Agenda
City Council
Meeting

City Council Chambers
Historic City Hall, 830 Boonville

Ken McClure, Mayor

Zone Councilmembers

Angela Romine, Zone 1
Abe McGull, Zone 2
Mike Schilling, Zone 3
Matthew Simpson, Zone 4

General Councilmembers

Heather Hardinger, General A
Craig Hosmer, General B
Andrew Lear, General C
Richard Ollis, General D

Upcoming Council Meeting Agenda
October 4, 2021 6:30 p.m.

Speakers must sign up with the City Clerk to speak to a Council Bill on the agenda.

Speakers must sign up with the City Clerk no later than 5:00 p.m. the Friday before the meeting to speak to an issue not on the agenda. Citizens wishing to submit comments to City Council may do so using the citizen comments form.

Speakers are to limit their remarks to three to five minutes based on City Council's policy regarding the number of speakers.

Note: Sponsorship does not denote Council member approval or support.

1. **ROLL CALL.**
2. **APPROVAL OF MINUTES, SEPTEMBER 20, 2021 CITY COUNCIL**

2. **APPROVAL OF MINUTES: SEPTEMBER 20, 2021 CITY COUNCIL MEETING.**

Documents:

09-20-21.PDF

3. **FINALIZATION AND APPROVAL OF CONSENT AGENDAS. CITIZENS WISHING TO SPEAK TO OR REMOVE ITEMS FROM THE CONSENT AGENDAS MUST NOTIFY THE CITY CLERK BY 5:00 P.M. ON FRIDAY, OCTOBER 1, 2021.**

4. **CEREMONIAL MATTERS.**

5. **CITY MANAGER REPORT, PUBLIC HEALTH DIRECTOR REPORT AND RESPONSES TO QUESTIONS RAISED AT THE PREVIOUS CITY COUNCIL MEETING.**

6. **SECOND READING AND FINAL PASSAGE. Citizens Have Spoken. May Be Voted On.**

7. **Council Bill 2021-245 (Romine)**

A general ordinance amending Section 1-9 of the Springfield City Code, 'City Limits;' and amending Section 46-1 of the Springfield City Code, 'Boundaries of wards, precincts and council zones;' for the purpose of annexing approximately 5.11 acres of Missouri Department of Transportation right-of-way, generally located in the 5900 through 6200 blocks of West State Highway 266, and referenced as Annexation A-3-2021, into the City of Springfield.

Documents:

2021-245.PDF

8. **Council Bill 2021-246 (Schilling)**

A general ordinance amending the Springfield Land Development Code, Section 36-306, 'Official zoning map and rules for interpretation,' by rezoning approximately 3.3 acres of property generally located at 2625 West Delmar Street, 1025 and 1045 South Clifton Avenue, and 2620 West Grand Street from Planned Development No. 269 to Planned Development No. 378; and adopting an updated Official Zoning Map. (Planning and Zoning Commission and Staff recommend approval.) (By: Simmons First National Bank; 2625 W. Delmar Street,1025 & 1045 S. Clifton Avenue and 2620 W. Grand Street; PD 378).

Documents:

2021-246.PDF

9. **Council Bill 2021-247 (Hosmer)**

9. **Council Bill 2021-247 (Hosmer)**

A general ordinance amending the Springfield City Code, Chapter 42, 'Courts,' Division II, 'Municipal court,' Section 42-41, 'Court costs,' to correspond with changes in state law.

Documents:

2021-247.PDF

10. **Council Bill 2021-248 (Hardinger)**

A special ordinance authorizing the City Manager, or his designee, to enter into an agreement with the owners of the property generally located at 2131 West Kingsley Street, to purchase the real property at this location; and authorizing certain other documents and actions in connection therewith.

Documents:

2021-248.PDF

11. **Council Bill 2021-249 (Hosmer)**

A special ordinance approving and accepting the proposal from the team, GAP Collaborative, as the best value team to design and construct the Grant Avenue Parkway Project; authorizing the City Manager, or his designee, to enter into a contract with the GAP Collaborative team leader, Radmacher Brothers Excavating Company, Inc.; and amending the budget of the Department of Public Works for Fiscal Year 2021-2022 in the amount of $2,714,000.

Documents:

2021-249.PDF

12. **RESOLUTIONS. Citizens May Speak. May Be Voted On.**

13. **Council Bill 2021-254 (McGull)**

A resolution declaring an intent to initiate annexation of approximately 2 acres of private property, generally located at 3284 North Mulroy Road, and referenced as Annexation A-5-2021, into the City of Springfield. (Staff recommends approval.) (Vivian L. McKinzie; 3284 N. Mulray Road; A-5-2021)

Documents:

2021-254.PDF

14. **Council Bill 2021-255 (Simpson)**

A resolution amending the Major Thoroughfare Plan, a portion of the Transportation Plan element of the Springfield-Greene County Comprehensive Plan, by removing two future collectors from Figures 20-2 and 20-9. (Planning and Zoning Commission and Staff recommends approval.)

Documents:

2021-255.PDF

15. **EMERGENCY BILLS.**

16. **PUBLIC IMPROVEMENTS.**

17. **GRANTS.**

18. **AMENDED BILLS.**

19. **COUNCIL BILLS FOR PUBLIC HEARING. Citizens May Speak. Not Anticipated To Be Voted On.**

20. **Council Bill 2021-256 (Schilling)**

A general ordinance amending General Ordinance 6662, which rezoned approximately 72.33 acres of property generally located adjacent to Grant Avenue between College Street and Catalpa Street to the Grant Avenue Parkway District, and which is referenced as Zoning Case Z-11-2021, to correct the legal descriptions of Subdistricts B and C within the Grant Avenue Parkway District. (City of Springfield; 465 S. Grant Avenue (Part of the Grant Avenue Parkway District); Z-11-2021-Corrected)

Documents:

2021-256.PDF

21. **FIRST READING BILLS. Citizens May Speak. Not Anticipated To Be Voted On.**

22. **Council Bill 2021-257 (Hardinger)**

A special ordinance authorizing the City Manager, or his designee, to enter into an Intergovernmental Agreement with Ozarks Technical Community College for the provision of professional equivalency credit for eligible sworn personnel of the City of Springfield Fire Department.

Documents:

2021-257.PDF

23. **Council Bill 2021-258 (Hosmer)**

A special ordinance authorizing the City Manager, or his designee, to enter into a Wastewater Service Contract and Mutual Aid Agreement with the City of Battlefield for the purpose of continuing to provide contract wastewater service to Battlefield.

Documents:

2021-258.PDF

24. **PETITIONS, REMONSTRANCES AND COMMUNICATIONS.**

Ben Brown wishes to address City Council.

25. **NEW BUSINESS.**

Andrew Lear will be the employer representative at the upcoming 2021 Missouri Local Government Employees Retirement System (LAGERS) Annual Meeting.

Mayor McClure is appointing Andrew Lear to serve as the City Council representative for Springfield Sister Cities Association.

26. **UNFINISHED BUSINESS.**

27. **MISCELLANEOUS.**

28. **CONSENT AGENDA – FIRST READING BILLS.**

29. **CONSENT AGENDA – ONE READING BILLS. See Item #3.**

30. **Council Bill 2021-259 (Lear)**

A special ordinance authorizing the City Manager, or his designee, to accept federal grant funds in the amount of $46,000 from a Section 402 State and Community Highway Safety Grant from the Missouri Highways and Transportation Commission to develop a shareable version of SGF Yields, the City's pedestrian safety program; amending the budget of the Department of Public Works for Fiscal Year 2021-2022 in that amount upon award of the grant; and declaring that this bill qualifies as a one-reading bill.

Documents:

2021-259.PDF

31. **Council Bill 2021-260 (Ollis)**

A special ordinance authorizing the City Manager, or his designee, to accept a 'Show-Me Zero Grant' in the amount of $8,000 from the Missouri Highways and

"Show-Me-Zero Grant" in the amount of $8,000 from the Missouri Highways and Transportation Commission to support continuation of the City's pedestrian safety education program "SGF Yields;" amending the budget of the Department of Public Works for Fiscal Year 2021-2022 in that amount upon award of the grant; and declaring that this bill qualifies as a one-reading bill.

Documents:

2021-260.PDF

32. **CONSENT AGENDA – SECOND READING BILLS. See Item #3.**

33. **Council Bill 2021-250 (Simpson)**

A special ordinance authorizing the City Manager, or his designee, to enter into a supplemental agreement with Missouri Highways and Transportation Commission and TransCore ITS, LLC, for continued maintenance of Advanced Traffic Management System software and hardware at the Transportation Management Center of the Ozarks.

Documents:

2021-250.PDF

34. **Council Bill 2021-251 (Ollis)**

A special ordinance authorizing the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Missouri Highways and Transportation Commission to participate in the On Call Work Zone Enforcement Program to provide enhanced traffic enforcement in work zones.

Documents:

2021-251.PDF

35. **Council Bill 2021-252 (Lear)**

A special ordinance authorizing the City Manager, or his designee, to enter into a Memorandum of Understanding with the United States Postal Inspection Service to allow the Springfield Police Department to participate in the United States Postal Inspection Service Springfield Drug Task Force; and amending the budget of the Police Department in the amount of $18,649.

Documents:

2021-252.PDF

36. **BOARD CONFIRMATIONS.**

Confirm the following appointment to the Board of Equalization: Derek White, with a term to expire April 1, 2026.

Confirm the following appointment to the Citizens Advisory Committee for Community Development: Brennan Pratt, with term to expire May 1, 2022.

Confirm the following appointments to the Landmarks Board: Bryan Lenox, with a term to expire November 1, 2023, John Hawkins, with a term to expire November 1, 2022, and Jan Preston, with a term to expire November 1, 2021.

Confirm the following appointment to the Police Officers' and Fire Fighters' Retirement System Board of Trustees: Charles Munsey, with a term to expire April 30, 2024.

Confirm the following reappointments to the Springfield- Greene-County Environmental Advisory Board: Barbara Garcia and Krista Peryer, with terms to expire October 1, 2024.

Confirm the following appointments to the Springfield Greene-County Environmental Advisory Board: Lindsey McDaniel, with term to expire October 1, 2022, and Mark Millsap, with a term to expire October 1, 2024.

37. **END OF CONSENT AGENDA.**

38. **ADJOURN.**

Persons addressing City Council are asked to step to the microphone and clearly state their name and address before speaking.

All meetings are recorded.

In accordance with ADA guidelines, if you need special accommodations when attending any City meeting, please notify the City Clerk's Office at 864 -1651 at least 3 days prior to the scheduled meeting.

September 20, 2021
Springfield, Missouri

The City Council met in regular session September 20, 2021 in the Council Chambers at Historic City Hall. The meeting was called to order by Mayor Ken McClure. Mayor McClure recognized September 18, 2021 as National Thank a Police Officer Day. Mayor McClure expressed condolences for fallen Police Officer Blaize Madrid- Evans, who was killed in the line of duty in September. He noted Officer Madrid- Evans' kidney was donated to save the life of Springfield Police Officer Mark Priebe, who was injured last year in the line of duty. A moment of silence was observed.

Roll Call

Present: Andrew Lear, Heather Hardinger, Abe McGull, Mike Schilling, Matthew Simpson, Craig Hosmer, Richard Ollis, and Ken McClure. Absent: Angela Romine.

Mayor McClure recognized David Ripper of Troop 409. Mr. Ripper is working on his Communications Badge. He was accompanied by Troop Leader Don Penderwood.

Minutes

The minutes of September 7, 2021 were approved as presented.

Consent Agenda

The Consent Agenda was approved as presented.

CEREMONIAL MATTERS

City Manager Report

Jason Gage, City Manager noted Mayor McClure and members of the state legislative delegation participated Saturday in the Governor's Missouri Bicentennial Parade in Jefferson City. He thanked Sterling Jones and Mark Lawrence in Public Works and Mark Montgomery, Cora Scott and Sharon Spain from the Department of Public Information and Citizen Engagement for their work on this project.

Mr. Gage noted the Departments of Public Works and Environmental Services have been collectively reaccredited by the American Public Works Association (APWA) – achieving 100% compliance. Joe Johnson, Past APWA President appeared in a video congratulating the departments on their hard work. In the video, Mr. Johnson explained this reaccreditation certifies the departments have met all requirements of the best management practices established nationally in the public works industry. During the 2021 reaccreditation process, eight items in Springfield were highlighted by APWA as "model practices." These are shared across the country with agencies also going through the self-assessment process. Model practices highlighted include Springfield's Emergency Operations Manual, Capital Improvement Programming, and Recycling program.

Councilman Schilling thanked the members of Council who are working on the American Rescue Plan Act. He thanked the City staff for their work putting together the surveys for community input on the use of these funds.

Councilman Hosmer asked Mr. Gage if a decision had been made for the police rehire program. Mr. Gage replied the legal review had been completed, but they are working on the logistical side.

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The following bills appeared on the agenda under Second Reading Bills.

Rezoning; 1905 and 1933 North Glenstone Avenue

Sponsor: McGull. Council Bill 2021-230.

A general ordinance amending the Springfield Land Development Code, Section 36-306, 'Official zoning map and rules for interpretation,' by rezoning approximately 3.91 acres of property generally located at 1905 and 1933 North Glenstone Avenue from HM, Heavy Manufacturing District, to HC, Highway Commercial District; establishing Conditional Overlay District No. 202; and adopting an updated Official Zoning Map. (Staff and Planning and Zoning Commission both recommend approval.)(By: TKG III Springfield LLC; 1905 & 1933 North Glenstone Avenue; Z-18-2021 w/COD #202

Council Bill 2021-230. General Ordinance 6683 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. Abstain: None.

Zoning Regulations; Grant Avenue Parkway District Standards

Sponsor: Schilling. Council Bill 2021-231.

A general ordinance amending the Springfield Land Development Code, Article III, 'Zoning Regulations,' Division 7, Grant Avenue Parkway District Standards. (Staff and Planning and Zoning Commission both recommend approval.)

Councilman Ollis asked staff for clarification about the amendment to the proposed and if the design standards include the inability to have drive-through's in this area. Randall Whitman, Principal City Planner noted the amendment proposal explained ways this issue was addressed in the zoning code and how the existing language does not allow for drive-through's. He noted zoning codes work to enumerate particular uses, but additional conditions would need to be listed in the original plan. He further noted drive-through's were not part of the zoning code that was adopted. Councilman Ollis expressed the need to do everything possible to encourage development in this area.

Council Bill 2021-231. General Ordinance 6684 was approved by the following vote: Ayes: Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, McGull, and McClure. Nays: None. Absent: Romine. None Abstain: None.

2022 Operating Budget; City Utilities

Sponsor: Ollis. Council Bill 2021-232.

A special ordinance approving City Utilities' Fiscal Year 2022 Operating Budget for its Fiscal Year ending September 30, 2022.

Council Bill 2021-232. Special Ordinance 27570 was approved by the following vote: Ayes: Simpson, Hosmer, Ollis, Lear, Hardinger, McGull, Schilling, and McClure. Nays: None. Absent: Romine. None Abstain: None.

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2021 Supplemental Operational Budget; City Utilities

Sponsor: Lear. Council Bill 2021-233.

A special ordinance approving City Utilities Supplemental Fiscal Year 2021 Operating Budget for changes to items of expenditure and total disbursement authority related to the extreme weather events which occurred from February 11, 2021 through February 20, 2021.

Council Bill 2021-233. Special Ordinance 27571 was approved by the following vote: Ayes: Hosmer, Ollis, Lear, Hardinger, McGull, Schilling, Simpson, and McClure. Nays: None. Absent: Romine. Abstain: None.

Edward Byrne Memorial Justice Grant

Sponsor: Hardinger. Council Bill 2021-234.

A special ordinance authorizing the City Manager, or his designee, to accept the Edward Byrne Memorial Justice Assistance Grant in the amount of $178,469 from the United States Department of Justice and to enter into an interlocal agreement with Greene County, outlining the division of the grant funds; and amending the budget for the Springfield Police Department for Fiscal Year 2021-2022 in the amount of $178,469.

Council Bill 2021-234. Special Ordinance 27572 was approved by the following vote: Ayes: Ollis, Lear, Hardinger, McGull, Schilling, Simpson, Hosmer, and McClure. Nays: None. Absent: Romine. Abstain: None.

Salary Ordinance

Sponsor: Hosmer. Council Bill 2021-235.

A general ordinance amending the Springfield City Code, Section 2-92, known as the 'Salary Ordinance,' relating to salary grades for various job titles within the City service as contained in the Professional, Administrative and Technical Schedules by making provision for six new job titles and deleting one job title; and amending the Fiscal Year 2021-2022 budget of certain City departments to reallocate funds for the addition of one new full-time equivalent position at the Airport and transitioning 29 contract positions to 29 full-time equivalent positions and adjusting the authorized employee positions.

Council Bill 2021-235. General Ordinance 6685 was approved by the following vote: Ayes: Lear, Hardinger, McGull, Schilling, Simpson, Hosmer, Ollis, and McClure. Nays: None. Absent: Romine. None Abstain: None.

Springfield Fire Department and OTC Training Program

Sponsor: Hosmer. Council Bill 2021-236.

A special ordinance authorizing the City Manager, or his designee, to enter into a revised Intergovernmental Agreement with Ozarks Technical Community College regarding cooperative training between the Springfield Fire Department and Ozarks Technical Community College.

Mayor Pro Tem Simpson recused himself and exited chambers.

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Council Bill 2021-236. Special Ordinance 27573 was approved by the following vote: Ayes: Hardinger, McGull, Schilling, Hosmer, Ollis, Lear, and McClure. Nays: None. Absent: Romine and Simpson. Abstain: None.

Mayor Pro Tem Simpson returned to the dais.

The following bill appeared on the agenda under Resolutions.

Federal Grant; Forward SGF

Council Bill 2021-242 (Simpson)

A resolution authorizing the City Manager, or his designee, to apply for a grant of up to $1,000,000 from the United States Economic Development Administration and the United States Department of Commerce for the purpose of further planning efforts and studies needed for the development of the Lake Springfield area in coordination with ForwardSGF Planning Efforts.

Sarah Kerner, Director of Economic Development gave an overview of the proposed. She explained this bill is part of Forward SGF's comprehensive plan for further studies of the Lake Springfield Subarea, the James River Power Station, Rail to Trail Opportunities, and Wayfinding Signage. She noted the Economic Development Administration is seeking up to $1 million in non-construction project funds. She further noted these funds would be utilized to conduct different studies for the development of the Lake Springfield Area. Ms. Kerner explained, per the stipulations of the grant, 80% would be contributed by the United States Economic Development Administration and U.S. Department of Commerce, with the remaining 20% matched by the receiving party.

Mayor McClure asked if the grant was awarded, would the City be responsible for the 20% match. Ms. Kerner expressed this would be the case and Economic Development is working with other partners on this project. Mayor McClure asked if Ms. Kerner knew the time frame that the application for the grant would need to be completed. Ms. Kerner noted the earlier you get the application in, the better chances you have in receiving the grant.

Councilman Lear expressed his support of the proposed and his belief that this is a strong opportunity for growth in the Springfield Lake area.

Councilman Ollis noted he was able to tour the James River Power Station. He expressed his opinion about this opportunity to develop this area into a community asset for recreational use.

Mayor Pro Tem Simpson expressed his support of the proposed. He noted his interest in seeing the potential of these areas once these studies are completed.

An opportunity was given for citizens to express their views. There being no appearances, the public hearing was declared closed.

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Council Bill 2021-242. Resolution 10598 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. Abstain: None.

EMERGENCY BILLS

PUBLIC IMPROVEMENTS

The following bills appeared on the agenda under Grants.

Crisis Cooperative Agreement Grant from the Missouri Department of Health and Senior Services

Council Bill 2021-243 (Ollis)

A special ordinance authorizing the City Manager, or his designee, to accept a Crisis Cooperative Agreement grant from the Missouri Department of Health and Senior Services in the amount of $432,334, for use by the Springfield-Greene County Health Department; amending the Fiscal Year 2021-2022 budget in the amount of $432,334, for the purpose of appropriating the grant funds; and declaring that this bill qualifies for approval in one reading.

Jon Mooney, Assistant Director of Health gave an overview of the proposed. He noted this grant is through the U.S. Missouri Department of Health and Senior Services. He explained it will provide the Springfield- Greene County Health Department with additional funding to continue the response to the COVID-19 crisis. Mr. Mooney noted these funds will allow the response to ongoing needs through testing services, epidemiology, vaccine distribution and administration, and community education and outreach. He noted these critical health activities will continue for the foreseeable future and funding such as this will help cover expenses.

An opportunity was given for citizens to express their views. There being no appearances, the public hearing was declared closed.

Council Bill 2021-243. Special Ordinance 27574 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. None Abstain: None.

Grant from the Missouri Department of Transportation for Springfield Branson National Airport Board

Council Bill 2021-244 (Lear)

A special ordinance authorizing the City Manager, or his designee, to apply for and accept a grant from the Missouri Department of Transportation, providing for a grant of funds under Section 226.225 RSMo, to the City, by and through the Springfield-Branson National Airport Board, for the construction of an extension to the existing cargo apron at Springfield-Branson National Airport; appropriating $500,000 of Springfield-Branson National Airport funds; amending the budget of the Springfield-Branson National Airport Board for Fiscal Year 2021-2022 in the amount of $1,000,000; and declaring that this bill qualifies for approval in one reading.

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Brian Weiler, Director of Aviation provided an overview of the proposed. He noted this grant is part of the Missouri Department of Transportation Freight Enhancement Program. He explained this grant is designed to remove freight bottlenecks and expand freight related economic development in the State of Missouri. He noted $1 million was available during this cycle of grant applications for non- construction projects. He further noted this grant can only be used on railroads, rivers ports, and airports. Mr. Weiler explained the Springfield Airport intends to use these funds to expand their cargo ramp which is seeing increased activity from carriers such as UPS and FedEx. He noted the freight cargo area is running 7% above pre-pandemic levels due to people ordering more items online. Mr. Weiler noted construction of this project is expected to be completed by next summer.

An opportunity was given for citizens to express their views. There being no appearances, the public hearing was declared closed.

Council Bill 2021-244. Special Ordinance 27575 was approved by the following vote: Ayes: Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, McGull, and McClure. Nays: None. Absent: Romine. Abstain: None.

AMENDED BILLS

The following bills appeared on the agenda under Council Bills for Public Hearing.

Annexing MoDOT Right-of-Way

Council Bill 2021-245 (Romine)

A general ordinance amending Section 1-9 of the Springfield City Code, 'City Limits;' and amending Section 46-1 of the Springfield City Code, 'Boundaries of wards, precincts and council zones;' for the purpose of annexing approximately 5.11 acres of Missouri Department of Transportation right-of-way, generally located in the 5900 through 6200 blocks of West State Highway 266, and referenced as Annexation A-3-2021, into the City of Springfield.

Brenden Griesemer, Acting Director of Planning and Development provided an overview of the proposed. He noted this is an annexation request near the intersection of Airport Boulevard and Route 266. He noted this area is 2,200 linear feet of MoDOT Right-of-way and adjacent to the city limits. He explained items Planning and Development has considered when bringing this request to Council. He noted this is adjacent to the proposed sports facility development that was previously approved. He explained this would allow for continued growth and development by maximizing the use of existing resources while minimizing the cost to citizens.

Mayor Pro Tem Simpson asked whether the portion of the area going west outside of Springfield boundary limits would be utilized for future annexations. Mr. Griesemer explained the area is a deceleration lane which was projected to accommodate that boundary.

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An opportunity was given for citizens to express their views. There being no appearances, the public hearing was declared closed.

Rezoning; 2625 West Delmar Street, 1025 and 1045 South Clifton Avenue, and 2620 West Grand Street

Council Bill 2021-246 (Schilling)

A general ordinance amending the Springfield Land Development Code, Section 36-306, 'Official zoning map and rules for interpretation,' by rezoning approximately 3.3 acres of property generally located at 2625 West Delmar Street, 1025 and 1045 South Clifton Avenue, and 2620 West Grand Street from Planned Development No. 269 to Planned Development No. 378; and adopting an updated Official Zoning Map. (Planning and Zoning Commission and Staff recommend approval.) (By: Simmons First National Bank; 2625 W. Delmar Street,1025 & 1045 S. Clifton Avenue and 2620 W. Grand Street; PD 378)

Brenden Griesemer, Acting Director of Planning and Development provided an overview of the proposed. He noted this is a rezoning request at the intersection of Scenic Avenue and Grand Street. He noted the comprehensive plan shows the proposed as appropriate for light industrial, office, and office-warehouse. He noted the current proposal is to rezone for an independent senior housing or multi-family development. He further noted a traffic impact study, and a stormwater detention study were previously completed for this area. He explained the planned development changes would remove the mixed-use requirement allowing for residential or commercial use. Mr. Griesemer noted the proposed senior housing complex has a design that would allow for a property density of 32 dwelling units, with one parking space per unit.

An opportunity was given for citizens to express their views. There being no appearances, the public hearing was declared closed.

The following bills appeared on the agenda under First Reading Bills.

Municipal Court Costs

Council Bill 2021-247 (Hosmer)

A general ordinance amending the Springfield City Code, Chapter 42, 'Courts,' Division II, 'Municipal court,' Section 42-41, 'Court costs,' to correspond with changes in state law.

Rhonda Lewsader, City Attorney provided an overview of the proposed. She noted earlier this year the Office of State Courts Administrator, (OSCA), sent their Municipal Assistance Review Unit to conduct a limited review of the Municipal Court's compliance with various Supreme Court rules, Missouri Statues, and Supreme Court operating rules regarding court cost. She explained the reviews suggested the proposed amendment needs updating to reflect changes in the State law over several years. Ms. Lewsader noted the Municipal Court has been assessing court costs according OSCA's bench card, which is required by the Missouri's Supreme Court rule and at OSCA's suggestion. She noted this resulted in Section 42-41 needing to be updated to reflect the current statutory language regarding court cost.

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Mayor McClure asked are the fees the Municipal Court enforce under the OSCA requirements. Ms. Lewsader explained this was correct and under Missouri Supreme Court rule, OSCA creates a bench card that contains a list of cost allowed to be assessed. Mayor McClure clarified OSCA has the authority to overrule City Code and this bill would make the cost and fees in compliance with OSCA.

Councilman Hosmer asked what information was given about inmates booked on code violations in Greene County jail. Ms. Lewsader noted she was unsure but would find out more information to pass to Council.

An opportunity was given for citizens to express their views.

Tim Havens spoke in opposition of the proposed. He provided his opinion on ways to stop the cycle of homeless individuals who are unable or unwilling to attend court. He proposed ways to avoid adding additional legal charges to the homeless community.

There being no further appearances, the public hearing was declared closed.

Purchase of Real Property; 2131 West Kingsley Street real property

Council Bill 2021-248 (Hardinger)

A special ordinance authorizing the City Manager, or his designee, to enter into an agreement with the owners of the property generally located at 2131 West Kingsley Street, to purchase the real property at this location; and authorizing certain other documents and actions in connection therewith.

Bob Belote, Director of Parks & Recreation provided an overview of the proposed. He noted this is the last piece in the Fieldhouse Sports Center proposal. He further noted this bill is for the acquisition of the adjacent 2.3-acre lot, which would allow for future expansion of the Fieldhouse. He explained the additional space for the facility could be used for additional parking when regional and national caliber sports events are hosted. Mr. Belote noted there is no additional funding needed to obtain this lot, as it was part of the original proposal.

An opportunity was given for citizens to express their views. There being no appearances, the public hearing was declared closed.

Approving and Accepting GAP Collaborative to design and construct the Grant Avenue Parkway Project

Council Bill 2021-249 (Hosmer)

A special ordinance approving and accepting the proposal from the team, GAP Collaborative, as the best value team to design and construct the Grant Avenue Parkway Project; authorizing the City Manager, or his designee, to enter into a contract with the GAP Collaborative team leader, Radmacher Brothers Excavating Company, Inc.; and amending the budget of the Department of Public Works for Fiscal Year 2021-2022 in the amount of $2,714,000.

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Cora Scott, Director of Public Information and Civic Engagement provided an overview of the proposed. She noted this measure is to approve and accept the proposal from the GAP Collaborative, the best value team to construct the Grant Avenue Parkway. She explained the Grant Avenue Parkway project will create multi-modal transportation improvements along Grant Avenue through the heart of Springfield. She noted the proposed will include transportation improvements, economic development strategies, quality of life efforts, and community revitalization initiatives. She further noted this project works alongside the Grant Avenue Corridor Plan, Forward SGF Comprehensive Plan, Restore SGF Neighborhood Revitalization, and community partner organizations.

Paula Brookshire, Principal Engineer elaborated on the proposed. She described this as the first project that Public Works has used the design build delivery method. She explained with other projects, Public Works would take bids to present to Council for approval of the lowest bid. With this project, Public Works set an amount and asked what each design/construction team could accomplish within those stipulations. Ms. Brookshire noted Public Works reviewed and scored each design, leading to the choice of GAP Collaborative as the best value team. She explained how the budget for this project would work and what funding sources would be utilized. She thanked everyone who helped with this process.

An opportunity was given for citizens to express their views. There being no appearances, the public hearing was declared closed.

The following items appeared on the agenda under Petitions, Remonstrances, and Communications.

Appeared Tim Havens addressed City Council. Mr. Havens noted the complications regarding the issue of homelessness. He spoke about the issues caused by the lack of transportation for the homeless. He expressed ways to help combat the cycle homeless individuals face when trying to get help.

Appeared Janice Gehrke addressed City Council. Ms. Gehrke thanked the Council for all they do. She noted the Citizens Police Academy is able to get all of the back logged kits tested this week. She expressed gratitude to the City Council for helping to get this program funded.

Appeared Phyllis Evans addressed City Council. Ms. Evans expressed her opinion regarding funding for the homeless. She highlighted benefits of focusing on treating the cause of homelessness and not just the symptom.

Appeared Ben Brown addressed City Council. Mr. Brown spoke about crime and issues in the area he works. He expressed numerous encounters he has had withing the neighborhood and the stress caused from the lack of intervention.

Councilman Ollis asked Jason Gage, City Manager about utilizing the upcoming study sessions to address the issues brought before Council and for ways to address lower-level types of crimes that are being brought to the attention of Council. Mr. Gage

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explained how the expansions of the jail system will help with these types of situations. He further explained the ways the Police Department is working to hire and retain officers. Councilman Ollis thanked Mr. Brown for his story and time.

Councilman Hosmer noted the Springfield Police Department is unfortunately understaffed, and the officers are doing the best they can. He asked Mr. Gage if they could receive more input from police officers working on the front lines on how these issues can be addressed and what types of support is needed. Mr. Gage mentioned crime has been happening for years, but looking at the number of budgeted staff, it is consistent for a town the size of Springfield. He explained Springfield does have more crime than other places but did not have the access to a large capacity jail. He noted Springfield now has the capacity which will be utilized to change the way officers are able to handle each situation that arises. Councilman Hosmer asked if it was possible to find a consultant outside of Springfield to give feedback about the way crime is handled. Mr. Gage noted it was a possibility to find someone with the right expertise to do so. He further noted this consultant may be the way to go to find the needed result to help with the crime.

Councilwoman Hardinger thanked Mr. Brown for coming to the meeting and sharing. She expressed the need for citizens to live in a safe community. She noted the struggle to recruit, hire, and retain officers. She expressed support on utilizing a consultant as this is a top concern.

Councilman McGull expressed his desire for City Council to be made aware of the shortage of staffing prior to it becoming a crisis and the arrest statistics of the jails to see where additional support can be added.

Appeared Lisa Meeks addressed City Council. Ms. Meeks noted recent changes in the federal government requiring front line workers to get vaccinated. She expressed frustration with people losing their jobs for not taking the vaccine.

Councilman Hosmer clarified information presented by Ms. Meeks.

Appeared Meike Aton addressed City Council. Ms. Aton expressed her opinions on changes and comments made on the federal level. She talked about City policies and how they correspond with certain historic events.

Did Not Appear Heather Dietz did not appear to address Council.

Anita Cotter, City Clerk noted Kevin Berry and Faunlee Harle provided comments that were distributed to members of Council.

Kevin Berry provided a handout regarding his proposed alternative to the COVID-19 vaccine. He provided his contact information should anyone have questions.

Faunlee Harle expressed her opinions regarding the proposed City flag. She expressed her desire for Council to entertain alternative flag designs.

DRAFT

The following items appeared on the agenda under New Business.

Recommended The Public Involvement Committee recommends the following appointment to the Board of Equalization: Derek White, with a term to expire April 1, 2026.

Recommended The Public Involvement Committee recommends the following appointment to the Citizens Advisory Committee for Community Development: Brennan Pratt, with term to expire May 1, 2022.

Recommended The Public Involvement Committee recommends the following appointments to the Landmarks Board: Bryan Lenox, with a term to expire November 1, 2023, John Hawkins, with a term to expire November 1, 2022, and Jan Preston, with a term to expire November 1, 2021.

Recommended The Public Involvement Committee recommends the following appointment to the Police Officers' and Fire Fighters' Retirement System Board of Trustees: Charles Munsey, with a term to expire April 30, 2024.

Recommended The Public Involvement Committee recommends the following reappointments to the Springfield- Greene-County Environmental Advisory Board: Barbara Garcia and Krista Peryer, with terms to expire October 1, 2024.

Recommended The Public Involvement Committee recommends the following appointments to the Springfield Greene-County Environmental Advisory Board: Lindsey McDaniel, with term to expire October 1, 2022, and Mark Millsap, with a term to expire October 1, 2024.

Appointed Mayor McClure is appointing Councilman Craig Hosmer to fill the open city position reserved for a City Council member on the Solid Waste District O Board.

UNFINISHED BUSINESS

MISCELLANEOUS

The following bills appeared on the agenda under Consent Agenda First Reading Bills.

Advanced Traffic Management System Software Council Bill 2021-250 (Simpson)

A special ordinance authorizing the City Manager, or his designee, to enter into a supplemental agreement with Missouri Highways and Transportation Commission and TransCore ITS, LLC, for continued maintenance of Advanced Traffic Management System software and hardware at the Transportation Management Center of the Ozarks.

DRAFT

Missouri Highways and Transportation Commission; On Call Work Zone Enforcement Program

Council Bill 2021-251 (Ollis)

A special ordinance authorizing the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Missouri Highways and Transportation Commission to participate in the On Call Work Zone Enforcement Program to provide enhanced traffic enforcement in work zones.

The following bill appeared on the agenda under Consent Agenda One Reading Bills.

Springfield Police Department grant for Civilian Motorcycle Safety Training Course

Council Bill 2021-253 (McGull)

A special ordinance authorizing the City Manager, or his designee, to accept a grant from the Missouri Department of Transportation in the amount of $16,850, to be used by the Springfield Police Department for the purpose of providing a Civilian Motorcycle Safety Training Course; amending the budget for the Police Department in the amount of $16,850; and declaring that this bill qualifies for approval in one reading.

Council Bill 2021-253. Special Ordinance 27576 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. Abstain: None.

The following bills appeared on the agenda under Consent Agenda Second Reading Bills.

Sanitary Sewer Easements; 3101 South Glenstone Avenue

Council Bill 2021-237 (Simpson)

A special ordinance relinquishing certain sanitary sewer easements located at 3101 South Glenstone Avenue for the purpose of accommodating improvements at said location.
Council Bill 2021-237. Special Ordinance 27577 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. Abstain: None.

Preliminary Plat of Stalzer; 1605 West Nichols Street

Council Bill 2021-238 (Romine)

A special ordinance authorizing the Director of Planning and Development to accept the dedication of public streets and easements to the City of Springfield, as shown on the Preliminary Plat of Stalzer Addition, generally located at 1615 West Nichols Street, upon the applicant filing and recording a final plat that substantially conforms to the preliminary plat; and authorizing the City Clerk to sign the final plat upon compliance with all the terms of this Ordinance. (Staff recommends that City Council accept the public streets and easements.)

Council Bill 2021-238. Special Ordinance 27578 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. Abstain: None.

DRAFT

Preliminary Plat of Boing, 2808 North Kansas Expressway

Council Bill 2021-239 (Romine)

A special ordinance authorizing the Director of Planning and Development to accept the dedication of public streets and easements to the City of Springfield, as shown on the Preliminary Plat of Boing U.S. Holdco Subdivision, generally located at 2808 North Kansas Expressway, upon the applicant filing and recording a final plat that substantially conforms to the preliminary plat; and authorizing the City Clerk to sign the final plat upon compliance with all the terms of this Ordinance. (Staff recommends that City Council accept the public streets and easements.)

Council Bill 2021-239. Special Ordinance 27579 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. Abstain: None.

Real Property at 2433 North Cottage Avenue to Sterling Fields

Council Bill 2021-240 (Romine)

A special ordinance approving the conveyance of real property at 2433 North Cottage Avenue to Sterling Fields; and authorizing the issuance of a quit claim deed.

Council Bill 2021-240. Special Ordinance 27580 was approved by the following vote: Ayes: McGull, Schilling, Simpson, Hosmer, Ollis, Lear, Hardinger, and McClure. Nays: None. Absent: Romine. Abstain: None.

Confirmed

Confirm the following appointments to the Public Housing Authority: Isabelle Jimenez Walker and Debbie Tinen, with terms to expire April 11, 2025.

Confirmed

Confirm the following reappointment to the Public Housing Authority: Cheryl Clay, with a term to expire April 11, 2025.

END OF CONSENT AGENDA.

Motion to Adjourn

Mayor Pro Tem Simpson moved to Adjourn. Councilman Lear seconded the motion, and it was approved by the following vote. Ayes. Simpson, Ollis, Lear, Hardinger, McGull, and McClure. Nays: Hosmer. Absent: Romine and Schilling. Abstain: None. The meeting adjourned at 8:25 p.m.

Prepared by
Lauren M. Fischer

Anita J. Cotter, CMC/MRCC
City Clerk

DRAFT

One-rdg. _____
P. Hrngs. X
Pgs. 20
Filed: 09-14-21

Sponsored by: Romine

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021-245 GENERAL ORDINANCE _____

AN ORDINANCE

AMENDING Section 1-9 of the Springfield City Code, 'City Limits;' and amending Section 46-1 of the Springfield City Code, 'Boundaries of wards, precincts and council zones;' for the purpose of annexing approximately 5.11 acres of Missouri Department of Transportation right-of-way, generally located in the 5900 through 6200 blocks of West State Highway 266, and referenced as Annexation A-3-2021, into the City of Springfield.

WHEREAS, the State of Missouri, through the Missouri Department of Transportation ("MoDOT"), has executed a written petition for the City to annex approximately 5.11 acres of MoDOT right-of-way as described in "Exhibit A," said area being generally located in the 5900 through 6200 blocks of West State Highway 266; and

WHEREAS, said petition was presented to City Council more than fourteen, but less than sixty days, prior to the public hearing thereon; and

WHEREAS, proper notice was published at least seven days prior to the public hearing; and

WHEREAS, City Council does find and determine that: (1) said annexation is reasonable and necessary to the proper development of the City; (2) the City is able to furnish normal municipal services to the area annexed herein with a reasonable time after annexation; and (3) the area annexed herein is contiguous and compact to the existing corporate boundaries of the City.

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

Section 1 – City Council, after holding a public hearing, hereby determines that Annexation A-3-2021 of the property described in "Exhibit A," which is attached hereto and incorporated herein by this reference, is reasonable and necessary to the proper development of the City, the City has the ability to furnish normal municipal services to

the area annexed within a reasonable time, and the area is contiguous and compact to the existing boundaries of the City as shown in “Exhibit B,” which is attached hereto and incorporated herein by this reference.

Section 2 – Pursuant to the provisions of Section 71.012 RSMo., the property described in “Exhibit A,” is hereby annexed into the City of Springfield, Missouri.

Section 3 – Section 1-9 of the Springfield City Code, ‘City Limits,’ is hereby amended by adding thereto the land described in "Exhibit A."

Section 4 – Section 46-1 of the Springfield City Code, ‘Boundaries of wards, precincts and council zones,’ is hereby amended by placing the property described in "Exhibit A" into the appropriate ward and precinct as determined by the County Clerk in accordance with the provisions of State law.

Section 5 – The City Clerk is directed to: (1) file certified copies of this Annexation Ordinance with the Clerk of Greene County; (2) file certified copies of this Annexation Ordinance with the Assessor of Greene County; and (3) forward to the Missouri Director of Revenue, by certified mail, certified copies of this Ordinance, and any other information that the Director of Revenue may require. The City Clerk is further authorized and empowered to perform any other administrative acts which are consistent with the intent of this Ordinance.

Section 6 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021- 245

FILED: 9-14-21

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: To adopt an ordinance to annex approximately 5.11 acres of public right-of-way into the City of Springfield, generally located at the 5900 to 6200 blocks of West State Highway 266 and referenced as Annexation A-3-2021. (Staff recommends approval.)

BACKGROUND INFORMATION:

The City requests to annex approximately 5.11 acres (2,200 linear feet) of MoDOT right-of-way generally located along the 5900 through 6200 blocks of West State Highway 266 (Chestnut Expressway), immediately west of North Airport Boulevard. The proposed right-of-way to be annexed is contiguous to the City limits and abuts the north side of SGF Sports, LLC's, proposed private athletic facility located just west of Deer Lake Golf Course. The purpose of this annexation is to ensure that a community improvement district ("CID") can be properly established to entirely reimburse the City the costs of the public improvements it has agreed to fund in association with proposed private athletic facility.

Per the development agreement between the City and SGF Sports, LLC, which was approved on March 8, 2021, by Special Ordinance 27472, the City will fund up to $2.1 million in public improvements and interest expenses associated with the proposed facility, including public sidewalks on the subject right-of-way. The City will be reimbursed for these costs by establishing a CID over the facility that will impose a 1-cent sales and use tax. In order for the CID to reimburse the City for the costs of the public sidewalks, the sidewalks must be located inside the CID, and the CID boundaries need to be entirely located inside the City limits in order for the City to establish the CID.

City Council is required to hold a public hearing to determine whether the annexation is reasonable and necessary for the proper development of the City and whether the City has the ability to furnish normal city services within a reasonable period of time. If no written objection is filed within fourteen (14) days of the public hearing, the City may annex the property by ordinance without further action.

REMARKS:

The area to be annexed is contiguous to the City of Springfield. See "Exhibit B" for the location of the public right-of-way to be annexed.

RECOMMENDATIONS:

1. The area to be annexed is within the City's Urban Service Area and is consistent with its policies.

2. The area to be annexed is contiguous to the City of Springfield and all City services can be provided to the property.

3. The *Growth Management and Land Use Plan* of the *Comprehensive Plan* supports the annexation because it enhances government efficiencies through rational and simplified city boundaries.

4. The owner has petitioned the City for annexation.

Staff recommends the public right-of-way be annexed based on the aforementioned findings.

Submitted by:

R. Daniel Neal, Senior Planner

Recommended by:

Brendan Griesemer, AICP
Acting Director

Approved by:

Jason Gage, City Manager

EXHIBITS:
Exhibit A, Legal Description
Exhibit B, Development Review Staff Report

ATTACHMENTS:
Attachment 1, Department Comments
Attachment 2, Annexation Schedule
Attachment 3, MoDOT Voluntary Annexation Petition

Exhibit A

LEGAL DESCRIPTION
ANNEXATION A-3-2021

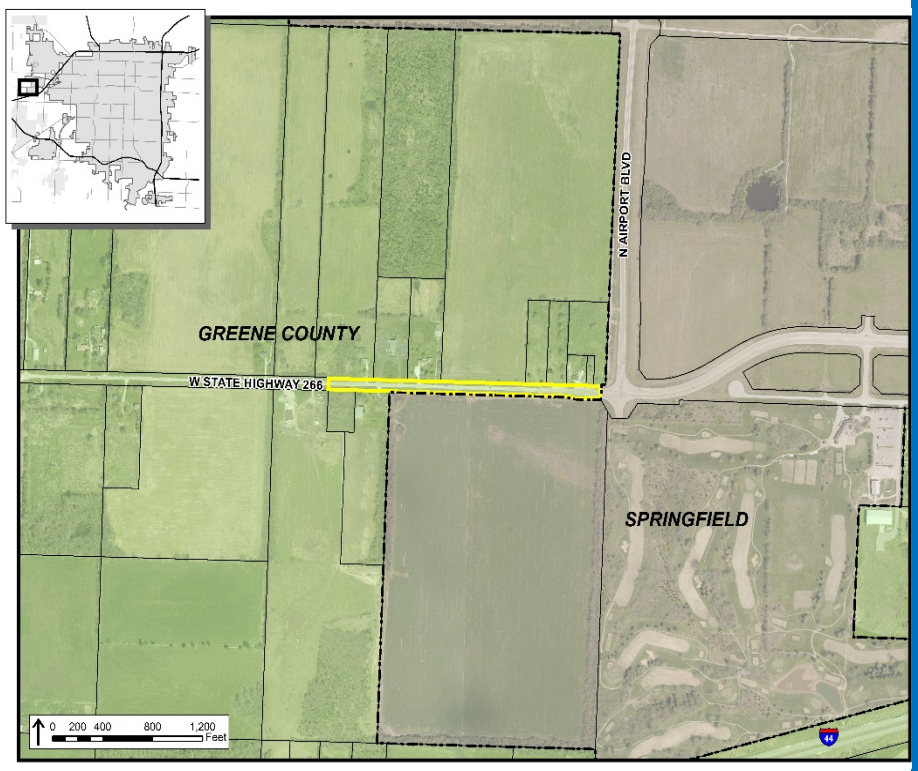
A PART OF THE EXISTING STATE ROUTE 266 RIGHT-OF-WAY IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 29 NORTH, RANGE 23 WEST, AND IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 29 NORTH, RANGE 23 WEST, IN GREENE COUNTY, MISSOURI, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 23; THENCE WEST, ALONG THE NORTH LINE OF SAID SECTION 23, A DISTANCE OF 51.61 FEET TO THE EXISTING WESTERLY LINE OF THE CITY LIMITS OF SPRINGFIELD, MISSOURI, FOR THE POINT OF BEGINNING; THENCE SOUTH, ALONG SAID LINE, A DISTANCE OF 64.34 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID STATE ROUTE 266, BEING AT A POINT 65.00 FEET RIGHT OF RELOCATED ROUTE 266 CENTERLINE STATION 607+64.89 AS DESCRIBED IN A WARRANTY DEED RECORDED IN BOOK 2007 AT PAGE 060394-07 OF THE GREENE COUNTY RECORDER'S OFFICE; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 202.39 FEET TO A POINT 65.00 FEET RIGHT OF STATION 605+62.5; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE, TO A POINT 50.00 FEET RIGHT OF STATION 604+75, BEING ON THE ORIGINAL SOUTH RIGHT OF WAY LINE OF STATE ROUTE 266; THENCE WEST, ALONG SAID SOUTH LINE, APPROXIMATELY 1910 FEET TO A POINT 2251.50 FEET WEST OF THE EAST LINE OF SAID SECTION 23, SAID POINT BEING AT THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN AN AFFIDAVIT RECORDED IN BOOK 2013 AT PAGE 040648-13 OF THE GREENE COUNTY RECORDER'S OFFICE; THENCE NORTH, 100 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID STATE ROUTE 266; THENCE EAST, ALONG SAID NORTH LINE, TO THE POINT OF INTERSECTION WITH SAID WESTERLY CITY LIMITS LINE; THENCE SOUTH, ALONG SAID WESTERLY LINE, TO THE POINT OF BEGINNING.

Exhibit B

Development Review Staff Report

CITY OF Springfield

CITY COUNCIL PUBLIC HEARING: SEPTEMBER 20, 2021



CASE NUMBER:
Annexation A-3-2021

LOCATION:
5900 to 6200 blocks W. State Hwy 266

ACRES:
Approximately 5.11 acres

EXISTING LAND USE:
MoDOT roadway

APPLICANT:
City of Springfield

STAFF:
Daniel Neal, Senior Planner
864-1036

STAFF RECOMMENDATIONS:
Approve

PROPOSED MOTION:
Move to approve the request to annex the subject property into the City of Springfield as submitted in the staff report

SUMMARY OF REQUEST:

Request to annex approximately 5.11 acres of MoDOT right-of-way into the City of Springfield.

