. John's Hospital from the JRC to Mercy Hospital.

DISCUSSION:

This Council Bill authorizes the title to the 8.78 + - acres located within the Former Mercy Site ("Property") with said Property being legally described in the attached Exhibit A should be returned by JRC to Mercy in return for cancellation of the Promissory Note and Deed of Trust, with the further intention that the Property shall be donated at a later date to the City for use as a park. The agreement is by and among Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc., a Missouri not-for-profit corporation (***"Mercy"***), Joplin Redevelopment Corporation, Inc., an urban redevelopment corporation, organized under the Missouri Urban Redevelopment Corporations Law (***"JRC"***), Wallace Bajjali Development Partners, L.P., a Texas Limited Partnership (**"Wallace Bajjali"**), and the City of Joplin, Missouri, a Missouri municipal corporation **("City").** This Agreement has the effect of cancelling the respective parties' obligations to one another and returning the real estate to Mercy.

RECOMMENDATION:

That this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12(6) of the Home Rule Charter of the City of Joplin, Missouri, and, the same shall be in full force and effect immediately from and after its adoption and approval.

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

RETURN OF PROPERTY AGREEMENT

THIS RETURN OF PROPERTY AGREEMENT (the ***"Return Agreement"***) is made and entered into effective as of the ___ day of _____, 2014, by and among Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc., a Missouri not-for-profit corporation (***"Mercy"***), Joplin Redevelopment Corporation, Inc., an urban redevelopment corporation, organized under the Missouri Urban Redevelopment Corporations Law (***"JRC"***), Wallace Bajjali Development Partners, L.P., a Texas Limited Partnership (**"Wallace Bajjali"**), and the City of Joplin, Missouri, a Missouri municipal corporation **("City").**

RECITALS

A. On May 22, 2011, an EF-5 tornado struck Joplin, Missouri destroying much of the Mercy Hospital generally located at the Southeast corner of 26th and McClelland Blvd. in Joplin, MO (the "Former Mercy Site").

B. On or about June 30, 2013, Mercy and Wallace Bajjali entered into a Memorandum of Understanding ("MOU") pursuant to which the two parties would evaluate various options for the development of certain portions of the Former Mercy Site.

C. On or about August 26, 2013, Mercy, Wallace Bajjali, and JRC entered into a Purchase and Sale Agreement ("PSA") regarding 8.78 + - acres located within the Former Mercy Site ("Property") with said Property being legally described in the attached Exhibit A.

D. Also executed were a Declaration of Restrictions in favor of Mercy ("Restrictions"), a special warranty deed conveying the Property to JRC ("Deed"), a promissory note in the amount of One Million Dollars payable by JRC to Mercy (the "Promissory Note"), a deed of trust securing the repayment of the Promissory Note, and an escrow agreement by and among JRC, Mercy Health, and St. Louis Title, LLC as escrow agent ("Escrow Agent") whereby a special warranty deed executed by JRC re-conveying the Property to Mercy was placed in escrow with the Escrow Agent (the "Escrow Deed").

E. It was the intention of the parties hereto to explore the development of a possible science/discovery center on the Property, for the use and benefit of the children and citizens of Joplin, Missouri and the surrounding area.

F. It has become apparent to the parties that the development of such a science/discovery center will likely take in excess of five years to complete.

G. In the meantime, the parties have agreed that they wish to see the Property properly maintained in a clean, safe, and useful manner and that the Property's best use at the present time may be as an extension of Cunningham Park located immediately north of the Property.

H. Therefore, the parties agree that title to the Property should be returned by JRC to Mercy in return for cancellation of the Promissory Note and Deed of Trust, with the further

intention that the Property shall be donated at a later date to the City for use as a park.

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

ARTICLE 1.
RETURN OF THE PROPERTY

1.1 Return of the Property. Upon the terms, covenants and conditions herein set forth, JRC shall transfer by Special Warranty Deed attached hereto as Exhibit B, the Property and any and all improvements located thereon.

1.2 Condition of Property.

1.2.1 The Property will be free and clear of all liens, claims, title defects, and other encumbrances, except those that existed prior to August 26, 2013, and the Restrictions.

1.2.2 The Property will be returned to Mercy in the same, or substantially the same, physical condition as it was in as of August 26, 2013.

ARTICLE 2.
CLOSING DATE AND CLOSING

2.1 Closing. The consummation of the closing transactions contemplated by this Agreement (the ***"Closing"***) between JRC and Mercy shall take place simultaneously with the execution and closing of that certain Donation Agreement (Tracts 5, 6, and 7) by and between Mercy, as Donor, and the City, as Donee (the "Donation Agreement"), to be considered for approval by the Joplin City Council at a future date, (the ***"Closing Date"***) at the offices of Abbey Title Company in Joplin, Missouri (the ***"Title Company"***) or at such other place as the parties may mutually agree.

2.2 Obligations at Closing.

2.2.1 *JRC's Deliveries.* At the Closing, JRC shall execute, acknowledge (where necessary) and deliver to Mercy or the Title Company, as appropriate, the following: (a) Special Warranty Deed describing the Property (the "Deed") , subject to the easements, conditions and restrictions of record, and to taxes for the year of Closing (which shall be prorated as of the Closing Date); (b) such other documents and instruments as may be required to give effect to this Agreement or as may be reasonably requested by the Title Company in connection with the performance of JRC's obligations hereunder; including execution and delivery of the Title Company's standard form of affidavit; and (c) possession of the Property.

2.2.2 *Mercy's Deliveries.* At the Closing, Mercy shall execute, acknowledge (where necessary) and deliver to JRC or the Title Company, as appropriate, the following: (a) the Cancellation of the Promissory Note; (b) a Release of the Deed of Trust; and (c) such documents and instruments as may be reasonably required to give effect to this Agreement or as may be reasonably requested by the Title Company.

2.3 Conditions to Closing.

2.3.1 *JRC's Conditions.* JRC's obligation to convey the Property to Mercy at Closing shall be expressly conditioned upon and subject to delivering all of the items required pursuant to Section 2.2.2 above.

2.3.2 *Mercy's Conditions.* Mercy's obligation to close shall be expressly conditioned upon and subject to the following: (a) JRC obtaining, and Mercy having received or receiving in form and substance reasonably satisfactory to Mercy, an owner's policy of title insurance with respect to the Property in an amount to be determined (the "Title Policy"), if required by Mercy given that the Donation Agreement is contemplated to be closed between the City and Mercy simultaneously with the closing obligations in this Agreement, (b) Mercy having received, in form and substance satisfactory to Mercy, an environmental report on the Property ("Environmental Report"), and (c) JRC delivering all of the items required pursuant to Section 2.2.1 above.

2.3.3 *Disposition of Escrow Deed.* Upon Closing, and issuance of the Title Policy, in such form and substance as is acceptable to Mercy, Mercy shall instruct the Escrow Agent to release or destroy the Escrow Deed.

ARTICLE 3.
CLOSING COSTS AND ADJUSTMENTS

3.1 Closing Costs of JRC. At Closing, JRC shall pay the cost of recording and filing fees regarding the release of any deeds of trust or other security documents relating to any existing loans being released on the Property, the charges and costs of obtaining the Title Policy, and the recording and filing fees regarding the Deed and any other necessary documents, one-half of the expense of the Environmental Report, and any other fees and closing costs relating to the Closing (including the cost of any escrow or closing fees charged by the Title Company).

3.2 Closing Costs of Mercy. At Closing, Mercy shall pay one-half of the expense of the Environmental Report.

3.3 Separate Expenses of Parties. Each party hereto shall be responsible for the payment of its respective attorneys' fees and all other costs and expenses of any kind or nature incurred by such party in connection with this Agreement, the Closing or the Property.

ARTICLE 4.

REPRESENTATIONS, COVENANTS AND WARRANTIES

4.1 JRC's Representation, Covenants and Warranties. JRC represents, warrants and covenants to Mercy as follows, which representation and warranties shall be considered made as of the date hereof and as of the Closing Date:

4.1.1 *JRC's Authority.* JRC is an urban redevelopment corporation organized and existing under the laws of the State of Missouri and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by JRC is fully authorized by all requisite authority; and no other consents by any other party are required for JRC to execute and deliver this Agreement and such other documents.

4.1.2 *Authority of Signatories; No Breach of Other Agreements.* The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon JRC and the signatories of JRC hereto. To the actual knowledge of JRC, the performance by JRC of its obligations under the terms of this Agreement do not conflict in any material or adverse way with or result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which JRC is bound, and, to the actual knowledge of JRC, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which JRC is subject.

4.1.3 *All Required Action Taken.* All action required pursuant to this Agreement and necessary to effectuate the donation contemplated herein has been or will be taken with reasonable promptness and in good faith by JRC and its representatives and agents.

4.1.4 *No liens, encumbrances, Restrictions violations, etc.* During the period of time of JRC's ownership of title to Property, there have been no liens or encumbrances created on the Property, no Hazardous Material introduced or placed upon the Property, no construction work, labor, or materials introduced to the Property which might give rise to a mechanic's or materialman's lien or similar encumbrance, and there have been no violations or actions taken at any time in violation of or inconsistent with any of the provisions of the Restrictions.

4.2 Mercy's Representations, Covenants and Warranties. Mercy represents, warrants and covenants to JRC as follows, which representations and warranties shall survive Closing hereunder for the period provided below and shall inure to the benefit of JRC, its successors and assigns and shall be considered made as of the date hereof and as of the Closing Date:

4.2.1 *Mercy's Authority.* Mercy is a not-for-profit corporation organized under the law of the State of Missouri, and has all requisite power and authority to execute this Agreement and such other documents as may be necessary or desirable to perform its obligations hereunder; the execution and delivery thereof by Mercy is fully authorized by

all requisite authority; and no other consents by any other party are required for Mercy to execute and deliver this Agreement and such other documents.

4.2.2 *Authority of Signatories; No Breach of Other Agreements.* The execution, delivery of and performance under this Agreement is pursuant to authority validly and duly conferred upon Mercy and the signatories of Mercy hereto. To the actual knowledge of Mercy, the performance by Mercy of its obligations under the terms of this Agreement do not conflict in any material or adverse way with our result in breach of any of the terms or provisions of, or constitute a default under any agreement, arrangement, understanding, accord, document or instrument by which Mercy is bound, and, to the actual knowledge of Mercy, will not and does not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental instrumentality or court, domestic or foreign, to which Mercy is subject.

4.2.3 *All Required Action Taken.* All action required pursuant to this Agreement and necessary to effectuate the transaction contemplated herein has been or will be taken with reasonable promptness and in good faith by Mercy and its representatives and agents.

ARTICLE 5.
RELEASE OF CLAIMS

5.1 Release of Claims. JRC, City, and Wallace Bajjali, and each of their officers, directors, partners, shareholders, members, managers, employees, agents, and any parent, subsidiary, or related entities" hereby covenant and agree to release and not to sue Mercy, its officers, directors, attorneys, agents and employees (the ***"Mercy Released Parties"***) as a result of any and all claims regarding the condition of the Property, including any and all claims and causes of action existing as of the date of Mercy's delivery of the Deed for the Property to JRC and any claims and causes of action thereafter created or enacted, whether at common law or by federal, state, county or municipal law or ordinance, including without limitation, any claims and causes of action relating to the presence in, on, under or near the Property, of any Hazardous Material (as defined below) or arising under any Environmental Laws. Further, JRC, City, and Wallace Bajjali, and each of their officers, directors, partners, shareholders, members, managers, employees, agents, and any parent, subsidiary, or related entities hereby covenant and agree to release and not to sue the Mercy Released Parties as a result of any and all claims regarding or arising under the MOU, the PSA, the Deed, the Promissory Note, the Deed of Trust, the Escrow Deed, the Restrictions, or any and all other contracts, agreements, arrangements, or conditions, including but not limited to any and all tax credits, grants, contributions, benefits or assistance of any kind, governmental or private, in any way related to the Property and/or the Former Mercy Site. The provisions of this paragraph shall survive Closing and conveyance of the Property.

5.2 Release of Claims. Wallace Bajjali and its officers, directors, partners, shareholders, members, managers, employees, agents, and any parent, subsidiary, or related entities" hereby covenant and agree to release and not to sue JRC or the City, or any of their officers, directors, attorneys, agents and employees (the ***"JRC Released Parties"***) as a result of

any and all claims regarding the Property, including any and all claims and causes of action existing as of the date of Mercy's delivery of the Deed for the Property to JRC and any claims and causes of action thereafter created or enacted, whether at common law or by federal, state, county or municipal law or ordinance, including without limitation, any claims and causes of action relating to the presence in, on, under or near the Property, of any Hazardous Material (as defined below) or arising under any Environmental Laws. Further, Wallace Bajjali and their officers, directors, partners, shareholders, members, managers, employees, agents, and any parent, subsidiary, or related entities hereby covenant and agree to release and not to sue the JRC Released Parties as a result of any and all claims regarding or arising under the MOU, the PSA, the Deed, the Promissory Note, the Deed of Trust, the Escrow Deed, the Restrictions, or any and all other contracts, agreements, arrangements, or conditions in any way related to the Property and/or the Former Mercy Site. The provisions of this paragraph shall survive Closing and conveyance of the Property.

5.3 Release of Claims. Mercy, JRC and the City, and each of their officers, directors, partners, shareholders, members, managers, employees, agents, and any parent, subsidiary, or related entities" hereby covenant and agree to release and not to sue Wallace Bajjali, or any of its officers, directors, attorneys, agents and employees (the ***"Wallace Bajjali Released Parties"***) as a result of any and all claims regarding the Property, including any and all claims and causes of action existing as of the date of Mercy's delivery of the Deed for the Property to JRC and any claims and causes of action thereafter created or enacted, whether at common law or by federal, state, county or municipal law or ordinance, including without limitation, any claims and causes of action relating to the presence in, on, under or near the Property, of any Hazardous Material (as defined below) or arising under any Environmental Laws. Further, Mercy, JRC and the City and their officers, directors, partners, shareholders, members, managers, employees, agents, and any parent, subsidiary, or related entities hereby covenant and agree to release and not to sue the Wallace Bajjali Released Parties as a result of any and all claims regarding or arising under the MOU, the PSA, the Deed, the Promissory Note, the Deed of Trust, the Escrow Deed, the Restrictions, or any and all other contracts, agreements, arrangements, or conditions in any way related to the Property and/or the Former Mercy Site. The provisions of this paragraph shall survive Closing and conveyance of the Property.