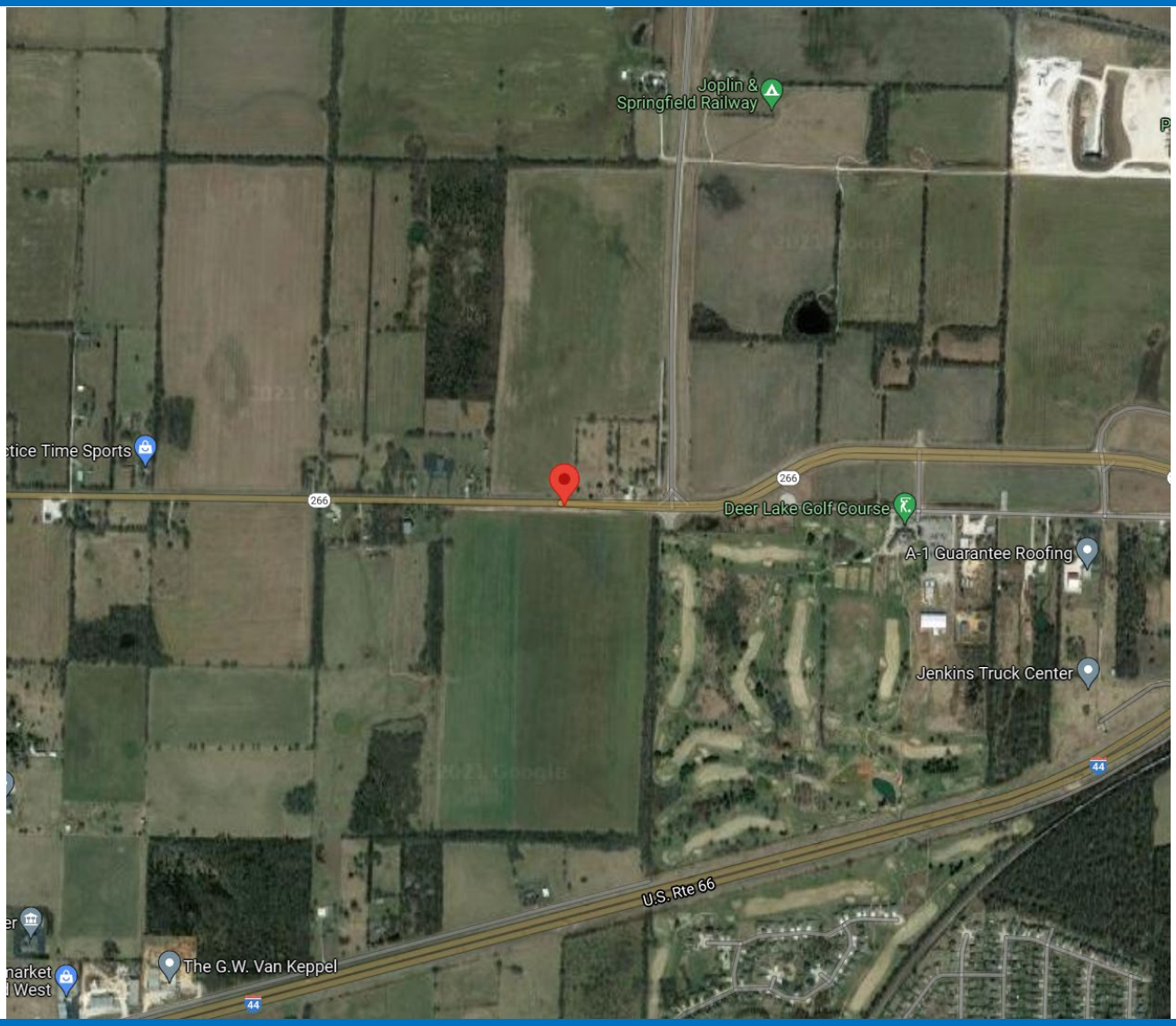
FINDINGS FOR STAFF RECOMMENDATION:

1. The area to be annexed is within the City's Urban Service Area and is consistent with its policies.
2. The area to be annexed is contiguous to the City of Springfield and all City services can be provided to the property.
3. The *Growth Management and Land Use Plan* of the *Comprehensive Plan* supports the annexation because this annexation will enhance government efficiencies through a rational and simplified city boundary.

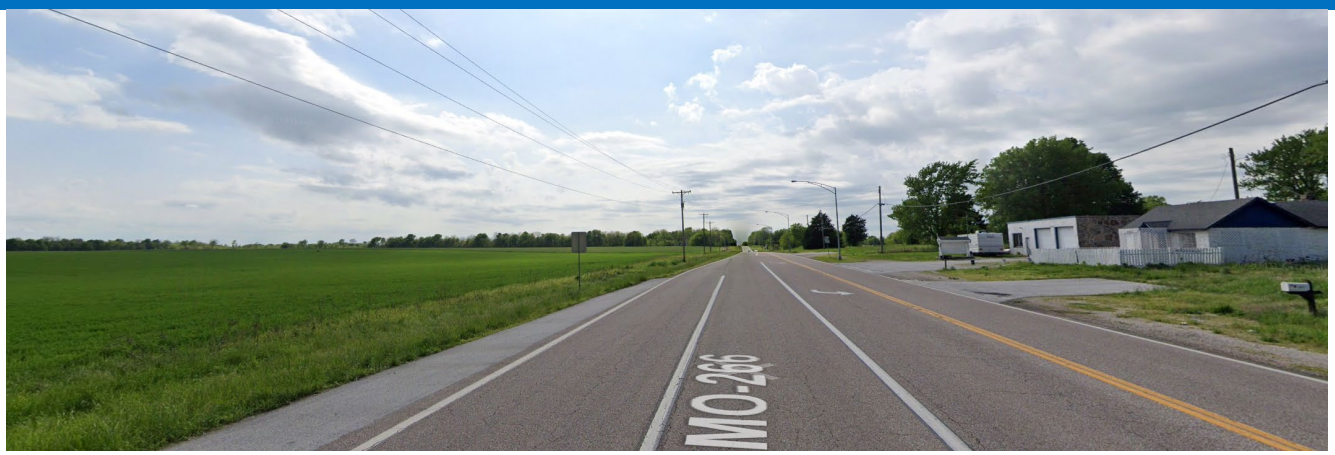
SURROUNDING ZONING AND LAND USES:

	NORTH	SOUTH	EAST	WEST
ZONING	PD 295 and County A-1	PAD 1015 and County A-1 and C-2	County C-2 and M-1	County A-1
LAND USE	Agriculture, residential and Vacant/undeveloped land uses	Golf course, residential, vacant/undeveloped and agricultural uses	General commercial and light industrial uses	Agricultural and residential uses

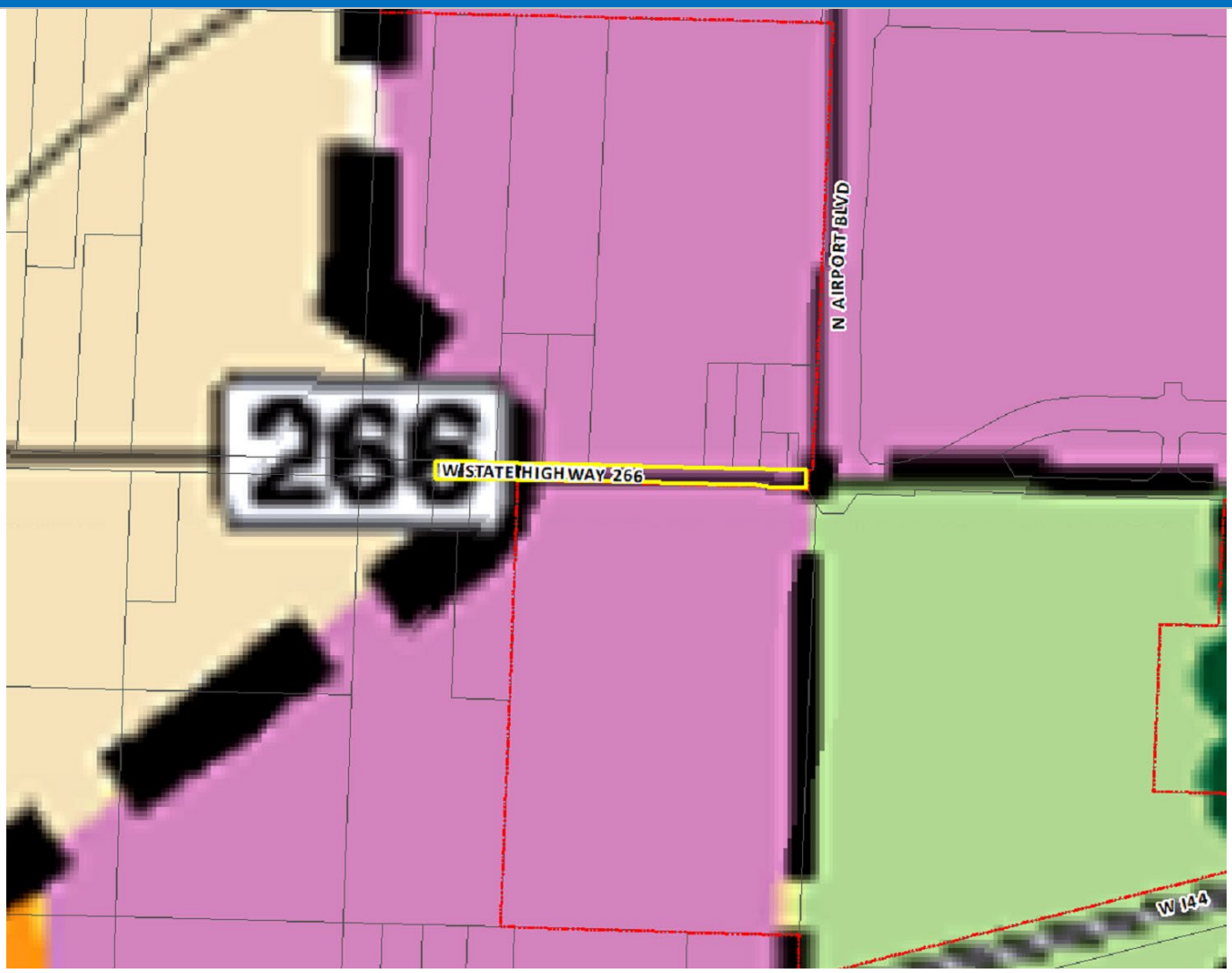
SURROUNDING LAND USES (GOOGLE MAP AERIAL VIEW):



GOOGLE MAPS STREET VIEW:

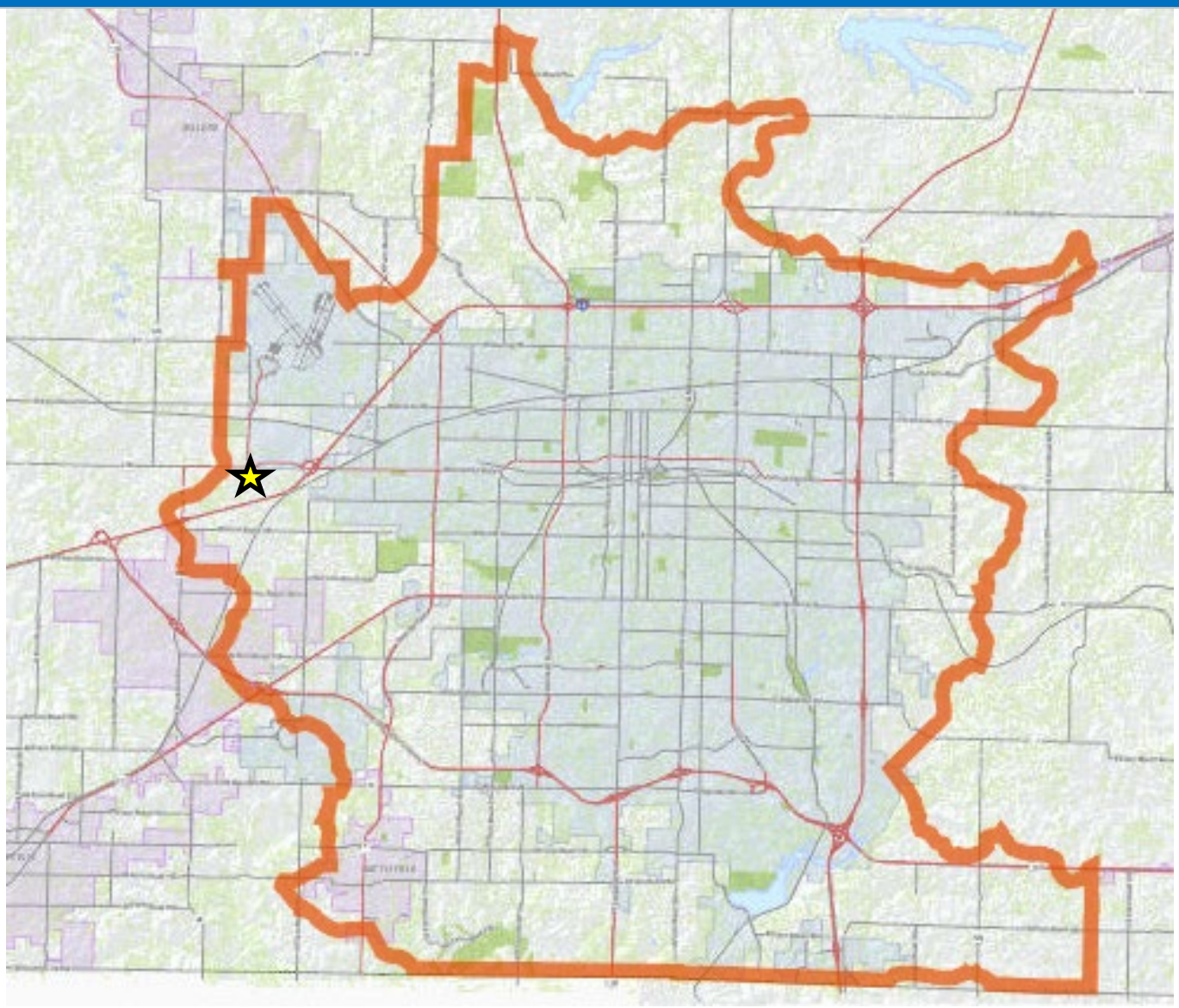


GROWTH MANAGEMENT AND LAND USE PLAN:



- Low-Density Housing
- Medium or High Density Housing
- Medium Intensity Retail, Office or Housing
- High Intensity Retail, Office or Housing
- Greater Downtown
- Business Park
- Light Industrial, Office and Office-Warehouse
- General Industry, Transportation and Utilities
- Park
- School
- Golf
- Community-Public
- Urban Reserve Area
- Rural Area
- Greenway
- Parkway
- City Boundary
- Urban Service Area Boundary, Year 2020
- Urban Reserve Boundary, Year 2040

URBAN SERVICE AREA:



Development Review Staff Report

CITY OF Springfield

PROPERTY HISTORY:

The subject property is currently outside the city limits in unincorporated Greene County. The subject property is MoDOT right-of-way.

COMPATIBILITY WITH COMPREHENSIVE PLAN:

The *Growth Management and Land Use Plan* element of the *Comprehensive Plan* states that City annexations should enhance governmental efficiencies through rational and simplified City boundaries and reduce any potential inter-jurisdictional conflict.

STAFF COMMENTS:

1. The City requests to annex approximately 5.11 acres (2,200 linear feet) of MoDOT right-of-way generally located along the 5900 through 6200 blocks of West State Highway 266 (Chestnut Expressway), immediately west of North Airport Boulevard. The proposed right-of-way to be annexed is contiguous to the City limits and abuts the north side of SGF Sports, LLC's proposed private athletic facility located just west of Deer Lake Golf Course. The purpose of this annexation is to ensure that a community improvement district (CID) can be properly established to entirely reimburse the City the costs of the public improvements it has agreed to fund in association with proposed private athletic facility.

2. Per the development agreement between the City and SGF Sports, LLC, which was approved on March 8, 2021 by Special Ordinance 27472, the City will fund up to $2.1 million in public improvements and interest expenses associated with the proposed facility, including public sidewalks on the subject right-of-way. The City will be reimbursed for these costs by establishing a CID over the facility that will impose a 1-cent sales and use tax. In order for the CID to reimburse the City for the costs of the public sidewalks, the sidewalks must be located inside the CID, and the CID boundaries need to be entirely located inside the City limits in order for the City to establish the CID.

3. The area to be annexed is within the City's Urban Service Area and is consistent with its policies.

4. The proposed annexation will allow the subject property to be developed similarly to adjacent properties in the City.

5. The proposed annexation does not contain a floodplain.

6. The proposed annexation includes public right-of-way.

7. The private property is currently served by the Brookline Fire Protection District.

8. The proposed rezoning was reviewed by City departments and comments are contained in Attachment 1. The legal description of the private property involved in this annexation is attached as Exhibit A.

PUBLIC NOTIFICATION:

The public notice for annexation was advertised in the Daily Events at least 15 days prior to the public hearing. For the rezoning, the property was posted by the applicant at least 10 days prior to the public hearing. For the rezoning, public notice letters were sent out at least 10 days prior to the public hearing to all property owners within 185 feet.

Notices sent to property owners within 185 feet: Mailed: 5 Returned: 0

DEPARTMENT COMMENTS:

ATTACHMENT 1
DEPARTMENT COMMENTS

BUILDING DEVELOPMENT SERVICES COMMENTS:

No comments. Not applicable.

CITY UTILITIES:

No comments. Not applicable.

CLEAN WATER SERVICES COMMENTS:

No comments. Not applicable.

E-911 COMMENTS:

No comments. Not applicable.

ECONOMIC DEVELOPMENT COMMENTS:

No comments. Not applicable.

FIRE DEPARTMENT COMMENTS:

No additional comments. Previous comments for adjacent private property.

1. **Service** – The primary Fire Station responding to this area would be Fire Station #5 located at 2750 W Kearney which is approximately 4.8 miles from the 5544 W Hwy 266 address. Station #8 located at 1405 S Scenic is the secondary station responding to the address which is approximately 5.5 miles from the address.

2. **ISO area** – The proposed annexation is currently outside the recommended ISO 1.5-mile (ISO diamond) response distance by 3.4 miles for the 1st due unit. ***This will have a potential impact to our ISO rating. Any negative impact resulting from this annexation will be mitigated through the addition of Fire Station 14, forecast for 2026.***

3. **Response times/Standards of Cover** – Estimated response time was calculated mathematically with an assumed travel speed of 45 miles per hour by fire apparatus on primary/secondary streets and an assumed travel speed of 55 mph for responses that are primarily on interstate highways. The 1st due company has an estimated total response time of 7 minutes, 35 seconds. The 2nd due company has an estimated total response time of 9 minutes, 40 seconds. It is unlikely the standard of coverage benchmark could be met for single company responses or a full 1st alarm response which requires 3 engines, 2 Trucks, 1 Rescue and 1 Battalion Chief to arrive on scene within 11 minutes and 24 seconds. ***The Department expects that it will not be able to meet the benchmark performance objective for total response time for a single unit response or an effective response force. This will impact our accreditation.***

		Estimated Total Response Time	Benchmark*	Baseline**
1st Due Company	Station 5	7-8 minutes	6 minutes 20 seconds	8 minutes 13 seconds
Total Effective Response Force	Stations 1, 2, 5, and 8	12-13 minutes	10 minutes 20 seconds	13 minutes 18 seconds

4. **Water Supply** – Currently there is adequate water supply to service the 5544 W Hwy 266 address. There is currently a fire hydrant at the address served by a 12" main. The 6006 W Hwy 266 portion of the proposed annexation has no water supply currently. A minimum of .4-mile extension of water main will be necessary to reach the northeast corner of the property with additional requirements for hydrants and mains dependent upon location of structures on the property. ***Additional infrastructure consistent with the needs of the development and sufficient to meet the requirements for fire suppression water supply and the requirements of the Fire Code would be required.***

5. **Impact -** The Fire Department estimate of impact is based upon comparable facilities in the City to those existing or proposed in the area of annexation. An average of 8 responses per year are anticipated to the golf course area and 3 responses per year to the proposed indoor/outdoor soccer facility. ***The Fire Department does not have any concerns with the operational impact to the department or the City of Springfield.***

Fire Department Recommendation: ***Upon review, the Fire Department is supportive of this request for annexation.***

MODOT COMMENTS:

No issues. (Signed voluntary annexation petition)

POLICE DEPARTMENT COMMENTS:

No issues.

PUBLIC WORKS TRAFFIC DIVISION COMMENTS:

No comments. Not applicable.

PUBLIC WORKS STORMWATER DIVISION COMMENTS:

No comments. Not applicable.

ANNEXATION SCHEDULE:

ATTACHMENT 2
ANNEXATION SCHEDULE

ANNEXATION:

Initiate annexation ..... May 3, 2021

City Council public hearing ..... September 20, 2021

City Council second reading and vote ..... October 4, 2021

CCO Form: RW39
Approved: 11/05 (BDG)
Revised: 11/19 (JDS)
Modified:

VOLUNTARY ANNEXATION PETITION

The City of Springfield, Missouri, (hereinafter, "City") has requested that the Missouri Highways and Transportation Commission (hereinafter, "MHTC") file a petition requesting voluntary annexation into the City of certain public rights of way as indicated in the attached plan sheets. The undersigned on behalf of the City hereby verifies the following:

(1) The City has published a notice of annexation in a local newspaper of general circulation for public comment regarding the proposed annexation or if the City has no local newspaper, it has given public notice using whatever mechanism it typically uses to notify citizens of similar actions.

(2) The City has provided accurate information to MHTC regarding any and all public input received for the annexation, along with any and all input received from the County of Greene and any other incorporated municipality within a five-mile radius of the area to be annexed.

(3) The City has complied with all requirements set forth by MHTC and has provided all information requested by MHTC.

(4) The City has notified all property owners adjacent to the MHTC property to be annexed pursuant to this annexation petition of the proposed voluntary annexation.

(5) The Commission has provided the City with a legal description of the property. If the City desires or is required by statute to use a legal description different from that provided by the Commission, the City shall ensure that the alternate legal description prepared by the City shall correspond to the Commission's legal description and the City shall ensure that the City's description will not extend beyond the description provided by the Commission.

(6) To the extent allowed by law, the City will holds MHTC, Missouri Department of Transportation and its employees harmless from any lawsuits arising out of or relating to the City's failure to comply with all statutes pertaining to the annexation of the described property.

(7) The parties enter into this voluntary annexation petition with full understanding that MHTC, to the best of its knowledge and belief, has the authority

to petition for voluntary annexation into the City. MHTC makes no representation that it has full fee simple title to the right of way which is the subject of this voluntary annexation. In the event this annexation is rendered null and void based upon a determination that MHTC did not have the authority to petition for voluntary annexation, MHTC will not be responsible for any damages, costs or other expenses incurred by the City in connection with this Agreement.

(8) That the undersigned on behalf of the City of Springfield has the authority to execute the terms and conditions contained in this voluntary annexation petition and bind the City to those terms and conditions.

(9) That the event the voluntary annexation is approved by the City and the city limits are extended to include the rights of way described in this voluntary annexation petition, the City shall provide MHTC's undersigned representative with a copy of the final ordinance adopted by the City extending the City's boundary to include the herein described right of way.

Therefore, the undersigned, according to his or her best knowledge, information, and belief, on behalf of the MHTC alleges:

(1) MHTC holds a property interest in the following described tract of land.

A PART OF THE EXISTING STATE ROUTE 266 RIGHT-OF-WAY IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 29 NORTH, RANGE 23 WEST, AND IN THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 29 NORTH, RANGE 23 WEST, IN GREENE COUNTY, MISSOURI, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 23; THENCE WEST, ALONG THE NORTH LINE OF SAID SECTION 23, A DISTANCE OF 51.61 FEET TO THE EXISTING WESTERLY LINE OF THE CITY LIMITS OF SPRINGFIELD, MISSOURI, FOR THE POINT OF BEGINNING; THENCE SOUTH, ALONG SAID LINE, A DISTANCE OF 64.34 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID STATE ROUTE 266, BEING AT A POINT 65.00 FEET RIGHT OF RELOCATED ROUTE 266 CENTERLINE STATION 607+64.89 AS DESCRIBED IN A WARRANTY DEED RECORDED IN BOOK 2007 AT PAGE 060394-07 OF THE GREENE COUNTY RECORDER'S OFFICE; THENCE WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 202.39 FEET TO A POINT 65.00 FEET RIGHT OF STATION 605+62.5; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE, TO A POINT 50.00 FEET RIGHT OF STATION 604+75, BEING ON THE ORIGINAL SOUTH RIGHT OF WAY LINE OF STATE ROUTE 266; THENCE WEST, ALONG SAID SOUTH LINE, APPROXIMATELY 1910 FEET TO A POINT 2251.50 FEET WEST OF THE EAST LINE OF SAID SECTION 23, SAID POINT BEING AT THE NORTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN AN AFFIDAVIT RECORDED IN BOOK 2013 AT PAGE

040648-13 OF THE GREENE COUNTY RECORDER'S OFFICE; THENCE NORTH, 100 FEET TO THE NORTH RIGHT-OFWAY LINE OF SAID STATE ROUTE 266; THENCE EAST, ALONG SAID NORTH LINE, TO THE POINT OF INTERSECTION WITH SAID WESTERLY CITY LIMITS LINE; THENCE SOUTH, ALONG SAID WESTERLY LINE, TO THE POINT OF BEGINNING.

(2) By execution of this petition, the MHTC requests that the above-described right of way be annexed to, and be included within the corporate limits of the City of Springfield, Missouri, as authorized by the provisions of Chapter 71 of the Revised Statutes of Missouri.

(3) That, based upon information provided by the City, that the area to be annexed is not now a part of any incorporated municipality.

(4) That, based upon information provided by the City, that the area to be annexed is compact and contiguous to the existing corporate limits of the City of Springfield.

(5) That the undersigned petitioner is authorized to execute this voluntary annexation petition on behalf of MHTC so that the described right of way can be included within the corporate limits of the City of Springfield.

(6) That MHTC authorizes the governing body of the City of Springfield to cause the required notice to be published, to conduct a public hearing as required by law and to thereafter adopt as ordinance extending the limits of the City of Springfield to include the above-described right of way.

[Remainder of page intentionally left blank]

THIS PETITION REQUESTING VOLUNTARY ANNEXATION IS NOT A VALID PETITION UNTIL BOTH THE CITY AND MHTC'S REPRESENTATIVE HAVE EXECUTED THE PETITION.

In Witness Whereof, the parties have entered into this voluntary annexation petition on the date last written below:

Executed by the City this _____ day of _____, 20___.

Executed by MHTC this 3rd day of September, 2021.

CITY OF _____

By: _____

Title: _____

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: _____

Title: District Engineer

ACKNOWLEDGEMENT BY COMMISSION

STATE OF MISSOURI)
) ss
COUNTY OF Greene)

On this 3rd day of September, 2021, before me appeared Steve Campbell personally known to me, who being by me duly sworn, did say that he/she is the district engineer of the Missouri Highways and Transportation Commission and that said instrument was signed in behalf of said Commission by authority of the Missouri Highways and Transportation Commission and said Steve Campbell acknowledged said instrument to be the free act and deed of said Commission.

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

Andrew J Ellsworth
Notary Public

ANDREW J. ELLSWORTH
Notary Public - Notary Seal
State of Missouri
Commissioned for Greene County
My Commission Expires: April 29, 2022
Commission Number: 14435454

My Commission Expires: April 29, 2022

ACKNOWLEDGEMENT BY CITY

STATE OF MISSOURI)
) ss
COUNTY OF_____)

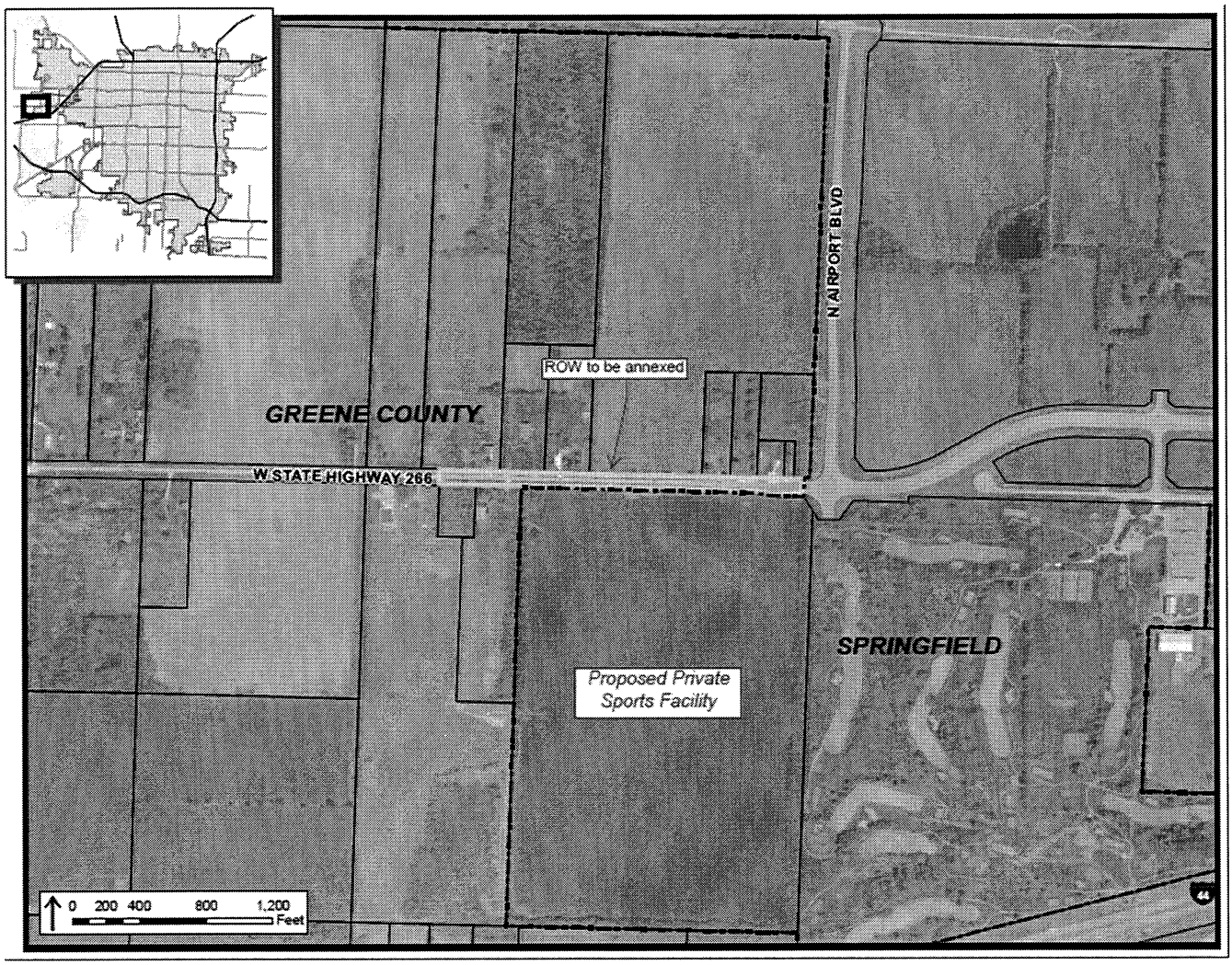
On this ____ day of _____, 20__, before me appeared _____ personally known to me, who being by me duly sworn, did say that he/she is the _____ of the City of _____ and that the foregoing instrument was signed and sealed on behalf of the City of _____ and that he/she acknowledged said instrument to be the free act and deed of the City of _____ and that it was executed for the consideration stated therein and no other.

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

_____
Notary Public

My Commission Expires: _____

EXHIBIT A


N AIRPORT BLVD
ROW to be annexed
GREENE COUNTY
W STATE HIGHWAY 266
SPRINGFIELD
Proposed Private
Sports Facility
0 200 400 800 1,200
Feet

One-rdg. _____
P. Hrngs. X
Pgs. 35
Filed: 09-14-21

Sponsored by: Schilling

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021-246 GENERAL ORDINANCE _____

AN ORDINANCE

AMENDING the Springfield Land Development Code, Section 36-306, 'Official zoning map and rules for interpretation,' by rezoning approximately 3.3 acres of property generally located at 2625 West Delmar Street, 1025 and 1045 South Clifton Avenue, and 2620 West Grand Street from Planned Development No. 269 to Planned Development No. 378; and adopting an updated Official Zoning Map. (Planning and Zoning Commission and Staff recommend approval.)

WHEREAS, an application has been filed for a zoning change of the property generally located at 2625 West Delmar Street, 1025 and 1045 South Clifton Avenue, and 2620 West Grand Street, and more fully described in "Exhibit A," from Planned Development No. 269 to Planned Development No. 378; and

WHEREAS, following proper notice, a public hearing was held before the Planning and Zoning Commission on September 9, 2021, a copy of the Record of Proceedings from said public hearing being attached hereto and incorporated herein by this reference as "Exhibit B," and said Commission made its recommendation; and

WHEREAS, the City has reviewed the applicant's request and prepared a staff report concerning the application, which is attached hereto and incorporated herein by this reference as "Exhibit C;" and

WHEREAS, proper notice was given of a public hearing before City Council and said hearing was held in accordance with law.

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

Section 1 – The property described in "Exhibit A," which is attached hereto and incorporated herein by this reference, is hereby rezoned from Planned Development No. 269 to Planned Development No. 378. Springfield Land Development Code, Section 36-306, 'Official zoning map and rules for interpretation,' is hereby amended,

changed, and modified consistent with this Ordinance.

Section 2 – The property described in “Exhibit A” of this Ordinance shall be subject to the requirements and standards included in “Exhibit 1,” which is attached to and a part of “Exhibit C” and is incorporated herein by this reference; and these requirements and standards shall govern and control the use and development of the land in Planned Development No. 378.

Section 3 – City Council hereby directs the City Manager, or designee, to update the City's digital zoning map to reflect this rezoning, and City Council adopts the map thereby amended as the Official Zoning Map of Springfield, Missouri, as provided for in Springfield Land Development Code, Section 36-306, ‘Official zoning maps and rules of interpretation.’

Section 4 – The Official Zoning Map herein adopted shall be maintained and archived in the same digital form in which this Council has approved its adoption.

Section 5 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021 –246

FILED: 09-14-21

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: Amending the Springfield Land Development Code Section 36-306, 'Official zoning map and rules for interpretation,' by rezoning approximately 3.3 acres of property generally located at 2625 West Delmar Street, 1025 and 1045 South Clifton Avenue, and 2620 West Grand Street from Planned Development No. 269 to Planned Development No. 378. (Planning and Zoning Commission and Staff recommend denial.)

BACKGROUND INFORMATION: PLANNED DEVELOPMENT DISTRICT NO. 378

The applicant is proposing to rezone approximately 3.3 acres of property generally located at 2625 West Delmar Street, 1025 and 1045 South Clifton Avenue, and 2620 West Grand Street from Planned Development No. 269 to Planned Development 378. The applicant intends to develop independent senior housing in a multi-family development not to exceed 32 dwelling units per acre.

The proposed PD has several changes from the current PD 269.

a) There is no longer a requirement for a mixed-use development on Lot 4; however, the same residential and commercial uses are permitted on Lot 4. Lot 1 was to be developed commercially and the proposed PD will allow it to be developed residentially or commercially. The preliminary development plan submitted is for a senior housing multi-family development.

b) Off-street parking for independent senior housing is proposed to be one space per dwelling unit.

c) A reduction of 5% on the open space requirements for residential development. The new open space requirement of 25% will still exceed the standard open space requirement of 20% in the other multi-family districts.

REMARKS:

The Planning and Zoning Commission held a public hearing on September 9, 2021, and recommended to approve the proposed Planned Development No. 378, by a vote of 9 to 0.

The Planning and Development staff recommends the application be approved (see the attached "Exhibit C,"- Development Review Staff Report).

FINDINGS FOR STAFF RECOMMENDATION:

1. While the *Growth Management and Land Use Element* of the *Comprehensive Plan* designates this property as appropriate for Light Industrial, Office and Office-Warehouse; however, this area was rezoned to Planned Development No. 269 in 2004 to encourage a variety of residential and mixed-use developments. The proposed PD will allow residential development consistent with uses that already exist in the neighborhood.

2. This application is consistent the *Plan* which encourages that each neighborhood should contain a range of housing types, densities, and building configurations including single-family detached, townhouses, and apartments. The *Plan* also encourages residential development provide a variety of housing types that would enable developers to compete more effectively and to provide a greater choice for the City's residents.

3. The proposed Planned Development has design guidelines that require structures to display a similar level of quality on all building facades as surrounding structures reducing any potentially negative impact to the surrounding neighborhoods.

Submitted by:

Daniel Neal
Senior Planner

Recommended by:

Brendan Griesemer, AICP
Acting Director

Approved by:

Jason Gage, City Manager

EXHIBITS:
Exhibit A, Legal Description
Exhibit B, Record of Proceedings
Exhibit C, Development Review Staff Report
ATTACHMENTS:
Attachment 1, Department Comments
Attachment 2, Neighborhood meeting summary and comments
Attachment 3, Multi-Family Design and Location Guidelines
PLANNED DEVELOPMENT 378 EXHIBITS:

Exhibit 1, Planned Development Ordinance Text
Exhibit 2, Preliminary Development Site Plan

Exhibit A

LEGAL DESCRIPTION
PLANNED DEVELOPMENT 377

All of Lot 4 of The Ridge at Ward Branch – Phase 2, a subdivision in Springfield, Greene County, Missouri.

Exhibit B

RECORD OF PROCEEDINGS
PLANNED DEVELOPMENT 377
Planning and Zoning Commission – September 9, 2021

Planned Development 378
2625 W. Delmar Street, 1025 & 1045 South Clifton Avenue and 2620 West Grand Street
Applicant: Simmons First National Bank

Mr. Hosmer stated that this a request to rezone approximately 3.3 acres of property generally located at 2625 W. Delmar Street from Planned Development 269 to Planned Development 378. The Comprehensive Plan designates this property as appropriate for Light Industrial, Office and Office-Warehouse; however, this area was rezoned to Planned Development No. 269 in 2004. The applicant intends to develop independent senior housing in a multi-family development not to exceed thirty-two (32) dwelling units per acre. The Transportation Plan classifies Grand Street as a Primary Arterial and Clifton and Delmar Street as a Local roadway. A Traffic Impact Study was submitted for these two lots when the property was zoned as PD 269 for multi-family and commercial uses. The property is not located in a FEMA designated floodplain or sinkhole area. A fee in lieu of on-site stormwater detention is not applicable because detention is already provided. The proposed PD's changes from the current PD 269 are:

- There is no longer a requirement for a mixed-use development on Lot 4; however, the same residential and commercial uses are permitted on Lot 4. Lot 1 was to be developed commercially and the proposed PD will allow it to be developed residentially or commercially. The preliminary development plan submitted is for a senior housing multi-family development.
- Off-street parking for independent senior housing is proposed to be one space per dwelling unit.
- A reduction of 5% on the open space requirements for residential development from the original PD. The new open space requirement of 25% will still exceed the standard open space requirement of 20% as in the multi-family districts.

The proposed Planned Development will have the same design guidelines and generally retain the cross accesses as originally designed in the current PD 269. The proposed reduction in parking for independent age restricted senior housing has a lower demand on parking. This request is consistent with Multi-Family Location and Design guidelines and scored for a density of up to 28 dwelling units per acre. The applicant is proposing a maximum density of 32 dwelling units per acre. Staff supports this request as the proposed age-restricted senior housing's lower impact on public and onsite infrastructure and the higher density which is allowed by the guidelines. Staff recommends approval.

Mr. Bill Knuckles as for clarification on the dwelling units per acre and if regulations allow for any increase. He also asked about the on-street parking.

Mr. Bob Hosmer noted the guidelines allows flexibility for up to 32 units per acre for senior housing and noted that they will be allowed to park along the sides on the street and this is public parking, stating that the City allowed the parking as part of the Planned Development.

Mr. Doennig opened the public hearing.

Mr. Matthew Kriete, Columbia, MO representing the developer, noting the same design guidelines as the original Planned Development 269 and will be able to accommodate the water quality per staff comments. The on-street parking the
ordinance allows it but they are putting 146 parking stalls and don't believe that they will exceed the one-on-one parking and here to answer any questions.

Mr. Bruce Colony asked about the stormwater issue and to make the developer aware of the sensitive nature of concern.

Mr. Matthew Kriete noted they are aware of size (large) of the detention and believes that it can accommodate access stormwater.

Mr. Doennig closed the public hearing.

COMMISSION ACTION:
Mr. Knuckles motioned to **approve** Planned Development 378 (2625 West Delmar Street, 1025 & 1045 South Clifton Avenue and 2620 West Grand Street). Mr. Jobe seconded the motion. Ayes: Doennig, Coltrin, Ogilvy, Knuckles, Colony, Bruce, Jobe, Broekhoven, and Lebeck. Nays: None. Abstain: None. Absent: None.

Bob Hosmer, AICP
Planning Manager

Exhibit C

Development Review Staff Report

CITY OF Springfield

PLANNING AND ZONING COMMISSION PUBLIC HEARING: September 9, 2021

CITY COUNCIL PUBLIC HEARING: September 20, 2021

CASE: Planned Development 378

ACRES: Approximately 3.3 acres

LOCATION: 2625 W. Delmar Street, 1025 & 1045 S. Clifton Avenue and 2620 W. Grand Street

EXISTING LAND USE: Undeveloped land

APPLICANT: Simmons First National Bank

STAFF: Daniel Neal, Senior Planner 417-864-1036

STAFF RECOMMENDATIONS: Approve

PROPOSED MOTION: Move to approve as submitted in the staff report. Required vote is a majority of those present (5 members are a quorum).

SUMMARY OF REQUEST:

Request to rezone approximately 3.3 acres of property generally located at 2625 W. Delmar Street from Planned Development No. 269 to Planned Development 378.

FINDINGS FOR STAFF RECOMMENDATIONS:

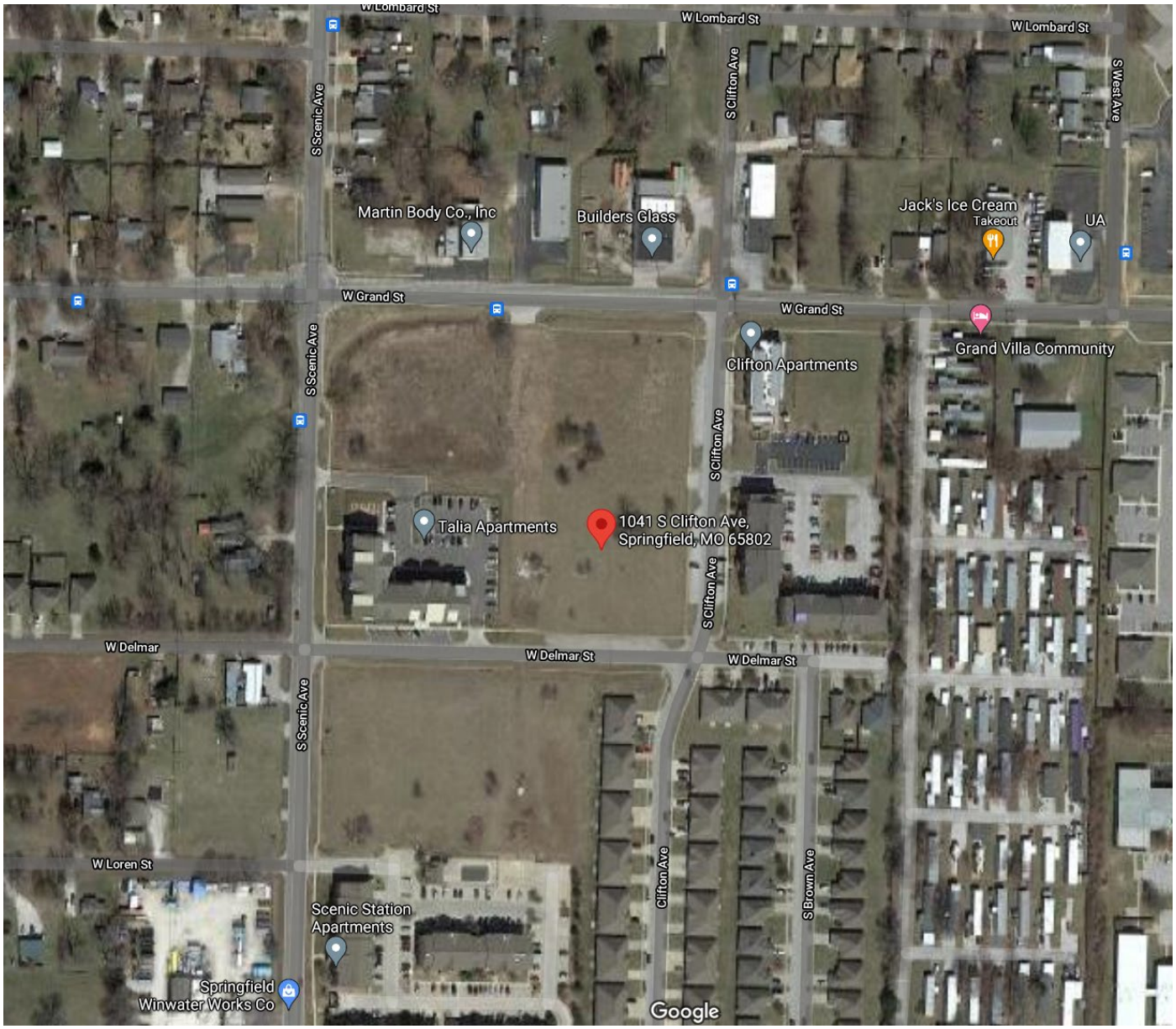
1) The *Growth Management and Land Use Element* of the *Comprehensive Plan* designates this property as appropriate for Light Industrial, Office and Office-Warehouse; however, this area was rezoned to Planned Development No. 269 in 2004 to encourage a variety of residential and mixed-use developments. The proposed PD will allow residential development consistent with uses that already exist in the neighborhood.
2) This application is consistent the *Plan* which encourages that each neighborhood should contain a range of housing types, densities, and building configurations including single-family detached, townhouses, and apartments. The *Plan* also encourages residential development provide a variety of housing types that would enable developers to compete more effectively and to provide a greater choice for the City's residents.
3) The proposed PD has design guidelines that require structures to display a similar level of quality on all building facades as surrounding structures reducing any potentially negative impact to the surrounding neighborhoods.
4) The proposed PD meets the Revised Multi-Family Location and Design Guidelines.

SURROUNDING ZONING AND LAND USES:

	NORTH	SOUTH	EAST	WEST
ZONING	LI	PD 269	PD 269	PD 269
LAND USE	Commercial and Industrial uses	Single-family uses and undeveloped land	Multi-family residential uses	Multi-family residential and common area uses

Development Review Staff Report

GOOGLE AERIAL OF LANDMARKS, BUSINESSES, AND ATTRACTIONS:

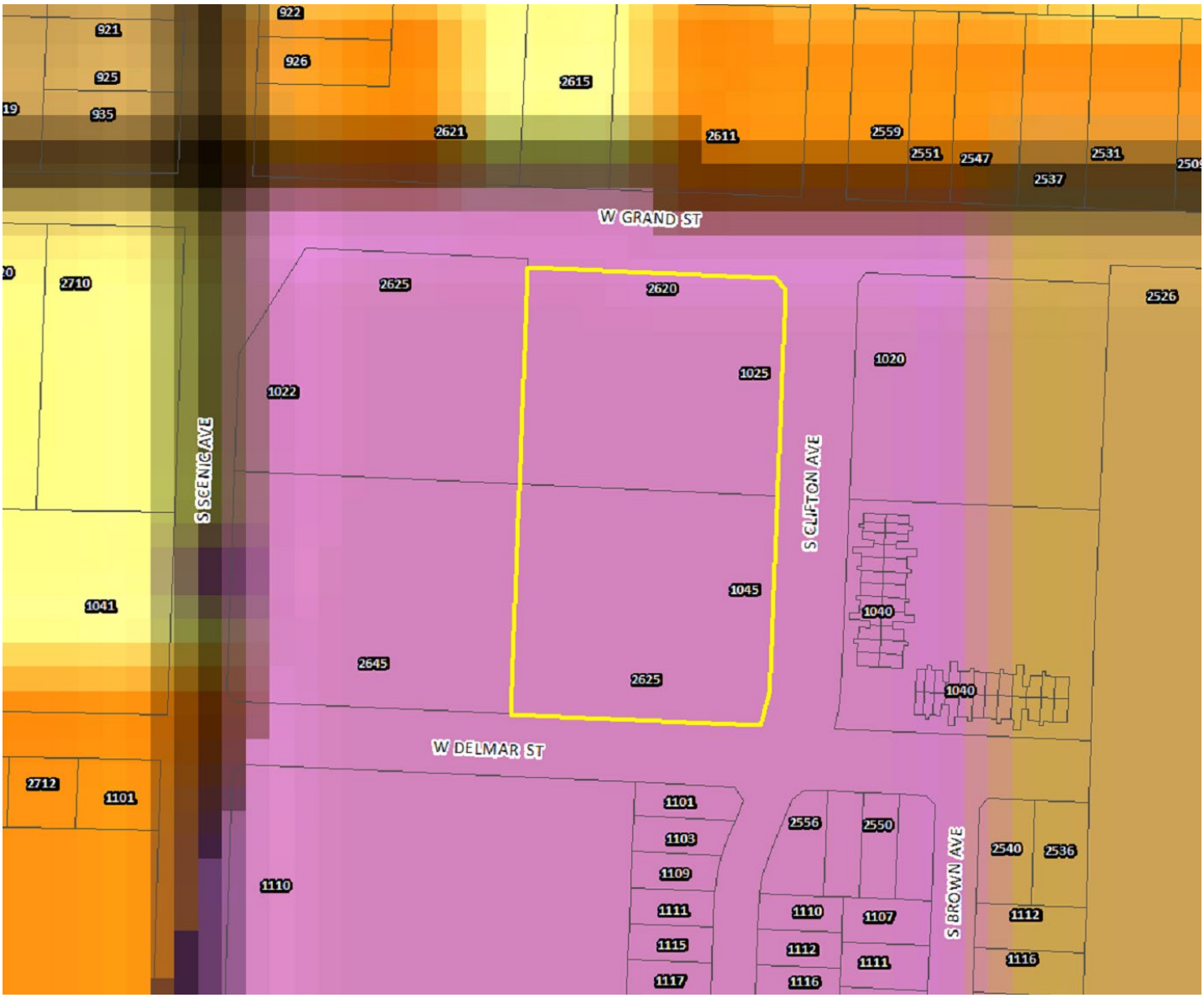


STREET VIEW:

Development Review Staff Report

CITY OF Springfield

GROWTH MANAGEMENT AND LAND USE PLAN:



- Low-Density Housing
- Medium or High Density Housing
- Medium Intensity Retail, Office or Housing
- High Intensity Retail, Office or Housing
- Greater Downtown
- Business Park
- Light Industrial, Office and Office-Warehouse
- General Industry, Transportation and Utilities
- Park
- School
- Golf
- Community-Public
- Urban Reserve Area
- Rural Area
- Greenway
- Parkway
- City Boundary
- Urban Service Area Boundary, Year 2020
- Urban Reserve Boundary, Year 2040

PROPERTY HISTORY:

The subject properties are currently zoned Planned Development District No. 269 and have been since 2004. Planned Development No. 269 was designed as a mixed-use development with a variety of housing types. The subject properties were also final platted as lots in Scenic Station Subdivision in 2004.

PLANNING AND ZONING COMMISSION AUTHORITY:

Sec. 36-367. – Amendments

(7) Findings by the commission.

(a) Rezonings. If the application is for a reclassification of property to a different zoning district classification on the zoning map, the report of the planning and zoning commission may consider:

1. Whether the proposed zoning district classification is consistent with the Springfield Comprehensive Plan;
2. Whether there are any changed or changing conditions in the area affected that make the proposed rezoning necessary;
3. Whether the range of uses in the proposed zoning district classification are compatible with the uses permitted on other property in the immediate vicinity;
4. Whether adequate utility and sewer and water facilities exist or can be provided to serve the uses that would be permitted on the property if it were rezoned;
5. The impact the uses, which would be permitted if the property were rezoned, will have upon the volume of vehicular and pedestrian traffic and traffic safety in the vicinity;
6. Whether the proposed rezoning would correct an error in the application of this article as applied to the subject property;
7. Whether a reasonably viable economic use of the subject property will be precluded if the proposed rezoning is denied; and
8. Information submitted at the public hearing.

ZONING ORDINANCE OR CODE REQUIREMENTS:

CODE ITEM	REQUIREMENTS FOR PD 378
Use Limitations	1) All uses shall operate in accordance with the noise standards contained in Section 36-485 of the Springfield Zoning Ordinance. 2) No use shall emit an odor that creates a nuisance as determined by Springfield City Code.
Maximum Structure Height	4 stories
Minimum open space	25 percent for residential development and 20 percent for non-residential development
Maximum impervious area	75 percent for residential development and 80 percent for non-residential development

BULK PLANE	BUFFERYARD AND LANDSCAPING
No bulk plane, however, the PD limits structures to 4 stories in height.	None.

COMPATIBILITY WITH COMPREHENSIVE PLAN:

The *Growth Management and Land Use Element* of the *Comprehensive Plan* designates this property as appropriate for Light Industrial, Office and Office-Warehouse; however, this area was rezoned to Planned Development No. 269 in 2004 to encourage a variety of residential and mixed-use developments. The proposed PD will allow residential development consistent with uses that exist.

The *Plan* encourages that each neighborhood should contain a range of housing types, densities, and building configurations including single-family detached, townhouses, and apartments. It discourages large housing projects that consist of a single building type. Some portion of each type of housing should, ideally, be available for occupancy on either an ownership or lease basis. The *Plan* also encourages residential development provide a variety of housing types that would enable developers to compete more effectively and to provide a greater choice for the City's residents. This application is consistent with these recommendations by proposing a variety of housing types within the development dispersed throughout the site rather than large buildings

The *Major Thoroughfare Plan* classifies W. Grand Street as a primary arterial roadway, W. Delmar as a residential local roadway and S. Clifton as a residential local roadway.

STAFF COMMENTS:

1) The applicant is proposing to rezone approximately 3.3 acres of property generally located at 2625 W. Delmar Street from Planned Development No. 269 to Planned Development 378. The applicant intends to develop independent senior housing in a multi-family development not to exceed thirty-two (32) dwelling units per acre.

2) The proposed PD's changes from the current PD 269 are:

   a) There is no longer a requirement for a mixed-use development on Lot 4; however, the same residential and commercial uses are permitted on Lot 4. Lot 1 was to be developed commercially and the proposed PD will allow it to be developed residentially or commercially. The preliminary development plan submitted is for a senior housing multi-family development.
   b) Off-street parking for independent senior housing is proposed to be one space per dwelling unit.
   c) A reduction of 5% on the open space requirements for residential development from the original PD. The new open space requirement of 25% will still exceed the standard open space requirement of 20% as in the multi-family districts.

3) The proposed development requires a Multi-Family Location and Design Guidelines assessment. This request is consistent with the guidelines and scored for a density of up to 28 dwelling units per acre. The applicant is proposing a maximum density of 32 dwelling units per acre. Staff may consider a recommendation of a higher density than that determined by the matrix calculation when much higher density exists or is planned/approved for area, the proposal a small site "sandwiched" between higher intensity uses and the proposal for age-restricted senior living. Staff also supports this request as the infrastructure and proposed independent senior housing allows for higher densities than prescribed by the assessment. It's important to note, the current PD 269 does not restrict the residential density on Lot 4 as part of a mixed-use development and Lot 1 was planned to be developed commercially which could be much more intense than the proposed multi-family development.

4) The proposed Planned Development will have the same design guidelines as the current PD 269 which states: "Structures within Lots shall display a similar level of quality on all building facades as surrounding structures. Entry doors shall be provided from both the streets and the parking lots to the businesses and multi-family dwellings. These entryways shall be differentiated from the rest of the building to define the entry and avoid a hole in the flat face of the building."

5) Cross accesses as originally designed in the current PD 269 shall be generally retained; however, because the proposed development is proposing to reduce the driveway widths then portions of the cross-access easement area will need to be relinquished if they are to be used as parking or landscaped areas.

6) This application is proposing a reduction in parking for independent senior housing. The applicant has provided additional information to show that senior housing has a lower demand on parking.

7) There are no bufferyards or bulk plane requirements for the proposed development because the applicant is proposing a multi-family residential development and the adjacent properties are also developed as multi-family residential.

8) The proposed rezoning was reviewed by City departments and comments are contained in Attachment 1.

NEIGHORHOOD MEETING:

The applicant held a neighborhood meeting on August 19, 2021 regarding the rezoning request. A summary of the meeting is attached (Attachment 2).

PUBLIC NOTIFICATIONS:

The public notice was advertised in the Daily Events at least 15 days prior to the public hearing. The property was posted by the applicant at least 10 days prior to the public hearing. Public notice letters were sent out at least 10 days prior to the public hearing to all property owners within 185 feet.

Notices sent to property owners within 185 feet: Mailed: 18 Returned: 0

DEPARTMENT COMMENTS:

ATTACHMENT 1

DEPARTMENT OF BUILDING DEVELOPMENT SERVICES COMMENTS:

No comments.

CITY UTILITIES COMMENTS:

No issues with PD language or site plan. Since building footprints as shown will no longer conflict with platted access/utility easements, CU would prefer to retain them. Note: Individual water meter configurations may not be provided exactly as shown. Contact Josh @ 417-831-8816 as needed.

DEPARTMENT OF ENVIRONMENTAL SERVICES WASTEWATER MANAGEMENT DIVISION COMMENTS:

No objection to the rezoning case, however, we have the following comments about the submitted plans (refer to changemarks on sheet C2.01):

1. There is an additional manhole and associated sewer mains not shown on the utility plan. The new lateral will need to be installed with tracer wire and a cleanout at the R/W line.
2. The 6-inch lateral will need to tap the main. Connections directly into manholes are not allowed. Need to determine whether or not the street can be open cut. If not, the lateral will have to be bored with tracer wire and a cleanout at the R/W line.
3. If submitted as a public improvement plan, those plans would need to be constructed or escrowed before a building permit was issued. There would be a 5.34% engineering and inspection fee required to file the plans once approved.
4. When a building permit is issued, there will be sewer impact permit fees required based on the side and number of water meters according to city code section 120.240.

FIRE DEPARTMENT COMMENTS:

The interior drive aisles closest to each building shall be 26 feet in width for aerial apparatus parking positions and all turns shall be 28 feet inside turn radius. (2018 IFC Appendix D).

DEPARTMENT OF PUBLIC WORKS TRAFFIC OPERATIONS DIVISION COMMENTS:

STREET CLASSIFICATION, RIGHT-OF-WAY, & JURISDICTION
City's Transportation Plan classifies both W. Grand Street as a Primary Arterial and both S. Clifton Avenue and W. Delmar Street as Local roadways. The standard right-of-way width for W. Grand Street is 50-feet from the centerline and 25-feet from the centerline for both S. Clifton Avenue and W. Delmar Street. It appears no additional right-of-way is needed along W. Grand Street, S. Clifton Avenue or W. Delmar Street. A survey is recommended to determine the exact amount of existing right-of-way as nothing can be built within the required right of way. W. Grand Street, S. Clifton Avenue and W. Delmar Street are all city- maintained streets.

TRAFFIC COUNTS & ON-STREET PARKING
The most recent traffic count for W. Grand Street is 5,990 vehicles per day. There are no traffic counts for S. Clifton Avenue or W. Delmar Streets as they are classified as Local roadways. On-street parking is not allowed along W. Grand Street but is allowed along S. Clifton Avenue and W. Delmar Street.

DRIVEWAY ACCESS
There is currently one driveway access point to the property from S. Clifton Avenue and a shared driveway access to the property from W. Grand Street. Any additional access will be required to meet City of Springfield spacing standards specified in Chapter 98 of City Code.

SIDEWALK
There is existing sidewalk along the property frontage of W. Grand Street, S. Clifton Avenue and W. Delmar Street.

TRAILS, BUS STOPS, & ADDITIONAL INFORMATION
There are no Greenway Trails in the area surrounding the property pertaining to this zoning. There are bus stops along W. Grand Street within the area of the property.

IMPROVEMENTS
A Traffic Impact Study was submitted when the property was zoned as PD 269 and the Traffic Study was based on multi-family and commercial for these two lots. This is consistent with the proposed development in this rezoning.

TRAFFIC - TABLE 1: REZONING DETAILS

	Street Name	Street Classification	On-Street Parking	Existing Street ROW from Centerline (ft.) (Approx.)	Required Street ROW from Centerline (ft.)
Street 1	W. Grand Street	Primary Arterial	No	60	50
Street 2	S. Clifton Avenue	Local	Yes	38	25
Street 3	W. Delmar Street	Local	Yes	35	25

	AM Peak	PM Peak	Weekday	Weekend
Existing Trips Generated	18	22	240	
***Proposed Trips Generated**	18	22	240	
Additional Trips Generated	0	0	0	

*Proposed Trips Generated is based on the highest, most intense use permitted in the proposed rezoning, Planned Development, or Conditional Use Permit

DEPARTMENT OF PUBLIC WORKS STORMWATER ENGINEERING DIVISION COMMENTS:

The property is in the **Wilsons Creek** drainage basin. The property **is not** located in a FEMA designated floodplain. Staff **is** aware of flooding problems in the area. The city is not aware of a sinkhole at this location. A fee in lieu of on-site stormwater detention **is not applicable because detention is already provided.** The property **is not in a stream buffer area.**

Please note that development of the property will be subject to the following conditions at the time of development:

1. Post development peak run-off rates shall not exceed pre-development peak run-off rates for the 1, 10 and 100 year rain events. Any increase in impervious surfacing will require the development to meet current detention and water quality requirements per Chapter 4 Section 3.2.3 of the stormwater design criteria manual – https://www.springfieldmo.gov/DocumentCenter/View/36063/Flood-Control-and-Water-Quality-Protection-Manual-?bidId=

2. If disturbing 1 acre or greater, water quality will also have to be provided per Chapter 10 Section 2 of the stormwater design criteria manual.

3. Please keep in mind that more detailed stormwater calculations will have to be submitted before any permits can be approved per Chapter 4 Section 3.0 of the stormwater design criteria manual.

4. A land disturbance permit will be required if disturbing 1 acre or greater per Chapter 4 Section 5 of the stormwater design criteria manual.

5. Water quality needs to be provided onsite for all of the impervious areas (including the buildings). The plan submitted shows what appears to be an underground storm drain collecting building downspouts on the east and south side of the buildings and directly connecting it into the stormwater system in Clifton Ave. which bypasses the bioretention shown. This is not permissible. Stormwater runoff from the buildings must be routed through the bioretention or some other SCM.

AFFIDAVIT OF NEIGHBORHOOD NOTIFICATION AND MEETING SUMMARY

1. Request change to zoning from: PD 269 to PD 378
   (existing zoning) *(proposed zoning)*
2. Meeting Date & Time: August 19, 2021 4:00-6:30 pm
3. Meeting Location: The Diamond Room, 2340 W Grand Street, Springfield, Missouri
4. Number of invitations that were sent: 124
5. How the mailing list was generated: City of Springfield - Andrew Menke
6. Number of neighbors in attendance (attach a sign-in sheet): 2
7. List the verbal comments and how you plan to address any issues:
   (City Council does not expect all the issues to be resolved to the neighborhood's satisfaction; however, the developer must explain why the issues cannot be resolved).

   The two neighbors in attendance were concerned the project was on Lombard Street. Once they were informed of the correct location, they mentioned they liked the project and location. They see the need for additional multi-family housing in the area.

   There are no issues to address based on verbal comments received.

8. List or attach the written comments and how you plan to address any issues:

   No written comments were received.

I, Matthew Kriete *(print name)*, attest that the neighborhood meeting was held on August 19, 2021 *(month/date/year)*, and is at least twenty-one (21) days prior to the Planning and Zoning Commission public hearing and in accordance with the attached "Neighborhood Notification and Meeting Process."

Signature of person completing affidavit

Matthew A. Kriete

Printed name of person completing affidavit

Delmar Meadows Neighborhood Meeting Sign-In Sheet
August 19, 2021

Name:	Name:
Mark Wolansky 2534 Lombard St	
Tanja Duvaul "	

The Diamond Room (2340 W Grand Street, Springfield, Missouri)

DEPARTMENT COMMENTS:

ATTACHMENT 3

MULTI FAMILY DEVELOPMENT LOCATION AND
DESIGN GUIDELINES ASSESSMENT

According to the Multi-Family Location and Design Assessment Matrix, the proposed development has attained 13 points, thus permitting a housing density of 25-28 dwelling units/acre. The applicant is requesting approximately 100 one- and two-bedroom independent senior housing apartments which equates to approximately 32 dwelling units per acre for the 3.3 acres of property. Staff may consider a recommendation of a higher density than that determined by the matrix calculation when much higher density exists or is planned/approved for area, the proposal a small site "sandwiched" between higher intensity uses and the proposal for age-restricted senior living. Below is an analysis of the five categories used to calculate the Matrix score.

A. Land Use Accessibility (1/3 points)
One point was given for land use accessibility. There is neighborhood retail mix located within a ½ mile.

B. Connectivity Analysis (2/5 points)
Two out of a maximum of five points were given for connectivity. The proposed development received scores for its proximity to transit routes, roadways and sidewalk connectivity.

C. Road Network Evaluation (1/2 points)
One point was given for the road network evaluation.

D. Design Guidelines (6/6 points)
A maximum of six points were given for design guideline criteria. Below are the design considerations that have been incorporated into the proposed development.

1. Pedestrian Amenities - Pedestrian amenities shall include benches placed near walkways at appropriate locations throughout the development. Pedestrian-scale lighting shall be provided within the development. Lighting sources or luminaries that have a cutoff shall not exceed a maximum of 30 feet in height. All lighting shall be glare-free and shielded from the sky and adjacent residential properties and structures, either through external shields or through optics within the fixture. A site lighting and photometric plan shall be submitted conforming to these requirements for building permits.

2. Building Scale and Articulation – Street facing walls that are greater than 50 feet in length shall be articulated at least each 25 feet with bays, projections or recesses. Articulation means a difference in the vertical plane of the building at least 18 inches or more. This project shall be in compliance with the attached site plan.

3. Building Orientation and Interior Landscaping – Landscaping and open spaces shown shall be provided with approved ground cover and/or plantings per required city ordinances and zoning requirements. Landscaping islands with plantings shall be located throughout the parking lot. A landscaping plan shall be submitted conforming to these requirements for building permits.

4. Avoidance of Blank Walls along pedestrian circulation areas – Facades that face public streets or connecting pedestrian frontage that are greater than 25 feet in length shall be subdivided and proportioned using at least one or more of the following features: windows, entrances, arcades, arbors, awning (over windows or doors), distributed along the façade at least once every 25 feet. This project shall be in conformance with the attached site plan.

5. Internal Connectivity – Internal sidewalks shall connect internally and to the public sidewalk system.

6. Useable Recreational Area/Facility – A minimum of 15% usable recreational area or facility is required.

7. Amenities – The development will have two patio areas for outdoor activities, a community room and fitness/exercise room internal to the buildings as shown on the site plan.

8. Preservation of Trees – All existing trees of 6" caliper or greater shall be preserved or replaced with 2-inch caliper trees in accordance with the site plan, MFM design guidelines and other city ordinances.

E. Opportunities and Constraints

1. How much higher density exists or is planned/approved for area? The existing PD 269 doesn't put a limit on density for Lot 4 which was planned as a mixed-use development. The other multi-family lots in the current PD have maximum densities of 29 dwelling units per acre. Lot 1 was to be developed commercially so the proposed independent senior housing is far less intense.

2. Is the proposal a small site "sandwiched" between higher intensity uses? Lot 1 currently only allows commercial development and Lot 4 only allows a mixed-use development with no maximum residential density. The properties to the east and west have maximum residential densities of 26 and 29 du/ac respectively.

3. Is the proposal for age-restricted senior living? Yes, the applicant is proposing independent senior housing with approximately 100 dwelling units.

DENSITY: The assessment criteria resulted in a total of 13 points for a maximum density of 28 dwelling units per acre. The applicant is requesting a density of 32 dwelling units per acre.

EXHIBIT 1

Requirements and Standards Applicable to

Delmar Meadows Planned Development District

No building or other permits may be issued for development permitted by this planned development nor can any changes be made to this property until the final development plan has been approved in the manner described at the end of this exhibit.

All **requirements of** the *Springfield Zoning Ordinance* shall apply unless modified by the requirements and standards that follow.

DEFINITIONS: For purposes of this ordinance, the following definitions shall apply:

Lot 1 and Lot 4: Lots 1 and 4 of the Scenic Station Subdivision, recorded in plat book ZZ page 107 in the City of Springfield, Greene County, Missouri.

Density: The number of dwelling units per unit of land normally expressed as dwelling units per acre. Gross density includes all the land within tire boundaries of the particular area including land that may eventually be devoted to streets, public lands and common area. Net density excludes streets, public lands and common area and its calculation shall generally be based on a tract(s) of record satisfying the requirements of Chapter 36, Article II, Subdivision Regulations, Code of the City of Springfield.

Dwelling Unit: One or more rooms, designed, occupied or intended for occupancy as separate living quarters. with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

Dwelling, Attached: A one-family dwelling attached to two or more one-family dwellings by common vertical walls.

Dwelling. Detached: A dwelling which is not attached to any other dwelling by any means.

Dwelling, Multifamily: Attached dwellings, involving no horizontal subdivision of land, shall be treated as multifamily dwellings.

Dwelling, Single-family Detached: A dwelling which is designed for and occupied by not more than one family and is surrounded by open space or yards and which is not attached to any other dwelling by any means.

Dwelling, Semidetached: A one-family dwelling attached to one other one-family dwelling by a common vertical wall and each dwelling located on a separate lot. These units are also referred to as twinhouses or patio homes.

Dwelling,Patio Home: A one-family dwelling on a separate lot with open space setbacks on three sides and a court. Patio homes may be attached to similar homes on adjacent lots and still satisfy this definition. Also known as zero Not line homes.

Floor Area, Gross: The sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including parking or loading spaces for motor vehicles. The gross floor area shall include public or common areas such as public toilets, corridors, stairwells, elevators. machine and equipment moms, lobbies or trials areas, whether closed or enclosed and shall also include all outdoor areas devoted to retail sales, storage or other activities incidental to the building.

Impervious Surface: Any part of a lot that is covered by buildings, structures, parking areas, driveways and any other surfaces which reduce or prevent absorption of storm watery.

Impervious Surface Ratio (ISR): The proportion of the site covered by impervious surfaces, and shall be determined as follows:

$$ISR = \frac{\text{Area covered by impervious surfaces}}{\text{Total site area}}$$

Open Space: Any occupied space on a lot that is unobstructed to the sky except for the ordinary projection of cornices and eaves. Open space shall not include areas covered by structures, decks, porches, parking areas, driveways, internal streets and other forms of impervious surface.

Open Space Ratio (OSR) The proportion of a site covered by open space which shall be determined as- follows:

$$OSR = \frac{\text{Area covered by open space}}{\text{Total site area}}$$

Vehicular Use Area That portions of a lot that is used by vehicles for access. circulation. parking and loading and unloading. It comprises the total of circulation areas, loading and unloading areas, and parking areas.

USES PERMITTED: The following uses shall be permitted in Lots 1 and 4:

1. Administrative and Professional Offices. Offices of firms or organizations providing professional, management or administrative services. Typical uses include abstract services, advertising agencies, data processing services, travel agencies, law offices, architectural and engineering offices, and general business and administrative, corporate offices and artist and photographic studios.

2. Finance. Insurance and Real Estate Services: Establishments primarily engaged in the provision of financial, insurance, real estate, security brokerage and other similar activities. Drive-thru facilities designed to expedite customer service are permitted. Typical uses include banks, insurance agencies, real estate firms, securities brokerage establishments, savings and loan institutions and other similar uses.

3. Medical Offices and Medical Support Activities such as offices for doctors and dentists and medical laboratories along with incidental administrative activities.

4. Retail Uses. For purposes of this ordinance, the following uses shall be classified as retail:

    a. General Retail Sales. Establishments involved in the onsite retail sales of goods and merchandise for personal or household use. Such activities are to be conducted within the confines of an enclosed structure with no permanent outdoor sales or storage. Typical uses include department stores, apparel stores, antiques shops, bicycle shops, bookstores, cosmetic shops, candy stores, confectionery stores, costume rental, dry goods stores, drugstores, florist or flower shops, furniture stores, garden supply shops, hardware stores, hobby shops, jewelry stores, pet stores, photographic supply stores, radio and television sales, shoe stores, sporting goods stores, stationery stores, toy shops, variety stores, wallpaper stores, wig shops and other similar retail sales.

    b. Convenience Sales and Personal Services. Establishments primarily engaged in the provision of frequently needed goods and services. Such activities are to be conducted within the confines of an enclosed stricture with no permanent outdoor sales or storage. Drive-thru facilities designed to expedite customer service are permitted. Typical uses include barber shops, beauty shops, bakeries, delicatessens, pharmacies, dry cleaning and laundry establishments, self-service laundries, newsstands, repair shops and other similar uses.

    c. Eating and Drinking Establishments: Establishments or places of business primarily engaged in the sale of prepared foods and/or beverages for on-premise consumption. Drive-thru facilities designed to expedite customer services are permitted. Curb service facilities are prohibited. Typical uses include restaurants, cafeterias, coffee shops, bars and taverns.

d. Business Support Services: Establishments primarily engaged in the provision of services of a clerical, employment, protective or processing nature to firms and individuals and where the storage of goods or equipment other than as samples or as necessary for daily operation is prohibited. Such activities are to be conducted within the confines of an enclosed structure with no outdoor sales or storage. Typical uses include secretarial services, telephone answering services, copying and blueprint services, drafting services, office supply stores, and computer sales and services.

e. Recreation Facilities: Establishments providing recreational activities open to the general public on a commercial basis. Such activities shall be entirely conducted within an enclosed structure. Typical uses include billiard parlors, athletic clubs, health spas and other similar activities.

f. Specialty Retail: Small scale retail establishments engaging in the sale of specialty and personal items. Such activities are to be conducted within the confines of an enclosed structure with no permanent outdoor sales or storage. Drive-thru facilities designed to expedite customer service are permitted. Typical uses include book stores, card shops, jewelry shops, gift stores, clothing shops, flower shops, tobacco shops, arts and craft shops, sporting goods shops, art shops and photographic shops.

5. Residential Use
    a. Attached dwellings such as townhouses.
    b. Residential condominiums.
    c. Multifamily dwellings.

6. Accessory uses incidental to residential development designed for and available to residents but not open to the public on a common basis. Typical uses include administrative offices for project management not exceeding one thousand (1000) square feet, model units, carports, garages, maintenance buildings, and gate houses.

7. Community and recreational facilities incidental to residential development designed for and available to residents but not open to the public on a commercial basis. Typical uses include community centers, swimming pools, tennis and basketball courts, health clubs, etc.

USE LIMITATIONS:

1. All uses shall operate in accordance with the noise standards contained *in Section 36-485 of the Springfield Zoning Ordinance.*

2. All activities or permitted uses shall be conducted within a completely enclosed building, except:

    a. Automobile parking lots;

    b. Accessory permitted drive-in, pick-up and drive-thru facilities;

    c. Accessory seasonal outdoor sales and related storage; and

    d. Accessory outdoor garden supply sales and storage.

    e. Recreational uses.

3. Screening and fencing shall be provided in accordance with *Section 36-480 of the Springfield Zoning Ordinance.*

INTENSITY OF DEVELOPMENT: Development shall adhere to the following:

1. The maximum gross residential density for development is thirty-two (32) dwelling units an acre.

BULK, AREA AND HEIGHT REQUIREMENTS: Development shall adhere to the following:

1. The intent of the following setbacks is to provide for development that is in substantial conformance with that as shown on Exhibit 2 with the buildings placed up to the street with the parking generally placed to the rear of the building(s).

   The following building setbacks are required:

    a. Lot 1: Maximum fifteen (15) foot setback along Clifton and Grand. A minimum of twenty (20) foot setback along the west boundary. No setback required on the south boundary.

    b. Lot 4: Maximum fifteen (15) foot setback along Clifton and Delmar. A minimum of twenty (20) foot setback along the west boundary. No setback required on the north boundary.

The following vehicular use area, excluding drives to adjoining streets,
setbacks are required:

a. Lot 1: Minimum fifteen (15) foot setback along Clifton and Grand.

b. Lot 4: Minimum fifteen (15) foot setback along Clifton and Delmar.

2. No structure shall exceed 4-stories tall.

3. The maximum impervious surface ratio shall not exceed 0.80 for non-residential development.

4. The maximum impervious surface ratio shall not exceed 0.75 for residential development.

REQUIRED IMPROVEMENTS. Public and private improvements are necessary to adequately accommodate the intensity of development proposed in this District. The improvements shall be constructed prior to or concurrently with the development of the property. If the development of the property is phased, the construction of the improvements may also be phased provided there is a logical relationship between each phase of the development and the construction of the required improvements. The applicant or subsequent owners shall include with the Final Development Plan(s) a schedule for completion of the required improvements. Prior to building permits being issued to the applicant, or subsequent owners:

A. The required improvements shall be constructed; or

B. Assurances satisfactory to the Director of Public Works guaranteeing that all required improvements will be constructed in accordance with the "Design Standards for Public Improvements" of the Public Works Department shall be provided to the City.

No certificate of occupancy shall be issued lot any structure within this District, or phase of the development, unless:

A. The required improvements are completed prior to occupancy of the structures; or

B. The Director of Public Works has determined that such required improvements, if not completed, have little or no effect on the occupancy of the facility or conditions beyond the control of the contractor, i.e., strikes, weather, etc., have delayed the completion of the improvements.

If one of these conditions occur, the Director of Building Development Services may permit occupancy under conditions satisfactory to the Director of Public Works that the required improvements will be completed as required by this ordinance within a reasonable time.

Improvements necessary to adequately accommodate the intensity of development proposed in this District include the following:

1. The property must be replatted, by a separate action by the Planning and Zoning Commission and City Council concurrent with or prior to the development as shown in the Preliminary Development Plan with building across lot lines.

2. Sidewalks in accordance with Public Works standards are also required along all public streets. Private sidewalks within the development, must connect to the public sidewalk system at appropriate aid convenient locations.

ACCESS TO PUBLIC THOROUGHFARES: Development shall adhere to the following:

Access to adjoining public thoroughfares shall be situated in substantial conformance with Exhibit 2.

OFF-STREET PARKING: Development shall adhere to the following:

1. Shall conform with Section 36-455 from the Springfield City Code, except as follows. One off-street parking space for each independent senior dwelling unit shall be permitted.

2. Angled head-in parking or loading zones shall be allowed on the south and east sides of Lot 4, and the east Lot 1.

SIGNS: Development shall adhere to the following:

1. All signage within the Planned Development shall be monument type signs.

2. Off-premise signs, as defined by the City sign code, are prohibited.

3. All other provisions Of the Springfield Zoning Ordinance for signage permitted for business areas shall be complied with.

PERIMETER TREATMENT: Development shall adhere to the following:

1. Bufferyards in accordance with *Section 36-482 of the Springfield Zoning Ordinance* are required on the west side of Lot 1 and 4.

2. Screening and fencing, and landscaping requirements for off-street parking and vehicular use areas is required in accordance with Sections 36-482 of the Springfield Zoning Ordinance in effect at the time of development.

3. No structures, signs, mechanical equipment, vehicular use areas (except those drives required to provide access to adjoining public thoroughfares) are permitted within these bufferyards. The surface of these bufferyards, or other required landscaped areas, shall be maintained with a living ground cover.

4. Waste cans, dumpster units, or other forms of litter control and refuse disposal devices shall be placed within the district where they are least visible from a public street or adjoining properties. Screening of these devices, in the form of a sight-proof fence or call, shall be provided. These devices may not occupy parking spaces required by this exhibit.

5. A landscape plan, showing conformance with these requirements, shall be submitted with the final development plan.

EXTERIOR LIGHTING: Development shall adhere to the following:

The purpose of this section is to regulate the spillover and glare on operators of motor vehicles, pedestrian and land uses in the proximity of the light source. With respect to motor vehicles in particular, safety considerations form the basis of the regulations contained herein. In other cases, both the nuisance and hazard aspects of glare are regulated. This section is not intended to apply to public street lighting. signs or seasonal displays.

1. The requirements and standards of *Section 36-484 of the Springfield* Zoning *Ordinance,* in effect at the time of development, shall apply.

DESIGN REQUIREMENTS: Development shall adhere to the following:

1. Structures within Lots shall display a similar level of quality on all building facades as surrounding structures. Entry doors shall be provided from both the streets and the parking lots to the businesses and multi-family dwellings. These entryways shall be differentiated from the rest of the building to define the entry and avoid a hole in the flat face of the building.

2. Building elevations, showing compliance with these requirements and detailing the architectural elements, shall be submitted with the final development plans.

3. All applicable Design Guidelines of Section 5.7 of the Revised Multi-Family Location and Design Requirements shall be met for the development as a whole.

MAINTENANCE OF COMMON AREAS AND FACTLITIES: Development shall adhere to the following:

The maintenance of common areas and facilities within the district shall remain the responsibility of the developer(s) or shall be assumed by a duly constituted property owners association meeting all legal requirements prescribed by the City Attorney.

PHASING: Development shaft adhere to the following:

Development may be phased at the discretion of the developer(s) provided that all public improvements directly related to each phase are completed at the time of its development and that improvements serving the District as a whole and the adjoining area are completed in a sequence assuring full utility of the District as a whole and all areas within the District and so that future public improvement required by this ordinance or other applicable ordinances of the City are not compromised or rendered unduly difficult.

FINAL DEVELOPMENT PLAN. A final development plan, showing conformance with the requirements of this exhibit, shall be submitted to the Planning and Development Department and approved in the manner described below prior to the issuance of any building permits or prior to the commencement of any of the permitted uses or improvements permitted or required by this exhibit. Development of this district shall be in accordance with the approved final development plan.

1. The Administrative Review Committee is hereby authorized to, acting jointly, approve the final development plan(s) for Lots provided such plan substantially conforms to the provisions of the ordinance.

The Administrative Review Committee is hereby authorized, at its discretion, to approve minor adjustments and modifications to the site plan. Such authority shall not, however, be construed to permit:

a. Any uses within the district other than those specifically prescribed by the ordinance.

b. Any increase in the intensity of use permitted within the district.

c. Any deviation from the height and setback standards prescribed by the ordinance.

d. Any reduction in the required parking prescribed by the ordinance.

PROPOSED SETBACKS:
CLIFTON AVENUE = 15' MAX.
DELMAR STREET = 15' MAX.
GRAND STREET = 20' MIN.
WEST PROPERTY LINE = 20' MIN.

ZONING:
EXISTING ZONE = PD 269
PROPOSED ZONE = PD 378

SCALE: 1" = 100'

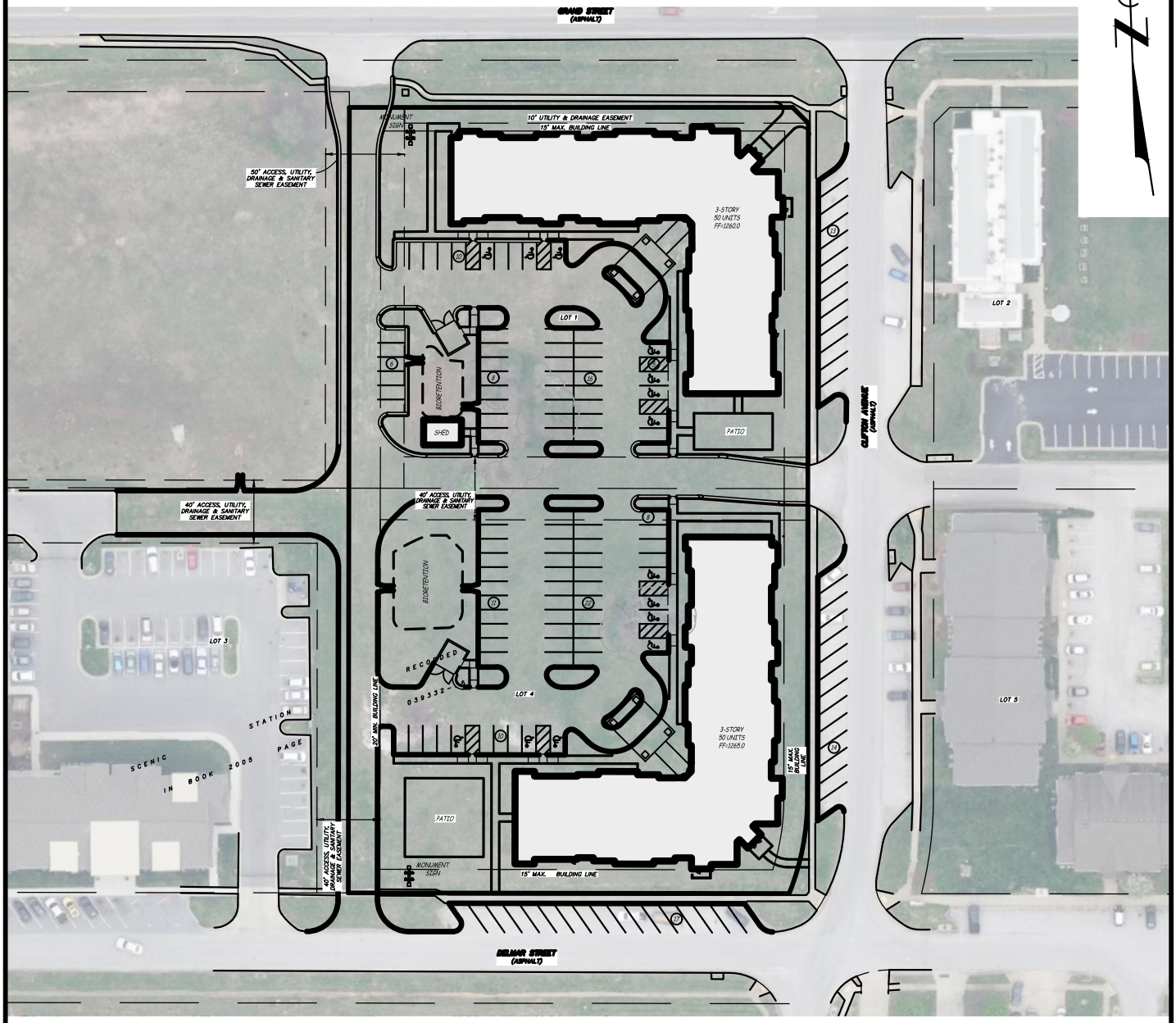


EXHIBIT 2 - PRELIMINARY DEVELOPMENT PLAN
DELMAR MEADOWS I & II
SPRINGFIELD, GREENE COUNTY, MISSOURI
AUGUST 27, 2021

Engineering Surveys & Services
1113 Fay Street, Columbia, Missouri 65201
573 - 449 - 2646 | www.ess-inc.com
Missouri Engineering Corporation # 2004005018

ES&S NO. 15175

F:\CURRENTDRAWINGS\AEP\S15175\15175 CONCEPT 2.DWG 8/27/2021

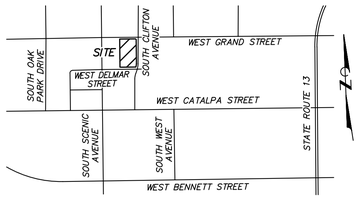
DELMAR MEADOWS

SPRINGFIELD, GREENE COUNTY, MISSOURI

PRELIMINARY DEVELOPMENT PLAN

AUGUST 27, 2021

Exhibit 2



SITE LOCATION MAP

NOT TO SCALE

LEGEND

	PROPERTY LINE
E	ELECTRIC LINE
T	TELECOMMUNICATIONS LINE
UT	UNDERGROUND TELECOMMUNICATIONS LINE
S	SANITARY SEWER LINE
SS	STORM SEWER LINE
W	WATER LINE
	TREE & BRUSH LINE
750	EXISTING CONTOUR
BOC	BACK OF CURB
CB	CATCH BASIN
CI	CURB INLET
DB	DRAIN BASIN
FES	FLARED END SECTION
FH	FIRE HYDRANT
HDPE	HIGH DENSITY POLYETHYLENE PIPE
ID	INLINE DRAIN BASIN
JB	JUNCTION BOX
L	LANDING
OCS	OUTFLOW CONTROL STRUCTURE
PVC	POLYVINYL CHLORIDE PIPE
R	RAMP
RCP	REINFORCED CONCRETE PIPE
TELECOM	TELECOMMUNICATIONS
UP	UTILITY POLE
S	PROPOSED SANITARY SEWER LINE
W	PROPOSED WATER LINE
	PROPOSED STORM SEWER
	PROPOSED WATER VALVE
	PROPOSED FIRE HYDRANT & VALVE
	THRUST BLOCK
	HEAVY DUTY CONCRETE
	RUNOFF FLOW DIRECTION

PARKING NOTE

REQUIRED PARKING

1 SPACE/UNIT	100 UNITS AT 1 SPACE / UNIT	= 100 SPACES
	TOTAL REQUIRED	= 100 SPACES

PROVIDED PARKING

STANDARD SPACES		= 82 SPACES
ACCESSIBLE SPACES		= 14 SPACES
	PROVIDED	= 96 SPACES
ON STREET PARKING		= 44 SPACES
	TOTAL PROVIDED	= 140 SPACES

UTILITY NOTES

THE LOCATIONS, SIZES, AND MATERIAL TYPES OF UNDERGROUND UTILITIES INDICATED ON THE PLAT, NOT VISIBLE OR APPARENT FROM THE SURFACE, ARE SHOWN IN THEIR APPROXIMATE LOCATIONS FROM A MISSOURI ONE CALL SYSTEM LOCATE, OR UTILITY COMPANY RECORDS AND WERE NOT VERIFIED IN THE FIELD. UNDERGROUND UTILITY SERVICES TO BUILDINGS WERE NOT LOCATED.

ELECTRIC/WATER/GAS
CITY UTILITIES OF SPRINGFIELD
2655 S. BLACKMAN ROAD
SPRINGFIELD, MISSOURI 65809
CONTACT: JOSH CASEY 417-831-8816
AS SHOWN

TELECOMMUNICATIONS
SPRINGNET
301 E. CENTRAL STREET
SPRINGFIELD, MISSOURI 65802
CONTACT: BETHANY FORRESTER 417-831-8529
AS SHOWN

ATT DISTRIBUTION
222 W. MAIN STREET
PARK HILLS, MISSOURI 63601
CONTACT: 573-431-4589
AS SHOWN

SANITARY SEWER
CITY OF SPRINGFIELD
840 BOONVILLE AVENUE
SPRINGFIELD, MISSOURI 65802
CONTACT: DAN SMITH 417-864-1902
AS SHOWN

STORM SEWER
CITY OF SPRINGFIELD
840 BOONVILLE AVENUE
SPRINGFIELD, MISSOURI 65802
CONTACT: DAN SMITH 417-864-1902
AS SHOWN

Call BEFORE you DIG
TOLL FREE
1-800-DIG-RITE
MISSOURI ONE-CALL SYSTEM, INC.

INFORMATION NOTES

**SITE IS TO BE CONSTRUCTED IN TWO PHASES; HOWEVER, ALL CALCULATIONS BELOW WERE CALCULATED FOR THE OVERALL DEVELOPMENT.

CURRENT ZONING = PD PLANNED DEVELOPMENT, NO. 269
PROPOSED ZONING = PD PLANNED DEVELOPMENT, NO. 378
EXISTING USE = VACANT LOT
EXISTING COVER = GRASS AND SCATTERED TREE CLUMPS
PROPOSED USE = INDEPENDENT SENIOR LIVING (MULTI-FAMILY)
SITE AREA = 3.34 ACRES
DENSITY (32 UNITS/ACRE MAX) = 100 UNITS/3.34 AC = 30.3 UNITS/AC

BUILDING INFORMATION
BUILDING FLOOR AREA = 34,248 (24% OF SITE)
GROSS FLOOR AREA = 102,744 SF
PROPOSED BUILDING HEIGHT = 3 STORIES/ 45'-5 1/4"
PROPOSED MAXIMUM BUILDING HEIGHT = 4-STORY
1 BEDROOM UNITS = 34 UNITS
2 BEDROOM UNITS = 66 UNITS

SITE INFORMATION
IMPERVIOUS SURFACE = 2.35 AC
IMPERVIOUS SURFACE RATIO (0.75 MAX)= 2.35 AC/3.34 AC (0.70)
OPEN SPACE = 0.99 AC, OPEN SPACE AREA INCLUDES ALL PERVIOUS AREA SUCH AS PARKING ISLANDS, LAWN, PLANTING BEDS, AND BIORETENTION BASINS
OPEN SPACE RATIO (25% MIN) = 30.0%
USABLE OPEN SPACE = 0.20 AC, USABLE OPEN SPACE AREA INCLUDES AREA WHERE ACTIVITIES CAN BE PERFORMED SUCH AS OPEN LAWN SPACE
SETBACKS
GRAND = 20' MIN
DELMAR = 15' MAX
CLIFTON = 15' MAX
VEHICULAR USE AREA = 1.29 AC (38.6%)
PEDESTRIAN USE AREA = 1.06 AC (31.7%)

PROPERTY DESCRIPTION

ALL OF LOTS ONE (1) AND FOUR (4) FINAL PLAT SCENIC STATION RECORDED IN PLAT BOOK ZZ PAGE 107 IN THE CITY OF SPRINGFIELD, GREENE COUNTY, MISSOURI.

APPLICANT/DEVELOPER

DELMAR MEADOWS, L.P.
ATTN: JAY BURCHFIELD
302 CAMPUS VIEW DRIVE, SUITE 211
COLUMBIA, MISSOURI 65201
JBURCHFIELD@SILVERTREECO.COM

PROPERTY OWNER

ATTN: JOE RENNER
SIMMONS BANK
4033 NORTH SHILOH DRIVE
FAYETTEVILLE, ARKANSAS 72703
JOE.RENNER@SIMMONBANK.COM

FLOOD PLAIN NOTE

THIS PROPERTY IS LOCATED IN ZONE "X" AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FOOD HAZARD, AREAS OF 1% ANNUAL CHANCE FLOOD WITH AVERAGE DEPTH LESS THAN 1 FOOT OR WITH DRAINAGE AREAS OF LESS THAN 1 SQUARE MILE, AS SHOWN BY FLOOD INSURANCE RATE MAP NUMBER 29077C0329E, DATED DECEMBER 17, 2010.

SHEET INDEX

C0.01	COVER
C1.01	SITE PLAN
C2.01	STORM SEWER & UTILITY PLAN
L1.01	LANDSCAPE PLAN
--	SIGN PLAN

DELMAR MEADOWS
PRELIMINARY DEVELOPMENT PLAN

ENGINEERING SURVEYS AND SERVICES Est. 1954
Engineering Surveys & Services
Consulting Engineers, Land Surveyors, and Geoprofessionals
Analytical and Material Laboratories
1113 Fay Street, Columbia, Missouri 65201
573-449-2646 | www.ess-inc.com
Other Offices:
Jefferson City - Sedalia - Wildwood
Missouri Engineering Corporation # 2004005018

DELMAR MEADOWS
2625 WEST DELMAR STREET
SPRINGFIELD, GREENE COUNTY, MISSOURI

8/27/2021
STATE OF MISSOURI
MATTHEW AARON KRIETE
NUMBER
PE-2007002811
PROFESSIONAL ENGINEER

MATTHEW A. KRIETE
PROFESSIONAL ENGINEER
PE-2007002811

IF ORIGINAL SIGNATURE OR DIGITAL AUTHENTICATION IS NOT PRESENT THIS MEDIA SHOULD NOT BE CONSIDERED A CERTIFIED DOCUMENT.