5.4 Definitions. The term ***"Hazardous Material"*** means any chemical, compound, material, mixture or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any Environmental Laws (as defined below) as a "hazardous substance," "hazardous material," "hazardous waste," "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, including any items defined as "Hazardous Materials" in 49 CFR 171.8, and any petroleum, polychlorinated biphenyls (PCBs), asbestos, radon, natural gas, natural gas liquids, liquefied Natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), and any other material of similar genre. The term ***"Environmental Laws"*** means any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of governmental authorities relating to the environment, or to any Hazardous Material or to any activity involving Hazardous Materials, including without

limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42. U.S.C. 6901 et seq., as amended (CERCLA), the Resource Conservation and Liability Act, as amended 42 U.S.C. 6901 et seq., the Clean Water Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. 300f through 300j, as all of the foregoing may be amended from time to time.

ARTICLE 6.
NOTICE

6.1 Notice. Any notice or election required or permitted to be given or served by any party hereto upon any other will be deemed sufficiently given when delivered in person, or when deposited in the United States Mail, registered or certified, return receipt requested, postage prepaid, to such party at the respective addresses given below, or sent by telecopy to the fax numbers set forth below, provided that a confirming copy of the telecopy is promptly sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses given below and a copy of any notice or election given to either party shall be promptly delivered to the attorneys for such party at the addresses given below:

If to Mercy:
Mercy Health
Attention: Ms. Nancy E. Bukovic
Executive Director-Counsel
14528 S. Outer Forty Drive, Suite 100
Chesterfield, Missouri 63017

With a copy to:
Lathrop & Gage LLP
Attention: Randell Wallace
910 E. St. Louis, Suite 100
Springfield, Missouri 65806

If to JRC:
Joplin Redevelopment Corporation, Inc.
Attn: Mr. Peter Edwards
602 S. Main Street
Joplin, Missouri 64801

With a copy to:

If to City:
City of Joplin
Attn: City Attorney
602 South Main Street
Joplin, Missouri 64801

With a copy to:

If to Wallace Bajjali: Wallace Bajjali Development Partners, L.P.
Attn: Bruce Anderson
1027 Main Street, Suite 350
Joplin, Missouri 64801

With a copy to: Dentons US LLP
Attn: Jennifer Marler
One Metropolitan Square
211 N. Broadway, Suite 3000
St. Louis, MO 63102

6.2 Effective Date; Change of Address. Each such notice or communication shall be deemed to have been delivered to the party to which addressed on the date the same is hand-delivered, if mailed when deposited in the United States Postal system, sent by registered or certified mail, return receipt requested, postage prepaid, as the case may be, properly addressed in the manner above provided, and shall be deemed to have been received by the party to which addressed, in the case of hand delivery, on the day it is delivered, or in the case of United States Mail, on the date of deposit in the United States Postal system. Any party may change its address for notice by delivering written notice of said change to the other party, in the manner above provided.

ARTICLE 7.
GENERAL PROVISIONS

7.1 Remedies. In the event of any breach or default by JRC, City, or Wallace Bajjali hereunder, Mercy shall be entitled to pursue any and all rights and remedies allowed at law or in equity. In the event of a breach or default of this Agreement by Mercy occurring prior to Closing and resulting in a failure to close, the sole and exclusive remedy of JRC, City, or Wallace Bajjali shall be to terminate this Agreement.

7.2 Entire Agreement. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Property. It is expressly agreed that there are no verbal understanding or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

7.3 Duties for Performance. If the date for the performance of any act hereunder falls on a Saturday, Sunday or legal holiday, then the time for performance of such act shall be deemed extended to the next business day.

7.4 Survival. Except as otherwise expressly provided herein, the representations, warranties, covenants and agreements set forth in this Agreement shall survive (and shall be enforceable after) the Closing, and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

7.5 Captions. The headings or captions of the articles, sections or paragraphs appearing in this Agreement are for convenience of reference only, are not a part of this Agreement and are not to be considered in the interpreting this Agreement.

7.6 Binding Effect. The Agreement shall become effective and shall be binding on the parties only after it has been signed by Mercy, JRC, City, and Wallace Bajjali. This Agreement and all covenants, terms and provisions contained herein shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

7.7 Controlling Law. This Agreement has been made and entered into under the laws of the State of Missouri, and said laws shall control the interpretation hereof.

7.8 Time of the Essence. Time is of the essence in the performance of this Agreement.

7.9 Counterparts. This Agreement may be executed in one or more counterparts which together shall constitute one and the same Agreement and shall be binding on the parties.

7.10 Assignment. JRC may not assign its interest in this Agreement prior to the Closing without the prior written consent of Mercy which may be granted in Mercy's sole and absolute discretion. Any assignment made in violation of this paragraph shall be null and void and of no force or effect.

7.11 Participation. Each of the parties has had the opportunity to participate in the negotiation and preparation of this Agreement, and expressly acknowledges such participation, and agrees that no rule construing contractual language against the party which drafted such language shall be applicable in connection with this Agreement.

7.12 Expense of Parties. In the event of litigation between the parties arising under or in connection with this Agreement, the prevailing party shall have the right to recover its reasonable attorneys' fees and expenses from the non-prevailing party. Except as otherwise specifically provided in this Agreement, each party hereto will pay and bear its own expenses and fees in connection with this Agreement and the donation contemplated hereby.

7.13 Effective Date. As used herein, the term ***"Effective Date"*** shall mean and refer to the date upon which this Agreement is executed by the last party to sign, as indicated by the dates set forth below opposite the signatures of Mercy, JRC, City, and Wallace Bajjali.

7.14 Exhibits. Any reference herein to any exhibit, addendum or attachment refers to the applicable exhibit, addendum or attachment attached to this Agreement, and all such exhibits, addenda or attachments shall constitute a part of this Agreement and are expressly incorporated herein by reference and made a part hereof.

[Remainder of page intentionally left blank; signatures on succeeding page]

IN WITNESS WHEREOF, the parties have executed this Donation Agreement as of the dates set for below.

JRC:

JOPLIN REDEVELOPMENT CORPORATION, INC., an urban redevelopment corporation

By: _____
Name: _____
Title: _____
Date: _____

WALLACE BAJJALI:

WALLACE BAJJALI DEVELOPMENT PARTNERS, L.P., a Texas Limited Partnership

By: _____
Name: _____
Title: _____
Date: _____

MERCY:

MERCY HEALTH SOUTHWEST MISSOURI/KANSAS COMMUNITIES, a Missouri not-for-profit corporation

By: _____
Name: _____
Title: _____
Date: _____

CITY:

CITY OF JOPLIN, MISSOURI, a Missouri municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A
to
Return of Property Agreement

Legal Description of Property

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, in the City of Joplin, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 436, and a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 450, all in the Jasper County Recorder's Office, Carthage, Missouri, and being more particularly described as follows:

Commencing at the Northwest corner of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 01 Degrees 59 Minutes 05 Seconds West along the West line of said Quarter Section, a distance of 74.36 feet; thence departing said West line South 88 Degrees 00 Minutes 55 Seconds East, a distance of 50.00 feet to the point of intersection of the East Right-of-Way line of McClelland Boulevard, as now established, and the South Right-of-Way line of 26th Street, as now established, said point being the Point of Beginning; thence South 88 Degrees 45 Minutes 33 Seconds East along said South Right-of-Way line, a distance of 1,080.74 feet to the Northwest corner of the tract of land described in the Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1285, at Page 317; thence departing said South Right-of-Way line South 02 Degrees 03 Minutes 17 Seconds West along the West line of said tract of land, a distance of 300.03 feet to the Southwest corner thereof; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 454.85 feet; thence South 01 Degrees 59 Minutes 09 Seconds West, a distance of 93.20 feet; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 625.52 feet to a point in the East Right-of-Way line of said McClelland Boulevard; thence North 01 Degrees 59 Minutes 05 Seconds East along said East Right-of-Way line, a distance of 393.22 feet to the Point of Beginning, being a part of Miscellaneous Tract Numbered Two (2) in the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, range 33 West, in the City of Joplin, Jasper County, Missouri.

EXHIBIT B
to
Return of Property Agreement

Deed

The space above this line is for Recorder's use only

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and entered into as of this _____ day of _____, 2014, by and between Joplin Redevelopment Corporation, Inc., a Missouri urban redevelopment corporation (***"Grantor"***) with a mailing address at 602 S. Main Street, Joplin, Missouri, 64801, and Mercy Health, a Missouri not-for-profit corporation (***"Grantee"***), with a mailing address at Mercy Health Attention: Nancy Bukovic, 14528 S. Outer Forty Drive, Suite 100, Chesterfield, Missouri 63017.

WITNESSETH, that the said Grantor, for and in consideration of the sum of One Dollar ($1.00) and other valuable considerations paid by the Grantee, the receipt and sufficiency of which are hereby acknowledged, does by these presents GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the Grantee the Real Estate situated in the County of Jasper, State of Missouri, described in Exhibit A attached hereto (the "***Property***").

TO HAVE AND TO HOLD the same, together with all rights and appurtenances to the same belonging, unto the said Grantee, and to the heirs and assigns of such party or parties forever.

The said Grantor hereby covenanting that said Grantor and the heirs, executors, administrators and assigns of such Grantor, shall and will WARRANT AND DEFEND the title to the premises unto the said Grantee, and to the heirs and assigns of such Grantee forever against the lawful claims of all persons claiming by, through, or under Grantor, but none other, excepting, however, the general taxes for the calendar year 2014 and thereafter, and special taxes becoming a lien after the date of this deed.

[Remainder of page intentionally left blank; signatures on succeeding page]

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed as of the day and year first above written.

GRANTOR:

JOPLIN REDEVELOPMENT CORPORATION,
a Missouri urban redevelopment corporation

By: _____

Name: _____

Date: _____

STATE OF MISSOURI)
) ss.
COUNTY OF JASPER)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT_____, personally known to me to be the President of Joplin Redevelopment Corporation, Inc. a Missouri urban redevelopment corporation which is the Grantor, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such President he signed and delivered the said instrument pursuant to authority given by the Board of Directors of said Missouri urban redevelopment corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this ____ day of _____, 2014.

_____
Notary Public

My commission expires:

EXHIBIT A
to
Special Warranty Deed

Legal Description of Property

All that part of the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, in the City of Joplin, Jasper County, Missouri, being a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 436, and a part of the tract of land described in the General Warranty Deed duly recorded in Deed Book 2149, at Page 450, all in the Jasper County Recorder's Office, Carthage, Missouri, and being more particularly described as follows:

Commencing at the Northwest corner of the Southwest Quarter of Section 15, Township 27 North, Range 33 West, Jasper County, Missouri; thence South 01 Degrees 59 Minutes 05 Seconds West along the West line of said Quarter Section, a distance of 74.36 feet; thence departing said West line South 88 Degrees 00 Minutes 55 Seconds East, a distance of 50.00 feet to the point of intersection of the East Right-of-Way line of McClelland Boulevard, as now established, and the South Right-of-Way line of 26th Street, as now established, said point being the Point of Beginning; thence South 88 Degrees 45 Minutes 33 Seconds East along said South Right-of-Way line, a distance of 1,080.74 feet to the Northwest corner of the tract of land described in the Warranty Deed duly recorded in the Jasper County Recorder's Office in Deed Book 1285, at Page 317; thence departing said South Right-of-Way line South 02 Degrees 03 Minutes 17 Seconds West along the West line of said tract of land, a distance of 300.03 feet to the Southwest corner thereof; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 454.85 feet; thence South 01 Degrees 59 Minutes 09 Seconds West, a distance of 93.20 feet; thence North 88 Degrees 45 Minutes 33 Seconds West, a distance of 625.52 feet to a point in the East Right-of-Way line of said McClelland Boulevard; thence North 01 Degrees 59 Minutes 05 Seconds East along said East Right-of-Way line, a distance of 393.22 feet to the Point of Beginning, being a part of Miscellaneous Tract Numbered Two (2) in the Northwest Quarter of the Southwest Quarter of Section 15, Township 27 North, range 33 West, in the City of Joplin, Jasper County, Missouri.

COUNCIL BILL NO. **ORDINANCE NO.**

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.

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

Section 1. The agreement is by and among Mercy Health Southwest Missouri/Kansas Communities, f/k/a Mercy Health Systems-Joplin, Inc., a Missouri not-for-profit corporation (***"Mercy"***), Joplin Redevelopment Corporation, Inc., an urban redevelopment corporation, organized under the Missouri Urban Redevelopment Corporations Law (***"JRC"***), Wallace Bajjali Development Partners, L.P., a Texas Limited Partnership (**"Wallace Bajjali"**), and the City of Joplin, Missouri, a Missouri municipal corporation **("City")**, whereas the JRC will return to Mercy Health Systems-Joplin Inc. the return of property as identified in Exhibit A.

Section 2. That the Interim City Manager, or his designee, is hereby authorized to execute said Agreement for and on behalf of the City of Joplin.

Section 3. That this Ordinance dealing with a public improvement, is an emergency within the meaning of Section 2.12(6) of the Home Rule Charter of the City of Joplin, Missouri, and, the same shall be in full force and effect immediately from and after its adoption and approval. Specifically, this Ordinance requires the Joplin Redevelopment Corporation to return property to Mercy Health Systems-Joplin Inc. in order to initiate allow for public improvement planning and construction of a public park. It is important that these events take place so that the planning and construction can begin so that the improvements can be completed to meet certain deadlines.