Date
AUGUST 2, 2021

Revised
1 AUGUST 27, 2021

Design: KAH Drawn: BR

COVER

Sheet
C0.01

ES&S PROJECT NO. 15175

PRELIMINARY DEVELOPMENT PLAN

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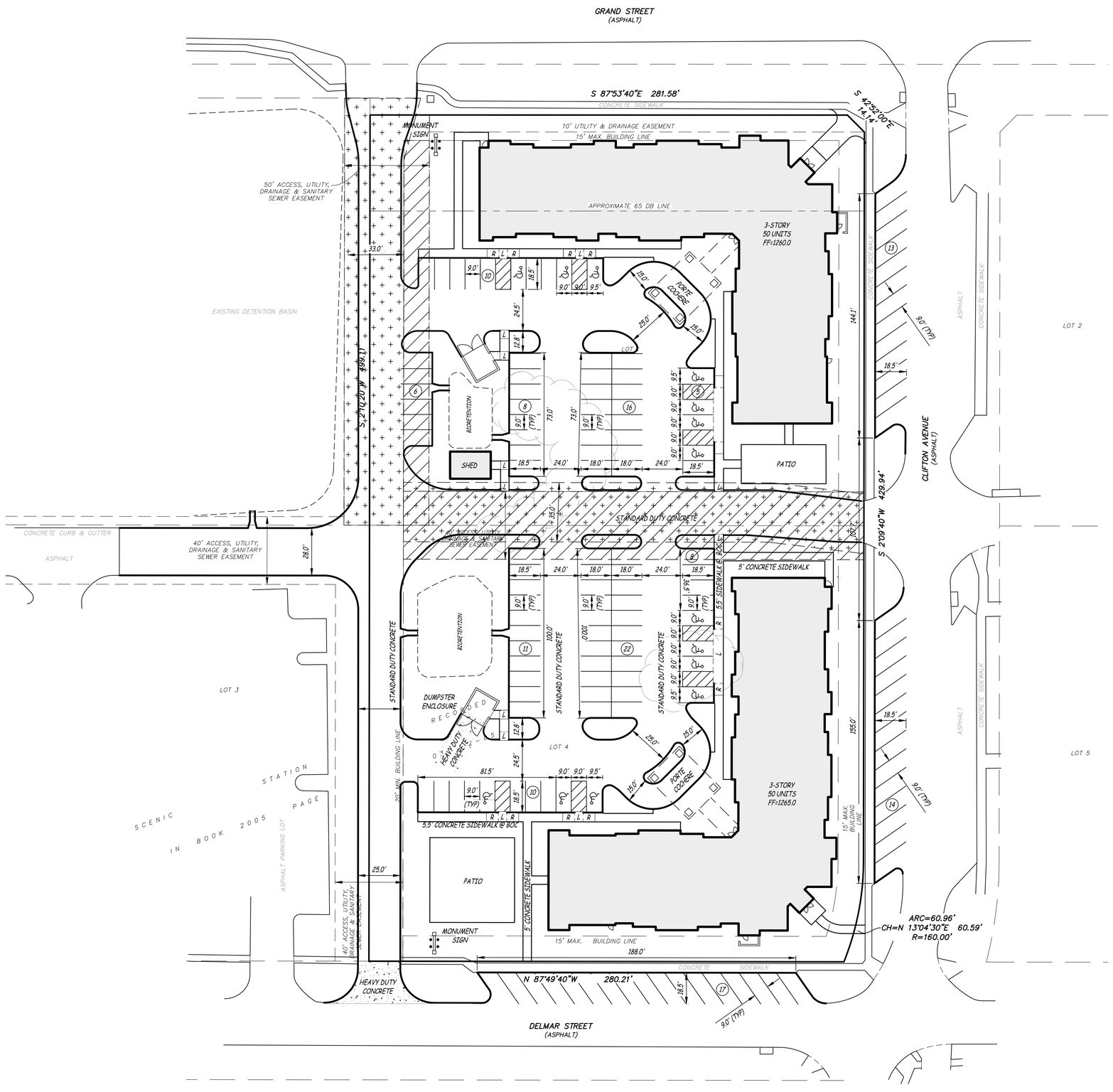

LEGEND

- VACATED EASEMENT
- PROPOSED EASEMENT

Engineering Surveys & Services
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Date
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Revised
1 AUGUST 27, 2021

Design: KAH Drawn: BR

SITE PLAN

Sheet
C1.01

ES&S PROJECT NO. 15175

PRELIMINARY DEVELOPMENT PLAN

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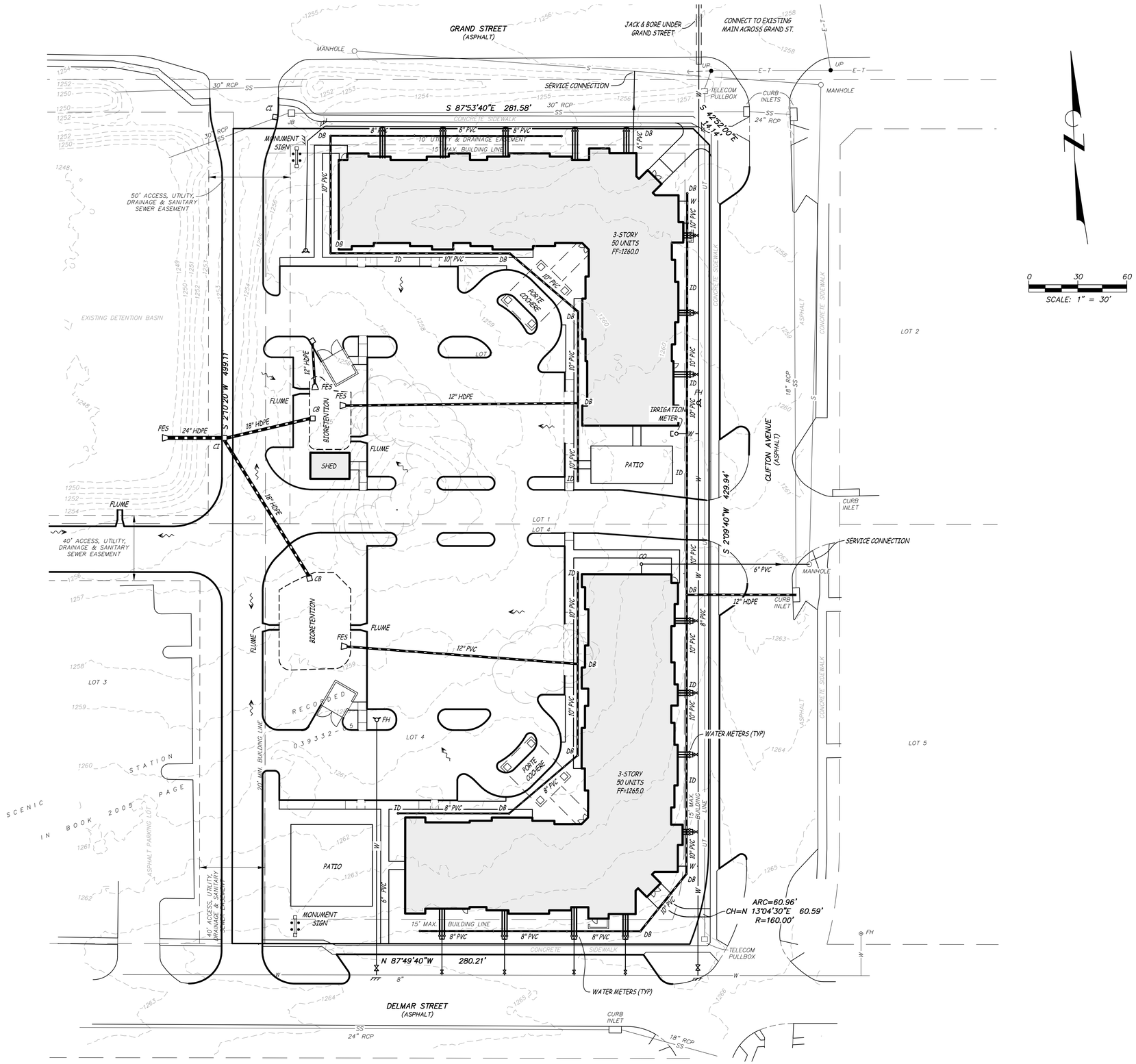

Engineering Surveys & Services
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1113 Fay Street, Columbia, Missouri 65201
573 - 449 - 2646 | www.ess-inc.com
Other Offices:
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Date
AUGUST 2, 2021

Revised
1 AUGUST 27, 2021

Design: KAH Drawn: BR

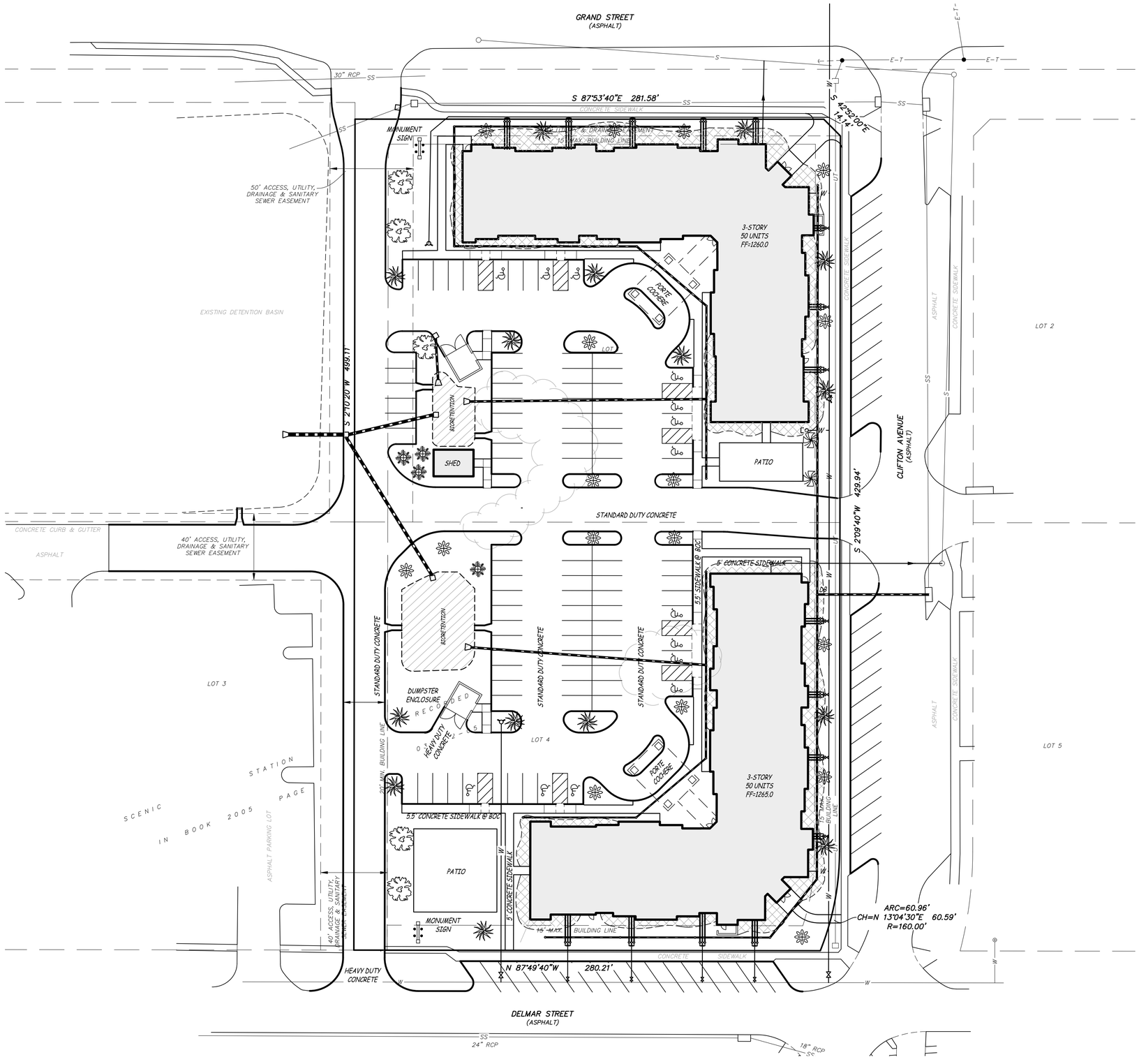
STORM SEWER & UTILITY PLAN

Sheet
C2.01

ES&S PROJECT NO. 15175

PRELIMINARY DEVELOPMENT PLAN

Y:\CURRENTDRAWINGS\AEP\15175\15175 PD PLAN.DWG 8/27/2021



0 30 60

SCALE: 1" = 30'

LANDSCAPE LEGEND

- LARGE DECIDUOUS SHADE TREES (CANOPY TREE)
- MEDIUM DECIDUOUS SHADE TREES (CANOPY TREE)
- SMALL DECIDUOUS SHADE TREES (UNDER STORY TREE)
- ORNAMENTAL DECIDUOUS SHADE TREES
- CONIFERS OR EVERGREEN TREES
- LANDSCAPING BED
- BIORETENTION BASIN

NOTE: CONDENSERS VISIBLE FROM THE RIGHT-OF-WAY SHALL BE SCREENED

ENGINEERING SURVEYS AND SERVICES Est. 1954

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Consulting Engineers, Land Surveyors, and Geoprofessionals
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DELMAR MEADOWS

2625 WEST DELMAR STREET
SPRINGFIELD, GREENE COUNTY, MISSOURI

8/27/2021

STATE OF MISSOURI
MATTHEW AARON KRIETE
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Date
AUGUST 2, 2021

Revised
1 AUGUST 27, 2021

Design: KAH Drawn: BR

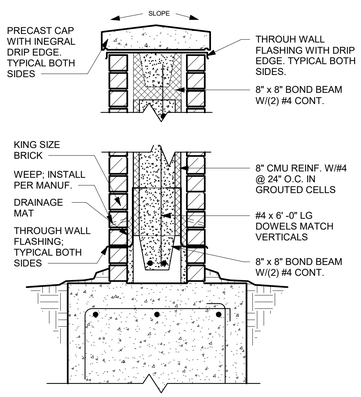
LANDSCAPE PLAN

Sheet
L1.01

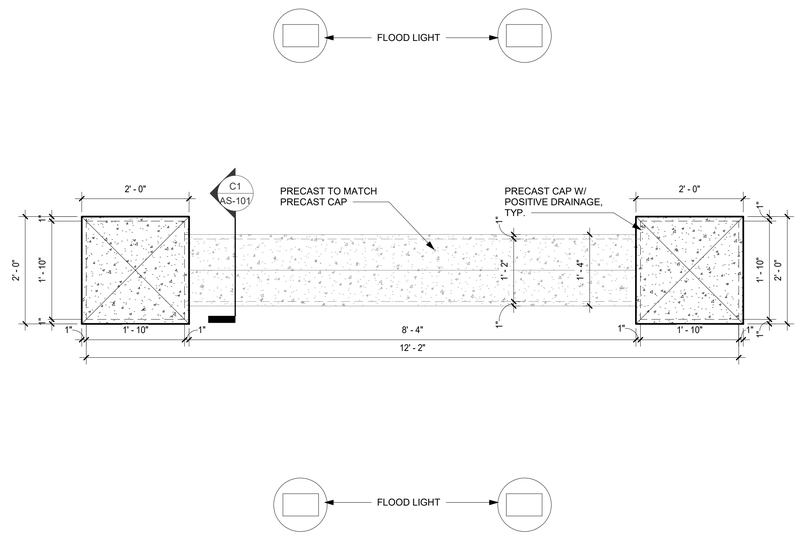
ES&S PROJECT NO. 15175

PRELIMINARY DEVELOPMENT PLAN

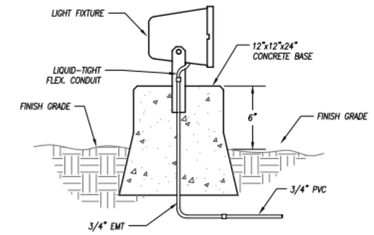
Y:\CURRENTDRAWINGS\AEP\15175\15175 LANDSCAPE PLAN.DWG 8/27/2021



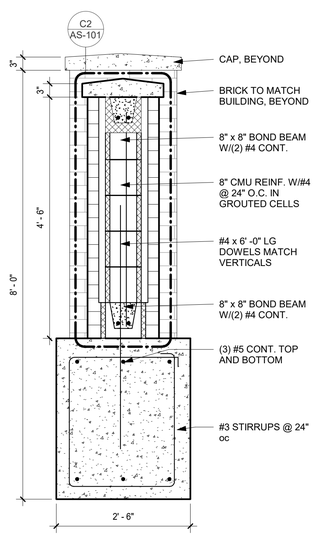
C2 MONUMENT SIGN SECTION
1" = 1'-0"



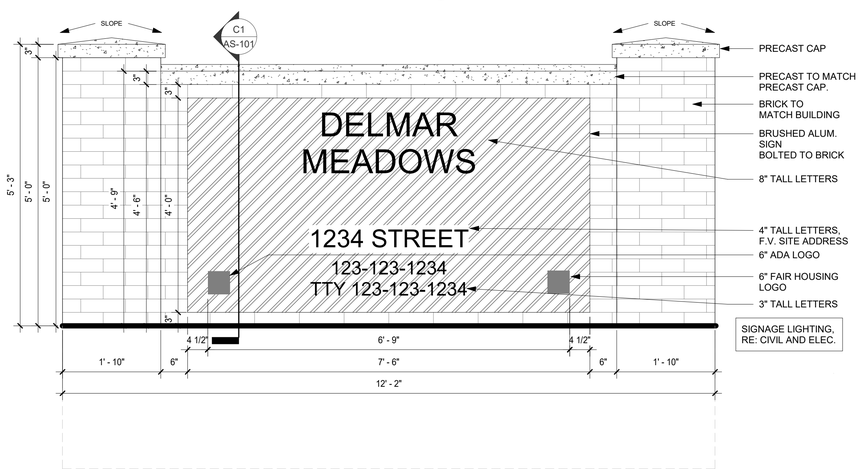
B2 MONUMENT SIGN PLAN
3/4" = 1'-0"



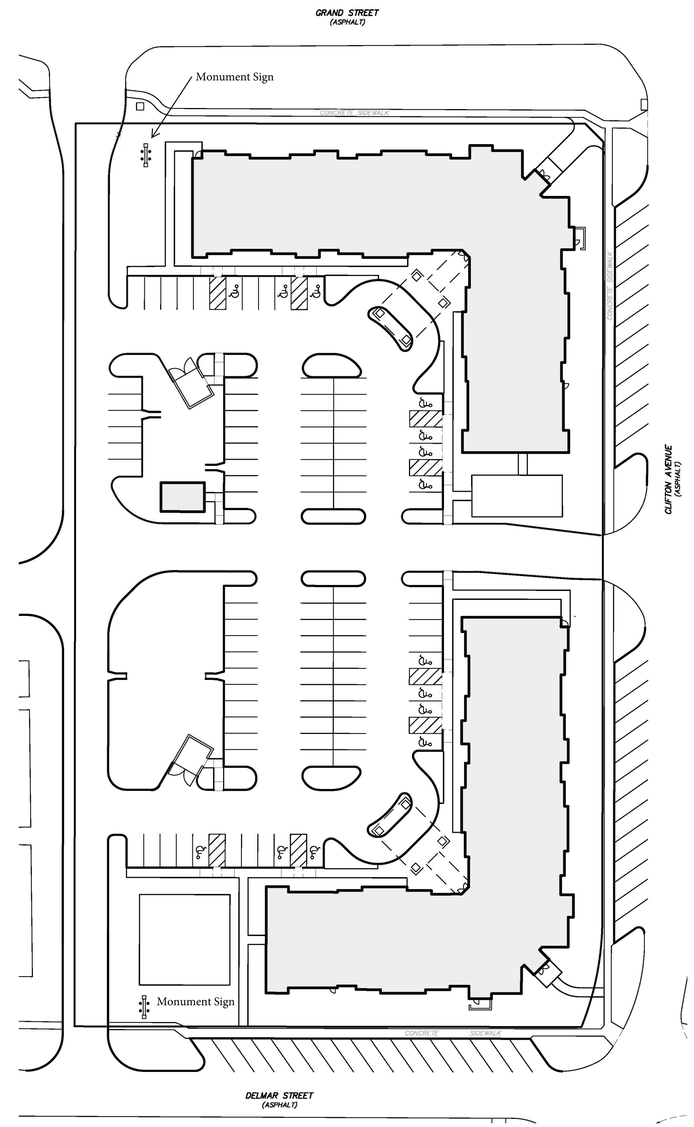
B3 FLOOD LIGHT DETAIL: RAB LIGHTING - FFLED18



C1 MONUMENT SIGN SECTION
3/4" = 1'-0"



B1. MONUMENT SIGN ELEVATION
3/4" = 1'-0"



A1 MONUMENT SIGN KEY PLAN
1" = 40'-0"

PRINTS ISSUED
08/02/21 SIGN SUBMITTAL

REVISIONS:

rosemann & ASSOCIATES P.C.
ARCHITECTURE
INTERIOR DESIGN
ENGINEERING
PLANNING
1526 Grand Boulevard
Kansas City, MO 64108-1404
p: 816.472.1448
w: www.rosemann.com
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DELMAR MEADOWS

2625 W. DELMAR STREET
SPRINGFIELD, GREENE COUNTY, MISSOURI

SHEET TITLE
MONUMENT SIGN

PROJECT NUMBER: 21012

SHEET NUMBER:

AS-101

DRAWN BY: SS CHECKED BY: SS

8/2/2021 9:44:54 AM
C:\Revit Local Files\rvt2021\2-01728 - 21012_Sports Meadows\R21_rvt\15\MM\21.rvt

One-rdg. _____
P. Hrngs. _____
Pgs. 5
Filed 09-14-21

Sponsored by Hosmer

First Reading _____ Second Reading _____

COUNCIL BILL 2021-247 GENERAL ORDINANCE _____

AN ORDINANCE

AMENDING the Springfield City Code, Chapter 42, 'Courts,' Division II, 'Municipal court,' Section 42-41, 'Court costs,' to correspond with changes in state law.

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

Section 1 – Springfield City Code, Chapter 42, 'Courts,' Division II, 'Municipal court,' Section 42-41, 'Court costs,' is hereby amended to read as follows:

(Note: Language to be added is underlined and language being removed is ~~stricken~~.)

Sec. 42-41. Court costs.

(a) *Fee schedule.* Costs may be taxed in any case in the municipal court according to the following schedule:

~~(1) Arrest ..... $ 5.00~~

~~(2) Commitment fee ..... 5.00~~

(1~~3~~) Each juror, per day 6.00

~~(4) Warrant issuance ..... 10.00~~

(2~~5~~) Preparation of transcript for appeal if prepared for a defendant 7.50

(3~~6~~) For defraying the general costs of the operation of the municipal court and maintenance of court facilities pursuant to Missouri Supreme Court Operating Rule 21.01(a)(5) 12.00

(4~~7~~) A surcharge ~~F~~for providing operation expenses for shelters for victims of domestic violence ~~battered persons~~, as defined in RSMo 455.200—455.230 pursuant to RSMo 488.607 ..... 2.00

(5~~8~~) A surcharge for the training of City police officers of $2.00~~, including~~ plus a surcharge of $1.00 payable to the state treasury to the credit of the peace officers standards and training commission fund created in RSMo 590.178 pursuant to RSMo 488.5336, except that such fee shall not be collected when the proceeding or defendant has been dismissed by the court or court costs are to be paid by the city 3.00

(6~~9~~) A surcharge for funding the crime victims compensation fund, as required in RSMo 595.045 ..... 7.50

(7~~10~~) For the procurement, installation, maintenance, consulting services, and upkeep of a court information and records management system, pursuant to RSMo 488.2220 ..... 5.00

(8~~11~~) A fee for the purpose of funding the Inmate Prisoner Detainee Security Fund through a biometric verification program for use at the Greene County Jail for inmates booked for Springfield City ~~Municipal~~ Code violations, pursuant to RSMo. 488.5026 ..... 2.00

(9~~12~~) A surcharge pursuant to RSMo. 488.2206 for the purpose of funding court house land assemblage, construction, maintenance and operation expenses 10.00

(10~~13~~) A fee imposed pursuant to RSMo. 559.604 and 559.607 for being placed on supervised probation.

(11~~14~~) A surcharge for the state automation fee imposed pursuant to RSMo. 476.056, 488.012.3(5), and 488.027.2 to be transmitted monthly to the Missouri Director of Revenue to the credit of the Missouri Statewide Court Automation Fund, except that such fee shall not be collected when the proceeding or defendant has been dismissed by the court or court costs are to be paid by the city 7.00

(b) *Witness fees.* The fees of witnesses shall be the same as those fixed for witnesses in trials before associated circuit judges and shall be taxed as other costs in the case.

(c) *Alcohol- and drug-related traffic offenses.* In addition to any other penalties and costs provided by law or ordinance, the court may order any person convicted of an alcohol- or drug-related traffic offense to reimburse the city for the costs associated with the arrest of such person. Such costs shall include the reasonable cost of making the arrest, including the cost of any chemical test

made to determine the alcohol or drug content of the person's blood, and the costs of processing, charging, booking and holding such person in custody. A schedule of such costs shall be established by the city police department and filed with the clerk of the municipal court, and the court may impose costs in accordance with the schedule; provided that the court may order the costs reduced in a case if the court determines the costs are excessive.

~~(d) *Additional fee to be remitted to county.* In addition to the costs allowed by statute or ordinance, a fee of $10.00 shall be assessed as costs in each court proceeding, except that no such fee shall be collected for moving or nonmoving traffic violations, other than violations of section 106-203, 106-205(a) or 106-205(b), nor shall the fee be collected in any proceeding where the defendant or the proceeding has been dismissed. This fee shall be collected in the same manner as provided for collection of municipal court costs, provided the fee shall be transmitted monthly to the treasurer of the county where the violation occurred.~~

(d) None of the costs, fees, or surcharges authorized by this section shall be taxed in any proceeding involving a violation of an ordinance when the proceeding or defendant has been dismissed by the court or when costs are waived or are to be paid by the city.

(e) The municipal judge may decide not to assess court costs against a defendant in those cases where the defendant is found by the municipal judge to be indigent and unable to pay the court costs.

Section 2 – Savings Clause. Nothing in this Ordinance shall be construed to affect any suit or proceeding now pending in any court, any rights acquired or liability incurred, any cause or causes of action accrued or existing under any act or ordinance repealed hereby, nor shall any right or remedy of any character be lost, impaired, or affected by this Ordinance.

Section 3 – Severability Clause. If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. City Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause, or phrase thereof, even if any one or more sections, subsections, sentences, clauses, or phrases were declared invalid.

Section 4 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-247

FILED: 09-14-21

ORIGINATING DEPARTMENT: Law

PURPOSE: To amend the Springfield City Code, Chapter 42, 'Courts,' Division II, 'Municipal court,' Section 42-41, 'Court costs,' to correspond with changes in state law.

BACKGROUND INFORMATION: Earlier this year, the Office of State Courts Administrator Municipal Assistance Review Unit ("OSCA") conducted a limited review of the Municipal Court's compliance with Supreme Court Rules, Missouri statutes, and Supreme Court Operating Rules regarding court costs ordinances. OSCA's review suggested that City Code Section 42-41 regarding court costs needed to be updated to correspond with changes that had been made in state law over a number of years.

The Municipal Court has assessed court costs in compliance with OSCA's bench card as required by Missouri Supreme Court Rule, rather than the City Code section.

This Council bill would update Section 42-41 to reflect current statutory authority and language for court costs. The update incorporates the suggestions of OSCA and additional revisions based on a legal review of current Missouri sentencing statutes.

Submitted by:

Rhonda Lewsader, City Attorney

Approved by:

Jason Gage, City Manager

One-rdg. _____
P. Hrngs. _____
Pgs. 12
Filed 09-14-21

Sponsored by Hardinger

First Reading _____ Second Reading _____

COUNCIL BILL 2021-248 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to enter into an agreement with the owners of the property generally located at 2131 West Kingsley Street, to purchase the real property at this location; and authorizing certain other documents and actions in connection therewith.

WHEREAS, City Council approved Council Bill 2021-208 on August 23, 2021, approving the budget adjustment for Fiscal Year 2021-2022 necessary for the purchase of the Fieldhouse SportsCenter property and this adjacent property located at 2131 West Kingsley Street, and the acquisition of this adjacent property will be funded by the carryover appropriation set out in said Budget Adjustment 003.

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

Section 1 – City Council hereby approves the purchase of the real property generally located at 2131 West Kingsley Street, to become part of the Springfield-Greene County Park Board's countywide park system, said property more particularly described in "Exhibit A," which is attached hereto and incorporated herein by reference.

Section 2 – The City Manager, or his designee, is hereby authorized to enter into a Contract for Purchase of Real Estate substantially in the form and content as that agreement attached hereto and incorporated herein by reference as "Exhibit B," and to do all things necessary, including the execution of contracts, as approved by the City Attorney or her designee, in order to carry out the intent and purpose of this Ordinance and said contracts.

Section 3 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

35
36 _____
Mayor
37
38 Attest: _____, City Clerk
39
40 Filed as Ordinance: _____
41
42
43 Approved as to form: _____, Assistant City Attorney
44
45
46 Approved for Council Action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-248

FILED: 09-14-21

ORIGINATING DEPARTMENT: Parks

PURPOSE: Authorizing the City Manager, or his designee, to enter into an agreement with the owners of the property generally located at 2131 West Kingsley Street, to purchase the real property at this location; and authorizing certain other documents and actions in connection therewith.

BACKGROUND INFORMATION: On August 23, 2021, through the passage of Council Bills 2021-207 and 2021-208, respectively, City Council approved the acquisition of the Fieldhouse SportsCenter ("Fieldhouse") located 2235 West Kingsley Street and approved the use of the Fieldhouse Facility Project Bonds and the General Fund carryover funds, with an appropriate budget adjustment, for the purchase of the Fieldhouse and the adjacent lot located at 2131 West Kingsley Street. The acquisition of the adjacent lot, located at 2131 West Kingsley Street, will be funded by the carryover appropriation set out in said Budget Adjustment 003.

The acquisition of this 2.33-acre lot (depicted in "Exhibit C") will help accommodate future expansion of the adjacent Fieldhouse facility, if and when project funding becomes available. While there is adequate room to construct an additional 40,000 square-foot addition on the Fieldhouse property site, there is inadequate parking on the Fieldhouse property segment to support that expansion. Acquisition of this lot would provide space for 200+ additional parking stalls and be essential to any future expansion plans for the Fieldhouse Sportscenter, such as adding four additional courts onto the existing facility. The City's Planning and Zoning Commission approved the acquisition of the Fieldhouse Sportscenter and the vacant lot located at 2131 W. Kingsley Street on August 19, 2021. Staff respectfully requests approval of this Ordinance.

Recommended by:

Bob Belote, Director of Parks

Approved by:

Jason Gage, City Manager

Exhibit A

LEGAL DESCRIPTION
2131 W KINGSLEY ST, SPRINGFIELD MO 65807

A TRACT OF LAND BEING A PART OF LOT 1 OF CHESTERFIELD CROSSING, A RECORDED SUBDIVISION IN THE CITY OF SPRINGFIELD, GREENE COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE N00^{o}58’30”E, ALONG THE WEST LINE OF SAID LOT 1, 469.75 FEET; THENCE S88^{o}55’50”E, 209.62 FEET; THENCE S00^{o}58’50”W, 445.75 FEET TO THE SOUTH LINE OF SAID LOT 1; THENCE THROUGH A NON TANGET CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 19°30’30”, A RADIUS OF 295.00 FEET, AN ARC LENGTH OF 100.44 FEET, AND A CHORD BEARING OF S79^{o}25’35” W; THENCE S 89°10’55”W, CONTINUING ALONG SAID SOUTH LINE, 90.00 FEET; THENCE S 88°47’40”W, CONTINUNING ALONG SAID SOUTH LINE, 21.74 FEET TO THE POINT OF BEGINNING.
CONTAINING 2.23 ACRES.
SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.

Exhibit B

ROUTING ORDER	(1) ORIGINATING DEPARTMENT	(2) SELLER	(3) FINANCE DEPARTMENT
	(4) LAW DEPARTMENT	(6) CITY MANAGER'S OFFICE	(6) CITY CLERK'S OFFICE
EFFECTIVE DATE	CLOSING DATE	CONTRACT NUMBER:	

City/Buyer	Seller
CITY OF SPRINGFIELD, MO 840 N BOONVILLE AVE, PO BOX 8368 SPRINGFIELD, MO 65802 PHONE (417) 864-1000; FAX (417) 864- ATTN: BOB BELOTE, DIRECTOR OF PARKS AND RECS EMAIL: BBELOTE@SPRINGFIELDMO.GOV	4G'S INVESTMENTS-C LLC PO BOX 577, REPUBLIC MO 65738 ATTN: ERNEST GIDDENS PHONE: 417-840-1255; EMAIL: EG4GINVEST@GMAIL.COM ADDRESS OF PROPERTY TO BE PURCHASED: 2131 W KINGSLEY ST, SPRINGFIELD MO 65807

CONTRACT FOR PURCHASE OF REAL ESTATE

1. PARTIES. This Contract is made by and between the parties identified above effective as of the date and time of final acceptance, hereinafter referred to as "Effective Date," which shall be the date upon which the final party executes this Contract as evidenced by the dates immediately below each party's representative's name.

2. PURPOSE. The City, by and through the Springfield-Greene County Park Board (hereinafter "Park Board"), has identified the land owned by 4G'S Investments-C, LLC, a Missouri Limited Liability Company (hereinafter "Seller"), for acquisition for Park Board's use as part of its Springfield-Greene County Park System.

3. PROPERTY. The City has offered to buy and the Seller is willing to sell by Special Warranty Deed, which shall be free from all liens and encumbrances except standard easements and restrictions, the real property located at 2131 W Kingsley St, Springfield, Greene County, Missouri 65807, more particularly described in "Exhibit A", which is attached hereto and incorporated herein by reference, including all improvements and fixtures located thereon and appurtenances thereto (collectively, the "Property").

4. PURCHASE. This Contract will be valid upon City Council approval and appropriation of funds, with the City agreeing to buy and the Seller agreeing to sell the Property upon the following terms and conditions:

   a. PURCHASE PRICE. The City agrees to purchase the Property for Six Hundred Thirty Thousand and No/100 Dollars ($630,000.00), payable by cashier's check, certified check or electronic wire transfer.

   b. CONTINGENCIES. This Contract and the City's obligation to purchase and accept the Property is subject to the following contingencies, and the City may elect to declare this Contract null and void prior to the Contingency Deadline (as defined below) if:

      i. An environmental assessment of the Property performed on behalf of the City individually or by and through the Park Board, discloses that hazardous substances may have been released on the Property, or that the Property is otherwise contaminated or environmentally impaired; or

      ii. A survey or inspection of the Property discloses any encroachments, overlays, boundary line disputes, violation of subdivision or other restrictions, or rights or claims of third parties in possession, or similar matters unacceptable to the City, are disclosed on any portion of the Property, which are unacceptable to the City; or

      iii. The title insurance commitment referred to in paragraph 7 of this Contract shall fail to show merchantable title in Seller, or shall contain exceptions unacceptable to the City; or

      iv. There has been a material change in the physical condition of the Property so that it would be unfit for park purposes; or

      v. There are rights or claims of parties in possession not shown by public records; or

vi. There are legal proceedings pending which involve the Property; or

vii. There are encroachments, overlays, boundary line disputes, or similar matters disclosed by an accurate current survey or inspection of the premises.

c. CONTINGENCY DEADLINE. The City shall have until October 20, 2021 (the "Contingency Deadline") to determine whether the contingencies set forth in Section 4(b) above are acceptable to the City. If the City, in its sole and absolute discretion, shall not be satisfied in any respect either with the results of: (a) any inspections and/or examinations conducted by the City, (b) the contingencies set forth in Section 4(b), or (c) for any other reason, then the City may terminate this Contract, provided that written notice of such termination is given to Seller on or before the expiration of the Contingency Deadline. Upon any such termination pursuant to this Section 4(c), prior to expiration of the Contingency Deadline, the parties shall have no further rights or obligations with respect to this Contract except those which specifically survive such termination.

5. SELLER'S REPRESENTATIONS. Seller represents to the City, as follows:

a. Seller has no knowledge of any underground tanks, toxic or hazardous substances, or dumpsites on the Property, either at present or in the past;

b. The Property is subject to a real estate listing agreement or other agreement providing for a real estate commission;

c. There have been no unpaid improvements or other work performed in connection with the Property that would give rise to the filing of any mechanic's liens against the Property;

d. The Seller has full authority to enter into this Contract and the Property is not subject to any options, contracts of sale, leases or other rights in favor of third parties; and

e. These representations are continuing and will be true at closing, unless Seller has given the City notice of the contrary in writing prior to closing.

6. ADDITIONAL TERMS AND CONDITIONS.

a. Environmental Conditions -

(1) The City shall cause a Phase 1 Environmental Assessment to be made of the Property. If the Phase 1 Environmental Assessment indicates the need for a full Phase 2 Environmental Assessment and if the Phase 2 Environmental Assessment indicates that there is Hazardous Substance on the Property, either party upon receipt of said report, may cancel this Contract by written notice. In the event there is any Hazardous Substance on the Property, and this Contract is not rescinded, the Seller may elect, in its sole discretion, to cause the Hazardous Substance to be removed provided it is removed prior to Closing, and upon its removal the Seller shall certify through an environmental engineer to the City that it has removed all such Hazardous Substances and shall deliver to the City a no-further-action letter from MDNR, provided the City shall have the right to independently inspect the Property to verify such certification. In the event the City determines that the Seller has not removed all such Hazardous Substances, or otherwise has not completed all remedial actions, the City shall not have any obligation to buy the Property until the Seller removes the Hazardous Substance, provided the City shall notify the Seller of any noncompliant condition and give the Seller the opportunity to remove the Hazardous Substance.

(2) Definition of Hazardous Substance. As used herein, "Hazardous Substance" shall mean any substance: (1) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law; (2) which is or becomes hereafter defined as a "hazardous waste," "hazardous substance," "hazardous material," "pollutant", or "contaminant" (whether harmful or not) under any federal, state, or local statute, regulation, rule, or ordinance including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. " 9601 et seq.), and/or the Resource Conservation and Recovery Act (42 U.S.C. " 6901 et seq.); (3) which is toxic,

explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is, or becomes, regulated by any governmental authority, agency, department, or instrumentality of the United States, the State of Missouri, or any political subdivision thereof; (4) without limitation, which consists of or contains petroleum, natural gas, and/or their components and distillates; (5) and/or any naturally-occurring but harmful substance such as methane or radon. For the purposes of this definition, asbestos is not included in the environmental assessment and is treated separately in Paragraph 9 hereunder.

b. Other conditions and consideration.

(1) The Seller represents and warrants to City that there is no lease in force related to the Property and such representation and warranty shall survive the Closing date. The Seller shall not execute any agreements relating to the Property after the parties' execution of this Contract without the prior written consent of the City, which said consent may be withheld by the City at its sole discretion. Subject to the provisions of this paragraph, the Seller shall hold harmless and indemnify the City from and against any claims which may arise or be based upon any alleged leasehold interest, tenancy or other right of occupancy or use of any portion of the premises.

7. CLOSING AND POSSESSION**.**

a. The "Closing" is the delivery and recording of the Seller's Special Warranty Deed (unless another type of deed is mutually agreed to in writing by the parties) and the payment of the purchase price by the City, which shall occur within five (5) days after the City has obtained the necessary funding for the purchase of this Property, with said date to be scheduled at a mutually agreeable date and time by all parties to this Contract, unless otherwise agreed to in writing, provided that all contingencies and conditions setout herein have been satisfied or waived, all documents have been signed, and there is a commitment showing merchantable title in Seller. Notwithstanding anything to the contrary, the Closing shall occur on or before October 29, 2021.

b. Seller will be responsible for one-half of all escrow fees or charges imposed by the Title Company; and (v) any real estate broker fees due to any real estate broker representing the Seller. The City will be responsible for: (i) the cost of its due diligence and inspections of the Property; (ii) the title commitment expense, (iii) the premium for the owner's title; (iv) one-half of all escrow fees or charges imposed by the Title Company; and (v) costs of the survey. All other Closing costs and expenses not allocated above shall be divided between the parties in accordance with the custom of the jurisdiction where the Property is located.

c. The City shall take possession of the Property at the time of closing.

d. The Seller acknowledges that proceeds will not be disbursed until the Deed has been recorded.

8. CLOSING PROCEDURES**.**

a. The City will order necessary title information within five (5) days of the Effective Date of this Contract, at the sole cost and expense of the City. The City shall obtain a commitment to insure title in the amount of the purchase price from a title company licensed and authorized to insure titles in the State of Missouri and will notify Seller, in writing, of its selected title company at said time. Seller shall furnish copies of all documents reasonably requested by the Title Company to confirm ownership and authority to convey the Property. Title Company shall also act as closing agent to prepare documents and handle disbursement of funds from the purchase price.

b. The commitment shall show merchantable title in the Seller in accordance with the Title Examination Standards of the Missouri Bar, subject to encumbrances as provided herein, standard residential subdivision restrictions, covenants, declarations, setback lines, easements, and zoning laws of record as of the Effective Date, and the lien of current year's taxes.

c. The City may, at the City's expense, obtain a survey of the Property (and shall obtain a survey if required by the Title Company).

d. The City may, at the City's expense, have the title commitment examined, and if applicable, the City shall provide to the Seller in writing any valid objections to title and survey prior to the Closing Date, and the Seller shall make reasonable efforts to correct the valid objections within thirty (30) days of receipt of request to cure, unless otherwise agreed to in writing; and if not corrected, the City may waive the objections and close, elect to terminate the Contract or clear title by filing a condemnation proceeding. At the Closing, the Seller shall deliver the Special Warranty Deed, along with all other documents and funds reasonably necessary to complete the Closing, and the City shall deliver cash or certified funds sufficient to satisfy the City's payment obligations and all other documents necessary to complete the Closing. If a closing fee is charged, the cost will be paid by the City unless otherwise provided. Recording fees shall be paid by the City. The Seller will warrant at Closing there are no unpaid bills for improvements within twelve (12) months prior to Closing and that the Seller has no knowledge of proposed improvements to be paid for by special assessment or fee. The Seller agrees to furnish all assurances, indemnities, deposits or other requirements of the insuring Title Insurance Company in order for the Owner's Title Insurance Policy, when issued, to contain no exception as to liens or the right of liens for service, labor or materials imposed by law and not shown by the public records. The City agrees that if Seller cannot furnish requirements for this coverage, then the City may elect to waive this requirement and accept an Owner's Title Insurance Policy without unrecorded mechanic's lien coverage and close; or condemn the Property at the agreed-to price; or terminate this Contract. The City shall pay the costs of the Owner's Title Insurance Policy. Rental deposits held by Seller, if any, shall be credited to the City at closing.

9. PRORATION - TAXES, UTILITIES AND DEPOSITS.

a. Seller shall be responsible for all taxes prior to 2020. Taxes for 2021 shall be prorated between the parties and deducted from the price at the time of Closing and paid by the Escrow Agent to Greene County. If taxes are not known at the time of closing, the parties shall estimate based upon taxes assessed in 2020 and pro rate the taxes based upon the estimate.

b. Interest, rentals and association dues, if applicable, shall be prorated to the Closing Date and the Seller shall be responsible for payment of Seller's prorated share accrued as of the date of closing.

c. All utilities to the Property shall be read on the transfer of possession date and transferred to the City. The City shall not be responsible for utility costs incurred prior to transfer of possession.

10. PROPERTY INSPECTION. The City may, at the City's expense, employ independent, qualified inspectors of the City's choice (and shall arrange for any inspections and testing systems) in order to determine:

a. The type of soil composition, and whether there exists on the Property any sink holes, voids, asbestos, other "special wastes" or any environmentally hazardous or otherwise regulated substances which might impose liability on the City as a subsequent owner of the Property; and

b. Such other inspections as the City deems reasonably necessary including a survey of the Property.

c. The Seller shall give the City, or its designated agent, reasonable access to the Property to make the inspections. The City shall restore the Property to its original condition and indemnify and hold harmless the Seller from any liability incurred as a result of such inspection activities.

d. The Seller further acknowledges and agrees that the right of inspection contained in this paragraph shall not in any way relieve the Seller from the obligation to satisfy any contingencies contained in this Contract within the applicable time periods.

11. VERIFICATION OF CONDITION. The City shall have the right to make a final inspection of the Property prior to closing, as a contingency of the sale, or solely to confirm that:

a. The Seller has complied with Seller's obligations; and

b. The Property is otherwise in substantially the same condition, subject to normal wear and tear, as on the date of the offer, unless otherwise agreed to in writing; and

c. Any contingency or defect of title has been resolved.

12. CONDITION OF PROPERTY. Except for the representations and warranties of Seller expressly set forth herein, the City acknowledges that it has investigated the Property to its satisfaction, and that Property shall be conveyed and transferred to the City, "AS IS, WHERE IS, AND WITH ALL FAULTS," and specifically and expressly without any representations, warranties or guaranties, either express or implied, of any kind, nature or type whatsoever from or on behalf of Seller. SELLER HAS NOT, DOES NOT, AND WILL NOT, WITH RESPECT TO THE PROPERTY, MAKE ANY WARRANTIES OR REPRESENTATIONS, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE. The terms and conditions of this Section shall expressly survive the Closing.

13. REMEDIES UPON DEFAULT.

a. The Seller or the City shall be in default under this Contract if either fails to comply with any material provision within the time limits required by the Contract. If either party defaults, the party claiming a default shall notify the other party in writing of the nature of the default and may, as set forth in said notice, either terminate this Contract or extend the time for performance by providing the defaulting party a deadline for curing the default, provided that if the default is the inability of the City to close the purchase because of its lack of appropriated and unencumbered funds, the City may at its option by written notice extend the closing date for a period of not more than thirty (30) days.

b. If this Contract shall not be closed for the fault of the Seller, then the City may elect to either sue for specific performance of the Contract and any incidental damages arising therefrom, or be paid liquidated damages of Five Percent (5%) of the total sale price from the Seller, it being agreed that the actual damages of the City are difficult, if not impossible, to ascertain, or condemn the Property at the agreed to price.

c. With the exception of the requirements of approval of City Council and appropriation of funds, as described in paragraph 4 above, if this Contract shall not be closed for the fault of the City, then the Seller shall be paid liquidated damages of Five Percent (5%) of the total sale price from the City, it being agreed that the actual damages of the Seller are difficult, if not impossible, to ascertain, or condemn the Property at the agreed to price.

d. In the event Seller shall fail to deliver possession of the Property to the City on the date of closing or an otherwise written agreed-to date, in addition to all legal remedies available to the City, the Seller shall thereafter be obligated to pay daily rental to the City in the amount of One Hundred Dollars ($100) per day until the City obtains possession, in addition to the City's reasonable attorney fees and court costs incurred in obtaining possession.

e. In the event the Property is destroyed or partially destroyed by calamity, including but not limited to fire, the City shall have the option of reducing the purchase price by any insurance proceeds available to the Seller, or to claim said insurance proceeds and pay the full purchase price. If the Seller fails to maintain insurance or sufficient insurance, the City shall have the option of declaring this Contract null and void if the Property is destroyed or partially destroyed by calamity, including but not limited to fire.

14. PROVISIONS NOT MERGED WITH DEED. No provision of this Contract is intended to or shall be merged by reason of any deed transferring title to the Property from the Seller to the City, or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Contract.

15. NOTICE. All notices required or permitted hereunder and required to be in writing may be given by FAX or by first class mail addressed to the City and the Seller by one of three different means: Facsimile Transmission ("FAX") if

both parties have a FAX number; U.S. Postal Service Mails; hand delivering a copy of the same to the receiving party; or notice may be given by any combination of the above methods. The date of notice shall be:

a. The date upon which notice is hand delivered to the receiving party;

b. The date of delivery of notice by FAX transmission, which shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party;

c. The third day following mailing of the notice, whichever first occurs.

i. It shall be sufficient if notices to the City are addressed to: City Attorney, City of Springfield, 840 N. Boonville Ave, Springfield, MO 65801.

ii. It shall be sufficient if notices to the Seller are addressed to: 4G'S INVESTMENTS-C LLC, PO BOX 577, REPUBLIC MO 65738

16. HEADINGS. The headings or captions of this Contract are for convenience and reference only, and in no way define, limit, or describe the scope or intent of the Contract or any provision thereof.

17. SEVERABILITY. In the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained in this Contract shall be declared invalid by a final and unappealed order, decree or judgment of any court, the City may, at its sole option, set this Contract aside.

18. NO ASSIGNMENTS. The City may not assign this Contract or any of its rights or obligations hereunder without prior written consent of the Seller. The Seller may not assign this Contract or any rights or obligations hereunder without the prior written consent of the City.

19. VENUE AND JURISDICTION. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be adjudicated, venue shall be proper only in the Circuit Court of Greene County, Missouri.

20. GOVERNING LAW. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. This Contract is to be deemed to have been jointly prepared by the parties hereto, and any uncertainty or ambiguity existing herein shall not be interpreted against any of the parties, but according to the application of the rules and interpretation of Contract.

21. ENTIRE CONTRACT. This Contract contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this Contract shall be effective unless in writing specifically referring hereto, and signed by both parties.

22. SURVIVAL OF PROVISIONS. To the extent necessary to carry out the intent of this Contract, the provisions herein shall survive the closing/settlement of this transaction.

23. CONFLICT OF INTEREST. By signing this Contract, Seller represents and certifies that no salaried officer or employee of the City of Springfield, Missouri, and no member of the City Council of the City has a financial interest, direct or indirect, in this Contract. A violation of this provision renders this Contract void. No federal or state regulations and applicable provisions of RSMo Section 104.540 et seq. shall be violated.

24. EXECUTION. The execution of this Contract shall constitute legal and binding obligations of the parties. To facilitate execution, this Contract may be executed in as many counterparts as may be required, and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on more than one counterpart. All counterparts shall collectively constitute a single Contract.

25. BINDING EFFECT. This Contract shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, and shall be construed and enforced in accordance with the Laws of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated and hereby verify that they are authorized to sign on behalf of and bind each of their designated entities/parties to this Contract.

SELLER/4G'S INVESTMENTS-C LLC/OWNER

By: _____
Ernest W. Giddens, Manager
Date: _____

BUYER/CITY OF SPRINGFIELD, MO

By: _____
Ken McClure, Mayor
Date: _____

By: _____
Jason Gage, City Manager
Date: _____

CITY OF SPRINGFIELD, MO, BY AND THROUGH THE SPRINGFIELD-GREENE COUNTY PARK BOARD

By: _____
Sydney Needham, Park Board Chair
Date: _____

By: _____
Bob Belote, Director of Parks and Recreation
Date: _____

CERTIFICATE OF DIRECTOR OF FINANCE: On the ____ day of _____, 2021, I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefore.

By: _____
DIRECTOR OR ACTING DIRECTOR OF FINANCE

APPROVED AS TO FORM BY: _____**, City Attorney or Assistant City Attorney**

FIELDHOUSE SPORTSCENTER PROPERTY EXHIBIT

Exhibit C

APRIL 23, 2021

1"=40'-0"

0' 20' 40' 80'

NORTH

The PARK
SPRINGFIELD-GREENE COUNTY PARK BOARD
Over 100 Years ~ Over 100 Parks

One-rdg. _____
P. Hrngs. _____
Pgs. 205
Filed: 09-14-21

Sponsored by: Hosmer

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021- 249 SPECIAL ORDINANCE _____

AN ORDINANCE

APPROVING and accepting the proposal from the team, GAP Collaborative, as the best value team to design and construct the Grant Avenue Parkway Project; authorizing the City Manager, or his designee, to enter into a contract with the GAP Collaborative team leader, Radmacher Brothers Excavating Company, Inc.; and amending the budget of the Department of Public Works for Fiscal Year 2021-2022 in the amount of $2,714,000.

WHEREAS, the Grant Avenue Parkway Project ("Project") will create an off-street pedestrian and bicycle pathway along Grant Avenue between Sunshine Street and College Street, connecting downtown Springfield with the Wonders of Wildlife National Museum and Aquarium; and

WHEREAS, the Project will include bike and pedestrian-friendly facilities, various traffic-calming improvements, bridge enhancements, utility upgrades, fiber connectivity, and additional crossing and intersection improvements in the project area, as depicted on "Exhibit A," which is attached hereto and incorporated herein by this reference; and

WHEREAS, Statements of Qualifications for this Project were solicited by advertising in *The Daily Events* from March 19, 2021, through March 22, 2021, and from March 25, 2021, through March 29, 2021, and were submitted April 20, 2021; and

WHEREAS, two teams were shortlisted from the submitted Statements of Qualifications, and a Request for Proposal was issued to those teams; and

WHEREAS, proposals were submitted August 20, 2021, and scores were revealed and cost proposals opened at 10:30 a.m. on August 31, 2021; and

WHEREAS, GAP Collaborative, a team led by Radmacher Brothers Excavating Company, Inc., received the highest score for its proposal.

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

Section 1 – City Council hereby approves and accepts the proposal from the team, GAP Collaborative, led by Radmacher Brothers Excavating Company, Inc. as the best value team to design and construct the Grant Avenue Parkway Project, and accepts the cost proposal of GAP Collaborative, for said Project, at the price and sum of $22,000,000, except as said sum may be lawfully increased or decreased by the actual quantities of work units involved.