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

Michael L. Seibert, Mayor

ATTEST:

Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

Peter Edwards, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

Item: Administration Contract for CDBG-Disaster Recovery-Round 1-Amendment 1
Originating Department: Planning and Community Development

Attachments: 1) Administration Contract Amendment No. 1
2) Council Bill No. 2014-411

Department Head: Nick Heatherly	Date: 9/8/14
Planning & Community Development Director: Troy Bolander TB	Date: 9-8-14
Finance Department: Leslie Haase	Date: 9-9-14
City Attorney: Peter Edwards PE	Date: 9/9/14
Interim City Manager: Sam Anselm	Date: 9/9/14

Recommended Action: Approval of Council Bill No. 2014-411

INTRODUCTION:

The following Council Bill is an amendment to the existing agreement approved on April 15, 2013 between the City of Joplin and Deloitte FAS for the Administration Services related to the City's initial $45 million award of Community Development Block Grant – Disaster Recovery Funds.

DISCUSSION:

One of the phases outlined in the agreement includes program implementation. Deloitte FAS assisted the City with creating and setting up the Joplin Homebuyer Assistance Program (JHAP). This highly successful program quickly outgrew the City's in house capability to administer. As a result, Deloitte FAS procured for and set up intake processes, opened and staffed a JHAP office, provided review of all closing documents, and tracked applicants on behalf of the City. Those tasks are considered 'Activity Delivery Costs' by HUD and, as such, can be charged directly to the Joplin Homebuyer Assistance Program, not administration. To preserve the administration dollars available to oversee the grant by the City and Deloitte FAS, which is restricted to 5%, staff recommends the costs incurred to directly run the program from August 10, 2013 through March 31, 2014 by Deloitte FAS be added to initial contract award for administration duties. The documented amount is $612,000.00. As required by HUD, a cost reasonable analysis was conducted to ensure the costs incurred were in line with the existing contract and the provision of like services by other entities.

RECOMMENDATION:
For the immediate preservation of public health and welfare, City Staff recommends approval of Council Bill No. 2014-411 on an emergency basis.

Amendment 1

First Amendment to the Community Development Block Grant-Disaster Recovery Administration Contract
Between
The City of Joplin
And
Deloitte Financial Advisory Services LLP

This First Amendment to the Community Development Block Grant-Disaster Recovery (CDBG-DR) Administration Contract between the City of Joplin and Deloitte Financial Advisory Services LLP for activity delivery for the Joplin Homebuyer Assistance Program is made and entered into as of the _____ day of _____, 2014.

RECITALS:

A. The parties desire to amend the Agreement.

B. Increase the amount to be reimbursed by $612,000.00 in CDBG-DR funds for activity delivery costs incurred from August 10, 2013 through March 31, 2014 by Deloitte FAS.

IN WITNESS WHEREOF, the parties have executed this amendment as to the date written above.

City of Joplin, Missouri
A Municipal Corporation

Deloitte Financial Advisory Services LLP

_____ _____

Samuel L. Anselm
Interim City Manager

COUNCIL BILL NO. 2014-411 **ORDINANCE NO.**

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.

WHEREAS, on May 22nd, 2011, an EF-5 tornado caused catastrophic damage to a significant portion of the City of Joplin; and

WHEREAS, there were thousands of households affected by the tornado; and

WHEREAS, the U. S. Department of Housing and Urban Development (HUD) provides assistance to communities that experience extreme disaster recovery circumstances; and

WHEREAS, the City of Joplin has been allocated CDBG-DR grant assistance in response to the loss of housing caused by the tornado on May 22nd, 2011; and

WHEREAS, the City of Joplin amends an agreement with Deloitte Financial Advisory Services LLP to provide activity delivery services for the Joplin Homebuyer Assistance Program.

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

Section 1. That the City amend the Agreement between the City of Joplin and Deloitte Financial Advisory Services (Deloitte FAS) approved on April 15, 2013, in the amount not to exceed Six Hundred Twelve Thousand ($612,000.00) for the provision of activity direct costs relating to the Joplin Homebuyer Assistance Program from August 10, 2013 through March 31, 2014 through Community Development Block Grant- Disaster Recovery funding.

Section 2. That the City Manager of the city of Joplin, Missouri, is hereby authorized to execute said Amendment, or amendment substantially similar in form, for and on behalf of the City of Joplin.

Section 3. This Ordinance is an emergency within the meaning of Section 2.12 (6) in that said ordinance provides for public health and welfare 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 allows Deloitte FAS to continue managing the Joplin Homebuyer Assistance Program.

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

_____
Michael Siebert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter Edwards, City Attorney

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

Item: Administration Contract for CDBG-Disaster Recovery – Round 1 – Amendment #2
Originating Department: Planning & Community Development

Attachments: 1) Administration Contract Amendment No. 2
2) Exhibit 1 – Engagement Letter dated August 26, 2014
3) Council Bill No. 2014-412

Department Head: Nick Heatherly — Date: 9/8/14
Planning & Community Development Director: Troy Bolander T.B. — Date: 9-8-14
Finance Department: Leslie Haase — Date: 9-9-14
City Attorney: Peter Edwards — Date: 9/9/14
Interim City Manager: Sam Anselm — Date: 9/9/14

Recommended Action: Approval of Council Bill No. 2014-412

INTRODUCTION:

The following Council Bill is a second amendment to the existing agreement approved on April 15, 2013 between the City of Joplin and Deloitte FAS for the Administration Services related to the City's initial $45 million award of Community Development Block Grant – Disaster Recovery Funds.

DISCUSSION:

The Engagement Letter attached to the amendment delineates Joplin Homebuyers Assistance Program (JHAP) Activity Delivery task support that is currently being undertaken by Deloitte FAS and additional tasks that will also be undertaken by Deloitte FAS. As of the end of August, 2014, nearly $4 million of assistance has been provided and over 140 closings have been completed. This highly successful program quickly outgrew the City's in house capability to administer. As a result, Deloitte FAS has been providing the service and is being asked to continue to provide the service at an even higher level. Those tasks are considered 'Activity Delivery Costs' by HUD and, as such, can be charged directly to the Joplin Homebuyers Assistance Program, not administration. To preserve the administration dollars available to oversee the grant by the City and Deloitte FAS, which is restricted to 5%, staff recommends additional funding in the amount not to exceed $974,940 or $81,245 monthly over a twelve month period ending July 15, 2015 or as directed by the City.

RECOMMENDATION:

For the immediate preservation of public health and welfare, city staff recommends approval of Council Bill No. 2014-412 on an emergency basis.

Amendment 2

Second Amendment to the Community Development Block Grant-Disaster Recovery Administration Contract
Between
The City of Joplin
And
Deloitte Financial Advisory Services LLP

This Second Amendment to the Community Development Block Grant-Disaster Recovery (CDBG-DR) Administration Contract between the City of Joplin and Deloitte Financial Advisory Services LLP for activity delivery tasks for the Joplin Homebuyer Assistance Program (JHAP) is made and entered into as of the _____ day of _____, 2014.

RECITALS:

A. The parties desire to amend the Agreement.

B. Increase the amount to be reimbursed by $974,940.00 in CDBG-DR funds for activity delivery tasks by Deloitte FAS for the Joplin Homebuyer Assistance Program as defined in the Engagement Letter dated August 26, 2014 (Exhibit 1).

C. Activity delivery tasks shall be reimbursed through July 15, 2015, or as directed by the City.

IN WITNESS WHEREOF, the parties have executed this amendment as to the date written above.

City of Joplin, Missouri
A Municipal Corporation

Deloitte Financial Advisory Services LLP

_____

Samuel L. Anselm
Interim City Manager

_____

EXHIBIT 1

Mr. Troy Bolander, Manager
Planning and Community Development
City of Joplin
602 S. Main St.
Joplin, MO 64801

August 26, 2014

Re: Engagement Letter Agreement between the City of Joplin (City) and Deloitte Financial Advisory Services LLP (Deloitte), dated April 22nd, 2013.

Dear Mr. Bolander,

The City and Deloitte agree to modify the above engagement letter to include the following additional tasks to be executed by Deloitte. Deloitte will provide Activity Delivery task support for the implementation of the Joplin Homebuyers Assistance Program (J-HAP). Deloitte shall perform the following tasks under the existing terms and conditions of our agreement.

Step 1 -Assist the City to evaluate the income eligibility of J-HAP applicants

Current Tasks

Deloitte has been performing the following tasks:

- Application intake assistance
- Intake documentation assistance
- Assisting with applicant income review
- Supporting income eligibility calculation/verification
- Assistance with preparing preliminary income approval letter to applicants
- Supporting document retention of active applicant hardcopy files
- Assisting with generation of applicant assistance letter
- Assist City with applicant issue resolution process

Additional Tasks

Deloitte is to provide the following additional tasks:

- Prepare initial income determination recommendation
- Produce draft applicant approval/denial letter
- Provide clerical administrative support to assist with processing applicant income determination letters.
- Provide originals and copies of all active applicant files for record keeping and archival to the City
- Provide online storage of all J-HAP files
- Assist in the development of J-HAP formal Policy and Procedures Manual

Under the direction of the City and in accordance with the J-HAP Policies and Procedures, Deloitte will meet with J-HAP applicants as necessary to inform potential applicants of the J-HAP criteria and explain

the J-HAP application process. Deloitte will also receive required J-HAP application documentation, and review the application for completeness and in compliance with the J-HAP Policies and Procedures, to facilitate the City to make a preliminary income eligibility determination regarding the applicant's application. Following the City's preliminary income determination, Deloitte will prepare the applicant's income eligibility determination letter for the City, which will be signed by the City and then delivered to the applicant. The City shall be responsible for reviewing application recommendations provided by Deloitte and making official decisions regarding the eligibility of each applicant.

Step 2 - Assist the City to gather appropriate property-related information to the City to make a J-HAP Environmental Review Record (ERR) eligibility determination

Current Tasks

Deloitte is currently performing the following tasks:

- Prepare property determination letter
- Assist with property determination letter delivery to applicant
- Assist City with applicant issue resolution

Additional Tasks

Deloitte to provide the following additional tasks:

- Process property assessment request and prepare appropriate environmental review records for approval by the City
- Prepare property assessment notification letter for review by the City
- Take property image (and include on SharePoint)
- Conduct environmental review of identified new construction properties according to "Categorical Exclusion, Not Subject To" requirements outlined in CFR 58.5.
- Prepare property determination letter
- Assist City with data reporting requirements
- Provide administrative support for the City's applicant appeal process

Under the direction of the City and in accordance with the J-HAP Policies and Procedures, Deloitte will collect identified property-related information described in the J-HAP ERR checklist. Deloitte will review the information for completeness and compliance with the J-HAP Policies and Procedures prior to delivering it to the City; the City will then make the final J-HAP property eligibility review determination. Following the City's property eligibility review determination, Deloitte will prepare the applicant's property eligibility determination letter for the City, which will be signed by the City and then delivered to the applicant.

Step 3 - Grant Application Closing

Current Tasks:

Deloitte is currently performing the following tasks:

- Prepare J-HAP forgivable loan agreement request
- Assist with and verify J-HAP Agreement execution
- Assist with non-legal preparation of the applicant's occupancy agreement for the City and verify signing of occupancy agreement by applicant
- Distribute Closing guidance to applicant
- Prepare J-HAP final award letter for City's delivery to the applicant
- Review and verify Final Settlement Statement against check list requirements
- Assist City with applicant issue resolution

Additional Tasks

Deloitte to provide the following additional tasks:

- Collect closing documents for record keeping
- Scan closing documents into SharePoint
- Prepare draft J-HAP final award letter for the City's review
- Distribute closing documents to lenders after they have been executed by the City and Applicant
- Assist with communicating status of loan closings to lenders and title companies
- Review final Settlement Statements, and closing documents for completeness and conformance with check list requirements
- Prepare draft Closing instrument for review by the City
- Prepare grant check request for approval and execution by the City
- Collect final recorded documents and provide them to the City for record keeping and archival.

Under the direction of the City and in accordance with the J-HAP Policies and Procedures, Deloitte will collect copies of the applicant's home purchase financing and property title documentation. Deloitte will review this information for completeness and in compliance with the J-HAP Policies and Procedures, and then deliver this information to facilitate the City's final J-HAP grant approval determination.

Provide Access to Electronic Files

Deloitte shall provide City with electronic access via SharePoint to applicant files and supporting documentation. Electronic access shall be provided during the City's normal business hours. This service is provided as a convenience for the City and only informal training and technical support shall be provided. Access shall be strictly limited to City, Deloitte and Deloitte subcontractor personnel who require access to perform J-HAP related tasks.

Deloitte will provide City with electronic copies of documents and related data for its own record keeping as applications are finalized. After these documents and related data have been delivered, they will be removed from the SharePoint site. No applicant data shall be stored or retained by Deloitte after the expiration of this agreement or the completion of services.

City's Responsibilities

- City shall be responsible for reviewing, approving and signing all forms and correspondence to applicants, lenders, and regulators.

- When required, work will be supervised by the City Attorney or other counsel as may retained by the City. (Deloitte does not engage in the practice of law and does not provide legal services.)
- City shall be responsible for notifying Deloitte when its employees require day-to-day access to electronic files as a result of their job duties related to J-HAP, and within one business day of no longer requiring such access (e.g., change of job duties, change of employment status with the City of Joplin, etc.).
- City shall require its personnel who require access to applicant data to complete any training required by Deloitte before accessing the system.
- City shall be responsible for its own data and network security, including but not limited to antivirus and intrusion prevention when accessing Electronic Files.
- City will be responsible for maintaining its own records.

Schedule

Deloitte will provide this additional support starting on July 15, 2014 and expects to complete these tasks by July 15, 2015 or as directed by the City.

Additional Fees, Expenses and Assumptions

Deloitte's estimated costs for performing these additional tasks per month are provided in the following table. Deloitte will invoice the City for these tasks on a time and materials basis in accordance with the terms of our engagement letter. The costs associated with J-HAP tasks performed by Deloitte will be treated as Activity Delivery Costs, and the City will not deduct these invoiced expenses from the Grant Administration Budget outlined on page 6 of our engagement letter with the City.