Section 2 – The City Manager, or his designee, is hereby authorized to enter into a contract with the GAP Collaborative team leader, Radmacher Brothers Excavating Company, Inc., for such work, said contract to be in in a form approved by the City Attorney and in accordance with the terms of the Statement of Qualifications, Request for Proposals, and the proposal as submitted by the GAP Collaborative team.

Section 3 – All workers performing work under the contract for construction of the Project shall be paid a wage of no less than the prevailing hourly rate of wages for work of a similar character in this locality or the public works contracting minimum wage, whichever is applicable. Contractor shall fully comply with the provisions and requirements of the Missouri State Prevailing Wage Law. Contractors and any subcontractor performing work under this contract must provide a 10-hour OSHA construction safety training program, or similar program approved by the Department of Labor, for on-site employees, unless employees demonstrate they previously completed the program.

Section 4 – City Council hereby amends the budget for Fiscal Year 2021-2022 of the Department of Public Works in the accounts and in the amounts as shown on Budget Adjustment No. 020, a copy of which is attached hereto and incorporated herein by this reference as “Exhibit B.”

Section 5 – City Council hereby finds that the budget adjustment made above has been recommended by the City Manager and further finds that the budget adjustment herein is necessary to meet the need for relevant public expenditure.

Section 6 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-249

FILED: 09-14-21

ORIGINATING DEPARTMENT: Public Works

PURPOSE: Approving and accepting the proposal from the team, GAP Collaborative, as the best value team to design and construct the Grant Avenue Parkway project, as shown in the attached "Exhibit A," project location map, and authorizing the City Manager, or his designee, to enter into a contract ("Exhibit B") with the GAP Collaborative team leader, Radmacher Brothers Excavating Company, Inc.; and amending the Fiscal Year 2021-2022 budget of the Department of Public Works in the amount of $2,714,000, to appropriate funds from City Utilities.

BACKGROUND INFORMATION: The Grant Avenue Parkway will create an off-street pedestrian and bicycle pathway along Grant Avenue between Sunshine Street and College Street as well as a bicycle route through downtown. The Parkway route will connect downtown Springfield with the Wonders of Wildlife National Museum and Aquarium and will further connect parks and recreation amenities, neighborhoods, schools, and fill a vital gap in the Ozark Greenways trail network. The project will include bike and pedestrian-friendly facilities, various traffic-calming improvements, bridge enhancements, utility upgrades, fiber connectivity, and additional crossing and intersection improvements.

Statements of Qualifications were solicited for this project by advertising in *The Daily Events* from March 19, 2021, through March 22, 2021, and from March 25, 2021, through March 29, 2021. Statements of Qualifications were submitted April 20, 2021. Two teams were shortlisted from the Statements of Qualifications and a Request for Proposals was issued to those teams. Proposals were submitted August 20, 2021, and scores were revealed and cost proposals opened at 10:30 a.m. on August 31, 2021, with the following scores and cost proposals received:

Proposer	Score	Cost Proposal
GAP Collaborative	703	$22,000,000
The Hartman Team	598	$22,000,000

The cost proposal for the project was a fixed price of $22,000,000 and if accepted, will be funded with $15,428,800 through a Better Utilizing Investments to Leverage Development ("BUILD") grant which is already budgeted, $3,857,200 from the 1/8-Cent Transportation Sales Tax and the 1/4-Cent Capital Improvement Sales Tax which is already budgeted, and $2,714,000 from City Utilities that is being budgeted with this Council bill.

Supports the following City Council Priorities:

- Public Safety
- Economic Vitality
- Fiscal Sustainability
- Quality of Place

REMARKS: Public Works recommends acceptance of the proposal from the team, GAP Collaborative, as the best value proposal, and recommends passage of this Ordinance and budget adjustment.

Submitted by:

Martin Gugel, Assistant Director of Public Works

Recommended by:

Dan Smith, Director of Public Works

Approved by:

Jason Gage, City Manager

CITY OF Springfield

Exhibit A

Plan# 2020PW0055

DISCLAIMER: All information included on this map or digital file is provided "as-is" for general information purposes only. The City of Springfield, and all other contributing data suppliers, make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of the data for any particular use. Furthermore, the City of Springfield, and all other contributing data suppliers, assume no liability whatsoever associated with the use or misuse of the data.

Exhibit B

Book 1 Design-Build Contract

Grant Avenue Parkway Corridor Improvements Project

City of Springfield, MO

Project Number:	BUILD-5901(816)
RFP Issued:	June 1, 2021
Proposals Due:	August 20, 2021

City of Springfield, MO
840 Boonville, Springfield, MO 65802

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This Design-Build Contract is entered into as of MONTH DATE, YEAR, by and between the City of Springfield, Missouri (hereinafter, "City") and CONTRACTOR, a corporation (hereinafter, "Contractor"), with reference to the definitions contained in Appendix A hereto and the following facts:

RECITALS

A. The Grant Avenue Parkway (GAP) will create an off-street pedestrian and bicycle pathway along Grant Avenue between Sunshine Street and College Street, in the heart of Springfield. The 3-mile stretch will connect downtown Springfield with the Wonders of Wildlife National Museum and Aquarium (WOW) – linking authentic Springfield experiences for both residents and visitors. The Parkway route will further connect parks and recreation amenities, neighborhoods, schools, and fill a vital gap in the Ozark Greenways trail network.

B. The Parkway will start Downtown and end at Sunshine Street, including bike and pedestrian friendly facilities, various traffic-calming improvements, utility upgrades, fiber connectivity and additional crossing and intersection improvements.

C. An environmental determination of a Categorical Exclusion 2 has been issued for the Project.

D. Book 4 encompasses environmental commitments and mitigation measures set forth in the Categorical Exclusion 2. Any Contractor design proposals that result in the need to acquire additional Right of Way or impacts extending beyond the Area of Potential Effect (APE) will need to be evaluated to determine the required Environmental Approvals.

E. The parties intend for the Contract to be a lump-sum design-build Contract obligating the Contractor to perform all Work necessary to complete the Project by the deadlines specified herein, for the Contract Price, subject only to certain specified limited exceptions. To allow the City to budget for the Project and to reduce the risk of cost overruns, the Contract includes restrictions affecting the Contractor's ability to make claims for an increase to the Contract Price or an extension of the Completion Deadlines. The Contractor has agreed in the Contract to assume such responsibilities and risks and has reflected the assumption of such responsibilities and risks in the Contract Price.

F. If the Contractor fails to complete the Project within the time limitations set forth in the Contract Documents, then the City will suffer substantial losses and damages. The Contract Documents therefore provide that the Contractor shall pay the City substantial Liquidated Damages if such completion is delayed.

G. The City has provided Informational Documents to the Contractor. The Contractor has no right to rely on the Informational Documents. The City and the Contractor both intend for the Contractor to assume full responsibility and liability with respect to the design of the Project, and the City and the Contractor both intend for the Contractor to indemnify and hold harmless the City and others with respect to any Defects in the Project.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor by the City, the foregoing premises and the covenants and agreements set forth herein, the parties hereto hereby agree as follows.

1. Contract Components; Interpretation of Contract Documents

1.1. Certain Definitions

Appendix A hereto contains the meaning of various terms used in the Contract Documents.

1.2. Contract Documents

The term "Contract Documents" shall mean the documents listed in Section 1.3, including all exhibits thereto.

1.3. Order of Precedence for Contract Documents

Each of the Contract Documents is an essential part of the Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete Contract. In the event of any conflict among the Contract Documents, the order of precedence shall be as set forth below:

1. Book 1, as executed by the City and the Contractor, including all Appendices. (Design-Build Contract).
2. Book 2, including all Appendices, Description and General Information Pages. (Performance Requirements).
3. Book 3, Applicable Standards, including Additional Applicable Standards proposed by the Contractor and accepted by the City. The Applicable Standards, including Additional Applicable Standards, are the final Applicable Standards included as Book 3 after final Contract negotiations.
4. Book 4, Contract Drawings, Data, and Reports.
5. The Proposal Documents and the Proposal Appendix, to the extent that they meet or exceed the requirements of the other Contract Documents. For example, if the Proposal Documents or Proposal Appendix include statements that can reasonably be interpreted as offers to provide higher quality items than otherwise required by the Contract Documents, or to perform services in addition to those otherwise required or otherwise contain terms which are more advantageous to the City than the requirements of the other Contract Documents, the Contractor's obligations hereunder shall include compliance with all such statements, offers, and terms. Any information provided by the Proposer in an attachment to its Proposal that is in addition to the information required to be submitted in the Instructions to Proposers (ITP) will be for information only and will not become part of the Contract Documents.

Notwithstanding the foregoing, in the event of conflicting requirements involving any requirement within a Book or a reference contained within a Book of the Contract Documents, the City shall have the right to determine, in its sole discretion, which requirement(s) apply. The Contractor shall request the City's determination respecting

the order of precedence among conflicting provisions promptly upon becoming aware of any such conflict.

1.4. Informational Documents (Book 5)

The documents included in Book 5 – Informational Documents are for information only and are not Contract Documents to be relied upon by the Contractor. Cross references in the Contract Documents to the Informational Documents do not incorporate the Informational Documents or portions of the Informational Documents as Contract Documents or requirements.

1.5. Interpretations

In the Contract Documents, where appropriate:

The singular includes the plural and vice versa;

References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to as of the Proposal Due Date;

Words such as “herein,” “hereof,” and “hereunder” refer to the entire document in which they are contained and not to any particular provision or section;

Words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings;

References to Persons include their respective permitted successors and assigns and, in the case of Governmental Persons, Persons succeeding to their respective functions and capacities; and words of any gender used herein include each other gender where appropriate.

Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive. The Contractor acknowledges and agrees that it had the opportunity and obligation, prior to submission of its Proposal, to review the Contract Documents and to bring to the City’s attention any conflicts or ambiguities contained therein. The Contractor further acknowledges and agrees that it has reviewed the Contract Documents, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or Dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the Person that prepared them, and instead other rules of interpretation shall be used. The City's final answers to the questions posed during the proposal process for the Contract shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

1.6. Referenced Standards, Codes, or Criteria

Except as otherwise specified in the Contract Documents, or otherwise directed by the City, references to standards, codes, or criteria; standards, codes, or criteria, shall mean the latest version in effect on the Proposal Due Date, except that the applicable version date of the Additional Applicable Standards shall be the date found acceptable by the City with concurrence by FHWA.

1.7. Omission of Details; Clarification by the City

The Contractor shall not take advantage of any apparent Error in the Contract. Should it appear that the Work to be done or any matter relative thereto is not sufficiently detailed or explained in the Contract Documents, the Contractor shall apply to the City in writing for such further written explanations as may be necessary and shall conform to the explanation provided. The Contractor shall promptly notify the City of all Errors that it may discover in the Contract Documents and shall obtain specific instructions in writing regarding any such Error before proceeding with the Work affected thereby.

1.8. Computation of Periods

References to “days” or “Days” contained in the Contract Documents shall mean Calendar Days unless specified otherwise. If the date to perform any act or give any Notice specified in the Contract Documents (including the last date for performance or provision of Notice “within” a specified time period) falls on a non-Business Day, such act or Notice may be timely performed on the next succeeding day that is a Business Day. Notwithstanding the foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency, requirements contained in Section 5.3 and any other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be required to be performed as specified, even though the date in question may fall on a non- Business Day.

1.9. Standard for Approvals

In all cases where Approvals, acceptances or consents are required to be provided by the City or approvals, acceptances or consents are required to be provided by the Contractor hereunder, such Approvals, acceptances, approvals or consents shall not be withheld unreasonably except in cases where a different standard (such as sole discretion) is specified and shall not be unreasonably delayed if no response time is specified. In cases where sole discretion is specified, the decision shall not be subject to Dispute resolution hereunder.

1.10. Federal Requirements

Notwithstanding anything to the contrary contained herein, in the event of any conflict between any Federal Requirement and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.

1.11. Completion Deadlines

The Instructions to Proposers (ITP) requires the Contractor to define Long Term Lane

Closure Duration Deadlines, Location Completion Deadlines, and the Project Completion Deadline as described therein in Appendix I, Form DB-302 Location Completion Deadlines and Form DB-303 Closure Duration Deadlines. All references in the Contract Documents to Completion Deadlines and Project Completion Deadline shall be deemed to mean all Long-Term Lane Closure Duration Deadlines, Location Completion Deadlines, and Project Completion Deadline included in the Proposal Documents.

1.12. Geographic Limits of the Project

The geographic limits of the Project shall be the Project limits described in the graphic plot provided by the Contractor in the Proposal. The requirements of the Contract Documents are limited to the geographic limits of the Project.

1.13. Revisions to Additional Applicable Standards

The Additional Applicable Standards, as defined by the Contractor, shall be modified as follows and incorporated into Book 3:

All references to the City or City Personnel shall mean the Engineer, as defined in Appendix A.

Except as otherwise provided in Book 2, all references to information, recommendations, or services provided by City shall be disregarded.

The Contractor shall maintain each submittal referenced in the Additional Applicable Standards but is not required to submit the documents to City unless requested.

All references to payment provisions related to pay items, measurement for payment, basis of payment, adjustment of Unit Prices, quantities, method of measurement, extra Work, bonuses, or similar phrases shall be disregarded.

All Additional Applicable Standards that are not City standards or that are City standards that have been modified by the Contractor shall be signed and sealed by a Contractor licensed professional Engineer and Approved by City.

Any standards, portions of standards, or details that have not been specified by the Contractor as Additional Applicable Standards, shall apply to the Project at no additional cost to City.

The City of Springfield General Conditions and Technical Specifications for Public Improvements shall be used. Chapter 2 shall be disregarded. Missouri Standard Specifications for Highway Construction Sections 106.12, 108.1, and 110 shall be used to supplement this contract.

All Applicable Standards and Additional Applicable Standards that include phrases such as “to the satisfaction of the Engineer” or “approved by the Engineer” shall be documented as approved by the Contractor’s Engineer, and the justification for such approval shall also be documented.

City conditions of Approval of Additional Applicable Standards are included as part of the Additional Applicable Standards.

Any proposed design exceptions that have been submitted but have not been Approved by City are not Approved and must be Approved prior to construction.

2. Obligations of Contractor

2.1. Performance Requirements

2.1.1. Performance of Work

All Materials, services and efforts necessary to achieve Final Acceptance on or before the Final Acceptance Deadline as shown in Appendix I, Form DB-302 shall be the Contractor's sole responsibility, except as otherwise specifically provided in the Contract Documents. Subject to the terms of Section 13, the costs of all such Materials, services and efforts are included in the Contract Price.

2.1.2. Performance Standards

The Contractor shall furnish the design of the Project in accordance with all professional engineering principles and generally accepted Standards of the Industry (but at least meeting the terms, conditions and requirements of the Contract Documents), and in accordance with the terms and conditions set forth in the Contract Documents; and shall construct the Project as designed, in a good and workmanlike manner, free from Defects.

2.1.3. Performance as Directed

At all times during the term hereof, including during the course of and notwithstanding the existence of any Dispute, the Contractor shall perform as directed by the City in a diligent manner and without delay, shall abide by the City's decision or order, and shall comply with all applicable provisions of the Contract Documents. If a Dispute arises regarding such performance or direction, the Dispute shall be resolved in accordance with Section 19.

2.2. General Obligations of Contractor

The Contractor, in addition to performing all other requirements of the Contract Documents, shall:

1. Furnish all design and other services, provide all Materials and labor and undertake all efforts necessary or appropriate (excluding only those services, Materials and efforts which the Contract Documents specify will be undertaken by other Persons): (i) to construct the Project and maintain it during construction in accordance with the requirements of the Contract Documents, including the Contract Schedule, all Legal Requirements, all Governmental Approvals, the Quality Manual, the Maintenance of Traffic Plan, the Safety Plan, Applicable Standards (including Additional Applicable Standards), and all other applicable safety, environmental, licensing and other requirements, taking into account the Right of Way (ROW) drawings and other constraints affecting the Project, so as to achieve Location Completions and Project Completion by the applicable Completion Deadlines; and (ii) otherwise to do everything required by and in accordance with the Contract Documents.
2. At all times provide a Contractor Project Manager, Approved by the City, who:

(i) will have full responsibility for the prosecution of the Work; (ii) will act as agent and be a single point of contact in all matters on behalf of the Contractor; (iii) will be present (or his Approved designee will be present) at the Site at all times that Work is performed; and (iv) will have authority to bind the Contractor on all matters relating to the Project.

3 Obtain all Governmental Approvals (other than the Environmental Approvals and certain New Environmental Approvals caused by actions of the City as provided in Section 6.3.2).

4 Comply with all conditions imposed by and undertake all actions required by and all actions necessary to maintain in full force and effect, all Governmental Approvals, including implementation of all environmental mitigation measures required by the Contract Documents, except to the extent that such responsibility is expressly assigned in the Contract Documents to another Person.

5 Provide such assistance as is reasonably requested by the City in dealing with any Person and/or in prosecuting and defending lawsuits in any and all matters relating to the Project, which may include providing information and reports regarding the Project, executing declarations and attending meetings and hearings, but which shall in no event be deemed to require the Contractor to provide legal services. If the amount of time required to provide assistance becomes unreasonable, the City may request such assistance at its cost.

6 Comply with all requirements of all applicable Legal Requirements, including: (i) the Environmental Laws, including all environmental mitigation and monitoring measures required for the Project, including those set forth in Book 2, Section 5, and requirements regarding the handling, generation, treatment, storage, transportation and disposal of Hazardous Substances; (ii) the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq., including any amendments, as well as all applicable regulations and guidelines; and (iii) the Federal Requirements.

7 Comply with all Applicable Standards, including Additional Applicable Standards accepted by the City, as revised to ensure their enforceability.

8 Cooperate with the City and Governmental Persons with jurisdiction over the Project in the review and oversight of the Project and other matters relating to the Work.

9 Provide payments to Third Parties required by the Contract Documents, if any, including but not limited to, payments to Utility Owners.

10 Supervise and be responsible to the City for acts and omissions of all Contractor-Related Entities, as though the Contractor directly employed all such Persons.

11 Mitigate delay to the Project and mitigate damages due to delay in all circumstances, to the extent possible, including by re-sequencing, reallocating or redeploying the Contractor's forces to other Work, as appropriate.

12 Pay all applicable federal, State, and local sales, consumer, use, and similar taxes, property taxes and any other taxes, fees, charges, or levies imposed by a Governmental Person, whether direct or indirect, relating to or incurred in

connection with the performance of the Work. The City will issue a sales tax exemption certificate as described in Section 144.062 RsMo to Contractors for the City. The tax exemption will apply to the prime Contractor, any Subcontractors, or Suppliers for Materials and supplies incorporated or consumed during the construction of the Project.

2.3. Representations, Warranties, and Covenants

The Contractor represents, warrants, and covenants for the benefit of the City as follows:

2.3.1. Maintenance of Professional Qualifications

The Contractor and its design Subcontractor(s) have maintained, and throughout the term of the Contract and its design Subcontract(s) shall maintain, all required authority, license status, professional ability, skills and capacity to perform the Work, and shall perform them in accordance with the requirements of the Contract Documents.

2.3.2. Evaluation of Constraints

The Contractor has evaluated the constraints affecting delivery of the Project, including the ROW drawings and the conditions of the Environmental Approvals, and has reasonable grounds for believing and does believe that the Project can be delivered within such constraints.

2.3.3. Feasibility of Performance

The Contractor has evaluated the feasibility of performing the Work within the time specified herein and for the Contract Price, and has reasonable grounds for believing and does believe that such performance (including achievement of Location Completion(s) and Project Completion by the applicable Completion Deadlines, for the Contract Price) is feasible and practicable.

2.3.4. Review of Site Information

The Contractor has, prior to submitting its Proposal, in accordance with prudent and generally accepted engineering and construction practices, inspected and examined the Site and surrounding locations, and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Project, to the extent the Contractor deemed necessary or advisable for submittal of a Proposal. As a result of such review, inspection, examination and other activities, the Contractor is familiar with and accepts the physical requirements of the Work. The Contractor acknowledges and agrees that changes in conditions at the Site may occur after the Proposal Due Date, and that the Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under Sections 12 and 13. Before commencing any Work on a particular aspect of the Project, the Contractor shall verify all governing dimensions and conditions at the Site and shall examine all adjoining Work, which may have an impact on such Work. The Contractor shall be responsible for ensuring that the Design Documents and Construction Documents accurately depict all governing and adjoining dimensions and conditions.

2.3.5. Governmental Approvals

The Contractor has no reason to believe that any Governmental Approval required to be obtained by the Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents. If any Governmental Approvals required to be obtained by the Contractor must formally be issued in the name of the City, the Contractor shall undertake all efforts to obtain such approvals, subject to the City's reasonable cooperation with the Contractor, including execution and delivery of appropriate applications and other documentation in a form Approved by the City. The Contractor shall assist the City in obtaining any Governmental Approvals, which the City may be obligated to obtain, including providing information requested by the City and participating in meetings regarding such approvals.

2.3.6. Progression of Work

The Contractor shall at all times schedule and direct its Work to provide an orderly progression of the Work to achieve Location Completions, Project Completion and Final Acceptance by the applicable Completion Deadlines and in accordance with the Contract Schedules, including furnishing such employees, Materials, facilities and Equipment and working such hours (including extra shifts, overtime operations, Sundays and Holidays) as may be necessary to achieve such goals, all at the Contractor's own expense, except as otherwise specifically provided in Sections 12 and 13.

2.3.7. Employee Performance Requirements

All employees shall have the skill and experience and any licenses or certifications required to perform the Work assigned to them. If the City determines in its sole discretion that any Person employed by the Contractor or by any Subcontractor is not performing the Work properly and skillfully, then, at the written request of the City, the Contractor or such Subcontractor shall remove such Person and such Person shall not be re-employed on the Project without the prior written Approval of the City. If the Contractor or the Subcontractor fails to remove such Person(s) or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the City may, in its sole discretion, suspend the affected portion of the Work by delivery of written Notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

2.3.8. Design and Engineering Personnel

All design and engineering Work furnished by the Contractor shall be performed by or under the supervision of Persons licensed to practice architecture, landscape architecture, engineering or surveying (as applicable) in the State, and by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Work in accordance with the Contract Documents, and who shall assume professional responsibility for the accuracy and completeness of the Design Documents.

2.3.9. Organization

The Contractor,_____, is a_____, duly organized and validly existing under the laws of the State, with all requisite power to own its properties and assets and carry on its business as now conducted or proposed to be conducted. The Contractor and its_ _____members are duly qualified to do business, and are in good standing, in the State, and will remain in good standing throughout the term of the Contract and for as long thereafter as any obligations remain outstanding under the Contract Documents.

2.3.10. Authorization

The execution, delivery, and performance of the Contract have been duly authorized by all necessary actions of the Contractor, and, if applicable, the Contractor's members, and will not result in a breach or a default under the organizational documents of any such Person or any indenture, loan, credit agreement, or other material agreement or instrument to which any such Person is a party or by which its properties and assets may be bound or affected.

2.3.11. Legal, Valid, and Binding Obligation

The Contract constitutes the legal, valid, and binding obligation of the Contractor and, if applicable, of each member of the Contractor.

2.3.12. False or Fraudulent Statements and Claims

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and the USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions hereunder. Accordingly, by signing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

2.3.13. Titles

The Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all Materials, Equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the City for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all of such Materials, Equipment, tools and supplies which shall have been delivered to the Site shall pass to the City, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the City to the Contractor of invoiced amounts pertaining thereto.

Notwithstanding any such passage of title, the Contractor shall retain sole care, custody and control of such Materials, Equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until the Contractor is removed from the Project.

2.4. Electronic Signatures

The Contractor may utilize a Verifiable electronic signature to sign Contract Documents. The electronic signature shall be Verified by a recognized independent third party.

3. Information Supplied to Contractor; Responsibility For Design; Disclaimer

3.1. Information Supplied

The City has made available to the Contractor information, which is described in the Contract Documents and certain Informational Documents regarding the Project and has allowed the Contractor access to the Site for purposes of Inspection and testing.

3.2. Responsibility for Design

The Contractor agrees that it has full responsibility for the design of the Project and that the Contractor shall furnish the design of the Project, regardless of the fact that certain conceptual design Work occurred and was provided to the Contractor prior to the date of execution of the Contract. The Contractor specifically acknowledges and agrees that:

1. The Contractor is not entitled to rely on and has not relied on: (i) the Informational Documents; or (ii) any other documents or information provided by the City, unless specifically permitted in the Contract Documents.
2. The Contractor's Warranties and indemnities hereunder cover any Errors in the Project even though they may be related to Errors in the Informational Documents.

3.3. Disclaimer

3.3.1. No Liability Regarding Informational Documents

The Contractor understands and agrees that the City shall not be responsible or liable in any respect for any loss, damage, injury, liability, cost or cause of action whatsoever suffered by any Contractor-Related Entity by reason of any use of any information contained in the Informational Documents or any action or forbearance in reliance thereon. The Contractor further acknowledges and agrees that: (i) if and to the extent the Contractor or anyone on the Contractor's behalf uses any of said information in any way, such use is made on the basis that the Contractor, not the City, has approved and is responsible for said information; and (ii) the Contractor is capable of conducting and obligated hereunder to conduct any and all studies, analyses and investigations as it deems advisable to change, recreate, Verify or supplement said information, and that any use of said information is entirely at the Contractor's own risk and at its own discretion.

3.3.2. No Representation or Warranty Regarding Informational Documents

THE CITY DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED IN THE INFORMATIONAL DOCUMENTS IS EITHER COMPLETE OR ACCURATE OR THAT SUCH INFORMATION CONFORMS TO THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

3.4. Professional Licensing Laws

The City does not intend to Contract for, pay for, or receive any design services that are in violation of any professional licensing laws, and by execution of the Contract, the Contractor acknowledges that the City has no such intent. It is the intent of the parties that the Contractor is fully responsible for furnishing the design of the Project, although the fully licensed design firm(s) or individuals designated herein will perform the design services required by the Contract Documents. Any references in the Contract Documents to the Contractor's responsibilities or obligations to "perform" the design portions of the Work shall be deemed to mean that the Contractor shall "furnish" the design for the Project. The terms and provisions of this Section 3.4 shall control and supersede every other provision of the Contract Documents.

4. Time Within Which Project Shall Be Completed; Scheduling

4.1. Time of Essence

Time is of the essence of the Contract.

4.2. Notices to Proceed

4.2.1. Issuance of Notice-to-Proceed 1

The Contractor shall begin performance of certain limited Work as directed and described in Notice-to-Proceed 1 (NTP1) issued by the City. NTP1 Work that may be performed includes all Work other than Construction. NTP1 will be issued within five Days of execution of the Contract by the City, provided that the City has received Contractor's Performance and Payment Bonds and insurance certificates. The Contractor shall not receive its first monthly progress payment until it has submitted a Preliminary Baseline Schedule that is acceptable to the City. The amount to be paid to the Contractor for Work performed pursuant to NTP1 shall not exceed the NTP1 Payment Cap, except that the Contractor shall also be entitled to receive reimbursement of insurance premiums and bond premiums in accordance with Section 8 and Section 9, and the first mobilization payment in accordance with Section 11.4. If the City issues NTP1 more than five Days after Contract execution through no fault, negligence, act or failure to act of Contractor, Contractor shall be entitled to an extension of the Completion Deadlines to the extent of the delay between five Days after Contract execution and the date the City issues NTP1.

4.2.2. Issuance of Notice-to-Proceed 2

City will provide comments on the Baseline Schedule and Quality Manual within 30 Days of receipt of each and will issue NTP2 upon satisfactory incorporation by the Contractor of City's comments on the documents.

The Contractor shall begin performance of the remainder of the Work as directed and described in Notice-to-Proceed 2 (NTP2) issued by the City. The City shall issue NTP2 upon Approval of the Baseline Schedule and the Quality Manual in accordance with Book 2 and receipt of the Safety Plan.

4.3. Contract Deadlines

4.3.1. Long Term Lane Closure Duration Deadlines

The Contractor shall achieve each Long Term Lane Closure Duration Deadline within the duration set forth in Appendix I, Form DB-303. Long Term Lane Closures are defined as any closure greater than three (3) days in duration of any Roadway within the Project. Said durations for Long Term Lane Closure Duration Deadlines, as they may be extended hereunder, are referred to respectively as the "Long Term Lane Closure Duration Deadlines."

4.3.2. Location Completion Deadlines

The Contractor shall achieve each Location Completion Deadline within the deadline set forth in Appendix I, Form DB-302. Said deadlines for Location Completion, as they may be extended hereunder, are referred to as the "Location Completion Deadlines."

4.3.3. Project Completion Deadline

The Contractor shall achieve Project Completion within the deadline set forth in Appendix I, Form DB-302 or June 30, 2025, whichever date is earlier. Said deadline for Project Completion, as it may be extended hereunder, is referred to as the "Project Completion Deadline."

4.3.4. Final Acceptance Deadline

The Contractor shall achieve Final Acceptance within 180 Days after achieving Project Completion. Said deadline for Final Acceptance, as it may be extended hereunder, is referred to as the "Final Acceptance Deadline."

4.3.5. No Time Extensions

Except as otherwise specifically provided in Section 12 and Section 13, the City shall have no obligation to extend any Completion Deadline and the Contractor shall not be relieved of its obligation to comply with the Contract Schedule and the applicable Completion Deadlines for any reason.

4.4. Contract Schedules

The Contractor shall deliver the Work in accordance with the Contract Schedules, as described in Book 2, Section 2.1. Such schedules shall also be the basis for determining the amount of monthly progress payments to be made to the Contractor.

4.5. Recovery Schedule

The Contractor shall submit a Recovery Schedule in accordance with Book 2, Section 2.1.5. All costs incurred by Contractor in preparing and achieving the Recovery Schedule shall be borne by Contractor and shall not result in a change to the Contract Price, except to the extent that a change in the Contract Price is permitted in accordance with Book 1, Section 12 and 13.

If a Recovery Schedule would be required in order to meet a Completion Deadline due to an event which entitles the Contractor to a Change Order as described in Book 1, Section 12, the City shall have the right in its sole discretion to decide whether to allow a time extension with no extended overhead or other delay or disruption damages payable except as provided in Book 1, Section 13.7.2 or to require implementation of the Recovery Schedule without such time extension. In such event Contractor shall submit to the City at least two alternative Change Order forms, one of which shall include a Recovery Schedule and show the proposed Acceleration Costs associated with the Recovery Schedule, and the other of which shall provide for an extension of the Completion Deadline without any increase in the Contract Price except as provided in Book 1, Section 12. If the City elects to implement the Recovery Schedule in lieu of a

time extension, the City shall issue a Change Order increasing the Contract Price to account for additional Acceleration Costs, if any. If it is not feasible to recover to the original Completion Deadline or if Contractor believes that the costs associated with such a recovery are prohibitive, then the Contractor shall recommend a date to be shown in the alternative Change Order form.

In the event that the Contractor fails to provide an Approved Recovery Schedule within 30 Days from the Contractor's receipt of a Notice to do so, the City shall withhold 20% of the Contractor's progress payments until such time as Contractor has prepared and the City has Approved such Recovery Schedule. Such Approval by the City will not be unreasonably withheld.

4.6. Prerequisites for Start of Construction

The Contractor shall not start construction (or recommence construction following any suspension) of any portion of the Project until all the following events have been fully satisfied with respect to the Work proposed to be constructed.

1. The City has issued NTP1 and NTP2.
2. All Governmental Approvals necessary for construction of such portion of the Project have been obtained and all conditions of such Governmental Approvals that are a prerequisite to commencement of such construction have been performed.
3. All insurance policies and bonds required to be delivered to the City hereunder have been submitted to the City as applicable and remain in full force and effect.
4. All necessary Right of Way acquisition for such portion of the Project has been obtained.
5. Any additional conditions for construction set forth in the Contract Documents.

5. Control of Work

5.1. Control and Coordination of Work

The Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences, procedures, and Site safety, and shall be solely responsible for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained in the Contract Documents.

5.2. Safety

The Contractor shall take all reasonable precautions and be solely responsible for the safety of, and shall provide protection to prevent damage, injury, or loss to, all Persons on the Site or who would reasonably be expected to be affected by the Work, including individuals performing Work, employees of the City and its consultants, visitors to the Site and members of the public who may be affected by the Work. The Contractor shall at all times comply with its safety program. The Contractor shall immediately notify the City if the Contractor believes that any Contract requirement creates a safety risk.

5.3. Process to be Followed for Discovery of Certain Site Conditions

5.3.1. Notification to the City

If the Contractor becomes aware of: (i) any on-Site material that the Contractor believes may contain Hazardous Substances that is required to be removed or treated, other than those Materials noted in Book 2 Section 5 (ii) any human remains, artifacts, and/or other items of historical, archaeological or geological significance within the Right of Way; or (iii) any Differing Site Conditions, as a condition precedent to the Contractor's right to a Change Order, the Contractor shall immediately notify the City thereof by telephone or in Person, to be followed by written notification as soon as practicable. The Contractor shall immediately stop Work and secure the area. Operations within 50 feet (15 m) of the area shall be temporarily suspended and shall not be resumed at that location unless and until authorized by the City. In such event, the City will view the location within two Business Days of receipt of notification and will advise the Contractor at that time whether to resume Work or whether further investigation is required. Any delay resulting from the City viewing the location up to two Business Days shall not be considered a City-caused delay.

5.3.2. Further Investigation

The Contractor shall promptly conduct such further investigations, as the City deems appropriate. Within five Business Days after its initial Notice to the City, the Contractor shall advise the City of any action recommended to be taken regarding the situation. If Hazardous Substances are involved, the Notice shall describe the type of Remediation Work, if any, which the Contractor proposes to undertake with respect thereto. If human remains, artifacts or paleontological, historical, geological, cultural, or biological resources are present, the Notice shall advise the City what course of action the Contractor intends to take with respect thereto and whether the location must be fenced off or whether Work can resume. The City then will either Approve, or require modification of, the Contractor's proposed actions.

5.3.3. Recommence Work

The City shall have the right to require the Contractor to recommence Work in the area at any time, even though an investigation may still be ongoing (so long as such Work is not in violation of any Legal Requirements or Governmental Approvals). The Contractor shall promptly recommence Work in the area upon receipt of notification from the City to do so. On recommencing Work, the Contractor shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such Work, consistent with the City's determination or preliminary determination regarding the nature of the material, resources, species or condition.

5.4. Obligation to Minimize Impacts

The Contractor shall ensure that all of its Activities and the Activities of all Contractor-Related Entities are undertaken in a manner that will minimize the effect on surrounding property and the public to the maximum extent practicable.

5.4.1. Damage to Off-site Property

The Contractor shall take all reasonable precautions and provide protection to prevent damage, injury, or loss to property adjacent to the Site or likely to be affected by the Work. The Contractor shall restore damaged, injured or lost property caused by an act or omission of any Contractor-Related Entity to a condition similar or equal to that existing before the damage, injury or loss occurred.

5.4.2. Environmental Protection

In addition to the requirements set forth in Book 2, Section 5, the Contractor shall comply with all federal, State and local laws and regulations controlling pollution of the environment. Pollution of streams, lakes, ponds, reservoirs, and wetlands with fuels, oils, bitumens, chemicals or other harmful material shall be avoided. Pollution of the atmosphere from particulate and gaseous matter, in excess of amounts permitted pursuant to the Clean Air Act, 42 U.S.C.A. § 7401, et seq, as amended, and the Missouri Air Conservation Law, §§ 643.010, et seq, as amended, and regulations issued pursuant to either law, shall be avoided.

When Work areas or pits are located in or adjacent to streams, the areas shall be separated from the main stream by a dike or barrier to keep sediment from entering the stream. Care shall be taken during the construction and removal of such barriers to minimize siltation of the stream.

Disposal of Portland cement concrete residue and wash water, water from aggregate washing or other operations resulting in sediment shall be treated by filtration, settling basins or other means sufficient to reduce the sediment concentration to applicable limits established by the Missouri Department of Natural Resources (MDNR).

5.5. Quality Management

The Contractor shall perform the quality management necessary to comply with its obligations under the Contract Documents.

5.5.1. Oversight, Audit, Inspection, and Testing by the City and Others

All Materials and each part or detail of the Work shall also be subject to oversight, audit and testing by the City and other Persons designated by the City. When any third party, including a Utility Owner, railroad company, unit of government, or political subdivision, is to accept or pay for a portion of the cost of the Work, its respective representatives have the right to oversee, audit, inspect and Test the Work. Such oversight, audit, Inspection and/or testing does not make such Person a party to the Contract nor will it change the rights of the parties hereto. The Contractor hereby consents to such oversight, Inspection and testing by the City and other Persons. Upon request from the City, the Contractor shall furnish information to such Persons as are designated in such request and shall permit such Persons access to the Site and all parts of the Work.

5.5.2. Obligation to Uncover Finished Work

If requested by the City, the Contractor, at any time before Final Acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standards required by the Contract Documents. If the Work thus exposed or examined proves acceptable, the uncovering, the removing, recovering or making good the parts removed and recovery of any delay to the Critical Path will be paid for in accordance with Book 1, Section 13. If Work exposed or examined proves unacceptable, the uncovering, removing and recovering or making good the parts removed and recovery of delay shall be at the Contractor's expense.

Refer to Book 1, Section 5.7 for provisions regarding payments owed by the Contractor to the City, if the City agrees (in its sole discretion) to accept certain Nonconforming Work.

5.6. Effect of Oversight, Spot Checks, Audits, Tests, Acceptances, and Approvals

5.6.1. Oversight and Acceptance

The Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents, or any of its other obligations under the Contract Documents, by oversight, spot checks, audits, reviews, Tests, inspections, acceptances, Approvals, or approvals by any Persons, or by any failure of any Person to take such action. The oversight, spot checks, audits, reviews, Tests, inspections, acceptances, Approvals, and approvals by any Person do not constitute Final Acceptance of the particular material or Work, or waiver of any legal or equitable right with respect thereto. The City may reject or require the Contractor to remedy any Nonconforming Work and/or identify additional Work which must be done to bring the Project into compliance with Contract requirements at any time prior to Final Acceptance, whether or not previous oversight, spot checks, audits, reviews, Tests, inspections, acceptances, Approvals or approvals were conducted by any Person.

5.6.2. No Estoppel

The City shall not be precluded or estopped, by any measurement, estimate, or certificate made either before or after Final Acceptance and payment therefore, from showing that any such measurement, estimate or certificate is incorrectly made or untrue, or from showing the true amount and character of the Work performed and Materials furnished by the Contractor, or from showing that the Work or Materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate or certificate, or payment made in accordance therewith, the City shall not be precluded or estopped from recovering from the Contractor and its Surety(ies) such damages as the City may sustain by reason of the Contractor's failure to comply or to have complied with the terms of the Contract Documents.

5.7. Conformity with Contract Documents

5.7.1. Nonconforming Work

All Work performed and all Materials furnished shall be in accordance with the lines, grades, cross sections, dimensions and material requirements, including tolerances, included in the Contract Documents, and in conformance with all other requirements. If the City finds the material or the finished product in which the material was used is not in accordance with the Contract Documents, but that reasonably acceptable Work has been produced, a determination will be made if the Work will be accepted and remain in place. In this event, the Engineer of Record will propose and document the basis of acceptance by Contract modifications that may provide for an appropriate adjustment in the Contract price for such Work or material as provided in Book 1, Section 5.7.2 to conform to the determination based on engineering judgment.

If the City finds the finished product to be unacceptable, the Work shall be removed and replaced or otherwise corrected by the Contractor at the Contractor's expense and without any time extension; and the Contractor shall promptly take all action necessary

to prevent similar deficiencies from occurring in the future. The fact that the City may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work.

All Construction and Materials that have been rejected or declared unsatisfactory shall be remedied or removed and replaced in an acceptable manner by the Contractor at the Contractor's expense. Upon failure of the Contractor to remedy or remove and properly dispose of rejected material or Work, or to replace them immediately after receiving written Notice from the City, the City may employ labor to rectify the Work and the cost of the rectification will be deducted from any payment due or which may become due the Contractor.

5.7.2. Nonconforming Work Pay Adjustment

The City may, in its sole discretion, accept any Nonconforming Work without requiring it to be fully corrected, and shall be entitled to a pay adjustment (or reimbursement of a portion of the Contract Price, if applicable). In such event, the City shall be entitled to reimbursement of a portion of the Contract Price in an amount determined by the City. In certain events, however, it may not be possible for the Nonconforming Work to be made to conform to the requirements of the Contract Documents, including, but not limited to, the Contractor's failure to perform required items to be paid in equal monthly amounts indicated in the Work Breakdown Structure (WBS) in Book 4 during a required time period. In general, the pay adjustment (or reimbursement) shall equal, at the City's election: (i) the amount allocated to such Work in the Revised Baseline Schedule; (ii) the Contractor's cost savings associated with its failure to perform the Work in accordance with the Contract requirements; or (iii) the amount deemed appropriate by the City to provide compensation for impacts to affected parties such as future maintenance and/or other costs relating to the Nonconforming Work. In certain events, the City shall be entitled to a pay adjustment (or reimbursement) as expressly set forth elsewhere in the Contract Documents. Such reimbursement shall be deducted from future payments or, if future payments are insufficient to cover the amount owed, shall be payable to the City within 30 Days after Contractor's receipt of an invoice therefore.

6. Access to Site, Utility Relocations, and Environmental Compliance

6.1. Access to Right of Way

6.1.1. Obligation to Provide Access to Right of Way

The City has identified the existing ROW and is committed to acquire new ROW once requirements for new ROW are determined by the Contractor. The Contractor will prepare electronic design files indicating Contractor determined fee simple Right of Way & Easement requirements to be used by the City for preparation of ROW plans.

6.1.2. Right of Way Access Requirements

Concurrently with review of the Original Baseline Schedule, the Contractor and the City shall discuss the access requirements for new ROW identified by the Contractor associated with the scheduled Activities. The Contractor and City may agree to revise the ROW Schedule set forth in Book 2, Section 8 in writing without a Change Order. The Contractor shall be provided access to new ROW that is to be acquired with the project when notified in writing by the Project Director.

6.1.3. Delay in Providing Access

If the City at any time determines it will be unable to provide access to a particular parcel, the City shall notify the Contractor regarding the revised Projected date for delivery of access. The Contractor shall take appropriate action to minimize any cost and time impact and shall Work around such parcel until access can be provided, including rescheduling and resequencing Work so as to avoid any delay to the Project. Subject to Section 6.1.4, to the extent that a delay to the Critical Path cannot be avoided due to not providing access to a parcel(s), the Contractor may be entitled to additional compensation and/or time in accordance with Section 12.1.

6.1.4. Obligation to Provide Written Notice

In addition to the requirements of Book 1, Section 6.1.3, and as a necessary condition for obtaining any increase in the Contract Price or extension of a Completion Deadline related to the City's delivery of access to the parcels identified on the ROW Plans, the Contractor shall provide the City written Notice within three Business Days after receipt of a revised Projected date if the lack of availability will result in an impact to the cost or schedule.

6.1.5. Contractor Determined Right of Way

The Contractor shall be responsible to determine which potential ROW acquisition needs are required for the Project as part of the Contractor's Proposal.

The City will be responsible for acquisition of all needed ROW determined to be required by the Contractor. The Contractor shall be responsible for generating

electronic design files indicating Contractor determined fee simple Right of Way &

Easement requirements to be used by the City for preparation of ROW plans as indicated in Book 2, Section 8.

The City will attempt to acquire the Contractor identified ROW acquisition needs in accordance with the schedule indicated in Book 2. The Contractor and the City shall discuss the access requirements for new ROW identified on the ROW Drawings associated with the scheduled Activities to facilitate acquiring properties to meet the needs of the Contractor. The Contractor and City may agree to revise the ROW Schedule set forth in Book 2, Section 8 in writing without a Change Order. The Contractor shall be provided access to new ROW that is to be acquired with the project when notified in writing by the Project Director.

6.1.6. Access to Right of Way Not Identified On Right of Way Drawings.

The cost of obtaining any ROW not identified on the ROW Plans associated with a Value Engineering Change Proposal (VECP) will be included in determining the Contract Price adjustment under Book 1, Section 13.

The Contractor shall prepare all documents described in Book 2, Section 8, and shall deliver them to the City in sufficient time to allow review and Approval prior to the document delivery date is scheduled to occur.

The Contractor shall reimburse the City for any costs (including attorneys', accountants' and expert witness fees and costs) of acquiring any ROW which is not the City's responsibility which the Contractor determines is necessary or advisable in order to complete the Project following submittal of ROW drawings, including obtaining any Temporary Easements. The City may deduct such amounts from payments otherwise owed hereunder or may invoice the Contractor. The Contractor shall reimburse the City for any such amounts paid by the City within 30 Days after receipt of an invoice from the City, therefore.

6.1.7. Failure to Have Necessary Rights of Access

If the Contractor enters any property in connection with the Project without having all necessary rights of access, the City may, in its sole discretion, obtain consent from the landowner for the Contractor's access. The Contractor shall be responsible for all costs incurred by the City as a result thereof and any delays resulting from the City obtaining access.

6.2. Utility Relocations

The risk of increased costs and delays associated with the Utility Work is allocated between the City and the Contractor through the Change Order process, and supplements the requirements in Book 2, Section 7. The Contractor shall be entitled to receive a Change Order associated with the Utility Work only as permitted by this Section 6.2, Section 12, and Section 13. At the City's election any Work Order will also function as a Change Order when a Work Order pursuant to a Master Utility Agreement (MUA) is completed and/or modified by the City to reflect such dual function. In that event the term "Change Order" shall include any such Work Order.

6.2.1. Changes in Utility Work

Increase in Work: The City shall be responsible for additional costs, excluding Delay and Disruption Damages, of Relocations of underground Utilities located within the ROW to be Relocated by the Contractor which are not indicated with reasonable accuracy as described in Book 2, Section 7. The amount of any such Change Order shall be determined in accordance with Book 1, Section 13.

Subject to the requirements of Book 1, Section 13.7.3, the Contractor shall be entitled to an extension of any Completion Deadline on account of such lacking or inaccurate information regarding underground Utilities located within the ROW to be Relocated by the Contractor. Notwithstanding the foregoing, the Contractor shall be responsible for the cost of Relocations of underground Utilities located within the ROW whether or not they are identified by the City with reasonable accuracy if any one or more of the following applies:

1. A surface Inspection of the area would have shown the existence or the likelihood of existence of such Utility (or portion thereof) in the correct location and/or size, as applicable, by reason of above-ground facilities such as buildings, meters or junction boxes or identifying markers; or
2. Such Utility is a Service Line (or the portions of a Utility that are Service Lines); or
3. Any costs or delays incurred due to performance of Incidental Utility Work by the Contractor.

Partial Inaccuracies: If only a portion of an existing underground Utility located within the ROW shown on the ROW Plans to be Relocated by the Contractor is not indicated at all in the information included in Book 5 or is not indicated with "reasonable accuracy" therein, then a Change Order shall be allowed only for the resulting increased costs of that portion of the Utility Work to be furnished or performed by the Contractor.

6.2.2. Change in Allocation of Responsibility Decreasing the Work

Any Utility Work initially included in the Contractor's Work, identified in Book 2 Section 7.2.2, may be deleted from the Work pursuant to:

1. A Work Order providing for the Utility Owner to perform Utility Work otherwise

assigned to the Contractor; or

2 Upon Approval or direction by the City, Utility Work may be removed from the Work by Change Order without or prior to execution of a Work Order.

The City shall be entitled to a reduction in the Contract Price to reflect any reduction in the Work pursuant to this Section Book 1, 6.2.2. Any reduction in the scope of the Work pursuant to this Book 1, Section 6.2.2 shall not be considered a City-Directed Change.

6.2.3. Betterments

Utility Betterments may be added to the Work pursuant to this Section and Book 2, Section 7.

Any Utility Owners may request the City to permit the Contractor to perform Work relating to Betterments as a part of the Work, at the Utility Owner's expense. If the City Approves any such request, the Contractor will have the obligation to perform such Work, with the right to receive additional compensation and, if applicable, an extension of any affected Completion Deadline as provided in Section 6.2.4. Any extension of any Completion Deadline(s) or Contract Price increase requested for any Betterment shall be subject to the requirements of Sections 6.2 and 13.

If a Utility Owner requests that the Contractor design and/or construct a Betterment, the Contractor shall use its best efforts to negotiate a lump sum price for such Work with the Utility Owner, in good faith. If the Contractor and the Utility Owner are unable to agree on a lump sum price, then the City shall direct the Contractor to perform such Work on a Force Account basis pursuant to Book 1, Section 13.5, provided that the conditions set forth in this Section are satisfied.

The amount of any Change Order issued for a Betterment shall be a direct pass-through of the lump sum price negotiated by the Contractor and the Utility Owner as set forth in the applicable Work Order (with no additional overhead or profit) or, if no such price has been negotiated, an amount determined in accordance with Book 1, Section 13. The Contractor shall not request or accept any payment directly from the Utility Owner for any Betterment added to the Work.

The City will Approve the addition of a Betterment to the scope of the Work only if: (i) the Utility Owner has agreed to the addition of such Betterment to the Work; (ii) such Betterment is compatible with the Project; (iii) the Utility Owner has agreed to reimburse the City for all the costs thereof; (iv) the Utility Owner has agreed as to the method (negotiated lump sum amount, or Force Account cost basis) of pricing such Work; and (v) it is feasible to separate the cost/pricing of the Betterment Work from that for any related Utility Work being furnished or performed by the Contractor. The Contractor shall provide the City with such information, analyses and certificates as may be requested by the City in connection with its Approval.