Marketing Activities	$	3,750
Project Oversight	$	8,055
Ongoing Operations	$	69,440
Total	**$**	**81,245**

We are estimating the period of performance for provision for these services to be 12 months, unless otherwise directed by the City. We are requesting an increase to our contract value with the City for $974,940. Professional service rates are as per our engagement letter.

If you agree to this modification to our contract, please sign the enclosed copy of this letter in the space provided and return it to me. If you have any questions, please call me at (202) 879-5637. We appreciate the opportunity to work for you and look forward to your prompt response.

Very truly yours,

DELOITTE FINANCIAL ADVISORY SERVICES LLP

By: Rizwan Shah, Director

Deloitte Financial Advisory Services LLP

Accepted by: City of Joplin, Missouri

By:

Title:

Date:

COUNCIL BILL NO. 2014-412 **ORDINANCE NO.**

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.

WHEREAS, on May 22nd, 2011, an EF-5 tornado caused catastrophic damage to a significant portion of the City of Joplin; and

WHEREAS, there were thousands of households affected by the tornado; and

WHEREAS, the U. S. Department of Housing and Urban Development (HUD) provides assistance to communities that experience extreme disaster recovery circumstances; and

WHEREAS, the City of Joplin has been allocated CDBG-DR grant assistance in response to the loss of housing, infrastructure, and economic impacts caused by the tornado on May 22nd, 2011; and

WHEREAS, the City of Joplin amends an agreement with Deloitte Financial Advisory Services LLP to provide activity delivery services for the Joplin Homebuyer Assistance Program.

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

Section 1. That the City amend the Agreement between the City of Joplin and Deloitte Financial Advisory Services (Deloitte FAS) approved on April 15, 2013, as described in the attached Engagement Letter of August 26, 2014 (Exhibit 1) in the amount not to exceed Nine Hundred Seventy-four Thousand Nine Hundred Forty Dollars ($974,940.00) for the provision of activity direct tasks relating to the Joplin Homebuyer Assistance Program (JHAP) through July 15, 2015 through Community Development Block Grant- Disaster Recovery funding.

Section 2. That the City Manager of the City of Joplin, Missouri, is hereby authorized to execute said Engagement Letter, or letter substantially similar in form, for and on behalf of the City of Joplin.

Section 3. This Ordinance is an emergency within the meaning of Section 2.12 (6) in that said ordinance provides for public health and welfare 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 allows Deloitte FAS to continue managing the Joplin Homebuyer Assistance Program.

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

_____
Michael Siebert, Mayor

ATTEST:

_____
Barbara L. Hogelin, City Clerk

APPROVED AS TO FORM:

_____
Peter Edwards, City Attorney

City of Joplin City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

ITEM: Council Bill No. 2014-618. This Council Bill approves the agreement between MoDOT (Missouri Department of Transportation) and the City of Joplin for upgrading the Wayfinder System Signage throughout the City of Joplin.

ORIGINATING DEPARTMENT: Convention and Visitors Bureau
ATTACHMENTS: Council Bill No. 2014-618, Agreement.

DEPARTMENT HEAD:	Patrick W. Tuttle	DATE: 9/8/14
INTERIM CITY MANAGER:	Sam Anselm	DATE: 9/9/14
CITY ATTORNEY:	Peter C. Edwards	DATE: 9/8/14
PUBLIC WORKS:	Nick Heatherly	DATE: 9/8/14
FINANCE DEPARTMENT:	Leslie Haase	DATE: 9-8-14

INTRODUCTION:

This Council Bill seeks permission from Council for the Interim City Manager to sign an agreement with MoDOT allowing the City to upgrade the Wayfinder Signage throughout the City of Joplin.

SUMMARY:

The effort for Joplin to have a Wayfinding system started in 2007 with input from a tourism related citizen's committee. Their initial task was to identify specific districts the signs would directed motorist to. The committee met and formulated four distinct districts – Downtown Historic, Hotel, Range Line Retail and Sports. Installation of the current signage was completed in 2009. These signs were manufactured in-house and currently do not meet Federal and MoDOT Highway Standards.

In late 2011, members of the original citizens committee, along with JCVB and Public Works reps came back together to discuss upgrading the existing system. At the second meeting MoDOT representatives educated the group on the process for an upgrade application, as well as what standards needed to be met. The MoDOT agreement before Council is required to upgrade the existing Wayfinder System throughout the City of Joplin. MoDOT has approved the attached designs, colors schemes, materials and locations. This upgrade will bring Joplin's Wayfinder System into compliance with Federal and MoDOT Highway Standards. Through a bid process, Sign Designs won the manufacturing and installation of the upgrades. Funding for this work is in the FY2014 CVB budget.

RECOMMENDATION:

The Joplin CVB and Public Works (Operations and Sign Shop) have worked closely with MoDOT to assure all upgrades comply with current Federal and MoDOT Highway Standards. All parties recommend Council approve to allow the Interim City Manager to sign this agreement.

COUNCIL BILL NO. 2014-618 ORDINANCE NO.

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.

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

Section 1. That the 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, in substantially similar form to that attached hereto and incorporated herein, be and the same is, hereby approved.

Section 2. That the City Manager is hereby authorized and directed to execute said Agreement by and on behalf of the City of Joplin upon the recommendation and approval of the City Attorney.

Section 3. That this Ordinance is an emergency within the meaning of Section 2.12(1)(6) of the Home Rule Charter of the City of Joplin, Missouri, in that said ordinance deals with the preservation of property, health, and safety and relating to public improvements, and as such, is considered an emergency and shall take effect immediately upon passage. Specifically, this agreement is being funded from the current year's fiscal budget, and needs approval so funds can be utilized from the current budget.

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

_____
Michael L. Seibert, Mayor

ATTEST:

_____
Barbara L. Hogelin,
City Clerk

APPROVED AS TO FORM:

_____
Peter C. Edwards,
City Attorney

CCO Form: TR47
Approved: 04/08 (BDG)
Revised: 11/12 (ASB)
Modified:

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
WAYFINDING SIGNING AGREEMENT
(Installed and Maintained by the City)

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), whose address is P.O. Box 270, 105 W. Capitol, Jefferson City, Missouri 65102, and **City of Joplin** (hereinafter, "City"), whose address is **602 S. Main Street - Joplin, MO 64801**.

WITNNESSETH:

WHEREAS, the City has adopted a wayfinding signing program and requests approval from the Commission to install and maintain Wayfinding signs further described below in **Jasper and Newton** County, Missouri for the city of **Joplin**; and

WHEREAS, the Commission is willing to approve the City's request subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties agree as follows:

(1) LOCATION AND DISPLAY: The City hereby requests that the Commission allow the City to construct, install and maintain Wayfinding signs under the following conditions:

(A) The sign(s) designs will be reviewed and approved by the Commission to assure they do not violate the guidelines and regulations of the Federal *Manual on Uniform Traffic Control Devices* (MUTCD) and the Commission's *Engineering Policy Guide* for size, color and reflectorization. The sign(s) shall read as displayed in Exhibit A (provided by City).

(B) The sign(s) installation location(s) will be reviewed and approved by the Commission to assure they do not interfere with the performance of other normal highway signing or represent any potential hazard to the traveling public. Sign locations will be generally located as illustrated in Exhibit B (provided by City).

(C) Any additions or modifications to City's Wayfinding signing plan, after the execution of this agreement, will be reviewed by the Commission prior to said modifications.

(2) INSTALLATION: All sign installations shall include a breakaway post assembly, in accordance with Commission requirements. The City shall provide plans with the specific location details of the sign installation for approval by the Commission prior to installation. All costs associated with this installation shall be borne by the City.

(3) TRAFFIC CONTROL: All work zone signs and traffic control devices to be used during installation and maintenance shall be in accordance and comply with the

latest revision of the Manual on Uniform Traffic Control Devices for Streets and Highways or as directed by the District Engineer or his authorized representative. This applies to the initial installation as well as during any future maintenance activities.

(4) PERMIT AND BONDING:

(A) Before beginning the installation work, the City shall secure a permit from the Commission's District Engineer for the installation of the proposed sign(s). The City shall comply with any additional requirements placed on the issuance of the permit by the District Engineer. The City may provide written authority to the Commission's District Engineer enabling its contractor to obtain the permit as an agent for the City. If required, separate permit(s) for future maintenance will be issued.

(B) The City shall secure sufficient bond, as determined by the Commission's District Engineer or authorized representative, for the construction of the wayfinding sign(s) on Commission right-of-way.

(5) COSTS: If this request is approved, all costs associated with the construction, installation, maintenance, or relocation of Wayfinding signs, including, but not limited to work zone signing and traffic control during construction will be borne entirely by the City, with no cost incurred by the Commission. In the event the Commission incurs any costs in association with the performance of this Agreement, the City shall reimburse the Commission for those costs.

(6) HIGHWAY SPECIFICATIONS: All work done pursuant to this Agreement shall be in accordance with applicable portions of the latest editions of the Missouri Highways and Transportation Commission's *Standard Specifications for Highway Construction* and the *Standard Plans for Highway Construction*. The City shall provide a copy of its contractor's certification of material used to the Commission.

(7) MAINTENANCE: The City shall maintain signs following the guidelines of the Federal *Manual on Uniform Traffic Control Devices* (MUTCD) and the Commission's *Engineering Policy Guide* for reflectivity, alignment, and placement. The Commission may request maintenance of the signs by the City, at the City's expense, and the City shall promptly comply with the Commission's request for maintenance of the signs. Failure by the City to complete requested maintenance within 14 calendar days from Commission's request shall be grounds for removal of all signs installed by the City. Given the complexity of some Wayfinding signs, should a replacement sign(s) be part of the maintenance required additional time would be granted by the Commission to complete the repairs. However, any material or remains of the sign installation in question must be removed from the site to eliminate a hazard for the traveling public.

(8) MAINTENANCE BY THE CITY WITHIN COMMISSION RIGHT OF WAY: In order to coordinate maintenance activities on the sign(s), the City shall notify the Commission either by telephone, telefax, or in writing, prior to performing maintenance work within Commission right of way. Such notification shall be made to the Commission's District Engineer or a designated assistant, and shall include the location and nature of the work to be performed. Any maintenance activities done by the City which involves closing one or more of the through lanes, affects the safety of the traveling public, will cause permanent changes to the configuration of the improvement or involve excavation of the soil may require a permit from the Commission. The City will be informed of whether or not a permit is required at the time the City notifies Commission

of the proposed maintenance activities. The City shall comply with any additional condition placed upon the issuance of the permit.

(9) REMOVAL:

(A) If the City fails to comply with the provisions stated herein regarding the maintenance responsibilities, the Commission may remove the sign(s).

(B) If the Commission, in its sole discretion, determines that the sign(s) is no longer justified, the Commission may remove the sign(s).

(C) If the Commission, in its sole discretion, determines that the sign(s) should be removed or eliminated as part of a highway or transportation project, the Commission may remove the sign(s).

(D) If the Commission, in its sole discretion, determines that the removal of the sign(s) from the Commission's right of way is in the best interests of the state highway system, the Commission may remove the sign(s).

(E) If the Commission removes the sign(s) in accordance with any provision of this Agreement, the Commission will not reimburse the City for the cost or value of the sign(s).

(10) CITY'S RESPONSIBILITIES: The Commission may request the City to modify the sign(s) when necessary to comply with changed standards that might be promulgated or adopted, at the City's cost. The Commission, at its sole discretion, may request the City to relocate the signs to accommodate the install of additional highway signs the Commission deems more appropriate, at the City's cost. The Commission may request the City to remove and relocate signs, at the City's cost, to accommodate the construction of roadway improvements. Should the Commission make any of these requests, the City shall comply with the Commission's request within 14 calendar days. Given the complexity of some Wayfinding signs, should a sign need to be fabricated, additional time will be granted by the Commission to allow for that work to be completed.

(11) CITY'S REPRESENTATIVE: The City's [Authorized Person Title] is designated, as the City's representative for the purpose of administering the provisions of this Agreement. The City's representative may designate by written notice other persons having the authority to act on behalf of the City in furtherance of the performance of this Agreement. All Notices or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

Sam Anselm
Interim City Manager
City of Joplin
602 S. Main Street
Joplin, MO 64801
417-624-0820

(12) 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.

(13) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City 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 City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City is required or will require any contractor procured by the City 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.

(14) NO INTEREST: By placing and maintaining signs on the Commission's right of way, the City gains no property interest in Commission's right of way. The Commission shall not be obligated to keep the sign(s) in place if the Commission, in its sole discretion, determines removal or modification of the sign(s) is in the best interests of the state highway system or the Commission.

(15) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the City.

(16) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(17) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be

interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(18) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(19) ATTACHMENTS: The following Exhibits and other documents are attached to and made a part of this Agreement:

Exhibit A: Sign Display Detail Supplied by the City depicting an image of each sign detail used in the signing plan.

Exhibit B: Sign Location Layout Supplied by the City, the detail will display the boundaries of each Wayfinding district.

[Remainder of Page Intentionally Left Blank; Execution and Signature Page Follows]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below:

Executed by the City the _____ day of _____, 20_____.

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

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

_____

Title _____

ATTEST:

_____
Secretary to the Commission

Approved as to Form:

_____
Commission Counsel

CITY OF _____

By_____

Title _____

ATTEST:

By _____

Title _____

Approved as to Form:

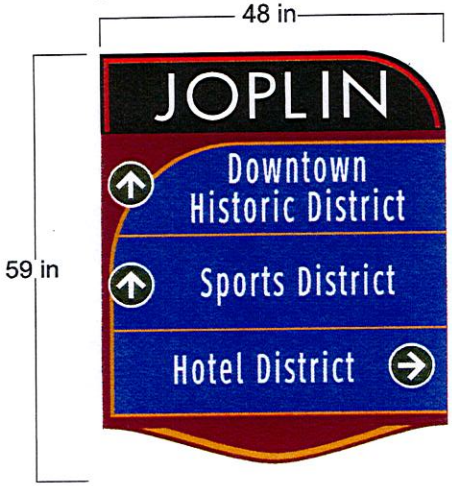
_____

Title _____

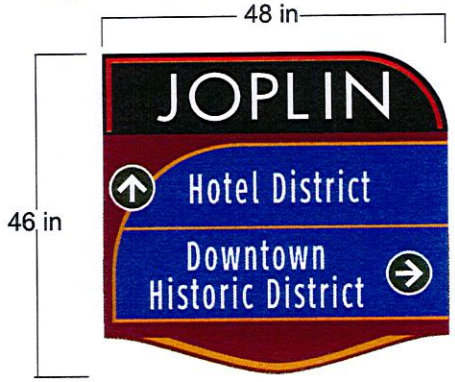
Ordinance Number_____

Copies: City
District Engineer
Traffic Division
Controller's Division

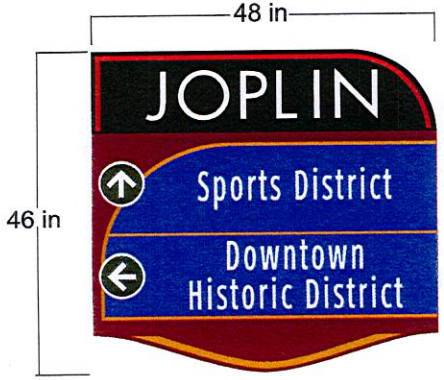
Sign 1 - Main - Northbound at 32nd*



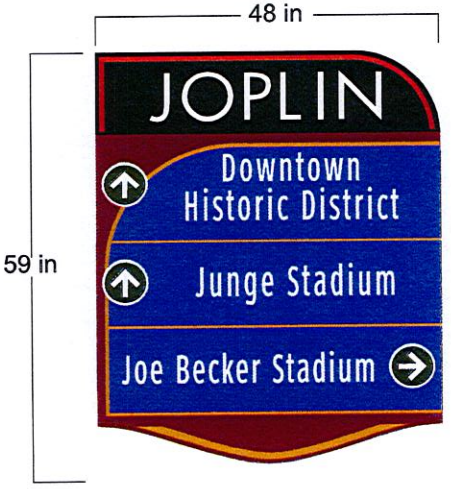
Sign 11 -Range Line - Southbound at 7th*



Sign 12 -Range Line - Northbound at 7th*



Sign 13 - 7th Westbound at High Ave*



Sign Specifications

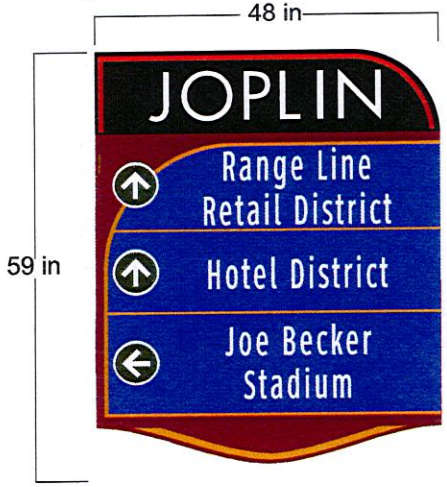
MODOT
Sign Locations

Way-finding signage
project
July 3, 2014

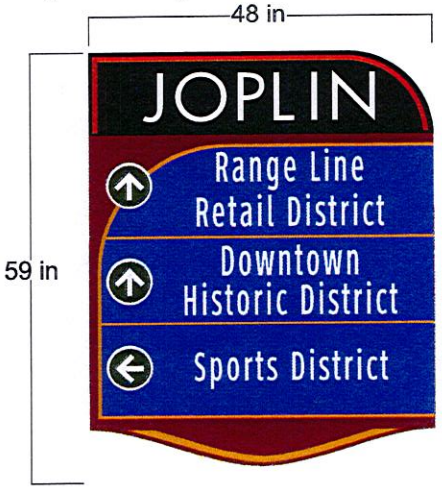
Joplin Convention
and Visitors Bureau
Joplin, Missouri

SIGN Designs
RISING HIGHER
1720 W. 7th St. Joplin, MO 64801
www.sign-designs.com

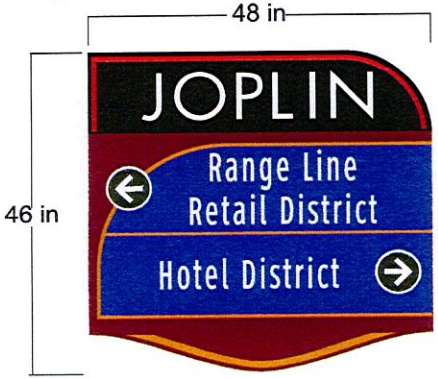
Sign 14 - 7th Eastbound at High Ave*



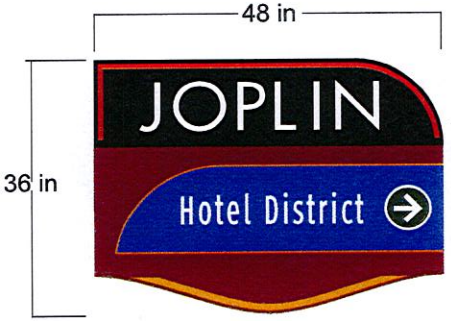
Sign 15 - Range Line Northbound at 32nd*



Sign 16 - 32nd Eastbound at Range Line*



Sign 17 - 7th Eastbound at Range Line*



Sign Specifications

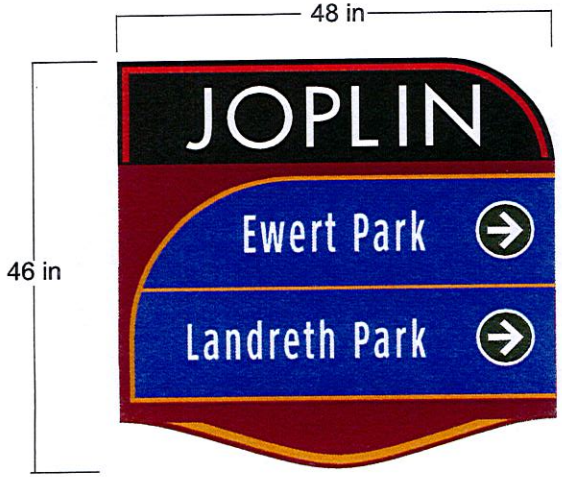
MODOT
Sign Locations

Way-finding signage
project
July 3, 2014

Joplin Convention
and Visitors Bureau
Joplin, Missouri

SIGN Designs
RISING HIGHER
1720 W. 7th St. Joplin, MO 64801
www.sign-designs.com

Sign 19 - 7th Westbound at Murphy Blvd*



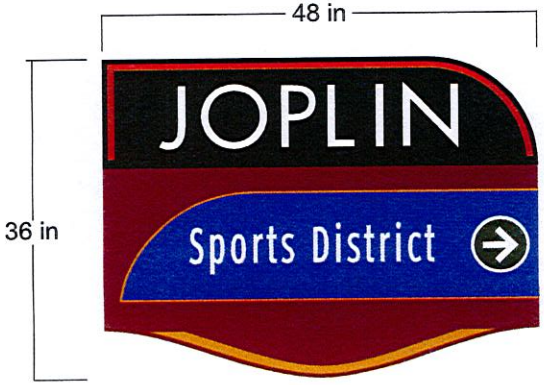
Double Sided

Sign 20 - 7th Westbound at Byers Ave*

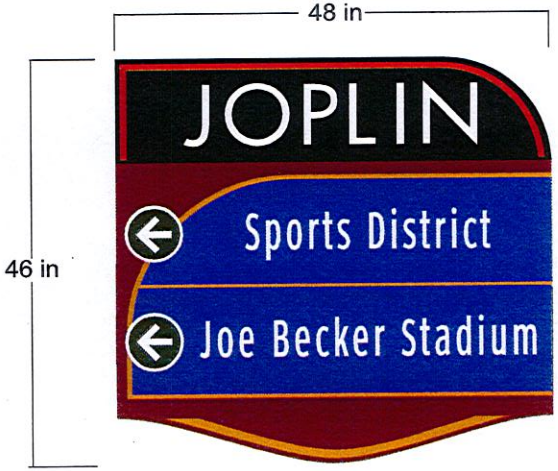


Double Sided

Sign 22 - 32nd Westbound at Main St*



Sign 23 - Range Line Northbound at 4th*



Sign Specifications

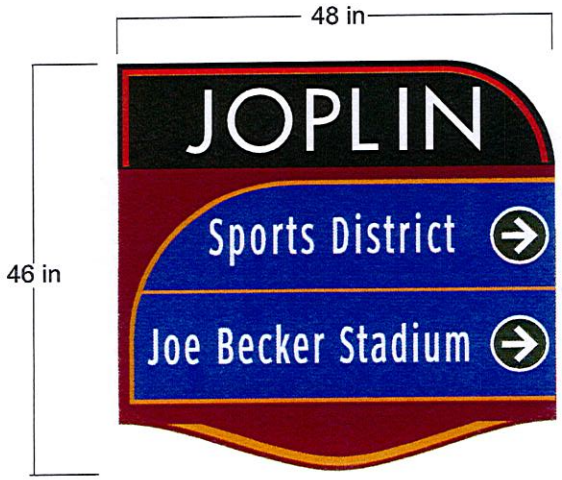
MODOT
Sign Locations

Way-finding signage
project
July 3, 2014

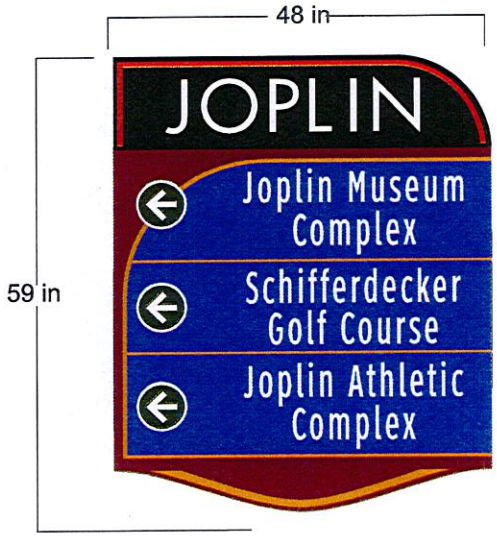
Joplin Convention
and Visitors Bureau
Joplin, Missouri

SIGN Designs
RISING HIGHER
1720 W. 7th St. Joplin, MO 64801
www.sign-designs.com

Sign 24 - Range Line Southbound at 4th*



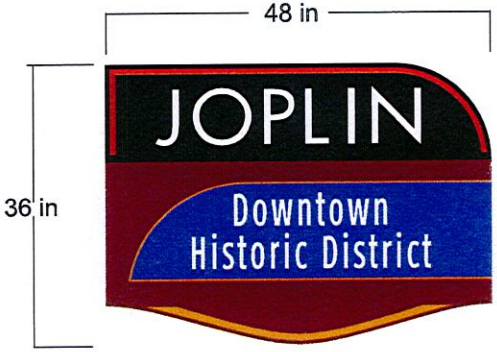
Sign 27- 7th & Schifferdecker - Eastbound*



Sign 28- 7th & Schifferdecker - Westbound*



Sign E - 7th Westbound at Kentucky*



Sign Specifications

MODOT
Sign Locations

Way-finding signage
project
July 3, 2014

Joplin Convention
and Visitors Bureau
Joplin, Missouri

SIGN Designs
RISING HIGHER
1720 W. 7th St. Joplin, MO 64801
www.sign-designs.com

City of **JOPLIN** City Council Agenda Item

Requested Council Meeting Date: September 15, 2014

Item: COUNCIL BILL NO. 2014-619
Originating Department: PUBLIC WORKS - AIRPORT

Attachments: 1) Copy of Agreement
2) Copy of Council Bill

Airport Manager:	Steve Stockam	Date: 9-8-14
Department Head:	Nick Heatherly	Date: 9/8/14
Finance Department:	Leslie Haase	Date: 9-9-14
City Attorney:	Peter Edwards	Date: 9/9/14
City Manager:	Sam Anselm	Date: 9/9/14

Recommended Action: 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 on an emergency basis.

Summary: In calendar years 2010 and 2011 enplanements at the Joplin Regional Airport fell below 10,000 passengers. This activity level is what triggers our Primary Federal Entitlements under the FAA Airport Improvement Program (AIP). In these two years we did qualify for $150,000 each year of Non Primary Entitlement funds that are administered by MoDOT Aviation under the State Block Grant Program. Eligibility of these funds expire after three funding years.

Non Primary Entitlement Funds are more flexible in the ability use the funds for buildings as compared to Primary Entitlements. Hangar Building A is a 36 unit T-Hangar facility that was built in 1967. While the main structure of the facility is sound the electrical system, doors, and roof require a major rehabilitation.

The engineering firm of Crawford, Murphy, & Tilley (CMT) has been selected to assist in the evaluation, scoping, bidding, and administration of the project.

Discussion: The Missouri Highways and Transportation Commission have issued this State Block Grant for the full $300,000.00 for the rehabilitation of the Hangar Building "A" project. All cost for this project will be paid from this State Block Grant based on a 95/5 State/Local share. The Local Share will be approximately $15,790.00.

Recommendation: Staff recommends acceptance of the State Block Grant by and between the City of Joplin and MoDOT for the rehabilitation of Hangar Building "A" at the Joplin Regional Airport on an emergency basis to meet the MoDOT timeline.