If any Betterment has been added to the Work and the Contract Price has been increased accordingly by Change Order, but subsequently for any reason the Betterment is deleted from the Work, or the scope of the Contractor's Work with regard to such Betterment is materially reduced, then the City shall be entitled to issue a Change Order reducing the Contract Price to reflect the value of any reduction in the costs of the Work that is directly attributable to such deletion or reduction.

Any change in the scope of the Work pursuant to this Book 1, Section 6.2.3 shall not be

considered a City-Directed Change.

6.2.4. Utility Delays

The Contractor shall bear 100 percent of the risk of Utility Delays, up to an aggregate amount of 15 Days of Utility Delays per Utility Owner (regardless of how many Utilities of such Utility Owner are causing delay). Subject to this Section and the requirements of Section 13 if aggregate Utility Delays caused by a particular Utility Owner exceed 15 Days, then any Completion Deadline(s) affected thereby shall be extended by one Day for every Day of Utility Delay caused by such Utility Owner in excess of the initial aggregate 15 Days of Utility Delay caused by such Utility Owner. The Contractor shall not be entitled to any extension of any Completion Deadline on account of any Utility Delay except as provided in this Section.

The extension of a Completion Deadline(s) and the 15-Day cap on the Contractor's risk shall not apply unless all of the following conditions are satisfied:

1. The Contractor has provided evidence reasonably satisfactory to the City that: (i) the Contractor has fulfilled its obligation under the applicable Utility Agreement(s) to coordinate with the Utility Owner to prevent or reduce such delays; and (ii) the Contractor has otherwise made diligent efforts to obtain the timely cooperation of the Utility Owner but has been unable to obtain such timely cooperation.
2. If the Contractor is responsible for the Relocation, the Contractor has provided a reasonable Relocation plan to the Utility Owner and the Contractor has obtained, or is in a position to timely obtain, all applicable approvals, authorizations, certifications, consents, exemptions, filings, leases, licenses, permits, registrations, options, and/or rulings required by or with any Governmental Person in order to design and construct such Relocations.
3. No circumstances exist which have delayed or are delaying the affected Relocation other than those that fit within the definition of a Utility Delay.

To the extent one or more Utility Delays is or are concurrent with another type of delay to the Critical Path, then such Utility Delay(s) shall not be considered in calculating any 15-Day cap on the Contractor's risk.

If two or more Utility Delays occur concurrently with each other (whether caused by the same Utility Owner or by different Utility Owners), then only one of such Utility Delays shall be considered in calculating a 15-Day cap on the Contractor's risk. In selecting between two or more Utility Owners for such purpose, the Utility Delay caused by the Utility Owner with the least amount of accrued Utility Delay shall be selected and applied to the 15-Day cap on the Contractor's risk for such Utility Owner.

The Contractor shall be entitled to delay and/or disruption damages for Utility Delays only in the circumstances described in, and to the extent provided, in Section 13.

6.2.5. Certain Obligations of Contractor; Utility-Related Right of Way Costs

<u>Multiple Relocations of the Same Utility:</u> The Contractor shall endeavor to avoid multiple

Relocations of the same Utility, whether by the Utility Owner or by the Contractor. After a Utility has been Relocated once in order to accommodate the Project based on the Contractor's design, the Contractor shall be responsible for all costs incurred by either the Contractor or the Utility Owner in order to subsequently Relocate such Utility to accommodate the Project if the subsequent Relocation is not caused by a City-Directed Change or by the Utility Owner. If the Utility Owner performs such subsequent Relocation at the City's expense, then the Contractor shall reimburse the City for all amounts paid by the City to such Utility Owner in reimbursement for such subsequent Relocation if the subsequent Relocation is not caused by a City-Directed Change or by the Utility Owner. If the Contractor performs such subsequent Relocation, then the Contractor shall not receive any extension of any Completion Deadline or increase in the Contract Price on account of the performance of such subsequent Relocation if the subsequent Relocation is not caused by a City-Directed Change or by the Utility Owner.

Minimizing Costs: In designing and constructing the Project, the Contractor shall take all reasonable steps to minimize costs to the Utility Owners and the City to the extent practicable.

Utility-Related Right of Way Costs: With respect to Utility Easements for which the Utility Owners are entitled to replacement or other compensation pursuant to the applicable Utility Agreement(s) and which are located within the ROW depicted in the drawings included in Book 4, whether or not such Utility Easements are themselves shown on the drawings originally included in Book 4, the City will be responsible for: (i) the cost of acquiring any necessary replacements therefore; and any other compensation which the City may be obligated to pay to the Utility Owners in compensation for relinquishing such Utility Easements. With respect to all other Utility Easements, the Contractor shall be responsible for, and shall reimburse the City within ten Days after receiving an invoice therefore: (i) all costs incurred by the City of acquiring any necessary replacements therefore; and (ii) any other compensation which the City may be obligated to pay to the Utility Owners in compensation for relinquishing such Utility Easements, except if the costs acquired were caused by actions of the City.

6.2.6. Additional Restrictions on Change Orders

For Relocations, the Contractor shall bear the burden of proving that the Relocation cannot reasonably be avoided.

The Contractor shall not be entitled to an increase in the Contract Price for any costs of coordinating with Utility Owners or for assisting the City in coordinating with Utility Owners.

If the Contractor elects to make payments to Utility Owners or to undertake any other efforts that are not required by the terms of the Contract Documents, the Contractor shall not be entitled to a Change Order in connection therewith. The Contractor shall promptly notify the City of the terms of any such arrangements.

6.2.7. Special Provisions Regarding Change Orders

At the City's election in its sole discretion, the Work Order pertaining to the Relocation of any Utility may also function as a Change Order.

If the City elects to have a Work Order also function as a Change Order, the City shall complete and/or modify the Work Order form attached to the applicable MUA to reflect

such dual function, including:

1 A statement to the effect that the Work Order will also function as a Change Order.

2 The addition of a specific Change Order number.

3 Such other provisions, if any, that the City determines, in its sole discretion, are necessary.

If there is a conflict between the terms of any Work Order and the requirements in Section 13 or Book 2, Section 7, the requirements of Section 13 or Book 2, Section 7, whichever is applicable, shall prevail as between the City and the Contractor.

If the City elects to have a Work Order also function as a Change Order, such Work Order shall be subject to all requirements set forth in this Section 6.2 and in Book 1, Section 13 that would be applicable to a separate Change Order addressing the same subject matter with the following exceptions:

1 The schedules and deadlines for the Contractor's submittal of Work Orders and the City's responses to same which are set forth in Book 2, Section 7, shall apply to such Work Orders, instead of the schedules and deadlines set forth in Book 1, Section 13.

2 Application of the Book 1, Section 13 requirements shall not require the Contractor to duplicate Work otherwise required to be performed in preparing a Work Order pursuant to Book 2, Section 7.

6.3. Environmental Compliance

In performance of the Work, the Contractor shall comply with all requirements of all applicable Environmental Laws and Governmental Approvals issued thereunder, whether obtained by the City or the Contractor. The Contractor acknowledges and agrees that it will be responsible for all fines and penalties that may be assessed in connection with any failure to comply with such requirements.

6.3.1. Mitigation Requirements

The Contractor shall perform all environmental mitigation measures (which term shall be deemed to include all requirements of the Environmental Approvals and similar Governmental Approvals, regardless of whether such requirements would be considered to fall within a strict definition of the term) for the Project. The Contract Price includes compensation for the Contractor's performance of all such mitigation measures, for performance of all mitigation measures arising from New Environmental Approvals which Section 6.3.3 designates as the Contractor's responsibility, for mitigation measures required by any Governmental Approvals, and for all other Activities to be performed by the Contractor as described in Book 2, Section 5.

6.3.2. New Environmental Approvals to be Obtained by the City

The City will be responsible for obtaining any New Environmental Approvals necessitated by a time and money change order described in Section 12.1. The Contractor shall provide support services to the City with respect to obtaining any such New Environmental Approval.

6.3.3. New Environmental Approvals to be Obtained by Contractor

If a New Environmental Approval becomes necessary for any reason other than those specified in Section 6.3.2, the Contractor shall be fully responsible for obtaining the New Environmental Approval and any other Environmental Approvals that may be necessary, and for all resulting requirements, as well as for any litigation arising in connection therewith. The City will reasonably assist the Contractor in obtaining any New Environmental Approvals. If the New Environmental Approval is associated with a VECP or other Contractor requested change order, the costs of obtaining and complying with the terms of the New Environmental Approval shall be considered in determining the Contract Price adjustment under Section 13.

7. EEO, Sub-Contracts, Labor

7.1. Equal Employment Opportunity (EEO)

7.1.1. Equal Employment Opportunity Policy

The City of Springfield, Missouri and its contractors will not knowingly exclude any person from participation in bidding or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, national origin, religion, age, sexual orientation, gender identity, veteran's status, or disability. The Contractor shall comply with the City's Equal Employment Opportunity Policy and the requirements set forth in Appendix F, FHWA Form 1273.

7.1.2. Non-Discrimination

The Contractor shall comply with all applicable Legal Requirements that enumerate unlawful employment practices including discrimination because of race, religion, color, gender, age, disability, or national origin, and that define actions required for affirmative action and minority/disadvantaged business programs. The Contractor will not knowingly exclude any person from participation in bidding or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, national origin, religion, age, sexual orientation, gender identity, veteran's status, or disability. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, sex, national origin, religion, age, sexual orientation, gender identity, veteran's status, or disability. Such action shall include the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

7.1.3. Inclusion in Subcontracts

The Contractor shall include Book 1, Sections 7.1.1 and 7.1.2 in all contracts and Subcontracts over $10,000 (including purchase orders) on the Project, so that such provisions will be binding upon each Subcontractor working on the Project. In addition, FHWA form 1273 must be physically incorporated into every subcontract agreement (see Appendix F).

7.2. Federal Workforce Requirements

The contract goal for this Project as determined by the U.S. Department of Labor is located in Appendix D.

7.2.1. Workforce Development Plan

City requires the Contractor include a workforce plan and strategy that demonstrates how individuals will be hired and how the Contractor will employ and retain minority, women, and economically disadvantaged individuals. The Contractor shall describe their plan to execute "City's Design-Build Workforce Program" (Book 1, Appendix D).

The Contractor shall include in their workforce plan strategies for hiring minority, women, and economically disadvantaged individuals for their professional services workforce. Professional service OJTs may be hired to supplement the professional service workforce. Incentives may be available to the Contractor in accordance with Book 1.

7.3. Socially-Economically Disadvantaged Workforce Utilization

The Contractor's goal for this Project is located in Appendix E.

The Contractor shall meet the OJT goal established for the Project or make a good faith effort to meet the OJT goal.

It is the policy of City to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minority groups, disadvantaged persons and women in all phases of the roadway construction industry. The intent of the On-the-Job Training Program is to recruit entry-level individuals, when feasible, and provide them with meaningful training intended to lead to journey-level employment. City, in carrying out the responsibilities of a federally assisted contract, has determined that this Project shall include "Training Special Provisions" (Appendix E). In accordance with Appendix E, the Contractor shall make every reasonable effort to enroll minority, disadvantaged persons and women trainees to the extent such persons are available within a reasonable recruitment area. This training provision is not intended, and shall not be used to discriminate against any applicant for training.

7.4. Disadvantaged Business Enterprises (DBE) Program

The DBE goals for this Project are located in Appendix C.

7.4.1. DBE Policy

The Contractor shall comply with the City's Disadvantaged Business Enterprises (DBE) Policy ensuring that DBEs shall have a full and equal opportunity to compete fairly in the performance of contracts financed in whole or in part with Federal funds. Consistent with this policy, City will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise be discriminated against in connection with the award and performance of any U.S. Department of Transportation assisted contract because of race, color, sex, national origin, religion, age, sexual orientation, gender identity, veteran's status, or disability. The Contractor shall comply with the requirements set forth in Appendix B and the Approved DBE Performance Plan required pursuant to Appendix C. The Contractor shall either meet the DBE goals established for the Project or shall make a good faith effort to meet the DBE goal.

7.4.2. Inclusion in Subcontracts

The Contractor shall include Book 1, Section 7.4.1 and Appendix C in every contract and Subcontract (including purchase orders), so that such provisions will be binding upon each Subcontractor.

7.5. Limitation on Subcontracted Work

The Contractor shall sublet no more than 70 percent of the construction Work, and the Major Participant responsible for design shall sublet no more than 60 percent of the design Work. The percentage of construction Work sublet shall be determined by dividing the total dollar value of the Subcontracts for construction Work, excluding any Subcontracts with Major Participants but including any Subcontracts under and through Major Participants, by the portion of the Contract Price allocable to construction Work (as determined by the City). The percentage of design Work sublet shall be determined by dividing the total dollar value of the design Subcontracts (except Subcontract(s) between the Contractor and the Major Participant(s) responsible for design) by the total dollar value of the prime design Subcontract(s); (i.e., the Subcontract(s) between the Contractor and the Major Participant(s) responsible for design).

7.6. Subcontracting Requirements

The Contractor shall comply with all applicable requirements of Section 108 of the *Missouri Standard Specifications for Highway Construction* related to Subcontracting requirements. The Contractor shall use Form DB-504 when requesting Approval of a sublet portion of the Contract. Form DB-504 shall be submitted monthly in accordance with Book 1, Section 6.2 of Appendix C, Book 1. Approval of sublet work will not be granted until all requirements of Form DB-504 have been met. The Contractor shall not add, delete, or change the role of any Major Participant without the prior written Approval of the City.

7.7. Subcontract Data

The Contractor shall notify the City, in writing, of the name and address of, and licenses held by, each Subcontractor (excluding Suppliers), as soon as the potential Subcontractor has been identified by Contractor, but in no event less than 14 days prior to the scheduled initiation of Work by such proposed Subcontractor. The Contractor shall provide the City with a list of its Subcontractors (including Suppliers) from time to time upon request by the City; shall allow the City access to all Subcontracts and records regarding Subcontracts; and shall deliver to the City, within thirty days after execution, copies of all Subcontracts with Major Participants and, within ten days after receipt of a request from the City, copies of all other Subcontracts.

7.8. Responsibility for Work by Subcontractors

Notwithstanding any Subcontract or agreement with any Subcontractor, the Contractor shall be fully responsible for all of the Work. The City shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the City.

7.9. Key Personnel

7.9.1. Key Personnel

Certain key positions for the Project are identified in Appendix I on Form DB-103. The City may add key positions at no cost to the City. The City shall have the right to review the qualifications and character of each individual to be assigned to a key position (including personnel employed by Subcontractors) and to Approve or disapprove use of such key person in such key position prior to the commencement of any Work by such individual or during the prosecution of the Work. The Contractor shall notify the City in writing of any proposed changes in any Key Personnel and shall include a resume of proposed Key Personnel. The Contractor shall not change any Key Personnel without the prior written Approval of the City.

7.9.2. Representations, Warranties, and Covenants

The Contractor acknowledges and agrees that the award of the Contract by the City to the Contractor was based, in large part, on the qualifications and experience of the personnel listed in Appendix I, Form DB-103, and the Proposal, and the Contractor's commitment that such individuals would be available to undertake and perform the Work. The Contractor represents, warrants, and covenants that such individuals are available for and will fulfill the roles identified for them in the Appendix I, Form DB-103 and the Proposal in connection with the Work. Unless otherwise agreed to by the City in writing, individuals filling Key Personnel roles shall devote a sufficient amount of their time for the applicable role with respect to the prosecution and performance of the Work and the Contractor shall document such commitment to the City's satisfaction upon the City's request.

7.10. Character of Workers

All workers shall have sufficient skill and experience to properly perform the Work assigned. The City may demand the dismissal of any Person employed by the Contractor or by any Subcontractor in, about or upon the Work, who engages in misconduct, is incompetent or negligent in the due and proper performance of assigned duties, or who neglects or refuses to comply with any proper directions given. Such a person shall not again be employed thereon without the written consent of the City. Should the Contractor or its Subcontractors continue to employ or re-employ any such Person, the City may suspend the Work until the Contractor complies with such orders. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract Documents or entitle the Contractor to a Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

7.11. Wage Laws

The Contractor and its Subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute the Work in accordance with Section 110 of the latest version of the *Missouri Standard Specifications for Highway Construction*. For Proposal purposes, the effective date for both the Federal and

Missouri wage rates will be the rates effective 10 days prior to the Proposal due date. City will notify all teams by addendum, which will include the actual wage order to use, 10 days prior to the Proposal due date. In addition, the effective Federal and Missouri wage rates will be uploaded to Book 4, Federal and Missouri Wage Rates.

8. Surety Bonds

The Contractor shall provide to the City and maintain at all times during the term of the Contract security for performance of the Work as described below (or other assurance satisfactory to the City in its sole discretion). Each bond required hereunder shall be provided by a Surety licensed as Surety and qualified to do business in the State. The Surety shall be listed in the current United States Department of the Treasury, Fiscal Service, Department Circular 570, *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies*. The Contract bonds may not be in excess of the cumulative underwriting limitation listed in the circular of the underwriting capacities of the Contractor's Surety companies.

8.1. Performance Bond

The Contractor has provided the Performance Bond in Appendix I in the form of Form DB-502. The Performance Bond was issued in the amount equal to the Contract Price.

8.2. Payment Bond

The Contractor has provided the Payment Bond in Appendix I in the form of Form DB-503. The Payment Bond was issued in the amount equal to the Contract Price. The Payment Bond shall be released one year after the later to occur of Final Acceptance, upon the City's receipt of the Contractor's Final Receipt of Payment and Release Forms.

8.3. Utility Work

The Utility Work furnished or performed by the Contractor hereunder will automatically be covered by the Payment and Performance Bonds and any replacement Performance Bond or other Security to be provided by the Contractor pursuant to Section 20. The Contractor shall provide all information necessary for such coverage to the Surety providing such bonds. All cost estimates required to be provided under the Contract Documents with respect to Utility Work furnished or performed by the Contractor shall include the cost of bond premiums.

8.4. No Relief of Liability

Notwithstanding any other requirements of the Contract Documents, performance by a Surety of any of the obligations of the Contractor shall not relieve the Contractor of any of its obligations hereunder.

9. Insurance

9.1. General Insurance Requirements

9.1.1. Evidence of Insurance

The Contractor shall provide evidence of insurance as proof of compliance for all insurance requirements contained in this Section 9. These insurance requirements are applicable to the Contractor only. When the Contractor requires a Subcontractor to obtain insurance coverage, the types and minimum limits of coverage may be different than those required in this Section 9. The Contractor's insurance shall cover all of the Work under this Contract, whether the Work is performed by the Contractor or its Subcontractors. The Contractor's insurance shall cover the entire Project. The Contractor shall delete the phrase "will endeavor to" preceding all references to provisions of Notice by the insurance company in the evidence of insurance. A Certificate of Insurance indicating certain specified amendments and attachments shall be acceptable, but the City reserves the right to request a complete certified copy of the policy, at the City's sole discretion. No Work will start until proof of insurance has been submitted to the City. If the insurance required by this Section 9 becomes no longer commercially reasonable, as determined by the City, the City will Work with the Contractor to find commercially reasonable alternatives to the required coverage that are acceptable to the City.

9.1.2. A.M. Best Rating

All insurance companies providing policies obtained to satisfy the insurance requirements must have an A.M. Best rating of A- or better.

9.1.3. Full Force and Effect

The commercial general liability, excess (umbrella) liability, Contractor's pollution liability, and professional liability insurance coverage requirements will remain in full force and effect until Project Acceptance at which time the Contractors shall maintain completed operations insurance throughout the term of all warranties or as otherwise required by the Contract Documents, whichever is greater.

9.1.4. Notice of Cancellation

Any insurance policy required by this Agreement shall contain provisions that the insurance company provide to the City with 10 Days written Notice of cancellation for nonpayment of premiums, or 45 Days written Notice of cancellation for any other reason, including non-renewal.

9.1.5. No Recourse

There shall be no recourse against the State for payment of premiums or other amounts with respect to the insurance provided by the Contractor, or for deductibles under these policies. This provision does not affect any rights the Contractor is entitled to pursuant to Section 13.

9.1.6. Indemnification

The insurance coverage provided hereunder shall support, but is not intended to limit, the Contractor's indemnification obligations under Section 18.

9.2. Contractor Provided Insurance

The Contractor shall procure, at its own expense, insurance acceptable to the City, as described herein, and shall maintain such insurance, as specified herein, in accordance with the requirements stated in Section 9.1, or as otherwise Approved by the City at its sole discretion.

9.2.1. Workers' Compensation and Employer's Liability Coverage

The Contractor shall furnish evidence to the City that, with respect to the Work, the Contractor carries workers' compensation insurance, or is qualified to by the Missouri Division of Workers' Compensation as self-insured and carries insurance for employer's liability sufficient to comply with all obligations under State laws relating to workers' compensation and employer's liability. The Contractor shall require each Subcontractor on the Project to furnish the same evidence to the City. This evidence shall be furnished to and Approved by the City prior to the time the Contractor commences Work on the Project Site.

9.2.2. Commercial General Liability Insurance

The Contractor shall obtain one or more occurrence–based policies of commercial general liability insurance (Form CG 00 01 or equivalent) that provide coverage for all Work. The minimum limits of liability for commercial general liability insurance shall be in amounts sufficient to cover the sovereign immunity limits for Missouri public entities, per claimant and per occurrence with a per Project endorsement as shown in Appendix G Table G1. Each such policy shall be endorsed to cover liability arising from blasting if applicable, other inherently dangerous activities, and underground property damage. Each such policy shall be endorsed to include broad form general liability, contractual liability and completed operations coverage.

9.2.3. Commercial Automobile Liability Insurance

The Contractor shall obtain one or more occurrence-based policies of automobile liability insurance that provide coverage for the Contractor's owned, non-owned and hired vehicles of every type and description that are used in the performance of Work, both on and off the Site, including loading and unloading. The minimum limits of liability for such insurance shall be in amounts sufficient to cover the sovereign immunity limits for Missouri public entities per claimant and per occurrence as shown in Appendix G Table G2.

9.2.4. Excess (Umbrella) Liability Insurance

The Contractor shall provide umbrella or excess liability insurance with limits of not less than those shown in Appendix G Table G3 for each occurrence and for the annual aggregate which will provide bodily injury, personal injury and property damage liability

at least as broad as the primary coverage set forth above, including employer's liability, commercial general liability and commercial automobile liability, as set forth in Sections 9.2.1, 9.2.2, and 9.2.3.

9.2.5. Contractor's Pollution Legal Liability Coverage

The Contractor shall provide pollution legal liability coverage for the Project. The following limits and conditions shall apply:

1. The limit of liability per occurrence and the total Project aggregate shall be no less than the amounts required in Appendix G Table G3.
2. The City shall be named as an additional insured (to the extent commercially available as determined by the City).
3. If the policy form is written on a "claims made" form, the extended reporting period must be at least 60 months following completion of the Work.

9.2.6. Additional Insureds

Each policy of commercial general liability insurance, commercial auto liability and excess liability (umbrella) insurance shall name the City of Springfield, its officers, agents and employees as additional insureds under these policies, and Contractor shall waive all rights against the City of Springfield, its officers, agents and employees, for recovery of damages to the extent these damages are covered by the insurance policies to be maintained pursuant to this section.

9.2.7. Navigable Waters Insurance Protection

Not required for this Project.

9.2.8. Professional Liability Insurance

The Major Participant in the Contractor entity that will perform the design function ("Designer"), shall maintain professional liability insurance appropriate to the consultant's profession, endorsed to include contractual liability, with provisions at least as follows:

1. The policy shall protect against any negligent act, Error or omission arising out of design or engineering Activities of the Designer;
2. The policy shall have a retroactive date of no later than the date the first design or engineering Activities have been conducted by the Designer;
3. The policy shall be required to cover up to the amount shown in Appendix G Table G3 per claim and an aggregate of the amount shown in Appendix G Table G3;
4. If the policy is written on an occurrence, or claims reported, basis, (that is, the policy covers claims arising out of acts, Errors or omissions that occur and are reported during a specific policy period or an extended reporting period), the insured shall provide an extended reporting period of at least five (5) years following completion of the Work; and

5 If the policy is written on a strict claim made basis (that is, the policy covers claims made while the policy is in effect without regard to when the event giving rise to the claim occurred), the insured shall maintain the policy in force for a period of five (5) years following Final Acceptance.

9.2.8.1. Professional Liability Insurance – Design Work by Others

Should the Contractor or the Designer contract any design Work to a consultant other than the Designer, the Contractor or the Designer shall require the additional consultant to carry professional liability coverage, on a form providing coverage equivalent to the Designer's professional liability coverage, including extended reporting period or continuing coverage for five (5) years following Final Acceptance, and, except with prior Approval of the City, with policy limits of no less than the amounts required in Appendix G Table G3 per claim and per aggregate, and to provide City with proof of such coverage, upon request.

9.2.9. Builder's Risk

The Contractor shall be responsible for all builders' risk claims.

10. Risk of Loss

10.1. Site Security

The Contractor shall provide appropriate security for the Site, including securing any buildings from entry, and shall take all reasonable precautions and provide protection to prevent damage, injury or loss to the Work and Materials and Equipment to be incorporated therein, as well as all other property at the Site, whether owned by the Contractor, the City, or any other Person.

10.2. Maintenance and Repair of Work and On-Site Property

10.2.1. Responsibility of Contractor

The Contractor shall maintain, rebuild, repair, restore, or replace all Work (including Design Documents, Released for Construction Documents, As-Built Documents, Materials, Equipment, supplies, and maintenance Equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether the City has title thereto under the Contract Documents) that is injured or damaged prior to the date of acceptance of maintenance liability by the City or third parties as specified in Section 10.2.2. All such Work shall be at no additional cost to the City except to the extent that the City is responsible for such costs as provided in Section 13. Additional requirements regarding maintenance of Roadways during construction are set forth in Book 2, Section 17.

The Contractor shall not be allowed to store or stockpile any material on a bridge without the Approval of the City. If for Project operations it becomes necessary for the Contractor to request to store or stockpile material, the Contractor shall submit a written request to the City that is signed and sealed by a professional Engineer from Missouri. This request shall include an evaluation with both dead and live load calculations to ensure that the material is safe to store.

Nothing contained herein or in any special permit will relieve the Contractor of liability for any damage caused to roadway facilities from the movement or operation of Equipment and vehicles over the roadway system.

10.2.2. Relief from Liability for Maintenance

Effective as of the date of Partial Acceptance by the City of a Location of the Project, the City is responsible for maintenance for all elements of the Project which have been accepted. All remaining elements of the Project shall be considered Accepted for maintenance purposes as of the date on which Final Acceptance occurs.

Nothing in the Contract Documents shall be construed to relieve the Contractor of full responsibility for making good any non-latent Defect in Work or material found on any section of Work prior to Final Acceptance of the entire Project, to alter in any manner the method of payment prescribed in the Contract Documents, or to constitute a waiver of any claim the City may have against the Contractor on the entire Project.

Notwithstanding the foregoing, all elements of the Work, which will be owned by Persons other than the City (such as Utility facilities) will be considered accepted for purposes of maintenance responsibility only as of the date of acceptance of maintenance responsibilities by such Persons.

10.3. Damage to Off-Site Property

Before Final Acceptance, the Contractor shall restore to a condition equal to or better than that existing prior to Construction all property, both public and private, within, adjacent to and beyond the limits of Construction that have been disturbed or damaged by prosecution of the Work. Restoration Work shall be at the Contractor's expense.

10.4. Third Party Agreements and City-Obtained Permits

The Contractor shall comply with all provisions in the third-party agreements and City-obtained permits in Book 4.

10.5. Title

The Contractor warrants that it owns, or will own, and has, or will have, good and marketable title to all Materials, Equipment, tools and supplies furnished, or to be furnished, by it and its Subcontractors that become part of the Project or are purchased for the City for the operation, maintenance, or repair thereof, free and clear of all Liens. Title to all such Materials, Equipment, tools and supplies which shall have been delivered to the Site shall pass to the City, free and clear of all Liens, upon the sooner of: (i) incorporation into the Project; or (ii) payment by the City to the Contractor of invoiced amounts pertaining thereto. Notwithstanding any such passage of title, and subject to Section 10.1, the Contractor shall retain sole care, custody and control of such Materials, Equipment, tools and supplies, and shall exercise due care with respect thereto as part of the Work until Final Acceptance or until the Contractor is removed from the Project.

11. Payment

11.1. Contract Price

As full compensation for the Work and all other obligations to be performed by the Contractor under the Contract Documents, the City shall pay to the Contractor the Contract Price shown in Appendix I, on Form DB-901. (Such amount, as it may be adjusted from time to time to account for Change Orders, is referred to herein as the "Contract Price"). The Contract Price may be increased or decreased only by a Change Order issued in accordance with Sections 12 and 13 or by a Contract amendment.

11.1.1. Items Included in Contract Price

The Contractor acknowledges and agrees that, subject only to the Contractor's rights under Sections 12 and 13, the Contract Price includes:

a. Performance of each and every portion of the Work.

b. All designs, Equipment, Materials, labor, insurance and bond premiums, home office, jobsite and other overhead, profit and services relating to the Contractor's performance of its obligations under the Contract Documents (including all Work, Warranties, Equipment, Materials, labor and services provided by Subcontractors and intellectual property rights necessary to perform the Work).

c. The cost of obtaining all Governmental Approvals (except for approvals which are the responsibility of the City, as specifically provided elsewhere in the Contract Documents).

d. All costs of compliance with and maintenance of the Governmental Approvals and compliance with Legal Requirements.

e. Payment of any taxes, duties, and permit and other fees and/or royalties imposed with respect to the Work and any Equipment, Materials, labor, or services included therein.

f. All Contractors' Utility Work as described in Book 2, Section 7.

g. All ROW Work as described under Section 6.1 and Book 2, Section 8.

11.1.2. Delay in Issuance of Notice-to-Proceed 1

The City anticipates that it will issue NTP1 within five Days of execution and delivery of the Contract. If the City has not issued NTP1 within five Days after execution of the Contract by the City, the Contractor may seek to negotiate a Change Order including an extension in the time allowed to the City for issuance of NTP1 and an increase in the Contract Price mutually acceptable to the Contractor and the City. If the Contractor does not wish to seek a Change Order as provided above or the City fails to issue a Change Order acceptable to the Contractor, then the Contractor's sole remedy shall be to terminate the Contract by delivery of Notice of Termination to the City, with the right to receive payment as specified in Section 15. The Contractor is not obligated to perform any Work that would result in payments exceeding the NTP1 Payment Cap.

Any price increase under this Section shall be amortized proportionally over all Work remaining to be performed and shall be evidenced by a Change Order.

11.2. Invoices and Payment

Requirements relating to invoicing are set forth in Book 2, Section 2.2. Within thirty Days after Approval by the City of each final and complete invoice, as described in Book 2, Section 2.2, the City shall pay the Contractor the amount of the invoice Approved for payment less any amounts that the City is entitled to withhold.

11.3. Limitations on Payment

In no event shall the City have any obligation to pay the Contractor any amount which would result in: (i) payment for any Activity in excess of the value of the Activity times the completion percentage of such Activity; or (ii) aggregate payments hereunder in excess of: (i) the overall completion percentage for the Project times the Contract Price; or (ii) the payment caps described herein. The City does not have the obligation to pay the Contractor for any Nonconforming Work.

11.3.1. Requirement to Provide Corrected Monthly Update

After Approval of the Original Baseline Schedule, no payment will be processed or owing to the Contractor for Work performed during any period not covered by the accepted current Monthly Progress Schedule.

11.3.2. Notice-to-Proceed 1 Payment Cap

The amount of funds available to pay the Contractor prior to issuance of NTP2 is limited to the amount of the NTP1 Payment Cap, insurance premiums, bond premiums, and the first Mobilization payment. The City has no obligation to make any payment to the Contractor in excess of this amount until such time (if any) as NTP2 is issued. If the Contractor performs any Work in excess of the NTP1 Payment Cap, other than payment of insurance premiums, bond premiums, and the first Mobilization Payment, it does so at its own risk. The NTP1 Payment Cap does not apply to termination costs under Section 15.5.1.

11.3.3. Unincorporated Materials

The City will not pay for Materials associated with a progressed WBS Level V Activity prior to their incorporation into the Project, except under the circumstances described in this Section.

The City may, in any payment estimate, include the value of any non- perishable material that will be finally incorporated in the completed Work. The material shall be in conformity with the plans and Contract Documents and shall not have been used at the time of such estimate. The value of such material in a single submission from one Supplier shall be no less than $10,000.00. The material shall be delivered to the Person or other location that is Approved by the City. Any storage area not within the Right of Way shall be leased at the Contractor's expense with provisions for right of entry by the City during the period of storage. Invoices for material payment shall be submitted to the City at least four Days prior to the estimate date. Receipted invoices for all material

payments previously allowed on the estimate shall be submitted to the Engineer within 42 Days of the date of the estimate on which material allowance was made or such material allowance will be deducted from future payments. The amounts paid for such material shall reduce the amount of other partial or final payments due the Contractor for the Work performed as the Materials are fabricated or incorporated in the completed Work.

The payment of structural steel may be included for partial payment for the receipted value of structural carbon steel or structural low alloy steel, or both, which is to form a part of the completed Work and which has been produced and delivered by the steel mill to the fabricator. The required receipted mill invoice, billing, title or assignment documents or other documents furnished by the Contractor shall include certified mill Test reports containing complete material description, identification, weights (masses), dimensions, heat and unit numbers, and cost data. The structural steel shall be stored separately and used only for the fabricated structural steel in the Project. The City may also pay an amount not to exceed 90 percent of the invoice value of any inspected and accepted fabricated structural steel items, fabricated structural aluminum sign trusses, structural precast items and permanent roadway signs providing the total invoice value of these items is not less than $25,000.00 for each storage location. All material furnished for the Work pursuant to this Section shall be subject to shop Inspection by the City prior to payment.

All such Materials so delivered shall become the property of the City. Payment for stockpiled Materials will not constitute final acceptance of such Materials.

11.4. Mobilization and Initial Payments

The actual amount of premiums paid by the Contractor for the Payment and Performance Bonds, required under Section 8, for insurance required to be provided by the Contractor under Section 9, the NTP1 Payment Cap, and the first mobilization payment may be invoiced at any time after issuance of NTP1. In addition, the Contractor shall be entitled to a number of additional mobilization payments to be issued at intervals after issuance of NTP2 as identified in Book 2, Section 25.

11.5. Deductions

The City may deduct from any amounts otherwise owed to the Contractor, including each monthly progress payment and the final payment, the following:

1. Any accrued losses, liability, Liquidated Damages or other damages for which the Contractor is responsible hereunder.
2. The estimated cost of remedying any Nonconforming Work or otherwise remedying any breach of Contract by the Contractor.
3. The amount of any outstanding claim relating to the Work.
4. The amount for Work that the Contractor is obligated to perform under the Contract, which the Contractor has failed to perform.
5. Any other sums which the City is entitled to recover from the Contractor under the terms of the Contract.

The City's failure to deduct from a progress payment of any amount, which the City is entitled to recover from the Contractor under the Contract, shall not constitute a waiver

of the City's right to such amounts.

11.6. Final Payment

Final payment will be made in accordance with this Section 11.6.

11.6.1. Application for Final Payment

On or about the date of delivery of its Affidavit of Final Completion, the Contractor shall prepare and submit a proposed Application for Final Payment to the City showing the proposed total amount due the Contractor. In addition to meeting all other requirements for invoices hereunder, the Application for Final Payment shall include: (a) an affidavit, on the form prescribed by the City, to the effect that all payments have been made and all claims have been released for all material, labor and other items covered by the Contract bond; or (b) a list of any outstanding or pending Potential Change Order (PCO) Notices and all existing or threatened claims, Liens and stop Notices by Subcontractors, laborers, Utility Owners or other third parties relating to the Project, including any Notices filed or to be filed with the Affidavit of Final Completion, stating the amount at issue associated with each such Notice; (c) the written consent by the Surety to such payment; and (d) such other documentation as the City may reasonably require. Prior applications and payments shall be subject to correction in the proposed Application for Final Payment. PCO Notices filed concurrently with the Application for Final Payment must be otherwise timely and meet all requirements under Sections 13 and 19. If a Subcontractor refuses to furnish a release or waiver required by the City, the Contractor may furnish a bond satisfactory to the City to indemnify the City against such Lien. If such Lien remains unsatisfied after payments are made and is not bonded over as provided in the previous sentence, Contractor shall promptly pay to the City all money that the City may be compelled to pay in discharging such Lien, including all costs and attorneys' fees.

The City will review the Contractor's proposed Application for Final Payment, and changes or corrections will be forwarded to the Contractor for correction. If no changes or corrections are required, the City will Approve the Application for Final Payment.

11.6.2. Payment

As a condition to its obligation to make payment to the Contractor based on the Application for Final Payment, the City shall have received a completed Final Receipt of Payment and Release Forms from the Contractor, releasing and waiving any claims against the Indemnified Parties and those matters identified in any PCO Notices listed as outstanding in the Application for Final Payment, and otherwise satisfactory in form and content to the City.

The Final Receipt of Payment and Release Forms "shall be accompanied by an affidavit from the Contractor certifying:

1. That it has resolved any claims made by Subcontractors, Utility Owners, and others against the Contractor or the Project.
2. That it has no reason to believe that any Person has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the City as of the date of the certificate.

3 That all guarantees and warranties are in full force and effect.

Final Receipt of Payment and Release Forms and the affidavit shall survive final payment. The payment amount will be reduced by any amounts deductible under Section 11.5.

All prior partial estimates and payments shall be subject to correction in the final payment.

The Contractor's acceptance of final payment shall constitute a waiver of affirmative Claims by the Contractor except those previously made in writing and identified as unsettled at the time of final payment.

11.7. Prompt Payment to Subcontractors

The Contractor is responsible to ensure that all Subcontractors and Suppliers at every tier are promptly paid in accordance with the Missouri Prompt Pay Act, 34.057 RSMo. The Contractor shall include in all Subcontracts a provision that this requirement for prompt payment to the Subcontractors and Suppliers must be included in all Subcontracts at every tier. If the Contractor fails to comply with this requirement, the City may withhold the amount due from any monthly progress payment until the required payment(s) have been made.

11.8. Disputes

Subject to the City's right to withhold from progress payments any amounts in Dispute, and except as expressly stated otherwise in this Section, any disagreement between the City and the Contractor relating to this Section 11 shall be subject to Section 19. Failure by the City to pay any amount in Dispute shall not alleviate, diminish, or modify in any respect the Contractor's obligation to perform under the Contract Documents, including the Contractor's obligation to achieve Final Acceptance in accordance with the Contract Documents, and the Contractor shall not cease or slow down performance under the Contract Documents on account of any such amount in Dispute. The Contractor shall proceed as directed by the City pending resolution of the Dispute. Upon resolution of such Dispute, each party shall promptly pay to the other any amount owing.

12. Change Order Risk Allocation

12.1. Time and Money Changes

The Contractor may request a Change Order to increase the Contract Price, subject to the limitations set forth in Sections 13.7 and 13.8, and for time extensions, subject to the limitations set forth in Section 13.7.3, only for increased costs or additional time for Completion Deadlines, as follows:

a. Additional costs or time directly attributable to additional Work resulting from City-Directed Changes.

b. Additional costs or time directly attributable to unavoidable delays, arising from a suspension order pursuant to Section 14.1.

c. Failure or inability of the City to provide the Contractor with access to ROW identified on the ROW Plans, unless due to condemnation proceedings. If the City is unable to provide the Contractor with access to ROW identified on the ROW Plans due to condemnation proceedings, then only additional time will be allowed.

d. Delay in issuance of NTP2 or provision of reasons why it was unable to do so to the extent provided in Section 4.2.2.

e. Additional costs or time directly attributable to Differing Site Conditions, to the extent provided in Section 13.9.

f. Certain additional costs or time relating to Remediation Work as described in Section 13.10, to the extent provided therein.

g. Certain additional costs or time relating to Utility Work, as described in Section 6.2, to the extent provided therein.

h. Certain additional costs or time relating to material Errors in the ROW as surveyed, as described in Section 13.11, to the extent provided therein.

i. Additional costs or time directly attributable to uncovering, removing, and restoring Work, to the extent provided in Section 5.5.2.

j. Additional costs or time directly attributable to the discovery at, near, or on the Site of human remains, artifacts and other items of historical, archaeological or geological significance, or cultural resources or any biological resources (which term shall be deemed to mean any threatened or endangered species, raptors or eagles), discovered within the Right of Way, provided that the existence of such resources was not disclosed in the RFP.

k. Additional costs or time directly attributable to the suspension, termination, interruption, denial, failure to obtain, nonrenewal or amendment of any Environmental Approval or New Environmental Approval required to be obtained by the City, except as otherwise provided in Section 6.3.

l. Any change in a Legal Requirement, change in the judicial interpretation of a legal Requirement, or adoption of any new Legal Requirement, excluding changes in tax laws, which is materially inconsistent with Legal Requirements in effect on the Proposal Due Date (excluding any such change

or new Legal Requirement which was passed or adopted as of the Proposal Due Date but has a defined future effective date), and which: (i) requires a material modification in the Project Work; (ii) requires the Contractor to obtain a major State or federal environmental approval not previously required for the Project; or (iii) specifically targets the Project or the Contractor.

m. Any lawsuit seeking to restrain, enjoin, challenge, or delay construction of the Project, except to the extent that the risk of such lawsuit has been assumed by Contractor under Section 6.3; or the lawsuit otherwise arises out of any act, omission or breach of obligation of Contractor, a Subcontractor or any Person for whom Contractor is contractually or legally liable.

n. Failure to issue NTP1 within 40 Days after Contract execution by the City.

12.2. Time Only Changes

The Contractor may Request a Change Order for time extensions, subject to the limitations set forth in Section 13.7.3, only for additional time for Completion Deadlines, as follows:

a. Fire, floods, earthquakes, epidemics, or quarantine restrictions.

b. Work stoppages, Work slowdowns, or other labor disruptions, unless caused by the Contractor.

c. Failure or inability of the City to provide responses to proposed schedules, design submittals or other submittals and matters for which response by the City is required within the time periods indicated in the Contract Documents.

d. Force majeure events under a MUA.

e. Failure to identify Utilities to be Relocated by the Contractor to the extent provided in Section 6.2.1.

f. Utility Delays.

g. Freight embargos.

h. Acts of the public enemy.

13. Changes in the Work

This Section sets forth the requirements for obtaining all Change Orders under the Contract. The Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work, subject only to those exceptions specified in this Section, and that the City is subject to constraints which limit its ability to increase the Contract Price or extend the Completion Deadlines. Contractor hereby waives the right to make any claim for a time extension or for any monetary compensation in addition to the Contract Price and other compensation specified in the Contract, except as set forth in this Section.

13.1. Circumstances Under Which Change Orders May Be Issued

13.1.1. Change Orders

The term "Change Order" shall mean a written amendment to the terms and conditions of the Contract Documents issued in accordance with this Section 13. A Change Order shall not be effective for any purpose unless executed by the City. Execution of a Change Order by the City shall mean that the Change Order has been fully executed by the City and FHWA. The term "Change Order" shall also include any Work Order that has been completed by the City to also function as a Change Order, as described in Section 6. Except for Work Orders functioning as Change Orders, Change Orders may be requested by the Contractor only pursuant to Section 13.3. Change Orders may be issued for the following purposes (or combination thereof):

1. To modify the Work.
2. To revise a Completion Deadline.
3. To revise the Contract Price.
4. To revise other terms and conditions of the Contract Documents.

Upon the City's Approval of the Change Order form, the City will execute the Change Order form indicating Approval thereof.

13.1.2. Issuance of Directive Letter

The City may at any time issue a Directive Letter to the Contractor in the event of any Dispute regarding the Work or for any desired change in the Work. The Directive Letter will state that it is issued under this Section 13, will describe the Work in question and will state the basis for determining compensation, if any. The Contractor shall proceed immediately with the Work as directed in the letter, pending the execution of a formal Change Order (or, if the letter states that the Work is within the original scope of the Work, the Contractor shall proceed with the Work as directed but shall have the right pursuant to Section 13 to request that the City issue a Change Order with respect thereto).

Receipt of a Directive Letter from the City is a condition precedent to the Contractor's right to claim that a City-Directed Change has occurred.

No Directive Letter shall be required for alleged City-Directed Changes directly attributable to delays caused by bad faith actions, active interference, gross negligence or comparable tortious conduct by the Contractor. The fact that a Directive Letter was issued by the City shall not be considered evidence that in fact a City-Directed Change occurred. The determination whether a City-Directed Change in fact occurred shall be based on an analysis of the original Contract document requirements and a determination whether the Directive Letter in fact constituted a change in those requirements. The foregoing requirements shall not imply that a Directive Letter would be required in order for the Contractor to have the right to receive compensation for Work within its original scope for which additional compensation is specifically allowed under this Section 13 (such as for Relocation of previously misidentified underground Utilities, if a Change Order is allowed therefore pursuant to Section 6.2).

13.1.3. Performance of Changed or Extra Work

As a condition precedent to the Contractor's right to receive additional payment or an extension of a Completion Deadline for changed or extra Work, the Contractor shall have received either a Directive Letter from the City stating that it is issued pursuant to Section 13 or a Change Order for such Work executed by the City. To the extent that the Contractor undertakes any such Work without receiving a Directive Letter or Change Order executed by the City, the Contractor shall be deemed to have performed such Work voluntarily and shall not be entitled to a Change Order in connection therewith. In addition, the Contractor may be required to remove or otherwise undo any such Work, at its sole cost.

13.2. Equal or Better Change Orders

The Contractor may request the City Approval of a Change Order that is equal or better than the Contract Document requirements. The City may Approve, in its sole discretion, in whole or in part, a Change Order that is equal or better than the Contract Document requirements using Form DB-701. If Approved as provided in this Section 13.2, equal or better changes may be implemented without any sharing of the Contractor's cost savings (and without any additional cost to the City).

An Equal or Better Change Order is an Approved proposal developed and documented by the Contractor, which would modify or require a change in any of the Contract Document requirements in order to be implemented that is "equal to or better than" the underlying requirement. Equal or Better Change Orders cannot change a Completion Deadline.

13.2.1. Required Information

At a minimum the following information shall be submitted by the Contractor with each Equal or Better Change Order proposal:

1. Redline of the changes proposed to the Contract requirements, which are involved in the proposed change.
2. Description of why the proposed change is equal or better than the existing Contract requirements.
3. A description of any previous use or Tests of the proposal and the conditions and results if requested by the City.

The Contractor shall provide any additional information requested by the City in a timely manner.

13.2.2. City Review and Approval or Rejection

Upon receipt of an Equal or Better Change Order proposal, the City will process it, but shall not be liable for any delay in acting upon any proposal submitted pursuant to this Section 13.2. The Contractor may withdraw all or part of any Equal or Better Change Order proposal at any time prior to Approval by the City. The City may Approve, in its sole discretion, in whole or in part, any Equal or Better Change Order proposal submitted. Until an Equal or Better Change Order proposal is Approved by the City, the Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of the City as to rejection or Approval of any Equal or Better Change Order proposal shall be at the sole discretion of the City, and shall be final and not subject to partnering, Dispute resolution or appeal. Equal or Better Change Order proposals that require excessive time or costs for review, evaluation or investigations, or that are not consistent with the City's design policies and basic design criteria may be rejected. The Contractor shall have no claim for any additional costs or delays resulting from the rejection of an Equal or Better Change Order proposal, including development costs, loss of anticipated profit, or increased material or labor costs. The City will consider only proven features that have been employed under similar conditions or Persons acceptable to the City.

13.3. Value Engineering Change Proposals

It is the desire for the Contractor to have significant flexibility in determining how best to deliver the Project within the parameters established by the Contract Documents. The Contractor is encouraged to submit Value Engineering Change Proposals (VECPs) or Practical Design Value Engineering Proposal (PDVEP) whenever it identifies potential savings. Notwithstanding the foregoing, the City's Approval is required with respect to any proposed changes in the requirements of the Contract Documents. This Section 13.3 sets forth the requirements applicable to VECPs.

13.3.1. Definition of Value Engineering Change Proposal

A VECP is a proposal developed and documented by the Contractor that is, in the discretion of the City, equal or better than the requirements of the Contract Documents, including the Contractor's proposal. A VECP would reduce the cost of the Project without impairing essential functions or characteristics of the Project (including service life, economy of operations, ease of maintenance, desirability and safety) as determined by the City in its sole discretion, and provided that it is not based solely upon a change in quantities, performance or reliability.

13.3.2. Required Information

At a minimum, the following information shall be submitted by the Contractor with each VECP:

1. A statement that the submission is a VECP, a narrative description of the proposed change, the advantages and disadvantages of the proposed change and the justification for changes in function or characteristics and the effect the proposed change has on performance.

2 Identification of all Contract requirements (with reference to specific Sections), which must be changed if the VECP is Approved.

3 A description of any previous use or Tests of the proposal and the conditions and results.

4 Date or time, by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Contract Schedule.

5 A complete cost analysis including current pricing for the existing Contract requirements compared to the Contractor's cost estimate of the proposed changes.

The Contractor shall provide any additional information requested by the City in a timely manner. Additional information could include results of field investigations and surveys, design computations, and field change sheets.

13.3.3. City Review and Approval or Rejection

Upon receipt of a VECP, the City will process it, but will not be liable for any delay in acting upon any proposal submitted pursuant to this Section 13.3. The Contractor may withdraw all or part of any VECP at any time prior to Approval by the City.

The City may Approve, in its sole discretion, in whole or in part, by Change Order, any VECP submitted. Until a Change Order is issued on a VECP, the Contractor shall remain obligated to perform in accordance with the Contract Documents. The decision of the City as to rejection or Approval of any VECP shall be at the sole discretion of the City and shall be final and not subject to partnering, Dispute resolution or appeal. The Contractor shall have not claim for any additional costs or delays resulting from the rejection of a VECP, including development costs, loss of anticipated profit, or increased material or labor costs.

13.3.4. Contract Price Adjustment

If the City Approves a VECP submitted by the Contractor pursuant to this Section 13.3, the Contract Price shall be adjusted in accordance with the following:

a. The term "estimated net savings", as used in this Section 13.3, shall mean: (i) the difference between the cost of performing the Work according to the Contract Documents using current estimates and the actual cost to perform it according to the proposed change; less (ii) the costs of studying and preparing the VECP as proven by the Contractor and Approved by the City in accordance with the Change Order procedures set forth herein; less (iii) any additional costs incurred by the City (including costs relating to any Relocations and ROW and implementation costs) resulting from the VECP. The Contractor's profit shall not be considered part of the cost.

b. Except as specified in Section (d), below, the Contractor is not entitled to share in either collateral or future Contract savings. The term "collateral savings" means those measurable net reductions in the City's costs resulting from the VECP, including costs of maintenance by the City, logistics, and the City-furnished property. The term "future Contract savings" shall mean reductions in the cost of performance of future construction Contracts resulting from a VECP submitted by the Contractor.

c. Subject to Section (d) below, the Contract Price shall be reduced by an amount equal to the sum of (i) 100 percent of any additional costs incurred by the City resulting from the VECP; plus (ii) 50 percent of the estimated net savings.

d. In a case where a VECP involves an adjustment to the ROW Plans (such as a proposal that additional real property be purchased to reduce construction costs), the VECP shall compare:

   I. The incremental reduction in costs (such as for not designing and building a wall); and

   II. The costs involved in adjusting the ROW Plans and Environmental Approvals (which shall be based on the Contractor's additional costs, such as for providing real property acquisition support services, including profit, plus the City's additional costs, including land acquisition, appraisals, negotiation, Relocation, condemnation, closing, property management, and environmental permitting, specifically including allocated costs of the City personnel involved in the acquisition); or as (appropriate) shall compare:

   III. The incremental reduction in costs (if any) for not acquiring the unnecessary real property; and

   IV. The additional construction costs to be incurred.

The estimated net savings shall be shared equally between the City and the Contractor. The Contractor shall include in its VECP an analysis of any impacts on Utility Owners for consideration by the City.

The following is a sample VECP calculation.

"Acquire additional ROW in lieu of MSE wall const.				
CALCULATION OF VECP SAVINGS		**ITEM COST**		**TOTAL COST**
Cost of wall		$250,000		$250,000
VECP Savings			-	$185,000
Cost of preparing VECP	-	$10,000		
Cost of implementing proposal				
○ Contractor's expenses	-	$15,000		
○ City's cost of personnel	-	$10,000		
○ City's cost of property	-	$150,000		
Net Savings from VECP				**$65,000**
CONTRACT ADJUSTMENT				
City's total cost				$160,000
Plus City's share of VECP Savings (50%)				$32,500
Total Reduction in Contract Price				**$192,000**

13.3.5. Use of Value Engineering Changes by the City

All Approved or disapproved VECPs and Negotiated changes will become the property of the City and shall contain no restrictions imposed by the Contractor on their use or disclosure. The City retains the right to use, duplicate, and disclose in whole or in part any data necessary for the utilization of the proposal on any other or subsequent Projects without any obligation to the Contractor. This provision is not intended to deny rights provided by law with respect to patented Materials or processes.

13.4. Lump Sum Change Orders

The preferred approach by both parties is that Change Orders will be reimbursed on a lump sum payment basis if the parties can agree on a lump sum amount. If the parties cannot agree on a lump sum amount for change orders, the Change Orders will be paid as Force Account Change Orders described in Section 13.5.

13.4.1. Procedure for City Initiated Lump Sum Change Orders

If the City desires to evaluate whether to initiate such a change, the City may, at its discretion, issue a Request for Change Proposal (RCP).

Within seven Days after the Contractor's receipt of a RCP, the City and the Contractor shall consult to define the proposed scope of the change. Within seven Days after the initial consultation, the City and the Contractor shall consult concerning an estimated rough order of magnitude (ROM) cost and time impacts, if any. The Contractor shall prepare the ROM at its cost. The Contractor shall provide data regarding such matters as requested by the City.

Within seven Days after the ROM consultation meeting and provision of any data requested by the City, the City shall notify the Contractor whether the City:

1. Wishes to request the Contractor to prepare a Change Order form as discussed at the meeting.
2. No longer wishes to issue a Change Order.

The City may at any time, in its sole discretion, require the Contractor to provide two alternative Change Order forms, one of which shall provide for a time extension if applicable and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

If requested by the City, the Contractor shall, within 21 Days after receipt of the notification, prepare and submit to the City for Approval a Change Order using the Form DB-703, for the requested change, complying with all applicable requirements of Section 13.4, and incorporating all requests made by the City. The Contractor shall bear the cost of developing the Change Order form, including any modifications thereto requested by the City, except that costs of design and engineering Work required for preparation of plans or exhibits necessary to the Change Order and pre-authorized by the City shall be included in the Change Order as reimbursable items. If the Change Order is Approved, the design and engineering costs will be included within the Change Order. If the Change Order is not Approved, the Contractor shall be separately reimbursed for the design and engineering costs through a separate Change Order.

If the City and the Contractor agree that a change in the requirements relating to the Work has occurred but disagree as to whether the change justifies additional compensation or time or disagree as to the amount of any change to be made to the Contract Price or a Completion Deadline, the City may, in its sole discretion, order the Contractor to proceed with the performance of the Work in question notwithstanding such disagreement. Such order may, at the City's option, be in the form of a:

1 Force Account Change Order or

2 Directive Letter

13.4.2. Procedures for Contractor-Initiated Lump Sum Change Orders

The Contractor's entitlement to a Change Order for eligible changes is subject to the restrictions and limitations contained in this Section 13.

13.4.3. Conditions Precedent

The requirements set forth in this Section 13.4.3 constitute conditions precedent to the Contractor's entitlement to request and receive a Change Order in all circumstances. The Contractor agrees that the filing of a Potential Change Order (PCO) Notice and subsequent filing of a Request for Change Order (RCO) with the City pursuant to this Section are necessary in order to begin the administrative process for Contractor-requested Change Orders. The Contractor understands that it shall be forever barred from recovering against the City under this Section 13 if it fails to give Notice of any act, or failure to act, by the City or any of its representatives or the happening of any event, thing or occurrence pursuant to a proper PCO Notice, and thereafter complies with the remaining requirements of this Section.

The Contractor shall deliver to the City a PCO Notice stating that an event or situation has occurred and shall state whether it is entitled to additional time or money. The first Notice shall be labeled "PCO No. 1" and subsequent Notices shall be numbered sequentially.

Each PCO Notice shall be delivered as promptly as possible after the occurrence of such event or situation. If any PCO Notice is delivered later than ten Days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence which is described therein, the Contractor shall be deemed to have waived the right to collect any and all costs incurred prior to the date of delivery of the PCO Notice, and shall be deemed to have waived the right to see an extension of any Completion Deadline with respect to any delay in the Critical Path which accrued prior to the date of delivery of the written Notice. Furthermore, if any PCO Notice concerns any condition or material described in Section 5.3, the Contractor shall be deemed to have waived the right to collect any and all costs incurred in connection therewith to the extent that the City is not afforded the opportunity to inspect such material or condition before it is disturbed. The Contractor's failure to provide a PCO Notice within 30 Days after the Contractor first discovered (or should have discovered in the exercise of reasonable prudence) the occurrence of a given event or situation shall preclude the Contractor from any relief, unless the Contractor can show, based on a preponderance of the evidence that: (i) the City was not materially prejudiced by the lack of Notice; or (ii) the City's designated representative specified in accordance with Section 24.4.1 had actual knowledge, prior to the expiration of the 30-Day period, of the

event or situation and that the Contractor believed it was entitled to a Change Order with respect thereto. A PCO Notice shall be deemed delivered only if it fully conforms to the requirements of Section 13.

The PCO Notice shall (i) state in detail the facts underlying the potential Change Order, the reasons why the Contractor believes additional compensation or time will or may be due and the date of occurrence; (ii) state in detail the basis that the Work is not required by the Contract, if applicable; (iii) identify particular elements of Contract performance for which additional compensation may be sought under this Section 13; (vi) identify any potential Critical Path affecting a Completion Deadline; and (v) provide an estimate of the time within which a response to the notice is required to minimize cost, delay, or disruption of performance.

The written notification under Section 5.3 may also serve as a PCO Notice provided it meets the requirements for PCO Notices.

Any adjustments made to the Contract shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide requested additional information under this Section.

The Contractor shall deliver all RCO under this Section 13 to the City within 30 Days after delivery of the PCO Notice. The City may require design and construction costs to be covered by separate Change Order requests. If the Contractor requests a time extension, then the City, in its sole discretion, may require the Contractor to provide two alternative Change Order requests, one of which shall provide for a time extension and any additional costs permitted hereunder, and the other of which shall show all Acceleration Costs associated with meeting the original Completion Deadlines, as well as any additional costs permitted hereunder.

The Contractor acknowledges and agrees that, due to the limited availability of funds for the Project, timely delivery of notification of such events and situations and requests for Change Orders and updates thereto are of vital importance to the City. The City is relying on the Contractor to evaluate, promptly upon the occurrence of any event or situation, whether the event or situation will affect schedule or costs and, if so, whether the Contractor believes a time extension and/or price increase is required hereunder. If an event or situation occurs which may affect the Contract Price or a Completion Deadline, the City will evaluate the situation and determine whether it wishes to make any changes to the definition of the Project so as to bring it within the City's funding and time restraints.

The following matters (among others) shall be considered in determining whether the City has been prejudiced by the Contractor's failure to provide timely Notice;

1. The effect of the delay on alternatives available to the City (that is, a comparison of alternatives which are available at the time Notice was actually given and alternatives which would have been available had Notice been given within ten Days after occurrence of the event or when such occurrence should have been discovered in the exercise of reasonable prudence).
2. The impact of the delay on the City's ability to obtain and review objective information contemporaneously with the event.

Prior to submission by the Contractor of any PCO Notice or a RCO to the City which is based in whole or in part on a request by a Subcontractor to the Contractor for a price increase or time extension under its Subcontract, the Contractor shall have reviewed all claims by the Subcontractor which constitute the basis for the RCO and determined in

good faith that each such claim is justified hereunder and that the Contractor is justified in requesting an increase in the Contract Price and/or change in Completion Deadlines in the amounts specified in the RCO. Each RCO involving Subcontractor Work shall include a sworn certification in form acceptable to the City signed by the Contractor's Project Manager stating that the Contractor has investigated the basis for the Subcontractor's claims and has determined that all such claims are justified as to entitlement and amount of money and/or time requested and has no reason to believe and does not believe that the factual basis for the Subcontractor's claim is falsely represented. Any RCO involving Subcontractor Work shall be considered incomplete if it is not accompanied by such certification.

If the City refuses to issue a Change Order based on the Contractor's request, the Contractor shall nevertheless perform all Work as specified in an appropriate Directive Letter, with the right to submit the issue of entitlement to a Change Order to Dispute resolution in accordance with Section 19. The Contractor shall maintain and deliver to the City, upon request, contemporaneous records, meeting the requirements of Section 13.7, for all Work performed which the Contractor believes constitutes extra Work, until all Disputes regarding entitlement or cost of such Work are resolved.

13.5. Force Account Change Orders

The City may at its discretion issue a Force Account Change Order whenever the parties cannot agree to a Lump Sum Change Order or the City determines that a Force Account Change Order is advisable. The Force Account Change Order shall instruct the Contractor to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the Contract Price will be determined and the estimated total change in the Contract Price anticipated thereunder. Upon final determination of the allowable costs, the City shall issue a modified Change Order setting forth the final adjustment to the Contract Price. The costs and additional amounts allowed in Section 13.8 (and no others) shall be used for calculating the change in the Contract Price. No direct compensation will be allowed for other miscellaneous costs for which no specific allowance is provided in Section 13.6.

The City and the Contractor may agree to negotiate Unit Prices for a Force Account Change Order. Measurement of any unit-priced quantities will be as specified in the Change Order. Unit Prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities. Upon final determination of the quantities, the City will issue a modified Change Order setting forth the final adjustment to the Contract Price.

13.5.1. Force Account Records

The Contractor shall maintain its records in such a manner as to provide a clear distinction between: (i) the direct cost of Work for which it is entitled (or for which it believes it is entitled) to an increase in the Contract Price; and (ii) the costs of other operations. The Contractor shall contemporaneously collect, record in writing, segregate, and preserve: (i) all data necessary to determine the costs described in this Section 13.5 with respect to all Work which is the subject of a Change Order or a requested Change Order, specifically including costs associated with design Work as well as Utility Relocations, but specifically excluding all negotiated Change Orders (except for Lump Sum Work Orders that are also Change Orders as described in

Section 13.4); and (ii) all data necessary to show the actual impact (if any) of the change on the Critical Path affecting a Completion Deadline with respect to all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the Critical Path affecting a Completion Deadline is in Dispute. Such data shall be provided pursuant to Section 19, on forms Approved by the City. The cost of furnishing such reports is included in the Contractor's predetermined overhead and profit.

The Contractor shall furnish daily, on forms Approved by the City, reports of Force Account Change Order Work. The cost of furnishing such reports shall be included in the Contractor's overhead and profit percentages. The reports shall include:

1. Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) and foreman.
2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and Equipment.
3. Quantities of Materials, prices and extensions.
4. Transportation costs of Materials, machinery, and Equipment.
5. Invoices for Materials used and for transportation charges.

The reports shall also state the total costs to date for the Force Account Change Order Work.

If Materials used on the Force Account Change Order Work are not specifically purchased for the Work but are taken from the Contractor's stock, the Contractor shall furnish an affidavit certifying that such Materials were taken from the Contractor's stock, that the quantity claimed was actually used, and that the price and transportation costs claimed represent actual costs to the Contractor.

All Force Account Change Order reports shall be signed by the Contractor's Project Manager. The City will compare its records with the Contractor's reports, make the necessary adjustments and compile the costs of Force Account Change Order Work. When such reports are agreed upon and signed by both parties, they will become the basis of payment, but shall not preclude subsequent adjustment based on a later audit. The Contractor's (and each Subcontractor's) cost records pertaining to Work paid for on a Force Account basis shall be open, during all regular business hours, to Inspection or audit by representatives of the City during the life of the Contract and for a period of not less than seven years after Final Acceptance, and the Contractor (and each Subcontractor) shall retain such records for that period. If an audit is to be commenced more than 60 Days after Final Acceptance, the Contractor will be given a 20-Day Notice of the time when such audit is to begin.

13.6. Contents of Change Orders (excluding Equal or Better Change Orders)

Each lump sum, force account and value engineering Change Order form and RCO shall meet all applicable requirements of this Section 13 and shall include a Cost Analysis to be prepared using the Form DB-702. The completed and/or modified Work Order Form described in Section 6.2.7 shall be considered an appropriate form, where applicable.

The Contractor shall prepare a scope of Work, cost estimate, impacted delay analysis, if

any and other information as required by this Section for each Change Order form and RCO.

Scope of Work: The scope of Work shall describe in detail satisfactory to the City all Activities associated with the Change Order, including a description of additions, deletions and modifications to the existing Contract requirements.

Cost Estimate: The cost estimate shall set out the estimated costs in such a way that a fair evaluation can be made. It shall include a breakdown for labor, Materials, Equipment, overhead (which includes all indirect costs) and profit, unless the City agrees otherwise. The estimate shall include costs allowable under this Section 13, if any. If the Work is to be performed by Subcontractors and if the Work is sufficiently defined to obtain Subcontractor quotes, the Contractor shall obtain quotes (with breakdowns showing cost of labor, Materials, Equipment, overhead and profit) on the Subcontractor's stationery and shall include such quotes as back-up for the Contractor's estimate. No additional payment shall be allowed in excess of the provisions under Section 13.

DBE Goal: The Contractor shall strive to ensure that DBEs have full and equal opportunity to compete fairly in the performance of change orders financed in whole or in part with Federal funds. The impact to the DBE goals will be taken into consideration and evaluated during the negotiation of each change order.

Impacted Delay Analysis: If the Contractor claims that such event, situation or change affects the Critical Path affecting a Completion Deadline, it shall provide an impacted delay analysis indicating all Activities represented or affected by the change, with activity numbers, durations, predecessor and successor Activities, resources and cost, and with a narrative report, in form satisfactory to the City, which compares the proposed new schedule to the Original Baseline Schedule or Revised Baseline Schedule, as appropriate. Except as otherwise provided in this Section, the impacted delay analysis shall only modify the Activities which have been impacted by the event which justifies the extension. The Contractor may reschedule Activities not otherwise affected by the event, in order to take advantage of additional Float available as a result of the requested time extension. Any such rescheduling shall be reflected in the impacted delay analysis.

Other Supporting Documentation: The Contractor shall provide such other supporting documentation as may be required by the City.

13.6.1. Justification

All Requests for Change Orders shall include a narrative justification therefore, detailing all causes of the proposed change, making specific reference to the applicable provisions of this Section 13 which permit a Change Order to be issued, and describing the data and documents which establish the necessity of such proposed change.

13.6.2. Contractor Representation

Each Change Order shall contain a sworn certification in form acceptable to the City by the Contractor (or Subcontractor, if applicable) that the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to such proposed change and that the Contractor has no reason to believe and does not believe that the factual basis for the Change Order is falsely represented.

13.6.3. Incomplete Change Orders

Each RCO shall meet all requirements set forth in this Section 13.6, provided that if any such requirements cannot be met due to the nature of the occurrence, the Contractor shall provide an incomplete RCO, which shall:

1. Comply with all requirements capable of being met.
2. Include a list of requirements, which are not fulfilled together with an explanation reasonably satisfactory to the City stating why such requirements cannot be met.
3. Provide such information regarding Projected impact on the Critical Path affecting a Completion Deadline as is requested by the City.
4. In all events include sufficient detail to ascertain the basis for the proposed Change Order and for any price increase associated therewith, to the extent such amount is then ascertainable.

The Contractor shall furnish, when requested by the City, such further information and details as may be required to determine the facts or contentions involved. The Contractor agrees that it shall give the City access to any and all of the Contractor's books, records, and other Materials relating to the Work, and shall cause its Subcontractors to do the same, so that the City can investigate the basis for such proposed Change Order. The Contractor shall provide the City with a monthly update to all outstanding incomplete requests for Change Order, describing the status of all previously unfulfilled requirements and stating any changes in Projections previously delivered to the City, time expenditures to date and time anticipated for completion of the Activities for which the time extension is claimed. The City may reject the Contractor's claim at any point in the process. Once a complete RCO is provided, the City's failure to respond thereto within 14 Days of delivery of the request shall be deemed a rejection of such request. Although the City intends to review incomplete Change Orders for the purposes of timely delivery described in Section 13.7.3, the City shall have no obligation to review the backup associated with any RCO until a complete RCO is provided.

13.6.4. Phased Change Orders

The City and Contractor may mutually agree to use a multiple-step process involving issuance of a Change Order which includes an estimated design cost and which provides for a revised Change Order to be issued after a certain design level has been reached, thus allowing a refinement and definition of the estimated construction cost.

13.7. Certain Limitations for all Change Orders (excluding Equal or Better Changes)

13.7.1. Limitation on Contract Price Increases

Any increase in the Contract Price allowed hereunder shall exclude:

1. Costs caused by the breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity.
2. Costs, which could reasonably have been avoided by the Contractor, including

by resequencing, reallocating, or redeploying its forces to other portions of the Work or to other activities unrelated to the Work (excluding any additional costs reasonably incurred in connection with such reallocation or redeployment).

3 Costs for any rejected Work which failed to meet the requirements of the Contract Documents and any necessary remedial Work.

13.7.2. Limitation on Acceleration Costs; Delay and Disruption Damages

Acceleration Costs; Delay and Disruption Damages: Acceleration Costs shall be compensable hereunder only with respect to Change Orders issued by the City as an alternative to allowing an extension of a Completion Deadline as contemplated by Section 12. Delay and Disruption Damages shall be compensable hereunder only in the case of a delay which pursuant to Section 12 to the extent that it entitles the Contractor to an extension of a Completion Deadline. Costs of rearranging the Contractor's Work plan not associated with an extension of a Completion Deadline shall not be compensable hereunder.

Other Limitations: Delay and Disruption Damages shall be limited to direct costs directly attributable to the delays described in this Section and overhead and profit thereon in accordance with Section 13.8 and any additional field office and jobsite overhead costs incurred by the Contractor directly attributable to such delays. In addition, before the Contractor may obtain any increase in the Contract Price to compensate for any Delay and Disruption Damages or Acceleration Costs, the Contractor shall have demonstrated to the City's satisfaction that:

1 Its schedule, which defines the affected Critical Path in fact, sets forth a reasonable method for completion of the Work.

2 The change in the Work or other event or situation, which is the subject of the requested Change Order, has caused or will result in an identifiable and measurable disruption of the Work, which impacted the Critical Path affecting a Completion Deadline.

3 The delay or disruption damage was not due to any breach of Contract or fault or negligence, or act or failure to act of any Contractor-Related Entity and could not reasonably have been avoided by the Contractor, including by resequencing, reallocating or redeploying its forces to other portions of the Work or other activities unrelated to the Work (subject to reimbursement for additional costs reasonably incurred in connection with such reallocation or redeployment).

4 The delay for which compensation is sought is not concurrent with any other delay excluding a City caused delay.

5 The Contractor has suffered or will suffer actual costs due to such delay, each of which costs shall be documented in a manner satisfactory to the City.

13.7.3. Limitation on Time Extensions

Any extension of a Completion Deadline allowed hereunder shall exclude any delay to the extent that it:

1 Did not impact the Critical Path affecting a Completion Deadline.

2 Was due to the fault or negligence, or act or failure to act of any Contractor-Related Entity.

3 Could reasonably have been avoided by the Contractor, including by re-sequencing, reallocating or redeploying its forces to other portions of the Work (provided that if the request for extension involves a City caused delay, the City shall have agreed, if requested to do so, to reimburse the Contractor for its costs incurred, if any, in re-sequencing, reallocating, or redeploying its forces).

The Contractor shall be required to demonstrate to the City's satisfaction that the change in the Work or other event or situation which is the subject of the RCO seeking a change in a Completion Deadline has caused or will result in an identifiable and measurable disruption of the Work which has impacted the Critical Path Activity affecting a Completion Deadline.

13.7.3.1. Limitations on Time Extensions Due to High Water

The Contractor may request for additional Days added to the Project Completion Deadline upon the occurrence of High Water on any of the streams at which work is being performed. These time-only extensions will be available when the Contractor is unable to progress on Critical Path items of the Work. Requests for additional Days must be made in writing to the City Project Director within 48 hours of the delay so that a determination can be made. The submittal of a Time Extension request does not guarantee any Days will be awarded if in the opinion of the Project Director the water levels did not impact Construction or the Critical Path. High Water delays not impacting Construction or the Critical Path will be non-compensable. The Contractor's CPM schedule, current at the time of the High Water event will be used for the purpose of identifying Critical Path Activities.

13.8. Pricing of Change Orders (excluding Equal or Better Changes)

The City and the Contractor (on its own behalf and on behalf of its Subcontractors) shall endeavor to negotiate, in good faith, a reasonable cost for each Change Order. Subject to the foregoing exceptions, in general the price of a Change Order shall be negotiated in accordance with this Section 13.8 or shall be based on Force Account records pursuant to Section 13.5.

13.8.1. Labor Costs

The cost of labor shall be separated into construction-related Work and non-construction-related Work as described below. The use of a labor classification that would increase the extra Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. The cost of labor shall be calculated based on straight time for all hours worked, unless the Contractor obtains the City's prior Approval for overtime.

Construction Labor: The cost of labor for workers used in the actual and direct performance of construction-related Work, including Lead Workers, whether provided

by the Contractor or a Subcontractor, will equal the sum of the following: (i) actual unburdened wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) the actual costs paid to, or on behalf of, employees for liability and worker's compensation insurance premiums, unemployment insurance contributions and social security taxes, health and welfare benefits, pension fund benefits or other benefits, if such amounts are required by the collective bargaining agreement or employment contract, applicable to the classes of labor employed on the Work; plus

20% (15% overhead and 5% profit) of the sum of the above items.

Non-Construction Labor: The cost of labor for non-construction-related Work, whether provided by the Contractor or a Subcontractor, will equal the sum of the following: (i) Actual wages (i.e. the base wage paid to the employee exclusive of any fringe benefits); plus (ii) an overhead based on the audited Federal Acquisition Regulations (FAR) field rates not to exceed 145%, or if a company has no FAR rate, an overhead of 145%. Contractor will also be paid for profit on non-construction labor of 10% of labor costs plus overhead.

13.8.2. Material Costs

Material costs shall be the cost of all Materials to be used in the performance of construction Work including normal wastage allowance as per industry standards, subject to the requirements set forth in this Section 13. The material prices shall be supported by valid quotes and invoices from the Suppliers. The cost shall include applicable sales taxes, freight and delivery charges and any allowable discounts (exclusive of machinery rentals). The City reserves the right to Approve Materials and sources of supply of Materials to be furnished by the Contractor or Subcontractors and shall have the right to furnish such Materials as it deems advisable. The price allowed for Materials shall be adjusted as follows:

If the Materials are obtained from a supply or source owned in whole or in part by the Contractor or a Subcontractor, the cost of such Materials shall not exceed the lesser of the lowest price charged by the Contractor or such Subcontractor (as applicable) for similar Materials furnished to other jobs or the current wholesale price for such Materials delivered to the Site.

If the cost of such Materials is, in the opinion of the City, excessive, then the cost of such Materials shall be deemed to be the lowest current wholesale price at which such Materials were available, in the quantities needed and delivered to the Site.

If the Contractor or any Subcontractor (as applicable) does not furnish satisfactory evidence of the cost of such Materials from the actual Supplier thereof within 60 Days after the date of delivery of the material, the City reserves the right to establish the cost of such Materials at the lowest current wholesale prices at which such Materials were available, in the quantities needed and delivered to the Site.

Contractor will be paid an additional 20% for overhead and profit.

13.8.3. Equipment

Contractor will be paid for the use of Equipment owned or rented by Contractor or any Subcontractor for actual use in construction of the Project at an hourly rate derived from the most recently published Rental Rate Blue Book for Construction Equipment by Dataquest, Inc., San Jose, California which is in effect at the time of commencement of

the changed Work (the "Blue Book").

The total hourly rates derived from the above publication are computed from Equipment costs currently in effect. The rates derived do not include costs for operating personnel. The rates require adjustment by a Regional Factor/City Factor, and Depreciation Factor found in the front of each chapter in the Blue Book.

Equipment use rates fall in the following two categories:

a. Operating Rate: This rate applies to those hours the Equipment is actually in use, includes ownership and operating costs, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor/City Factor plus the estimated hourly operating costs from the Blue Book.

b. Standby Rate: This rate applies to Equipment required to be at the Site but not operating, includes ownership costs only, and shall equal the Blue Book monthly rate adjusted for year of manufacture divided by 176 times the Regional Factor/City Factor times 0.5. The duration of allowable standby time is to be Approved in writing by the City with a maximum of eight hours per Day or 40 hours in a normal week.

When the "manufacturer's rated capacity" falls between those shown in the Blue Book, the closest rated capacity will be used, without interpolation. All rates shall be agreed upon in writing before Work is begun. Payment will not be made for pickup trucks used solely for transportation.

In cases where the Equipment to be used is specialized in nature and is not available in Contractor's inventory and is rented or leased from an outside agency a 10 percent allowance will be added on the first $5,000 plus 5 percent of the balance in excess of $5,000 for overhead for all rented or leased Equipment paid for by invoices. Where the rate charged by the agency exceeds the rate determined by the Blue Book, the rental or lease agreement shall be submitted to the City for Approval. The Equipment operating costs from the Blue Book will be paid for rented or leased Equipment for each hour the Equipment was actually used.

In those cases where the required Equipment is in Contractor's or Subcontractor's available inventory but not on the Site, the Equipment may be rented from a local source. The City may Approve rental rates for Equipment obtained from local sources when such rates are within 10 percent of rates in the Blue Book. When the Equipment use is of short duration (less than a week) "move in" and "move out" costs for Equipment owned by Contractor or Subcontractors may be considered when comparing rental costs of Equipment obtained from local sources. This option will only be allowed when the cost of locally rented Equipment would be less than using owned Equipment, including "move in" and "move out" charges. Such rentals must be supported by a cost analysis indicating the method used was the least expensive. Should Equipment be rented even though it is of a type that is in Contractor's or Subcontractor's inventory and the rental costs exceed that allowed by this paragraph, Contractor will be reimbursed for such Equipment based on the rates in the Blue Book.

The rates paid as above provided shall be deemed to include compensation for the cost of fuel, oil, lubricants, supplies, small tools, necessary attachments, repairs and maintenance of all kinds, depreciation, storage, insurance and all incidentals. Individual pieces of Equipment or tools not listed in the Blue Book and having an individual replacement value of $1,000 or less, whether or not consumed by use, shall be

considered to be small tools. Equipment rental rates not provided by the Blue Book must be Approved by the City before the start of any Change Order Work.

Contractors will be paid an additional 20% for overhead and profit. Equipment operators will be paid for as stipulated in Section 13.

All Equipment shall be in good working condition and suitable for the purpose for which the Equipment is to be used.

Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify Equipment for the determination of applicable rental rates. Equipment, which has no direct power unit, shall be powered by a unit of at least the minimum rating recommended by the manufacturer of that Equipment.

The time to be paid for use of Equipment on the Site shall be the time the Equipment is in operation on the Force Account Change Order Work being performed. The time shall include the reasonable time required to move the Equipment to the location of the Force Account Change Order Work and return it to the original location or to another location requiring no more time than that required to return it to its original location. Moving time will not be paid for if the Equipment is also used at the Site other than for Force Account Change Order Work. Loading and transporting costs will be allowed, in lieu of moving time, when the Equipment is moved by means other than its own power. No payment for loading and transporting will be made if the Equipment is also used at the Site other than for Force Account Change Order Work. Time will be computed in half and full hours. In computing the time for use of Equipment, less than 30 minutes shall be considered one-half hour.

13.8.4. Permit Fees

The Contractor will be reimbursed for the cost of any additional permit fees payable as the result of a change in the Work requiring additional permit fees. Back-up documentation supporting each cost item for this category shall be provided by the Contractor and Approved by the City prior to any payment authorization being granted.

Contractor will be paid an additional 5% for overhead and profit.

13.8.5. Subcontracted Work

For administration and all overhead costs in connection with Subcontract Work, the Contractor will receive an amount equal to 5%of the cost of the Subcontracted Work, notwithstanding the actual number of intervening Subcontractors, provided that the Contractor may allocate all or any part of such administration and overhead costs among intervening Subcontractors. This shall fully compensate the Contractor (and all Subcontractors) for administration, general superintendence, overhead, profit and expenses not otherwise recoverable with respect to Subcontracted Work. This shall not apply to: (i) Subcontracts with Affiliates; or (ii) Subcontracts with Suppliers.

13.8.6. Overhead and Profit

Items included in Overhead and Profit: Unless otherwise indicated in this Section 13, the overhead and profit and labor surcharges under this Section 13 are full and complete compensation for all indirect costs of the added or changed Work, as well as for profit thereon. The Contractor’s overhead and profit percentages and labor surcharges under this Section 13 shall be considered to include, among other costs,

salary and expenses of executive officers, supervising officers or supervising employees, clerical employees, charges for minor Equipment, such as small tools, and other miscellaneous supplies and services, incidental job burdens, builder's risk, bonuses not otherwise covered, field, jobsite and general home office expenses of all types (including timekeepers, bookkeepers, and other general office help), supervisory expenses of all types (excluding only direct supervision of force account Work) and all other overhead, general condition and indirect costs and expenses, and profit. With respect to non-construction related labor costs, overhead is included as part of the labor surcharge calculated in accordance with Section 13 and includes accessories such as Computer-Assisted Drafting and Design (CADD) systems, computers, facsimile transmission machines, scanners, plotters, etc.

Payment of Overhead and Profit: The foregoing overhead and profit and labor surcharges will be paid to the Contractor only for Work it performs; in the case of Work that is Subcontracted, the additional payment for Subcontract administration will be allowed to the Contractor as described in Section 13 and all other overhead and profit and labor surcharges will be allowed to the Subcontractor who actually performs the Work.

Materials and Equipment: No overhead, profit or other surcharges will be paid to the Contractor for any Materials or Equipment furnished by the City.

Credit Items: Where the Contractor's or any Subcontractor's portion of a change involves credit items, or the proposed change is a net deductive change, the Contractor shall include all Contractor's and Subcontractor's overhead and profit in computing the value of the credit.

Bond and Insurance Premiums: If a change requires additional bond and/or insurance premiums, they will be paid for as a direct payment with no additional amount for overhead or profit. Proof of bond and insurance premium increases must accompany Change Orders.

13.8.7. Compliance with Federal Acquisition Regulation

Reimbursable expenses shall be limited to and comply with the FARs. Expenses excluded by the FARs shall not be reimbursed. If FHWA asserts that any claimed reimbursable expenses are not reimbursable under FARs, the City will allow the Contractor the opportunity to respond to the City and defend the allowability of the expenses.

13.9. Differing Site Conditions

13.9.1. Responsibilities of the City

Upon the Contractor's fulfillment of all applicable requirements of Sections 5.3 and 13, and subject to the limitations contained therein, the City shall be responsible for, and agrees to issue Change Orders to: (i) compensate the Contractor for additional costs directly attributable to changes in the Work arising from Differing Site Conditions; and (ii) extend the Completion Deadlines as the result of any delay in the Critical Path affecting a Completion Deadline caused by any such conditions.

13.9.2. Burden of Proof

The Contractor shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Each request for a Change Order relating to a Differing Site Condition shall be accompanied by a statement signed by a qualified professional setting forth all relevant assumptions made by the Contractor with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions are eligible for a Change Order under the terms of this Book 1, and stating the efforts undertaken by the Contractor to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

13.10. Hazardous Substances Management

The Contract Price does not include remediation related to Hazardous Substances located on and around all existing Structures, including but not limited to lead and asbestos. The City shall be responsible for testing any Structure identified by the Contractor as part of the required ROW for hazardous materials. The Contractor shall be responsible for removal of any Structure identified by the Contractor within part of the required ROW.

The Contract Price does not include the cost of Activities to be performed by the Contractor for other Hazardous Substances management, except for identification that such Hazardous Substances are present, and except as caused by a Contractor-Related Entity as provided in Section 18.

13.10.1. Limitations on Change Orders

All Change Orders authorized by this Section shall be subject to the restrictions, limitations and procedures set forth in Section 13. Allowable costs shall be limited to the Incremental Costs associated with the fact that Hazardous Substances subject to Remediation Work compensable under Section 13.10 are present after identification that Hazardous Substances are present. The Contractor shall take all reasonable steps to minimize any such costs. In addition, compensation for Remediation Work compensable under Section 13.10 will not be allowed unless the Contractor demonstrates to the City's satisfaction that: (i) the Remediation Work could not have been avoided by reasonable design modifications or construction techniques; and (ii) the Contractor's plan for the Remediation Work represents the approach which is most beneficial to the Project and the public. The Contractor shall provide the City with such information, analyses and certificates as may be requested by the City in order to enable a determination regarding eligibility for payment.

13.11. Material Errors in Right of Way Drawings

Upon the Contractor's fulfillment of all applicable requirements of this Section 13, and subject to the limitations contained therein, the City shall be responsible for, and agrees to issue Change Orders: (i) to compensate the Contractor for additional costs directly attributable to material Errors in the Right of Way limits indicated in the existing ROW as surveyed; and (ii) to extend the Completion Deadlines as the result of any delay in the Critical Path affecting a Completion Deadline caused by any such Errors. The Contractor shall be responsible for any material Errors resulting in the final ROW Plans created for the purposes of this Person. The Contractor shall provide written Notice to the City immediately upon discovery of any such material Error. The City, in the City's sole discretion, shall have the right to cure any such Error such as by acquiring additional property.

13.12. Incentives

There are no incentives on this Project.

13.13. Waiver

THE CONTRACTOR HEREBY EXPRESSLY WAIVES ALL RIGHTS TO ASSERT ANY AND ALL CLAIMS BASED ON ANY CHANGE IN THE WORK, DELAY OR ACCELERATION (INCLUDING ANY CHANGE, DELAY, SUSPENSION OR ACCELERATION WHICH, BUT FOR THE EXPRESS TERMS OF THE CONTRACT DOCUMENTS, COULD BE INFERRED OR IMPLIED AT LAW) FOR WHICH THE CONTRACTOR FAILED TO PROVIDE PROPER AND TIMELY NOTICE OR FAILED TO PROVIDE A TIMELY CHANGE RCO, AND AGREES THAT THE CONTRACTOR SHALL BE ENTITLED TO NO COMPENSATION OR DAMAGES WHATSOEVER IN CONNECTION WITH THE WORK EXCEPT TO THE EXTENT THAT THE CONTRACT DOCUMENTS EXPRESSLY SPECIFY THAT THE CONTRACTOR IS ENTITLED TO A CHANGE ORDER OR OTHER COMPENSATION OR DAMAGES.

13.14. Disputes

If the City and the Contractor agree that a request to increase the Contract Price and/or extend any Completion Deadline by the Contractor has merit, but are unable to agree as to the amount of such price increase and/or time extension, the City agrees to mark up the Change Order request or Change Order form, as applicable, provided by the Contractor to reduce the amount of the price increase and/or time extension as deemed appropriate by the City. In such event, the City will execute and deliver the marked-up Change Order to the Contractor within a reasonable period, and thereafter will make payment and/or grant a time extension based on such marked-up Change Order. The failure of the City and the Contractor to agree to any Change Order under this Section 13 (including agreement as to the amount of compensation allowed under a Force Account Change Order and the Disputed amount of the increase in the Contract Price and/or extension of a Completion Deadline in connection with a Change Order as described above) shall be a Dispute to be resolved pursuant to Section 19. Except as otherwise specified in the Change Order, execution of a Change Order by both parties shall be deemed accord and satisfaction of all claims by the Contractor of any nature arising from or relating to the Work covered by the Change Order. The Contractor's

Claim and any award by the resolver of the Dispute shall be limited to the Incremental Costs incurred by the Contractor with respect to the Disputed matter (crediting the City for any corresponding reduction in the Contractor's other costs) and shall in no event exceed the amounts allowed by this Section 13 with respect thereto.

13.15. No Release or Waiver

13.15.1. Extension of Time for Performance

No extension of time granted hereunder shall release the Contractor's Surety from its obligations. The City shall not be deemed to have waived any rights under the Contract (including its right to abrogate the Contract for abandonment or for failure to complete within the time specified, or to impose and deduct damages as may be provided herein) as the result of any grant of an extension of time beyond the date fixed for the completion of any part of the Work, any acceptance of performance of any part of the Work after a Completion Deadline, or the making of any payments to the Contractor after such date.

13.15.2. No Change Order Based on Course of Conduct or Order by Unauthorized Person

Neither course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the City has been unjustly enriched shall be the basis for any claim, request for additional compensation or extension of a Completion Deadline. Further, the Contractor shall undertake, at its risk, Work included in any request, order or other authorization issued by a Person in excess of that Person's authority as provided herein, or included in any oral request. The Contractor shall be deemed to have performed such Work as a volunteer and at its sole cost. In addition, the City may require the Contractor to remove or otherwise undo any such Work, at the Contractor's sole cost.

14. Suspension of Work

14.1. Suspension for Convenience

The City may, at any time and for any reason, by written Notice, order the Contractor to suspend all or any part of the Work required under the Contract Documents for the period of time that the City deems appropriate for the convenience of the City. The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written Notice from the City directing the Contractor to resume Work. Suspensions related to seasonal or climatic conditions, or compensable events shall not be considered a City caused delay.

14.2. Suspension for Cause

The City has the authority by written order to suspend the Work without liability to the City wholly or in part for the Contractor's failure to:

1. Correct conditions unsafe for the Project personnel or general public.
2. Comply with any Governmental Approval, Legal Requirement, or otherwise carry out the requirements of the Contract.
3. Carry out orders of the City.
4. Comply with environmental requirements or requirements for developing and implementing the Quality Manual.

The Contractor shall promptly comply with any such written suspension order. The Contractor shall promptly recommence the Work upon receipt of written Notice from the City directing the Contractor to resume Work.

14.3. Contractor Responsibilities during Suspension

During periods that Work is suspended, the Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project and other facilities in the Project vicinity, provide for drainage, obtain and maintain compliance with all Governmental Approvals, maintain all Contractor-provided insurance and bonds and erect necessary Temporary Structures, signs or other facilities required to maintain the Project and other facilities in the Project vicinity. During any suspension period, unless otherwise directed by the City, the Contractor shall continue to be responsible for maintenance of traffic in accordance with the Maintenance of Traffic Plan and Section 17 of Book 2 and for maintenance during construction in accordance with Section 18 of Book 2. If the suspension is for the City's convenience, the additional Work performed by the Contractor during the suspension period shall be considered a City-Directed Change. The Contractor shall be entitled to payment, in accordance with Section 34.057, RSMo, for all Work performed in accordance with the terms of the order of suspension.

15. Termination for Convenience

15.1. Notice of Termination

The City may terminate the Contract and the performance of the Work by the Contractor in whole or, from time to time, in part, if the City determines, in its sole discretion that a termination is in the best public, State or national interest to do so. The City shall notify the Contractor of its decision to terminate by delivering to the Contractor a written Notice of Termination specifying the extent of termination and its effective date. Termination (or Partial Termination) of the Contract shall not relieve any Surety of its obligation for any claims arising out of the Work performed.

15.2. Contractor Responsibilities Upon Termination

After receipt of a Notice of Termination, and except as otherwise directed by the City, the Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 15.

1. Stop Work as specified in the Notice.
2. Communicate such Notice to all affected Subcontractors and that their Subcontracts are not to be further performed unless otherwise authorized in writing by the City.
3. Place no further Subcontracts or orders for Materials, services or facilities, except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages.
4. Terminate all Subcontracts to the extent that they relate to the Work terminated.
5. Assign to the City in the manner, at the times, and as and to the extent directed by the City, all of the right, title and interest of the Contractor under the Subcontracts so terminated, in which case the City will have the right, in its sole discretion, to accept performance, settle or pay any or all claims arising out of the termination of such Subcontracts.
6. Settle all outstanding liabilities and claims arising out of such termination of Subcontracts, with the Approval or ratification of the City, to the extent it may be required, which Approval or ratification shall be final.
7. Provide the City with an inventory list of all Materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to the City, and such other information as the City may request; and transfer title and deliver to the City, in the manner, at the times, and as and to the extent, if any, directed by the City: (i) fabricated or unfabricated parts, the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated; and (ii) the Design Documents, Construction Documents and all other completed or partially completed drawings (including plans,

elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to the City if the Work had been completed.

8 Complete performance in accordance with the Contract Documents of all Work not terminated.

9 Take all action that may be reasonably necessary, or that the City may direct, for the safety, protection and preservation of: (i) the public, including public and private vehicular movement; (ii) the Work; and (iii) the Equipment, machinery, Materials and property related to the Contract Documents that is in the possession of the Contractor and in which the City has or may acquire an interest.

10 As authorized by the City in writing, use its best efforts to sell, in a manner, at the times, to the extent, and at the price or prices directed or authorized by the City, any property of the types referred to in Section 15.2(7); provided, however, that the Contractor: (i) is not required to extend credit to any purchaser; and (ii) may acquire the property under the conditions prescribed and at prices Approved by the City. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the City under the Contract Documents or paid in any other manner directed by the City.

11 If requested by the City, withdraw from the portions of the Site designated by the City and remove such Materials, Equipment, tools and instruments used by, and any debris or waste Materials generated by, the Contractor and any Subcontractor in the performance of the Work as the City may direct.

12 Take other actions directed by the City.

15.3. Responsibility After Notice of Termination

The Contractor shall continue to be responsible for damage to Materials after issuance of the Notice of Termination, except as follows:

1 The Contractor's responsibility for damage to Materials for which partial payment has been made as provided herein shall terminate when the City certifies that those Materials have been stored in the manner and at the locations directed by the City.

2 The Contractor's responsibility for damage to Materials purchased by the City subsequent to the issuance of the Notice that the Contract is to be terminated shall terminate when title and delivery of those Materials has been taken by the City. Immediately after the City determines that the Contractor has completed the Work directed to be completed prior to termination and such other Work as may have been ordered to secure the Project for termination, the Contractor will not be required to provide for continuing safety, Security and maintenance at the Site. Subsequent to the determination that all Materials have been stored in the manner and at the locations directed by the City, further handling of such Materials shall be the responsibility of the City.

15.4. Negotiated Termination Settlement

15.4.1. Settlement Proposal

After receipt of a Notice of Termination, the Contractor shall submit a final termination settlement proposal to the City in the form and with the certification prescribed by the City. The Contractor shall submit the proposal promptly, but no later than 60 Days from the effective date of termination, unless the Contractor has requested a time extension in writing within such 60-Day period and the City has agreed in writing to allow such an extension. The City will then review the Contractor's termination settlement proposal and will act upon it, return it with comments or reject it. If the Contractor fails to submit the proposal within the time allowed, the City may determine, on the basis of information available to it, the amount, if any, due the Contractor because of the termination and shall pay the Contractor the amount so determined.

15.4.2. Negotiated Settlement Amount

The Contractor and the City may agree, as provided in Section 15.4.1, upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or Partial Termination of Work pursuant to this Section 15. Such negotiated settlement may include a reasonable allowance for profit solely on Work, which has been completed as of the termination date and subsequently accepted by the City. Such agreed amount(s), exclusive of settlement costs, shall not exceed the total Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Upon determination of the settlement amount the Contract will be amended accordingly, and the Contractor will be paid the agreed amount. Nothing in Section 15.5, prescribing the amount to be paid to the Contractor in the event that the Contractor and the City fail to agree upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section 15, shall be deemed to limit, restrict or otherwise determine or affect the amount(s) which may be agreed upon to be paid to the Contractor pursuant to this Section 15.4. Unless otherwise agreed to by the parties as a part of a negotiated settlement, the City's execution and delivery of any settlement agreement shall not affect any of its rights under the Contract Documents with respect to completed Work, relieve the Contractor from its obligations with respect thereto, including Warranties, or affect the City's rights under the Payment and Performance Bond and Payment as to such completed or non-terminated Work.

15.5. Determination of Settlement Amount if Negotiations Fail

If the Contractor and the City fail to agree, as provided in Section 15.4.2, upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section 15, the amount payable (exclusive of interest charges) shall be determined by the City in accordance with the following, but without duplication of any amounts agreed upon in accordance with Section 15.4:

15.5.1. Payment Amount

The City will pay the Contractor the sum of the following amounts for Work performed prior to the effective date of the Notice of Termination, as such amounts are determined by the City:

1. The Contractor's actual reasonable out-of-pocket cost (without profit and including Equipment costs only to the extent permitted by Section 13) for all Work performed, including mobilization, demobilization and Work done to secure the Project for termination, including reasonable overhead and accounting for any refunds payable with respect to insurance premiums, deposits or similar items, as established to the City's satisfaction. In determining the reasonable cost, deductions will be made for the cost of Materials to be retained by the Contractor, amounts realized by the sale of Materials and for other appropriate credits. Deductions will also be made for the cost of damaged Materials. When, in the opinion of the City, the cost of an item of Work is excessively high due to costs incurred to remedy or replace Defective or rejected Work, the reasonable cost to be allowed will be the estimated reasonable cost of performing that Work in compliance with the requirements of the Contract Documents and the excessive actual cost will be disallowed.
2. As profit on Clause 1 above, a sum determined by the City to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this Section 15.5.1 and an appropriate adjustment shall be made by reducing the amount of the settlement to reflect the indicated rate of loss.
3. The cost of settling and paying claims arising out of the termination of Work under Subcontracts as provided in Section 15.2(6), exclusive of the amounts paid or payable on account of supplies or Materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination under the Contract, which amounts shall be included in the cost on account of which payment is made under clause 1 above.
4. The reasonable out-of-pocket cost (including reasonable overhead) of the preservation and protection of property incurred pursuant to Section 15.2(9) and any other reasonable out-of-pocket cost (including overhead) incidental to termination of Work under the Contract, including the reasonable cost to the Contractor of handling material returned to the vendor, delivered to the City or otherwise disposed of as directed by the City, and including a reasonable allowance for the Contractor's administrative costs in determining the amount due to the Contractor as the result of the termination of Work under the Contract.