CCO FORM: AC10
Approved: 03/91 (KR)
Revised: 03/13 (MWH)
Modified:

Sponsor: City of Joplin
Project No.: 14-090A-1
Airport Name: Joplin Regional

CFDA Number: CFDA #20.106
CFDA Title: Airport Improvement Program
Federal Agency: Federal Aviation Administration, Department of Transportation

STATE BLOCK GRANT AGREEMENT

SECTION I - TITLE, AUTHORIZATION, PROJECT DESCRIPTION

--State Block Grant Agreement
--Federal Authorization - Airport and Airway Improvement Act of 1982 (as amended)
--Project Description - Planning, Land/Easement Appraisals and Acquisitions, Surveying, Engineering Design, Construction

SECTION II - STANDARD AGREEMENT ITEMS

1. PURPOSE
2. PROJECT TIME PERIOD
3. TITLE EVIDENCE TO EXISTING AIRPORT PROPERTY
4. AMOUNT OF GRANT
5. AMOUNT OF MATCHING FUNDS
6. ALLOWABLE COSTS
7. WITHDRAWAL OF GRANT OFFER
8. EXPIRATION OF GRANT OFFER
9. FEDERAL SHARE OF COSTS
10. RECOVERY OF FEDERAL FUNDS
11. PAYMENT
12. ADMINISTRATIVE/AUDIT REQUIREMENTS
13. APPENDIX
14. ASSURANCES/COMPLIANCE
15. LEASES/AGREEMENTS
16. NONDISCRIMINATION ASSURANCE
17. CANCELLATION
18. VENUE
19. LAW OF MISSOURI TO GOVERN
20. WORK PRODUCT
21. CONFIDENTIALITY
22. NONSOLICITATION
23. DISPUTES
24. INDEMNIFICATION
25. HOLD HARMLESS
26. NOTIFICATION OF CHANGE
27. DURATION OF GRANT OBLIGATIONS
28. AMENDMENTS
29. PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS
30. ASSIGNMENT
31. BANKRUPTCY
32. COMMISSION REPRESENTATIVE
33. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006
34. SPECIAL CONDITIONS

SECTION III – PLANNING

35. AIRPORT LAYOUT PLAN
36. AIRPORT PROPERTY MAP
37. ENVIRONMENTAL IMPACT EVALUATION
38. EXHIBIT "A" PROPERTY MAP

SECTION IV - LAND/EASEMENT APPRAISALS AND ACQUISITIONS

39. RUNWAY PROTECTION ZONE

SECTION V - DESIGN

40. ENGINEER'S DESIGN REPORT
41. GEOMETRIC DESIGN CRITERIA
42. PLANS, SPECIFICATION AND ESTIMATES

SECTION VI - CONSTRUCTION

43. CONSTRUCTION OBSERVATION/INSPECTION REQUIREMENTS
44. CONSTRUCTION PROGRESS AND INSPECTION REPORTS
45. WAGE LAWS
46. COMPETITIVE SELECTION OF CONTRACTOR
47. REVIEW OF BIDS AND CONTRACT AWARD
48. NOTICE TO PROCEED
49. DISADVANTAGED BUSINESS ENTERPRISES - CONSTRUCTION
50. LABOR STANDARDS INTERVIEWS
51. AIR AND WATER QUALITY STANDARDS
52. FILING NOTICE OF LANDING AREA PROPOSAL
53. FILING NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION
54. CHANGE ORDERS/SUPPLEMENTAL AGREEMENTS
55. RESPONSIBILITY FOR PROJECT SAFETY
56. RECORD DRAWINGS

SECTION VII - GRANT ACCEPTANCE

--Signature by sponsor constitutes acceptance of grant terms and conditions. Failure to comply with grant requirements will jeopardize funding eligibility.
--Certificate of sponsor's attorney

Sponsor:	City of Joplin
Project No.	14-090A-1
Airport Name	Joplin Regional
CFDA Number:	CFDA #20.106
CFDA Title:	Airport Improvement Program
Federal Agency:	Federal Aviation Administration, Department of Transportation

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
STATE BLOCK GRANT AGREEMENT

THIS GRANT AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Joplin (hereinafter, "Sponsor"). Reference will also be made to the Federal Aviation Administration (hereinafter, "FAA") and the Federal Airport Improvement Program (hereinafter, "AIP").

WITNESSETH:

WHEREAS, Section 116 of the federal Airport and Airway Safety and Capacity Expansion Act of 1987 amended the previous Act of 1982 by adding new section 534 entitled "State Block Grant Pilot Program", (Title 49 United States Code Section 47128); and

WHEREAS, the Federal Aviation Reauthorization Act of 1996 declared the State Block Grant Program to be permanent; and

WHEREAS, the Commission has been selected by the FAA to administer state block grant federal funds under said program; and

WHEREAS, the Sponsor has applied to the Commission for a sub grant under said program; and

WHEREAS, the Commission has agreed to award funds to the Sponsor with the understanding that such funds will be used for a project pursuant to this Agreement for the purposes generally described as follows:

Design and Construct T-Hangar Rehabilitation;

NOW, THEREFORE, in consideration of these mutual covenants, promises and representations, the parties agree as follows:

(1) PURPOSE: The purpose of this Agreement is to provide financial assistance to the Sponsor under the State Block Grant Program.

(2) PROJECT TIME PERIOD: The project period shall be from the date of execution by the Commission to September 30, 2015. The Commission's chief engineer may, for good cause as shown by the Sponsor in writing, extend the project time period.

(3) TITLE EVIDENCE TO EXISTING AIRPORT PROPERTY: The Sponsor shall provide satisfactory evidence of title to all existing airport property and avigation

easements and address any and all encumbrances. Satisfactory evidence will consist of the Sponsor's execution of a Certificate of Title form provided by the Commission.

(4) AMOUNT OF GRANT: The initial amount of this grant is not to exceed Three Hundred Thousand Dollars dollars ($300,000) for eligible preliminary project costs and/or land/easement acquisition. A grant amendment to cover the balance of eligible project costs will be provided after construction bids are received.

(A) The amount of this grant stated above represents ninety-five percent (95%) of eligible project costs.

(B) The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will the Commission provide the Sponsor funding for improvements or work that are not actually performed. The release of all funding under this Agreement is subject to review and approval of all project expenses to ensure that they are qualifying expenses under this program.

(5) AMOUNT OF MATCHING FUNDS: The initial amount of local matching funds to be furnished by the Sponsor is not to exceed Fifteen Thousand Seven Hundred Ninety dollars ($15,790).

(A) The amount of matching funds stated above represents five percent (5%) of eligible project costs.

(B) The Sponsor warrants to the Commission that it has sufficient cash on deposit to provide the local matching funds identified above, as well as to cover one hundred percent (100%) of any ineligible items included in the scope of work.

(6) ALLOWABLE COSTS: Block grant funds shall not be used for any costs that are ineligible as defined in the Airport and Airway Improvement Act of 1982 (as amended) and in Title 49, Code of Federal Regulations (hereinafter, "CFR"), Part 18.

(7) WITHDRAWAL OF GRANT OFFER: The Commission reserves the right to amend or withdraw this grant offer at any time prior to acceptance by the Sponsor.

(8) EXPIRATION OF GRANT OFFER: This grant offer shall expire and the Commission shall not be obligated to pay any part of the costs of the project unless this grant Agreement has been executed by the Sponsor on or before September 20, 2014 or such subsequent date as may be prescribed in writing by the Commission.

(9) FEDERAL SHARE OF COSTS: Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary of the United States Department of Transportation (hereinafter, "USDOT") shall practice. Final determination of the United States' share will be based upon the audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the federal share of costs.

(10) RECOVERY OF FEDERAL FUNDS: The Sponsor shall take all steps, including litigation if necessary, to recover federal funds spent fraudulently, wastefully, in violation of federal antitrust statutes, or misused in any other manner for any project upon which federal funds have been expended. For the purpose of this grant Agreement, the term "federal funds" means funds used or disbursed by the Sponsor that were originally paid pursuant to this or any other federal grant Agreement. The Sponsor shall return the recovered federal share, including funds recovered by settlement, in order or judgment, to the Commission. It shall furnish to the Commission, upon request, all documents and records pertaining to the determination of the amount of the federal share or to any settlement, litigation, negotiation, or other effort taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such federal share shall be approved in advance by the Commission.

(11) PAYMENT: Payments to the Sponsor are made on an advance basis. The Sponsor may request incremental payments during the course of the project or a lump sum payment upon completion of the work. However, this advance payment is subject to the limitations imposed by paragraph 11(B) of this Agreement.

(A) The Sponsor may request payment at any time subsequent to the execution of this Agreement by both parties. Requests for reimbursement shall be supported with invoices. After the Sponsor pays incurred costs, copies of checks used to pay providers must be submitted to the Commission.

(B) It is understood and agreed by and between the parties that the Commission shall make no payment which could cause the aggregate of all payments under this Agreement to exceed ninety percent (90%) of the maximum federal (block grant) obligation stated in this Agreement or eighty-six percent (86%) of actual total eligible project cost, whichever is lower, until the Sponsor has met and/or performed all requirements of this grant Agreement to the satisfaction of the Commission. The final ten percent (10%) of the maximum federal (block grant) obligation stated in this Agreement shall not be paid to the Sponsor until the Commission has received and approved all final closeout documentation for the project.

(C) Within ninety (90) days of final inspection of the project funded under this grant, the Sponsor shall provide to the Commission a final payment request and all financial, performance and other reports as required by the conditions of this grant, with the exception of the final audit report. This report shall be provided when the Sponsor's normal annual audit is completed.

(D) When force account or donations are used, the costs for land, engineering, administration, in-kind labor, equipment and materials, etc., may be submitted in letter form with a breakdown of the number of hours and the hourly charges for labor and equipment. Quantities of materials used and unit costs must also be included. All force account activity, donations, etc., must be pre-approved by the Commission to ensure eligibility for funding.

(12) ADMINISTRATIVE/AUDIT REQUIREMENTS: This grant shall be governed by the administrative and audit requirements as prescribed in Title 49 CFR

Parts 18 and 90, respectively.

(A) If the Sponsor expends five hundred thousand dollars ($500,000) or more in a year in federal financial assistance, it is required to have an independent annual audit conducted in accordance with Office of Management and Budget (hereinafter, "OMB") Circular A-133. A copy of the audit report shall be submitted to the Missouri Department of Transportation (hereinafter, "MoDOT") within the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period. Subject to the requirements of OMB Circular A-133, if the Sponsor expends less than five hundred thousand dollars ($500,000) in a year, the Sponsor may be exempt from auditing requirements for that year, but records must be available for review or audit by applicable state and federal authorities.

(B) When the Sponsor's normal annual audit is completed, the Sponsor shall provide to the Commission a copy of an audit report that includes the disposition of all federal funds involved in this project.

(C) In the event a final audit has not been performed prior to the closing of the grant, the Commission retains the right to recover any appropriate amount of funding after fully considering interest accrued or recommendations on disallowed costs identified during the final audit.

(D) The Commission reserves the right to conduct its own audit of the Sponsor's records to confirm compliance with grant requirements and to ensure that all costs and fees are appropriate and acceptable.

(13) APPENDIX: An appendix to this Agreement is attached. The appendix consists of standards, forms and guidelines that the Sponsor shall use to accomplish the requirements of this Agreement. The appendix items are hereby provided to the Sponsor and incorporated into and made part of this Agreement.

(14) ASSURANCES/COMPLIANCE: The Sponsor shall adhere to the FAA standard airport Sponsor assurances, current FAA advisory circulars (hereinafter, "ACs") for AIP projects and/or the Commission's specifications, including but not limited to those as outlined in attached Exhibit 1. These assurances, ACs and the Commission's specifications are hereby incorporated into and made part of this Agreement. The Sponsor shall review the assurances, ACs, Commission's specifications and FAA Order 5190.6B entitled "FAA Airport Compliance Manual" dated September 30, 2009, included in the grant appendix, and notify the Commission of any areas of non-compliance within its existing facility and/or operations. All non-compliance situations must be addressed and a plan to remedy areas of non-compliance must be established before final acceptance of this project and before final payment is made to the Sponsor.

(15) LEASES/AGREEMENTS: The Sponsor shall incorporate the FAA Standard Airport Lease/Agreement provisions into all leases/agreements for use of airport property other than the public use areas. In addition to these provisions, these leases/agreements must provide for fair market value income and prohibit exclusive rights.

(A) Long term commitments (longer than 5 years) must provide for renegotiation of the leases'/agreements' terms and payments at least every five (5) years.

(B) Leases/agreements shall not contain provisions that adversely affect the Sponsor's possession and control of the airport or interfere with the Sponsor's ability to comply with the obligations and covenants set forth in this grant Agreement.

(16) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the Sponsor agrees as follows:

(A) Civil Rights Statutes: The Sponsor 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. In addition, if the Sponsor is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.

(B) Administrative Rules: The Sponsor shall comply with the administrative rules of the USDOT 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 Sponsor shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Sponsor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21, Section 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 Sponsor. These apply to all solicitations either by competitive bidding or negotiation made by the Sponsor for work to be performed under a subcontract, including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the Sponsor of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The Sponsor shall provide all information and reports required by 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 as may be determined by the Commission or the USDOT to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the Sponsor is in the exclusive possession of another who fails or refuses to furnish this information, the Sponsor 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 Sponsor 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 under this Agreement until the Sponsor complies; and/or

2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The Sponsor shall include the provisions of Paragraph (16) 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 Sponsor will take such action with respect to any subcontract or procurement as the Commission or the USDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Sponsor becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Sponsor may request the United States to enter into such litigation to protect the interests of the United States.

(17) CANCELLATION: The Commission may cancel this Agreement at any time the Sponsor breaches the contractual obligations by providing the Sponsor with written notice of cancellation. Should the Commission exercise its right to cancel the Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Sponsor.

(A) Upon written notice to the Sponsor, the Commission reserves the right to suspend or terminate all or part of the grant when the Sponsor is, or has been, in violation of the terms of this Agreement. Any lack of progress that significantly endangers substantial performance of the project within the specified time shall be deemed a violation of the terms of this Agreement. The determination of lack of progress shall be solely within the discretion of the Commission. Once such determination is made, the Commission shall so notify the Sponsor in writing. Termination of any part of the grant will not invalidate obligations properly incurred by the Sponsor prior to the date of termination.

(B) The Commission shall have the right to suspend funding of the project at any time and for so long as the Sponsor fails to substantially comply with all the material terms and conditions of this Agreement. If the Commission determines that substantial noncompliance cannot be cured within thirty (30) days, then the Commission may terminate the funding for the project. If the Sponsor fails to perform its obligations in substantial accordance with the Agreement (except if the project has been terminated for the convenience of the parties) and the FAA requires the Commission to repay grant funds that have already been expended by the Sponsor, then the Sponsor shall repay the Commission such federal funds.

(18) 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.

(19) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Sponsor shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(20) WORK PRODUCT: All documents, reports, exhibits, etc. produced by the Sponsor at the direction of the Commission shall remain the property of the Sponsor. However, Sponsor shall provide to the Commission a copy of magnetic discs that contain computer aided design and drafting (CADD) drawings and other documents generated under this grant. Information supplied by the Commission shall remain the property of the Commission. The Sponsor shall also supply to the Commission hard copies of any working documents such as reports, plans, specifications, etc., as requested by the Commission.

(21) CONFIDENTIALITY: The Sponsor shall not disclose to third parties confidential factual matter provided by the Commission except as may be required by statute, ordinance, or order of court, or as authorized by the Commission. The Sponsor shall notify the Commission immediately of any request for such information.

(22) NONSOLICITATION: The Sponsor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Sponsor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(23) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(24) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Sponsor 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 Sponsor's wrongful or negligent performance of its obligations under this Agreement.

(B) The Sponsor will require any contractor procured by the Sponsor 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.

(25) HOLD HARMLESS: The Sponsor shall hold the Commission harmless from any and all claims for liens of labor, services or materials furnished to the Sponsor in connection with the performance of its obligations under this Agreement. Certification statements from construction contractors must be provided to ensure all workers, material suppliers, etc., have been paid.

(26) NOTIFICATION OF CHANGE: The Sponsor shall immediately notify the Commission of any changes in conditions or law which may significantly affect its ability to perform the project in accordance with the provisions of this Agreement. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal, facsimile or electronic mail (email) delivery, addressed as follows:

Commission:
Amy Ludwig
Administrator of Aviation
Missouri Department of Transportation
P.O. Box 270
Jefferson City, MO 65102
(573) 526-7912
(573) 526-4709 FAX
email: Amy.Ludwig@modot.mo.gov

Sponsor:
Steve Stockam
Airport Manager
Joplin Regional Airport
602 S. Main
Joplin, MO 64801
(417) 623-0262
(417) 625-4714 FAX

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile or email delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of the facsimile or email transmission of the document.

(27) DURATION OF GRANT OBLIGATIONS: Grant obligations are effective for the useful life of any facilities/equipment installed with grant funds as stipulated in attached Exhibit 1, but in any event not to exceed twenty (20) years. There shall be no limit on the duration of the assurance, referenced in paragraph B of said Exhibit 1 against exclusive rights or terms, conditions and assurances, referenced in paragraph B-1 of said Exhibit 1, with respect to real property acquired with federal funds. Paragraph (27) equally applies to a private sponsor. However, in the case of a private sponsor, the useful life for improvements shall not be less than ten (10) years.

(A) The financial assistance provided hereunder constitutes a grant to the Sponsor. Neither the Commission nor the FAA will have title to the improvements covered by this grant, as title to same shall vest in the Sponsor.

(B) For the period as specified in this Paragraph, the Sponsor becomes obligated, upon any sale or disposition of the airport or discontinuation of operation of the airport to immediately repay, in full, the grant proceeds or proportionate amount thereof based upon the number of years remaining in the original obligation to the Commission. The Commission and the Sponsor hereby agree that during said period, the property and improvements which constitute the subject airport are subject to sale, if necessary, for the recovery of the federal pro rata share of improvement costs should this Agreement be terminated by a breach of contract on the part of the Sponsor or should the aforementioned obligations not be met.

(C) In this Section, the term "any sale or disposition of the airport" shall mean any sale or disposition of the airport: (i) for a use inconsistent with the purpose for which the Commission's share was originally granted pursuant to this Agreement; or (ii) for a use consistent with such purposes wherein the transferee in the sale or disposition does not enter into an assignment and assumption Agreement with the Sponsor with respect to the Sponsor's obligation under the instrument so that the transferee becomes obligated there under as if the transferee had been the original owner thereof.

(28) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Sponsor and the Commission.

(29) PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS: Contracts for professional services are to be procured by competitive proposals per federal procurement requirements (Title 49 CFR, Section 18.36). Requests for proposals/qualifications are to be publicly announced for services expected to cost more than one hundred thousand dollars ($100,000) in the aggregate. Small purchase procedures (telephone solicitations or direct mail) may be used for services costing one hundred thousand dollars ($100,000) or less. All professional services contracts are

subject to review and acceptance by the Commission prior to execution by the Sponsor to ensure funding eligibility.

(30) ASSIGNMENT: The Sponsor shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(31) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Sponsor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Sponsor responsible for damages.

(32) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(33) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The Sponsor shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 CFR Part 170.

(34) SPECIAL CONDITIONS: The following special conditions are hereby made part of this Agreement:

(A) Lobbying and Influencing Federal Employees: All contracts awarded by the Sponsor shall include the requirement for the recipient to execute the form entitled "CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS" included in the grant appendix.

This requirement affects grants or portions of a grant exceeding one hundred thousand dollars ($100,000).

(B) Buy America Requirements: Unless otherwise approved by the Commission and the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any iron, steel or manufactured products produced outside of the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The Sponsor will include in every contract a provision implementing this special condition.

(C) Safety Inspection: The Sponsor shall eliminate all deficiencies identified in its most recent annual safety inspection report (FAA Airport Master Record Form 5010-1). If immediate elimination is not feasible, as determined by the Commission, the Sponsor shall provide a satisfactory plan to eliminate the deficiencies and shall include this plan with phased development as outlined in a current and approved airport layout plan.

(D) Navigational Aids: Except for instrument landing systems acquired

with the AIP (block grant) funds and later donated to and accepted by the FAA, the Sponsor must provide for the continuous operation and maintenance of any navigational aid funded under the AIP (block grant) program during the useful life of the equipment. The Sponsor must check the facility, including instrument landing systems, prior to commissioning to ensure it meets operational standards. The Sponsor must also remove, relocate, or lower each obstruction on the approach or provide for the adequate lighting or marking of the obstruction if any aeronautical study conducted under Federal Aviation Regulation Part 77 determines that to be acceptable; and mark and light the runway, as appropriate. The FAA will not take over the ownership, operation, or maintenance of any Sponsor-acquired equipment, except for instrument landing systems.

(E) Environmental Due Diligence Audit: The Sponsor shall conduct an Environmental Due Diligence Audit (EDDA) of all NAVAID (electronic navigational equipment) sites that will be established or relocated with federal (block grant) funds. This audit shall include existing equipment currently owned and operated by the FAA Airways Facilities Branch and new equipment for which the Sponsor will be requesting FAA maintenance.

(F) Notice to Bidders - Required Language: The Sponsor shall include the following special provision when advertising for bids: "Notice to all potential bidders on federally funded airport construction projects: As mandated by Executive Order 12818, issued by President George Bush on October 23, 1992, a Job Special Provision will be inserted into and made a part of every contract for federally funded airport construction projects, awarded from this or future notices of lettings."

(G) Airport Job Special Provision - Required Language: The Sponsor shall include the following special provisions in contracts for federally funded airport construction projects. "By entering into this contract, the Contractor agrees to comply with all applicable terms of Executive Order 12818, issued by President George Bush on October 23, 1992, prohibiting certain contractual requirements, and prohibiting discrimination against certain persons or entities on the basis of whether or not labor organization Agreements or affiliations exist. The Contractor further agrees to include within its contracts and subcontracts governing this work, a provision that requires those contractors or subcontractors to comply with Executive Order 12818 (except as may be exempted by the terms of the executive order itself).

The contractor understands, and agrees to inform its own contractors and subcontractors, that failure to comply with Executive Order 12818 will subject them to disciplinary action as appropriate, including, but not limited to, debarment, suspension, termination of the contract for default, or the withholding of payments. The Contractor also understands that the Sponsor has not adopted any policies or contractual provisions which violate Executive Order 12818."

(H) Grant Made on Preliminary Plans and Specifications and/or Estimates: This grant is made and accepted upon the basis of preliminary plans, specifications and/or estimates. Within 120 calendar days from the date of acceptance of this grant, the Sponsor shall furnish final plans and specifications to the Commission. Construction work shall not commence, and a contract shall not be awarded for the

accomplishment of such work, until the final plans and specifications have been accepted by the Commission. Any reference made in this grant to plans and specifications shall be considered a reference to the final plans and specifications as accepted.

Since this grant is made on preliminary plans and specifications and/or estimates, the grant amount is subject to revision (increase or decrease) after actual project costs are determined through negotiations, appraisals and/or bids. The Sponsor agrees that said revision will be at the sole discretion of the Commission.

(I) Sponsor's Disadvantaged Business Enterprise (DBE) Program: When the grant amount exceeds two hundred fifty thousand dollars ($250,000), the Sponsor hereby adopts the Commission's Disadvantaged Business Enterprise (hereinafter, "DBE") program that is incorporated into this grant agreement by reference. Only DBE firms certified by the Commission will qualify when considering DBE goal accomplishments.

(J) Disadvantaged Business Enterprise Required Statements:

(1) Policy: It is the policy of the USDOT that DBEs, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

(2) Contract Assurance: The Commission and the Sponsor will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

> "The contractor 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 the applicable requirements of Title 49 Code of Federal Regulations, Part 26 in the award and administration of any United States Department of Transportation-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."

(This assurance shall be included in each subcontract the prime contractor signs with a subcontractor.)

(3) Federal Financial Assistance Agreement Assurance: The Commission and the Sponsor agree to and incorporate the following assurance into their day-to-day operations and into the administration of all USDOT-assisted contracts; where "recipient" means MoDOT and/or any MoDOT grantee receiving USDOT assistance:

> "MoDOT and the Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United

States Department of Transportation-assisted contract or in the administration of the United States Department of Transportation's DBE Program or the requirements of Title 49 Code of Federal Regulations, Part 26. The recipient shall take all necessary and reasonable steps under Title 49 Code of Federal Regulations, Part 26 to ensure nondiscrimination in the award and administration of United States Department of Transportation-assisted contracts. The recipient's DBE Program, as required by Title 49 Code of Federal Regulations, Part 26 and as approved by the United States Department of Transportation, is incorporated by reference into this agreement. Implementation of this program is a legal obligation and for failure to carry out its approved program, the United States Department of Transportation may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under Title 18 United States Code, Section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (Title 31 United States Code, Section 3801 *et seq.*)."

The Commission and the Sponsor shall ensure that all recipients of USDOT-assisted contracts, funds, or grants incorporate, agree to and comply with the assurance statement.

(4) Prompt Payment: The Commission and the Sponsor shall require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with section 34.057 RSMo, Missouri's prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Sponsor also require the prompt return of all retainage held on all subcontractors after the subcontractors' work is satisfactorily completed, as determined by the Sponsor and the Commission.

All contractors and subcontractors must retain records of all payments made or received for three (3) years from the date of final payment, and these records must be available for inspection upon request by any authorized representative of the Commission, the Sponsor or the USDOT. The Commission and the Sponsor will maintain records of actual payments to DBE firms for work committed to at the time of the contract award.

The Commission and the Sponsor will perform audits of contract payments to DBE firms. The audits will review payments to subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation and that payment was made in compliance with section 34.057 RSMo.

(5) MoDOT DBE Program Regulations: The Sponsor, contractor and each subcontractor are bound by MoDOT's DBE Program regulations, located at Title 7 Code of State Regulations, Division 10, Chapter 8.

(K) DISADVANTAGED BUSINESS ENTERPRISES - PROFESSIONAL SERVICES: DBEs that provide professional services, such as architectural, engineering, surveying, real estate appraisals, accounting, legal, etc., will be afforded

full and affirmative opportunity to submit qualification statements/proposals and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for selection for this project. The DBE goals for professional services will be determined by the Commission at the time each proposed service contract is submitted for the Commission's approval.

(35) AIRPORT LAYOUT PLAN: All improvements must be consistent with a current and approved Airport Layout Plan (hereinafter, "ALP"). The Sponsor shall update and keep the ALP drawings and corresponding narrative report current with regard to the FAA Standards and physical or operational changes at the airport.

(A) ALP approval shall be governed by FAA Order 5100.38B, entitled "Airport Improvement Program Handbook."

(36) AIRPORT PROPERTY MAP: The Sponsor shall develop (or update), as a part of the ALP, a drawing which indicates how various tracts/parcels of land within the airport's boundaries were acquired (i.e., federal funds, surplus property, local funds only, etc.). Easement interests in areas outside the fee property line shall also be included. A screened reproducible of the Airport Layout Drawing may be used as the base for the property map.

(37) ENVIRONMENTAL IMPACT EVALUATION: The Sponsor shall evaluate the potential environmental impact of this project per FAA Order 5050.4B, entitled "National Environmental Policy Act Implementing Instructions for Airport Actions." Evaluation must include coordination with all resource agencies that have jurisdiction over areas of potential environmental impact and a recommended finding such as categorical exclusion, no significant impact, level of impact and proposed mitigation, etc.

(38) EXHIBIT "A" PROPERTY MAP: The Sponsor shall develop (or update) an Exhibit "A" Property Map, which clearly shows by appropriate legal description all airport land owned by the Sponsor, including land and interests in land in the runway approach areas, plus any areas or tracts/parcels of land proposed to be acquired in connection with this project. In addition, the map must indicate by appropriate symbols or other markings the property interest (fee title, avigation easement, etc.) the Sponsor holds in each tract/parcel of airport land and the property interest to be acquired in each tract/parcel of land in connection with this project.

(39) RUNWAY PROTECTION ZONE: The Sponsor agrees to prevent the erection or creation of any obstruction, residence, structure or place of public assembly in the Runway Protection Zone, as depicted on the Exhibit "A" Property Map and the approved ALP, except for NAVAIDS that are fixed by their functional purposes or any other structure approved by the Commission and the FAA. Any existing obstructions, structures, facilities or uses, including use of equipment that could interfere with electronic guidance or communication systems for aircraft, within the Runway Protection Zone shall be cleared or discontinued unless approved by the Commission and the FAA. The Sponsor shall also take any and all steps necessary by fee ownership or avigation easement to ensure that the land within the designated Runway Protection Zone will not include anything that violates FAA standards, is an airport hazard or which might create glare or misleading lights or lead to the construction of residences, fuel

handling and storage facilities, smoke generating activities, or places of public assembly, such as churches, schools, office buildings, shopping centers, and stadiums, golf courses or any other uses restricted by FAA standards.

(40) ENGINEER'S DESIGN REPORT: Prior to development of the plans and specifications, the Sponsor shall provide an engineer's report setting forth the general analysis and explanation of reasons for design choices. Said report shall include an itemized cost estimate, design computations, reasons for selections and modifications, comparison of alternatives, life cycle cost analysis, geotechnical report and any other elements that support the engineer's final plans and specifications.

(41) GEOMETRIC DESIGN CRITERIA: The Sponsor shall use the geometric design criteria promulgated by the FAA in the AC series and in FAA Orders. The Sponsor may request and receive approval for adaptation of said criteria where the FAA and the Commission concur that such adaptation is appropriate considering safety, economy and efficiency of operation.

(42) PLANS, SPECIFICATIONS AND ESTIMATES: The plans and construction specifications for this project shall be those promulgated by the FAA in the AC series and in FAA Orders.

(A) The plans shall include a safety plan sheet to identify work areas, haul routes, staging areas, restricted areas, construction phasing, shutdown schedule etc., and to specify the requirements to ensure safety during construction.

(B) The Sponsor shall submit all plans, specifications and estimates to the Commission for review and acceptance prior to advertising for bids for construction.

(43) CONSTRUCTION OBSERVATION/INSPECTION REQUIREMENTS: In conjunction with submittal of the construction bid tabulation, the Sponsor shall provide a construction observation/inspection program setting forth a format for accomplishment of resident observation, construction inspection and overall quality assurance.

(44) CONSTRUCTION PROGRESS AND INSPECTION REPORTS: The Sponsor shall provide and maintain adequate, competent and qualified engineering supervision and construction inspection at the project site during all stages of the work to ensure that the completed work conforms with the project plans and specifications. Project oversight by the Commission's project manager or other personnel does not relieve the Sponsor of this responsibility.

(A) The Sponsor shall require the resident project representative to keep daily construction records and shall submit to the Commission a weekly construction progress and inspection report on the FAA Form 5370-1 ("Construction Project and Inspection Report"), completed by the resident project representative. A weekly summary of tests completed shall be included.

(B) Prior to final acceptance, the Sponsor shall provide to the Commission a testing summary report bearing the engineer's seal and including a certification from the engineer that the completed project is in compliance with the plans

and specifications.

(45) WAGE LAWS: The Sponsor and its contractors and subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri and the United States. Federal wage rates under the Davis-Bacon or other federal acts apply to and govern this Agreement also for such work which is performed at the jobsite, in accord with 29 CFR Part 5. Thus, this Agreement is subject to the "Contract Work Hours and Safety Standards Act", as amended (40 U.S.C. Sections 327, *et seq.*), and its implementing regulations. The Sponsor shall take the acts which may be required to fully inform itself of the terms of, and to comply with, state and federal laws.

(46) COMPETITIVE SELECTION OF CONTRACTOR: Construction that is to be accomplished by contract is to be competitively bid in accordance with federal procurement requirements, located at 49 CFR Part 18. Bid notices should be published in a qualified (local or area) newspaper or other advertisement publication located in the same county as the airport project as a minimum.

(47) REVIEW OF BIDS AND CONTRACT AWARD: The Commission shall review all contractors' bids and approve the selection of the apparent successful bidder prior to the Sponsor awarding the construction contract.

(48) NOTICE TO PROCEED: After the Commission receives copies of the executed construction contract between the Sponsor and the contractor, the performance and payment bonds and any other documentation as required by this Agreement, the Commission will authorize the Sponsor to issue a notice to proceed with construction.

(A) Notice to proceed shall not be issued until the Sponsor has provided satisfactory evidence of acceptable title to the land on which construction is to be performed. Ownership status of existing airport property as well as any land or easements acquired under this project must be included in a Certificate of Title tied to a current Exhibit "A" property map.

(B) The Sponsor shall issue a notice to the contractor within ten (10) days of authorization by the Commission, unless otherwise approved by the Commission.

(C) Any construction work performed prior to the Sponsor's issuance of a Notice to Proceed shall not be eligible for funding participation.

(49) DISADVANTAGED BUSINESS ENTERPRISES - CONSTRUCTION: The Sponsor shall notify prospective bidders that DBEs will be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex or national origin in consideration for an award.

(A) The goal for this project to be awarded to DBE firms shall be

established by the Commission based on the engineer's construction cost estimate included in the design report. The goal will be a percentage of the federal portion of the contract costs less the amount expended for land, easements, the Sponsor's in-house administration, force account work and any noncontractual costs. Failure to meet the DBE goal can render a bid proposal nonresponsible at the Commission's discretion.

(B) The Sponsor shall conduct field reviews and interviews with workers to ensure that the portion of the work identified in the construction contract to be performed by DBE firms is so performed. Results of these interviews shall be submitted to the Commission with the weekly construction progress reports.

(50) LABOR STANDARDS INTERVIEWS: The Sponsor shall conduct periodic random interviews with the workers to assure that they are receiving the established prevailing wages. Results of these interviews shall be submitted to the Commission with the weekly construction progress reports.

(51) AIR AND WATER QUALITY STANDARDS: Approval of the project is conditioned on the Sponsor's compliance with the applicable air and water quality standards in accomplishing project construction and in operating the airport. Failure to comply with this requirement may result in suspension, cancellation or termination of federal assistance under this Agreement.

(52) FILING NOTICE OF LANDING AREA PROPOSAL: When a project involving changes to the runway will be implemented at an airport, the Sponsor must submit FAA Form 7480-1 ("Notice of Landing Area Proposal") to the FAA not less than one hundred twenty (120) days prior to commencement of any construction or alteration. A copy of the form as filed with the FAA and the FAA airspace determination letter must be provided to the Commission. This form must be submitted for any projects that involve the widening, lengthening or reconstruction of an existing runway or construction of a new runway. When the funded project is strictly a master plan/site selection, this form will be submitted for the final three proposed sites prior to development of the ALP.

(53) FILING NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION: When a development project that does not involve changes to the runway will be implemented at an airport, the Sponsor must submit FAA Form 7460-1 ("Notice of Proposed Construction of Alteration") to the FAA not less than one hundred twenty (120) days prior to commencement of any construction or alteration. A copy of the form as filed with the FAA and the FAA airspace determination letter must be provided to the Commission. This form must be submitted for construction of any permanent structures on the airport, temporary structures over 20 feet in height or use of construction equipment over 20 feet tall. It is not necessary for routine construction projects, unless they include above ground installations.

(54) CHANGE ORDERS/SUPPLEMENTAL AGREEMENTS: All change orders/supplemental agreements must be submitted to the Commission for approval prior to implementation to ensure funding eligibility. Requests for additional work for items not included in the original bid must be accompanied by a cost analysis to substantiate the proposed costs.

(55) RESPONSIBILITY FOR PROJECT SAFETY: During the full term of the project, the Sponsor shall be responsible for the installation of any signs, markers or other devices required for the safety of the public. All markers or devices required shall conform with all applicable FAA regulations or specifications.

(A) The Sponsor shall ensure that a safety plan is included in the contract documents and that the Contractor complies with the safety plan during construction.

(B) It is also the responsibility of the Sponsor to issue, through the applicable FAA Flight Service Station, any and all Notices to Airmen that may be required. Copies of notices shall also be sent to the Commission as soon as they are filed with the FAA.

(56) RECORD DRAWINGS: The Sponsor shall provide one (1) set of blue line or black line as-built construction plans and two (2) sets of the updated ALP with a narrative report to the Commission upon project completion. The Commission will forward one (1) set of the updated ALP to the FAA central region office.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into and accepted this Agreement on the last date written below.

Executed by the Sponsor this _____ day of _____, 20___.

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

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By _____

Title _____

Attest:

_____
Secretary to the Commission

Approved as to Form:

_____
Commission Counsel

CITY OF JOPLIN

By _____

Title _____

Attest:

By _____

Title _____

Ordinance No. _____
(if applicable)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____, acting as attorney for the Sponsor, do hereby certify that in my opinion, the Sponsor is empowered to enter into the foregoing grant Agreement under the laws of the State of Missouri. Further, I have examined the foregoing grant Agreement, and the actions taken by said Sponsor and Sponsor's official representative have been duly authorized and the execution thereof is in all respects due and proper and in accordance with the laws of the said state and the Airport and Airway Improvement Act of 1982, as amended. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said grant constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

SPONSOR: City of Joplin

_____

Name of Sponsor's Attorney (typed)

_____

Signature of Sponsor's Attorney

Date _____

COUNCIL BILL NO. 2014-619 **ORDINANCE NO.**

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 on an emergency basis.

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

Section 1. That an agreement by and between the City of Joplin and 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, 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 is hereby authorized and directed to execute said Agreement 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. The Grant must be accepted by September 20, 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

ORDINANCES

FIRST READING

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

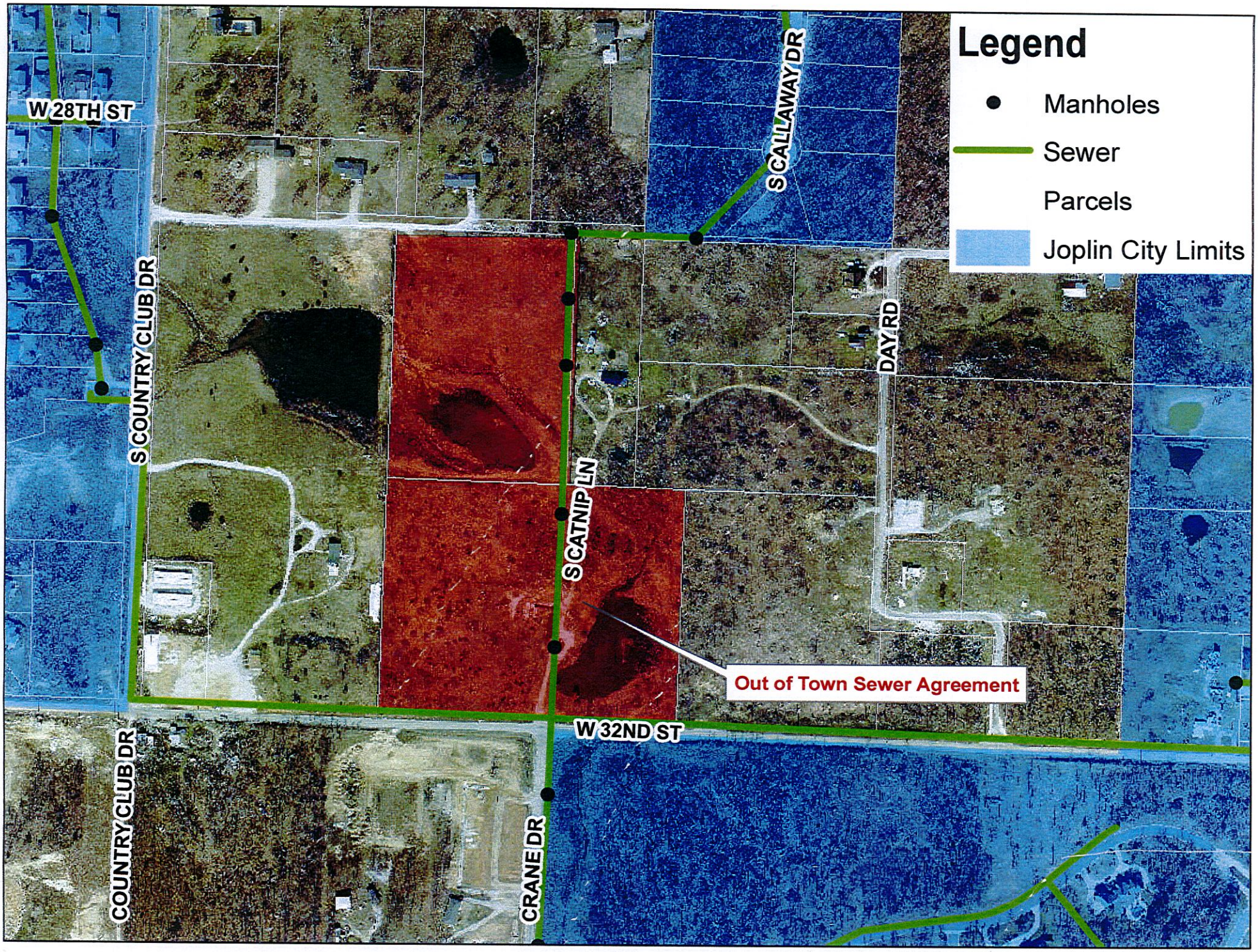
Engineering: Dan Johnson DJH	Date: 9-8-14
Department Head: Nicholas A. Heatherly	Date: 9/8/14
Finance Department: Leslie Haase LH	Date: 9-9-14
City Attorney: Peter C. Edwards PE	Date: 9/9/14
Interim City Manager: Samuel L. Anselm	Date: 9/9/14

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)

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, Jasper 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 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

NEW BUSINESS

1. Declare excess surplus property for the annual auction.

2. News/Announcements from Public Information Office, Lynn Onstot