15.5.2. Maximum Compensation

The Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed (determined as provided in

Section 15.5.1) plus its settlement costs, and that items such as lost or anticipated profit, unabsorbed overhead and opportunity costs shall not be recoverable by it upon termination of the Contract. However, the total amount to be paid to the Contractor, exclusive of costs described in Sections 15.5.1(3) and (4), may not exceed the total Contract Price less the amount of payments previously made and less the Contract Price of any Work not terminated. Furthermore, if any refund is payable with respect to insurance or bond premiums, deposits or similar items which were previously passed through to the City by the Contractor, such refund shall be paid directly to the City or otherwise credited to the City. Notwithstanding anything to the contrary contained herein, if a termination occurs prior to issuance of NTP2, the total amount payable to the Contractor shall in no event exceed the NTP1 Payment Cap (and previously made insurance or bond payments).

15.5.3. Excluded Items

Except for normal spoilage, and except to the extent that the City will have otherwise expressly assumed the risk of loss, there will be excluded from the amounts payable to the Contractor under Section 15.5.1, the fair value, as determined by the City, of Equipment, machinery, Materials and property which is destroyed, lost, stolen or damaged so as to become undeliverable to the City, or to a buyer pursuant to Section 15.2(10). The amount set forth in the Proposal by the Contractor for the Work terminated shall be a factor to be analyzed in determining the value of the Work terminated.

15.5.4. Payment of Termination Amount

Upon determination of the amount of the termination payment, the Contract shall be amended to reflect the agreed termination payment, and the Contractor shall be paid the agreed amount.

15.6. Partial Termination

If a termination hereunder is partial, the Contract Price for the remainder of the Work shall be adjusted as appropriate to account for the change in the overall scope of the Project.

15.7. Reduction in Amount of Claim

The amount otherwise due the Contractor under this Section 15 shall be reduced by:

(i) all unliquidated advance or other payments made to or on behalf of the Contractor applicable to the terminated portion of the Contract; (ii) the amount of any claim which the City may have against any Contractor-Related Entity in connection with the Contract; (iii) the agreed price for, or the proceeds of the sale of, any property, Materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this Section 15, and not otherwise recovered by or credited to the City; (iv) amounts that the City deems advisable, in its sole discretion, to retain to cover any existing or threatened claims, Liens and stop Notices relating to the Project, including claims by Utility Owners; (v) the cost of repairing any Nonconforming Work, and (vi) any amounts due or payable by the Contractor to the City.

15.8. Partial Payments

The City may, from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by the Contractor in connection with the terminated portion of the Contract, whenever in the opinion of the City the aggregate of such payments shall be within the amount to which the Contractor will be entitled under this Section 15. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Section 15, such excess shall be payable by the Contractor to the City upon demand together with interest at a rate equal to the average rate at the time being received from the investment of City funds, as determined by the Director of Public Works or his designee, for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to the City. However, no interest will be charged with respect to any such excess payment attributable to a reduction in Contractor's claim by reason of retention or other disposition of termination inventory until ten Days after the date of such retention or disposition, or such later date as determined by the City by reason of the circumstances.

15.9. Inclusion in Subcontracts

The Contractor shall insert in all Subcontracts a requirement that the Subcontractor shall stop Work on the date and to the extent specified in a Notice of Termination from the City in accordance with this Section 15, and shall require Subcontractors to insert the same provision in each Subcontract at all tiers.

15.10. Limitation on Payments to Subcontractor

For the purposes of Sections 15.4.2 and 15.5, upon termination under Section 15.2(4) of Work under any Subcontract, the Contractor will not be entitled to reimbursement for that portion of the termination settlement with any such Subcontractor which constitutes anticipatory or unearned profit on Work not performed, or which constitutes consequential damages on account of the termination or partial termination.

15.11. No Unearned Profit or Consequential Damages

Under no circumstances shall the Contractor be entitled to anticipatory or unearned profit or consequential or other damages as a result of a termination or Partial Termination under this Section 15. The payment to the Contractor determined in accordance with this Section 15.2 constitutes the Contractor’s sole and exclusive remedy for a termination under this Section 15.

15.12. No Waiver

Anything contained in the Contract to the contrary notwithstanding, a termination under this Section 15 shall not waive any right or claim to damages, which the City may have, and the City may pursue any cause of action, which it may have at law or in equity or under the Contract.

15.13. Dispute Resolution

The failure of the parties to agree on amounts due under this Section 15 shall be a

Dispute to be resolved in accordance with Section 19.

15.14. Allowability of Costs

All costs claimed by the Contractor under this Section 15 shall, at a minimum, be allowable, allocable and reasonable in accordance with the cost principles and procedures of 48 CFR Part 31.

15.15. Suspension of Work

In the event of any suspension of Work by the City, after issuance of NTP1, for more than 180 consecutive Days, the Contractor shall have the right to consider the Contract to have been terminated for convenience under this Section 15. The Contractor shall notify the City of such election by delivering to the City a written Notice of Termination due to such suspension specifying its effective date. Upon delivery by the Contractor to the City of a Notice of Termination due to suspension, the provisions of this Section 15 shall apply.

16. Default

16.1. Default by Contractor

16.1.1. Events of Default

The Contractor shall be in breach under the Contract upon the occurrence of any one or more of the following events or conditions:

1 The Contractor fails to promptly begin the Work under the Contract Documents following issuance of NTP1.

2 The Contractor fails to perform the Work with sufficient resources to ensure the prompt completion thereof; (i.e., the Contractor fails to execute remedial action in accordance with the Quality Manual and Book 2, Section 3).

3 The Contractor fails to perform the Work in accordance with the Contract Documents, refuses to remove and replace rejected Materials or Nonconforming or unacceptable Work, or fails to remove and replace workers as directed by the City under Section 7.10.

4 The Contractor discontinues or suspends the prosecution of the Work (exclusive of Work stoppage due to: (i) termination by the City; (ii) an excusable delay pursuant to 12.1(g); or (iii) nonpayment by the City not related to a breach by the Contractor).

5 The Contractor fails to resume performance of Work, which has been suspended or stopped, within a reasonable time after receipt of Notice from the City to do so or (if applicable) after cessation of the event preventing performance.

6 The Contractor breaches any other agreement, representation or Warranty contained in the Contract Documents, or the Contractor fails to perform any other obligation under the Contract Documents, including EEO and DBE requirements.

7 The Contractor fails to provide and maintain the required insurance and payment and Performance Bond.

8 The Contractor assigns or transfers the Contract Documents or any right or interest therein, except as expressly permitted under Section 24.4.2.

9 The Contractor fails, absent a valid Dispute, to make payment when due for labor, Equipment or Materials in accordance with its agreements with Subcontractors and applicable law, fails to comply with any Legal Requirement or Governmental Approval; or fails reasonably to comply with the instructions of the City consistent with the Contract Documents.

10 The Contractor fails to discharge or obtain a stay within ten Days of any final judgment(s) or order for the payment of money against it in excess of $100,000 in the aggregate arising out of the prosecution of the Work (provided that, for purposes hereof, posting of a bond in the amount of 125 percent of such judgment or order shall be deemed an effective stay).

11 The Contractor shall have become insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors.

12 Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against the Contractor and not dismissed within 60 Days.

13 Any representation or Warranty made by the Contractor in the Contract Documents or in any certificate, schedule, instrument or other document delivered pursuant to the Contract Documents shall have been false or materially misleading when made.

14 The Contractor is a party to fraud.

16.1.2. Right to Cure

The City agrees to allow the Contractor and Surety ten (10) Days of Notice and opportunity to cure any breach before declaring an Event of Default, provided that no such Notice and opportunity to cure is required for any breach, which by its nature cannot be cured. If a breach is curable but by its nature cannot be cured within 10 Days, as determined by the City, the City agrees not to declare an Event of Default provided that the Contractor commences such cure within such 10-Day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period exceed 60 Days in total. The Contractor hereby acknowledges and agrees that the events described in Sections 16.1.1(13) and (14) are not curable. Notwithstanding the foregoing, if the City believes a condition affecting the Project poses an immediate and imminent danger to public health or safety, the City may, without Notice and without awaiting lapse of any cure period, rectify the condition at the Contractor's cost, and so long as the City undertakes such action in good faith, even if under a mistaken belief in the occurrence of such default, such action shall not expose the City to liability to the Contractor and shall not entitle the Contractor to any other remedy, it being acknowledged that the City has a paramount public interest in providing and maintaining safe public use of and access to the Project. The City's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

16.2. Remedies

16.2.1. Rights of the City

If an Event of Default occurs, then, in addition to all other rights and remedies provided by law or equity or available under the Contract or otherwise, including the rights to recover Liquidated Damages and to seek recourse against the Surety bonds required hereby and/or other performance Security, the City shall have the following rights and remedies, without further Notice, and without prejudice to any of its other rights or remedies and without waiving or releasing the Contractor from any obligations, and the Contractor shall have the following obligations (as applicable):

1 The City may order the Contractor to suspend or discontinue the Work or any portion of the Work.

2 The City may terminate the Contract or a portion thereof, in which case, the provisions of Sections 15.2 and 15.3 shall apply.

3 If and as directed by the City, the Contractor shall withdraw from the Site; and shall remove such Materials, Equipment, tools and instruments used by, and any debris or waste Materials generated by, any Contractor- Related Entity in the performance of the Work.

4 The Contractor shall deliver to the City possession of any or all facilities of the Contractor located on the Site as well as any or all Design Documents, Construction Documents and all other completed or partially completed drawings (including plans, elevations, details and diagrams), specifications, records, information, schedules, samples, Shop Drawings and other documents, that the City deems necessary for completion of the Work.

5 The Contractor shall confirm the assignment to the City of the Subcontracts requested by the City, and the Contractor shall terminate, at its cost, all other Subcontracts.

6 The City may deduct from any amounts payable by the City to the Contractor such amounts payable by the Contractor to the City, including Liquidated Damages or other damages payable to the City under the Contract Documents.

7 The City, without incurring any liability to the Contractor, shall have the rights to: (i) take the performance of all or a portion of the Work from the Contractor (either with or without the use of the Contractor's Materials, Equipment, tools and instruments) and enter into an agreement with another Person for the completion of such Work; or (ii) use such other methods, as in the opinion of the City, will be required for the completion of the Project.

8 If the City exercises any right to perform any obligations of the Contractor, in the exercise of such right the City may, but is not obligated to, among other things: (i) perform or attempt to perform, or cause to be performed, such Work; (ii) spend such sums as the City deems necessary and reasonable to employ and pay such architects, Engineers, consultants and contractors and obtain Materials and Equipment as may be required for the purpose of completing such Work; (iii) execute all applications, certificates and other documents as may be required for completing the Work; (iv) modify or terminate any contractual arrangements; (v) take any and all other actions which it may in its sole discretion consider necessary to complete the Work; and (vi) prosecute and defend any action or proceeding incident to the Work.

16.2.2. Liability of Contractor

If an Event of Default has occurred, the Contractor and Surety shall be jointly and severally liable to the City (in addition to any other damages under the Contract Documents other than those costs intended to be covered by Liquidated Damages payable hereunder) for all costs reasonably incurred by the City or any party acting on the City's behalf in completing the Work or having the Work completed by another Person (including any re-procurement costs, throw away costs for unused portions of the completed Work and increased financing costs). Upon the occurrence of an Event of Default, the City shall be entitled to withhold all or any portion of further payments to the Contractor until such time as the City is able to determine how much (if any) remains owing to the Contractor. Promptly upon such determination, the City shall notify the Contractor in writing of the amount, if any, that the Contractor shall pay the City or that the City shall pay the Contractor with respect thereto. All costs and charges incurred by the City, including attorneys', accountants' and expert witness fees and costs, together with the cost of completing the Work under the Contract Documents, will be deducted from any moneys due or which may become due to the Contractor. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor and its Surety(ies) shall be liable and shall pay to the City the amount of such excess.

It is recognized that if a default under Sections 16.1.1(11) or (12) occurs, such event could impair or frustrate the Contractor's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, the City shall be entitled to request of the Contractor, or its successor in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within ten Days of delivery of the request shall entitle the City to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate assurance of performance and actual performance in accordance therewith, the City shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be credited against and deducted from the City's payment obligations hereunder. The foregoing shall be in addition to all other rights and remedies provided by law or equity and such rights and remedies as are otherwise available under the Contract and Payment and Performance Bond.

In lieu of the provisions of this Section 16.2 for terminating the Contract and completing the Work, the City may pay the Contractor for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by the Contract. No claim under this provision will be allowed the Contractor for prospective profit on, or any other compensation relating to, Work uncompleted by the Contractor.

If the Contract is terminated for grounds, which are later determined not to justify a termination for default, such termination shall be deemed to constitute a termination for convenience pursuant to Section 15.

If the City suffers damages as a result of the Contractor's breach or failure to perform an obligation under the Contract Documents, then the City shall be entitled to recovery of such damages from the Contractor regardless of whether the breach or failure that gives rise to the damages ripens into an Event of Default.

The exercise or beginning of the exercise by the City of any one or more rights or

remedies under this Section 16.2 shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies, each of which shall be cumulative.

The Contractor and Surety shall not be relieved of liability for continuing Liquidated Damages on account of a default by the Contractor hereunder or by the City's declaration of an Event of Default, or by actions taken by the City under this Section 16.2.

16.3. Right to Stop Work if Undisputed Payment is Not Made

The Contractor shall have the right to stop Work if the City fails to make an undisputed payment due hereunder within seven Days after receipt of Notice of nonpayment. Any such Work stoppage shall be considered a suspension under Section 14.1. The Contractor shall not have the right to terminate the Contract for default as the result of any failure by the City to make an undisputed payment due hereunder, but the Contractor shall have the right to declare a termination for convenience under Section 15 upon meeting the requirements of Section 15.15.

16.4. Notice and Opportunity to Cure Other Types of City Breaches

In the event of any breach of the Contract by the City other than a failure to make payments to the Contractor, the Contractor shall provide to the City a written Notice describing the breach and the opportunity to cure such breach. The City shall be entitled to 30 Days of Notice and opportunity to cure any such breach; provided that if such breach is capable of cure but by its nature cannot be cured within 30 Days, the City shall have such additional period of time as may be reasonably necessary to cure the breach so long as the City commences such cure within such 30-Day period, and thereafter diligently prosecutes such cure to completion. The Contractor shall have no right to exercise any remedies to which it may be entitled at law or in equity until the foregoing Notice is delivered and the foregoing cure period lapses without cure of the breach.

17. Damages

17.1. Liquidated Damages

17.1.1. Failure to Meet Contract Requirements

The Contractor understands and agrees that if the Contractor fails to complete the Work in accordance with the Contract Documents, the City will suffer substantial losses and damages. The Contractor agrees that it shall be liable for all such losses and damages. The Contractor acknowledges and agrees that because of the unique nature of the Project, the fact that it is an essential part of the system and the fact that inconvenience to the traveling public will be one of the significant impacts of any completion delay, certain closure duration delays or failure to obtain access, it is impracticable and extremely difficult to ascertain and determine the actual damages which would accrue to the City and the public in the event of the Contractor's failure to achieve Long Term Lane Closure Duration Deadlines, Location Completion Deadlines, and Project Completion Deadline or Final Acceptance by the applicable Completion Deadlines, or to obtain necessary rights of access to encroach upon private property. Therefore, the Contractor and the City have agreed to stipulate the amount payable by the Contractor in the event of its failure to meet a Completion Deadline, Short Term Lane Closure Deadline or Long-Term Closure Deadlines. The Contractor acknowledges and agrees that such Liquidated Damages are intended to compensate the City solely for the Contractor's failure to meet these Contract Document requirements and shall not excuse the Contractor from liability from any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements.

If the Contractor fails to achieve Location Completion(s), lane closure deadlines, Project Completion by the applicable Completion Deadline, or fails to comply with the requirements of Appendix C, Appendix D, Appendix E, Appendix F, the Contractor agrees to pay the City Liquidated Damages in the amounts listed in Appendix H, Table H1.

17.1.2. Multiple Assessments of Liquidated Damages

If the Contractor sustains Liquidated Damages under more than one subsection under Section 17.1.1 for the same delay event, only the greater amount of Liquidated Damages under the above subsections will be assessed.

17.1.3. Reasonableness of Liquidated Damage Amounts

The Contractor acknowledges and agrees that the foregoing damages have been set based on an evaluation by the City of damages, which it will incur in each of the above events, including additional interest expense as well as administrative costs. The Contractor and the City agree that the amount of such damages are impossible to ascertain as of the date of execution hereof and the parties have agreed to such Liquidated Damages in order to fix the Contractor's costs and to avoid later Disputes over which items are properly chargeable to the Contractor. The Contractor understands and agrees that any Liquidated Damages payable in accordance with this Section 17.1 are in the nature of liquidated damages and not a penalty and such sums

are reasonable under the circumstances existing as of the date of execution and delivery of the Contract. The Contractor further acknowledges and agrees that Liquidated Damages may be owed even though no Event of Default has occurred.

17.2. Offset; Waiver

17.2.1. Offset

The City shall have the right to deduct any amount owed by the Contractor to the City hereunder from any amounts owed by the City to the Contractor under this Contract.

17.2.2. No Waiver

Permitting or requiring the Contractor to continue and finish the Work or any part thereof after a Completion Deadline shall not act as a waiver of the City's right to receive Liquidated Damages hereunder or any rights or remedies otherwise available to the City.

17.3. Payment of Liquidated Damages

To the extent Liquidated Damages are not deducted from any amount owed to the City by the Contractor, the City may send Contractor an invoice and the Liquidated Damages shall be payable by the Contractor to the City within ten Days after the Contractor's receipt of the invoice therefore.

18. Indemnification

18.1. Indemnifications by Contractor

18.1.1. General Indemnities

Subject to Section 18.1.3, the Contractor shall release, defend, indemnify and hold harmless the City and its agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties") from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of Persons or damage to or loss of property (including damage to Utility facilities), and including attorneys', accountants' and expert witness fees and costs, arising out of, relating to or resulting from:

1. The breach or alleged breach of the Contract by any Contractor-Related Entity.
2. The failure or alleged failure by any Contractor-Related Entity to comply with any applicable Environmental Laws or other Legal Requirements (including Legal Requirements regarding handling, generation, treatment, storage, transportation and disposal of Hazardous Substances) or Governmental Approvals in performing the Work.
3. Any alleged patent or copyright infringement or other allegedly improper appropriation or use of trade secrets, patents, proprietary information, know-how, copyright rights or inventions in performance of the Work, or arising out of any use in connection with the Project of methods, processes, designs, information or other items furnished or communicated to the City or another Indemnified Party pursuant to the Contract; provided that this indemnity shall not apply to any infringement resulting from the City's failure to comply with specific written instructions regarding use provided to the City by the Contractor.
4. The alleged negligent act or omission or willful misconduct of any Contractor-Related Entity or breach of Contract claim by any Contractor-Related Entity.
5. Any and all claims by any governmental or taxing authority claiming taxes based on gross receipts, purchases or applicable sales tax, or the use of any property or income of the Contractor or any of its Subcontractors or any of their respective agents, officers or employees with respect to any payment for the Work made to or earned by any Contractor-Related Entity.
6. Any and all stop Notices and/or Liens filed in connection with the Work, including all expenses and attorneys', accountants' and expert witness fees and costs incurred in discharging any stop Notice or Lien, provided that the City is not in default in payments owed to the Contractor with respect to such Work.
7. Any spill or release or threatened spill or release of Hazardous Substances:

(i) attributable to the negligence, willful misconduct or breach of contract by any Contractor-Related Entity; or (ii) that was brought onto the Site by any Contractor-Related Entity.

8 The claim or assertion by any contractor of inconvenience, disruption, delay or loss caused by interference by any Contractor-Related Entity with or hindering the progress or completion of Work being performed by other contractors as described in Section 23.1, or failure of any Contractor-Related Entity to cooperate reasonably with other contractors in accordance therewith.

18.1.2. Design Defects

Subject to Section 18.1.3, the Contractor shall release, defend, indemnify and hold harmless the Indemnified Parties from and against any and all third party claims, causes of action, suits, judgments, investigations, legal or administrative proceedings, penalties, fines, damages, losses, liabilities, costs and expenses, including any injury to or death of Persons or damage to or loss of property (including damage to Utility facilities), and including attorneys', accountants' and expert witness fees and costs, to the extent arising out of, relating to or resulting from Errors in the Design Documents, regardless of whether such Errors were also included in the basic configuration or Informational Documents. The Contractor agrees that, because the basic configuration and Informational Documents are subject to review and modification by the Contractor, it is appropriate for the Contractor to assume liability for Errors in the completed Project even though they may be related to Errors in the basic configuration or Informational Documents.

18.1.3. Losses Due to Negligence of Indemnified Parties

The Contractor's indemnity obligations under Sections 18.1.1 and 18.1.2 shall not extend to any loss, damage or cost to the extent that such loss, damage or cost was caused by the negligence or willful misconduct of such Indemnified Party or its agents, servants or independent contractors who are directly responsible to such Indemnified Party.

18.1.4. Claims by Employees

In claims by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 18.1 shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation, disability benefit or other employee benefits laws.

18.1.5. Reliance on Contractor's Performance

The Contractor hereby acknowledges and agrees that it is the Contractor's obligation to cause the Project to be designed and to construct the Project in accordance with the Contract Documents and that the Indemnified Parties are fully entitled to rely on the Contractor's performance of such obligation. The Contractor further agrees that any review, acceptance and/or approval by the City and/or others hereunder shall not relieve the Contractor of any of its obligations under the Contract Documents or in any

way diminish its liability for performance of such obligations or its obligations to provide indemnities hereunder.

18.1.6. Indemnities in Connection with Utilities

The Contractor is advised that each MUA contains provisions for the Contractor to indemnify, save and hold harmless the Utility Owner, its employees and agents with respect to certain matters. The Contractor hereby agrees to and shall perform and comply with such provisions of the MUAs for the benefit of the Utility Owners, their employees and agents.

The Contractor is also advised that the MUAs may include certain agreements by the City to indemnify, defend and hold harmless the Utility Owners with respect to certain matters. The Contractor's obligation under this Section 18.1 shall automatically apply to require it to release, indemnify, defend and hold harmless the Utility Owners, in addition to the Indemnified Parties, with respect to all such matters.

18.2. Responsibility of the City for Certain Hazardous Substances

18.2.1. Pre-Existing Site Contamination

It is recognized that the City may assert that certain third Persons or parties may rightfully bear the ultimate legal responsibility for any and all Hazardous Substances, which may currently be present on the Site. It is further recognized that certain State and federal statutes provide that individuals and firms may be held liable for damages and claims related to Hazardous Substances under such doctrines as joint and several liability and/or strict liability. It is not the intention of the parties that the Contractor be exposed to any such liability arising solely out of: (i) pre-existing Site contamination, whether known or unknown, except as otherwise provided in Section 18.1.1(7); (ii) the non-negligent performance by the Contractor, its employees, agents, officers or Subcontractors or any other Persons for whom the Contractor may be contractually or legally responsible, in the handling of such Hazardous Substances; and/or (iii) the activities of any Persons not described in (ii) above, including the City.

Accordingly, for the purposes of the Contract only, the City shall reimburse the Contractor for Remediation Work (through payment of the Contract Price, as it may be increased by Change Order pursuant to Section 13), and will be responsible for, any and all claims, damages, losses, liabilities, costs and expenses, arising out of, or in connection with, bodily injury (including death) to Persons, damage to property or environmental Removal or response costs arising out of the presence, release or threatened release of Hazardous Substances on or from the Site, irrespective of whether such substances were generated or introduced on the Site before or after execution of the Contract and irrespective of whether the City was aware of, or directly involved in, the generation or introduction of such Materials, but specifically excluding from any obligation of responsibility for those conditions for which the Contractor has agreed to be responsible as described in Section 18.1.1(7).

18.2.2. Generator Number for Hazardous Waste Remediation

Except for Hazardous Substances for which the Contractor is responsible as described in Section 18.1.1(7), without contradiction of any assertion by the City of third-party liability, and for purposes of the Contract only:

1. The Contractor shall not be required to execute any hazardous waste manifests as a "generator."
2. Hazardous Substances encountered in the performance of the Work shall be disposed of, if at all, utilizing an EPA Identification Number or other appropriate legal device obtained by and carried in the name of the City or another Person designated by the City.

18.3. No Effect on Other Rights

The foregoing obligations shall not be construed to negate, abridge or reduce other rights or obligations, which would otherwise exist in favor of a party hereunder.

18.4. Comprehensive Environmental Response, Compensation, and Liability Act Agreement

Without limiting their generality, the indemnities set forth in Section 18.1.1(7) are not intended to operate contrary to the requirements or violate Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Section 9607(e).

19. Partnering, Claims for Adjustment and Disputes

19.1. Partnering

The City and the Contractor, its Subcontractors and other Stakeholders where appropriate agree to utilize a formal partnering process on this Project. The partnering relationship will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives include effective and efficient Project performance and completion on schedule, within budget and in accordance with the Contract Documents.

The City anticipates a partnering effort involving the executive management, Project Management, Project staff and all others associated with the Project. The partnering facilitation will be the responsibility of the Project Director and the Contractor's designee, or through an agreed upon third party.

Any costs associated with effectuating partnering will be agreed by both parties. Any costs incurred by the City will be paid by the City. Any costs incurred by the Contractor will be paid by the Contractor. Any costs associated with the Partnering facilitation process will be outside of the Contract Price. The Contractor shall not include their portion of partnering costs in the Work Breakdown Structure.

It is the intent of the parties that the Dispute resolution provisions contained in this Section 19 shall apply only in the event that the normal City-Contractor issue resolution efforts through partnering are not successful. The Contractor and the City shall establish a dispute resolution process prior to NTP2. It is encouraged that all Disputes are solved at the lowest level possible. Any alternative Dispute resolution shall be mutually agreed upon between the parties only if the established process is unable resolve a Dispute. The Dispute resolution provisions set forth in Section 19.2 shall apply to all Disputes arising out of the Work that are not resolved by the parties through the partnering process, except as expressly provided to the contrary in the Contract Documents.

19.2. Dispute Resolution; General Provisions

All Disputes between the Contractor and the City that have not been resolved by the parties through the partnering process shall be resolved in accordance with Section 100 of the latest edition of the *Missouri Standard Specifications for Highway Construction*.

20. Acceptance of Project

20.1. Location Completion

As a pre-requisite to Location Completion, the Contractor shall provide written Notice to the City when all of the following have occurred with respect to a Location:

1. City and the Contractor have agreed upon a Punch List and the timing for completing each Punch List item for Location Completion and which items can be deferred until Project Completion or Final Acceptance.
2. The Contractor has completed all Work in connection with Location Completion (except for Punch List items, final cleanup and other items only included in the requirements for Project Completion or Final Acceptance).
3. The Contractor has ensured that the Work completed in connection with Location Completion has been performed in accordance with the requirements of the Contract Documents.
4. The Contractor has ensured that the Location may be operated safely without injury to any Person or damage to the Project or any other property on or off the Site.
5. The Contractor has certified that the Location is ready to be opened for public traffic and that no further Work is required which would involve any lane or Shoulder closure.
6. The Contractor has furnished to the City certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the City, certifying that there are no outstanding Nonconforming Work or Punch List items, identified by the Contractor or the City, as prerequisites to Location Completion.
7. The Contractor has obtained all applicable Utility Owner approvals relating to the Work.

20.2. Notice of Partial Acceptance

Upon receipt of the Contractor's Notice under Section 20.1, the City will Verify that:

1. All Nonconforming Work identified as prerequisites to completion of a Location has been corrected.
2. All Punch List items identified as prerequisites to completion of a Location have been completed.
3. All other requirements identified Section 20.1 as prerequisites to completion of a Location have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the City will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Location Completion (excluding items identified for Project Completion or Final Acceptance). Upon correction of the Nonconforming Work (including incomplete Work), the Contractor shall provide written notification to the City and the City will Verify that all

prerequisites to Location Completion have been met and will issue a Notice of Partial Acceptance.

20.3. Project Completion

As a pre-requisite to Project Completion, the Contractor shall provide written Notice to the City when all of the following have occurred with respect to the Project:

1. City and the Contractor have agreed upon a Punch List for Project Completion and Final Acceptance, as appropriate.
2. The Contractor has completed all Work (except for Punch List items, final cleanup and other items only included in the requirements for Final Acceptance).
3. The Contractor has ensured that the Work in connection with Project Completion has been performed in accordance with the requirements of the Contract Documents.
4. The Contractor has ensured that the Project may be operated safely without injury to any Person or damage to the Project or any other property on or off the Site.
5. The Contractor has ensured that the Project is ready to be opened for traffic and that no further Work is required which would involve any lane or Shoulder closure.
6. The Contractor has received all applicable Governmental Approvals required for the Project.
7. The Contractor has furnished to the City certifications from the Contractor's Design Manager, in form and substance satisfactory to the City, certifying that the Design Documents meet the requirements of the Contract Documents.
8. The Contractor has furnished to the City certifications from the Contractor's Project Manager, in form and substance satisfactory to the City, certifying that the construction meets the requirements of the Contract Documents.
9. The Contractor has furnished to the City certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the City, certifying that there are no outstanding Nonconforming Work or Punch List items, identified by the Contractor or the City, as prerequisites to Project Completion.
10. The Contractor has obtained all applicable third-party approvals relating to the Work (including Utility Owners as required under any applicable MUAs and Section 7 of Book 2), and all third parties have completed all Work that involves obligations by the Contractor (including Utility Owners under any applicable MUAs and Section 7 of Book 2).
11. The Contractor has furnished to the City documentation that the Contractor met the goals set forth for DBE utilization, OJT involvement, and Workforce Diversity or evidence of a good faith effort to meet those goals.

20.4. Notice of Project Completion

Upon receipt of the Contractor's Notice under Section 20.3, the City will Verify that:

1. All Nonconforming Work identified as prerequisites to completion of the Project has been corrected.
2. All Punch List items identified as prerequisites to completion of the Project have been completed.
3. All other requirements identified as prerequisites to completion of the Project have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the City will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Project Completion. Upon correction of the Nonconforming Work (excluding Punch List items identified for Final Acceptance), the Contractor shall provide written notification to the City and the City will Verify that all prerequisites to Project Completion have been met and will issue a Notice of Project Completion.

20.5. Affidavit of Final Completion

The Contractor shall provide to the City an executed sworn Affidavit of Final Completion in accordance with this Section 20.5 when all of the following have occurred:

1. The City has received all Released for Construction Documents, Design Documents, As-Built Documents, ROW record maps, surveys, Test data, and other deliverables required under the Contract Documents for the Location or Project, whichever is applicable. The Contractor has furnished to the City alignment points as part of the As-Built Documents.
2. All special tools, Equipment, furnishings, and supplies purchased by and/or used by the Contractor, as provided in the Contract Documents, have been delivered to the City free and clear of Liens.
3. All of the Contractor's and Subcontractors' personnel, supplies, Equipment, waste Materials, rubbish, and temporary facilities have been removed from the Site, the Contractor has restored and repaired all damage or injury arising from such Removal to the satisfaction of the City and the Site is in good working order and condition.
4. The Contractor has furnished to the City certifications from the Contractor's Construction Quality Manager, in form and substance satisfactory to the City, certifying that there are no outstanding Nonconforming Work or Punch List items.
5. The Contractor has furnished the Contractor's Materials and Inspection Summary to the City.
6. The Contractor has delivered to the City a Notice of completion for the Project in recordable form and meeting all statutory requirements.
7. All of the Contractor's other obligations under the Contract Documents (other

than obligations which by their nature are required to be performed after Final Acceptance as determined by the City) have been satisfied in full or waived in writing by the City.

The Affidavit of Final Completion shall include the following statement:

To the best of the Contractor's knowledge and belief, the Work under the Contract has been completed in strict accordance with the Contract Documents, no lawful debts for labor or materials are outstanding and no federal excise tax has been included in the Contract Price; all requests for funds for undisputed work under the Contract, including changes in the Work, and under all billings of whatsoever nature are accurate, complete and final and no additional compensation over and above the final payment will be requested or is due under the Contract or under any adjustment issued thereunder for said undisputed work; there are no outstanding claims, Liens or stop notices relating to the Project, including claims by Utility Owners; there is no existing default by the Contractor under any Utility Agreement, and no event has occurred which, with the passing of time or giving of notice or both, would lead to a claim relating to the Work or event of default under any Utility Agreement; and upon receipt of final payment, the Contractor and Subcontractors acknowledge that the City and any and all employees of the City and their authorized representatives will thereby be released, discharged and acquitted from any and all claims or liability for additional sums on account of undisputed work performed under the Contract.

If the Contractor is unable to provide the affidavit in the above form, the affidavit shall certify that all such outstanding matters are set forth in an attached list which shall describe the outstanding matters in such detail as may be requested by the City. The affidavit shall include a representation of the Contractor that it is diligently and in good faith contesting all such matters by appropriate legal proceedings and shall provide a status report regarding the same including an estimate of the maximum payable with respect to each such matter.

20.6. Notice of Final Acceptance

Upon the City's receipt of the Affidavit of Final Completion, the City will Verify that:

1. All Nonconforming Work has been corrected (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the City).
2. All Punch List items have been completed (other than obligations which by their nature are required to be performed after Final Acceptance as determined by the City).
3. All other requirements identified as prerequisites to Final Acceptance have been met.

If any Work does not meet the requirements of the Contract Documents or Work has not been completed, the City will promptly advise the Contractor as to Nonconforming Work or incomplete Work necessary to be corrected as a condition to Final Acceptance. Upon correction of the Nonconforming Work (including incomplete Work), the Contractor shall provide written notification to the City and the City will Verify that all prerequisites to Final Acceptance have been met and will issue a Notice of Final Acceptance.

20.7. Overpayments; No Relief from Continuing Obligations

Final Acceptance will not prevent the City from correcting any measurement, estimate or certificate made before or after completion of the Work, or from recovering from the Contractor, the Surety(ies) or both, the amount of any overpayment sustained due to failure of the Contractor to fulfill the obligations under the Contract. A waiver on the part of the City of any breach by the Contractor shall not be held to be a waiver of any other or subsequent breach. Final Acceptance shall not relieve the Contractor from any of its continuing obligations hereunder, or constitute any assumption of liability by the City.

20.8. Opening of Locations to Traffic

20.8.1. No Waiver

Opening of portions of the Project prior to Partial Acceptance or Final Acceptance does not constitute Acceptance of the Work or a waiver of any provisions of the Contract Documents.

20.9. Assignment of Causes of Action

The Contractor hereby offers and agrees to assign to the City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), arising from purchases of goods, services or Materials pursuant to the Contract or any Subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgment by the parties.

21. Warranties

21.1. Warranties by Contractor

21.1.1. Project Warranties

The Contractor warrants that:

1. All design Work furnished pursuant to the Contract Documents shall conform to all Professional Engineering principles generally accepted as Standards of the Industry in the State.
2. The construction Work furnished pursuant to the Contract Documents shall be performed in a workmanlike manner and shall conform to the standards of care and diligence normally practiced by recognized construction firms performing construction of a similar nature in the State.
3. Materials and Equipment furnished under the Contract Documents shall be of good quality and, when installed, shall be new.
4. The Work shall meet all of the requirements of the Contract Documents.
5. The specifications and/or drawings selected or prepared for use during construction are appropriate for their intended use.
6. The Project shall be fit for use for the intended function.

21.1.2. Project Warranty Term

The Warranty term for each element of the Project shall commence upon Acceptance thereof by the City or acceptance thereof by the appropriate Person who will own such element. Subject to extension under Section 21.2, the Warranties regarding all elements of the Project shall remain in effect until one year after Partial Acceptance or Final Acceptance, whichever is applicable and comes first in time, provided that the Warranty term for elements of the Project that will be owned by Persons other than the City (such as Utility Owners) shall remain in effect for such term as may be required under the applicable agreement (such as MUAs). If the City determines that any of the Work has not met the standards set forth in this Section 21.1 at any time within the Warranty period, then the Contractor shall correct such Work as specified below within the one-year Warranty term.

21.1.3. Corrective Work

Within seven Days of receipt by the Contractor of Notice from the City specifying a failure of any of the Work to satisfy the Contractor's Warranties, or of any Subcontractor representation, Warranty, guarantee, or obligation which the Contractor is responsible to enforce, the Contractor and the City shall mutually agree when and how the Contractor shall remedy such violation; provided, however, that in case of an emergency as indicated by the City in its Notice requiring immediate curative action, the Contractor and the City shall agree on a remedy immediately upon Notice by the City of such emergency. If the Contractor does not use its best efforts to proceed to

effectuate such remedy within the agreed time, or if the Contractor and the City fail to reach such an agreement within such 7 Day period (or immediately, in the case of emergency conditions), then the City, after Notice to the Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Contractor. The Contractor shall reimburse the City for such costs within 30 Days after the Contractor's receipt of invoice, therefore. The City may agree to accept Nonconforming Work in accordance with Section 5.7.2.

The City and the Contractor shall conduct a walkthrough of the Sites prior to expiration of the Warranty period and shall produce a Punch List of those items requiring Warranty Work.

21.1.4. Contractor's Costs of Correction of Work

All costs of correcting such rejected Work, including additional testing, inspections, and traffic control, shall be deemed included in the Warranty. The Contractor shall be responsible for obtaining any required Governmental Approvals or other consents from any other Person in connection with the Warranty Work.

21.2. Warranty of Corrected Work

The Warranties shall apply to all Work redone, repaired, corrected or replaced pursuant to the terms of the Contract. The Warranties as to each redone, repaired, corrected or replaced element of the Work shall extend 1 year beyond the original Warranty period following acceptance thereof by the City or acceptance thereof by the appropriate Person who will own such element.

21.3. Subcontractor Warranties

21.3.1. Assignment

Without in any way derogating the Contractor's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, the Contractor shall obtain from all Subcontractors and cause to be extended to the City, appropriate representations, warranties, guarantees and obligations with respect to the design, Materials, workmanship, Equipment, tools and supplies furnished by such Subcontractors, including all such representations, warranties, guarantees, and obligations required to be furnished by Subcontractors pursuant to the Contract Documents. All representations, warranties, guarantees, and obligations of Subcontractors shall: (i) be written so as to survive all the City and the Contractor inspections, Tests, and approvals; and (ii) run directly to and be enforceable by the Contractor and/or the City and their respective successors and assigns. The Contractor hereby assigns to the City all of the Contractor's rights and interest in all extended warranties for periods exceeding the applicable Warranty period which are received by the Contractor from any of its Subcontractors.

21.3.2. Enforcement

Upon receipt from the City of Notice of a failure of any of the Work to satisfy any Subcontractor Warranty, representation, guarantee, or obligation, the Contractor shall enforce or perform any such representation, Warranty, guarantee, or obligation, in

addition to the Contractor's other obligations hereunder. The City's rights under this Section 21.3.2 shall commence at the time such representation, Warranty, guarantee, or obligation is furnished, and shall continue until the expiration of the Contractor's relevant Warranty (including extensions thereof under Section 21.2). Until such expiration, the Contractor shall be responsible for the cost of any Equipment, material, labor (including re-engineering) or shipping, and the Contractor shall be required to replace or repair Defective Equipment, material or workmanship furnished by any Subcontractor.

21.4. No Limitation of Liability

The foregoing Warranties are in addition to all rights and remedies available under the Contract Documents or applicable law, and shall not limit the Contractor's liability or responsibility imposed by the Contract Documents or applicable law with respect to the Work, including liability for design Defects, latent construction Defects, strict liability, negligence or fraud; provided, however, that, upon expiration of the Warranties, the Contractor shall have no further liability to the City hereunder for patent construction Defects.

21.5. Warranty Beneficiaries

In addition to benefiting the City and its successors and assigns, the Warranties and Subcontractor warranties provided under this Section 21 shall inure to the benefit of, and shall be directly enforceable by, any local agencies and Utility Owners with respect to those portions of the Work owned or controlled by each such Person.

21.6. Remedies for Breach of Warranty

In addition to the City's other rights and remedies hereunder, at law or in equity, the Contractor shall be liable for actual damages resulting from its failure to provide corrective Work in accordance with Section 21.1.4 and any breach of an express Warranty or any Defect in the Work.

21.7. Disputes

Any disagreement between the City and the Contractor relating to this Section 21 shall be subject to the Dispute resolution provisions contained in Section 19, provided that the Contractor shall proceed as directed by the City pending resolution of the Dispute.

22. Documents and Records

22.1. Project Records

22.1.1. Maintenance of Records

The Contractor shall maintain at the Contractor's Project Manager's office in the State a complete set of all books, records and documents prepared or employed by the Contractor with respect to the Project.

22.1.2. Audit and Inspection Rights

The Contractor shall grant to the City, MoDOT, FHWA, and the U.S. Comptroller General and their respective authorized representatives, such audit and Inspection rights and allow such Persons such access to and the right to copy such books and records (including all tax returns and supporting documentation filed with any Governmental Persons) as such Persons may reasonably request from time to time in connection with the issuance of Change Orders, the resolution of Disputes, and such other matters as such Persons reasonably deems necessary for purposes of complying or Verifying compliance with the Contract and Legal Requirements, including responding with requests pursuant to the Missouri Open Records Act. The Contractor shall grant to Utility Owners and their respective authorized representatives, such audit and Inspection rights and all such Persons access to and the right to copy such books and records as such Persons may request in connection with the resolution of Disputes or such other matters as such Persons reasonably deems necessary for purposes of complying or Verifying compliance with the Utility- related Contractual or MUA requirements.

22.1.3. Audit of Force Account Work

Where the payment method for any Work is on a Force Account basis, such examination and audit rights shall include all books, records, documents and other evidence and accounting principles and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If an audit indicates the Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

22.1.4. Change Order Pricing Data

For cost and pricing data submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, such Persons and their representatives have the right to examine all books, records, documents, and other data related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. The right of examination shall extend to all documents deemed necessary by such Persons to

permit adequate evaluation of the cost or pricing data submitted, along with the computations and Projections used therein.

22.1.5. Claims Audits

All Claims filed against the City shall be subject to audit at any time following the filing of the Claim. The audit may be performed by employees of the City or by an auditor under contract with the City. No Notice is required before commencing any audit before 60 Days after Final acceptance. Thereafter, the City shall provide 20 Days of Notice to the Contractor, any Subcontractors or their respective agents before commencing an audit. The Contractor, Subcontractors or their agents shall provide adequate facilities, acceptable to the City, for the audit during normal business hours. The Contractor, Subcontractors, and their agents shall cooperate with the auditors. Failure of the Contractor, Subcontractors, or their agents to maintain and retain sufficient records to allow the auditors to Verify all or a portion of the Claim or to permit the auditors access to the books and records of the Contractor, Subcontractors, or their agents shall constitute a waiver of the claim and shall bar any recovery there under. At a minimum, the auditors shall have available to them the following documents:

1. Daily time sheets and supervisor's daily reports.
2. Union agreements.
3. Insurance, welfare, and benefits records.
4. Payroll registers.
5. Earnings records.
6. Payroll tax forms.
7. Material invoices and requisitions.
8. Material cost distribution worksheet.
9. Equipment records (list of company Equipment, rates, etc.).
10. Subcontractors' (including Suppliers) and agents' invoices.
11. Subcontractors' and agents' payment certificates.
12. Canceled checks (payroll and Suppliers).
13. Job cost report.
14. Job payroll ledger.
15. General ledger.
16. Cash disbursements journal.
17. E-mail, letters, and correspondence.
18. Network servers, data storage devices, backup media.
19. All documents that relate to each and every Claim together with all documents that support the amount of damages as to each Claim.
20. Work sheets used to prepare the Claim establishing the cost components for

items of the Claim including labor, benefits and insurance, Materials, Equipment, Subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

Full compliance by the Contractor with the provisions of this Section 22.1.5 is a contractual condition precedent to the Contractor's right to seek relief under Section 19. The Contractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with this Section 22.1.

22.2. Retention of Records

The Contractor shall maintain all records and documents relating to the Contract (including copies of all original documents delivered to the City) at the Contractor's Project Manager's office in the State until seven years after the earlier to occur of: (i) the date Final Acceptance is achieved; or (ii) the termination date. If Approved by the City, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents. The Contractor shall notify the City where such records and documents are kept.

Notwithstanding the foregoing, all records which relate to Claims being processed or actions brought under the Dispute resolution provisions hereof shall be retained and made available until such actions and Claims have been finally resolved. Records to be retained include all books and other evidence bearing on the Contractor's costs and expenses under the Contract Documents. The Contractor shall make these records and documents available for audit and Inspection to the City, at the Contractor's office, at all reasonable times, without charge, and shall allow such Persons to make copies of such documents (at no expense to the Contractor).

22.3. Missouri Open Records (Sunshine) Law

22.3.1. Applicability of Law

The Contractor acknowledges and agrees that all records, documents, drawings, plans, specifications, and other Materials in the Contractor's or the City's possession directly related to the Project, including Materials submitted to the City by the Contractor, are subject to the provisions of the Missouri Open Records (Sunshine) Law. The Contractor shall be solely responsible for all determinations made by it under such Law and for clearly and prominently marking each and every page or sheet of its Materials with trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data as it determines to be appropriate. The Contractor is advised to contact legal counsel concerning such act and its application to the Contractor.

22.3.2. Confidential Materials

If any of the Materials submitted by the Contractor to the City are clearly and prominently labeled trade secret, privileged information, or confidential commercial, financial, geological, or geophysical data by the Contractor, the City will endeavor to advise the Contractor of any request for the disclosure of such Materials prior to making any such disclosure. Under no circumstances, however, will the City be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled

Materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of the City.

22.3.3. Contractor to Defend Against Disclosure Request

In the event of litigation concerning the disclosure of any material submitted by the Contractor to the City, the City's sole involvement will be as a Stakeholder retaining the material until otherwise ordered by a court, and the Contractor shall be fully responsible for otherwise prosecuting or defending any action concerning the Materials at its sole expense and risk. Under no circumstances, however, will the City be responsible or liable to the Contractor or any other Person for the disclosure of any such labeled Materials, whether the disclosure is required by law, by court order or occurs through inadvertence, mistake or negligence on the part of the City.

22.3.4. Cooperation with the City Regarding Missouri Open Records (Sunshine) Law Requests

In the event the City receives a Missouri Open Records (Sunshine) Law request for documents that are in the custody and control of the Contractor, the Contractor shall cooperate with the City in responding to the request in a timely manner under the Missouri Open Records (Sunshine) Law.

23. Cooperation and Coordination with Others

23.1. Cooperation with Other Contractors

The City reserves the right to perform and to contract with others to perform other or additional Work on or near the Site. The Contractor shall cooperate with the City and such other contractors to the extent reasonably necessary for the performance by the City and such other contractors of their Work, and shall cause its employees, agents, officers, and Subcontractors and other Persons for whom the Contractor may be contractually or legally responsible to so cooperate. If other separate contracts are awarded by the City, which affect the Work, the Contractor shall conduct its Work without interfering with or hindering the progress or completion of the Work being performed by other contractors.

23.2. Interference by Other Contractors

If the Contractor asserts that any of the City's other contractors have hindered or interfered with the progress or completion of the Work, then the Contractor's sole remedy shall be to seek recourse against such other contractors. The Contractor shall have the right to ask the DRB to resolve such Dispute, provided the other contractor and its sureties have agreed to submit the Dispute to the DRB, and provided that such proceeding shall be conducted at no cost to the City.

24. Miscellaneous Provisions

24.1. Amendments

The Contract may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

24.2. Waiver

24.2.1. No Waiver of Subsequent Rights

Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Contract Documents at any time shall not in any way limit or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the parties make and implement any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future Disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

24.2.2. Custom Does not Constitute Waiver

No act, delay, or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such party under any Contract Document, or to relieve the other party from the full performance of its obligations under the Contract Documents. No custom or practice between the parties in the administration of the terms of the Contract Documents shall be construed to waive or lessen the right of a party to insist upon performance by the other party in strict compliance with the terms of the Contract Documents.

24.2.3. Waivers Must be in Writing

No waiver of any term, covenant or condition of the Contract Documents shall be valid unless in writing and signed by the party providing the waiver.

24.3. Independent Contractor

The Contractor is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the City other than that of Project owner and independent contractor. In no event shall the relationship between the City and the Contractor be construed as creating any relationship whatsoever between the City and any of the Contractor's employees. Neither the Contractor nor any of its employees is or shall be deemed to be an employee of the City. Except as otherwise specified in the Contract Documents, the Contractor has sole

authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors and for all other Persons that the Contractor or any Subcontractor hires or engages to perform or assist in performing the Work.

24.4. Successors and Assigns

The Contract Documents shall be binding upon and inure to the benefit of the City and the Contractor and their permitted successors, assigns and legal representatives.

24.4.1. Assignment by the City

The City may assign all or part of its right, title and interest in and to the Contract, including rights with respect to the Surety bonds required hereunder and any other performance security provided, to any Person with the prior written approval of the Contractor.

24.4.2. Assignment by Contractor

The Contractor may assign its rights to receive payment under the Contract Documents and may Subcontract Work in accordance with the Approved Subcontracting and Small Business Plan and in compliance with the requirements of the Contract Documents. The Contractor shall not otherwise sublet, transfer, assign or dispose of any portion of the Contract, or delegate any of its duties hereunder, except with the City's prior written Approval. The Contractor's assignment or delegation of any of its Work under the Contract Documents shall be ineffective to relieve the Contractor of its responsibility for the Work assigned or delegated, unless the City, in its sole discretion, has Approved such relief from responsibility.

24.5. Designation of, and Cooperation with Representatives

24.5.1. Designation of Representatives

Concurrently with execution hereof, the City and the Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Such designations may be changed by a subsequent writing delivered to the other party in accordance with Section 24.10. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to bind the City or the Contractor.

24.5.2. Cooperation

The Contractor shall cooperate with the City and all representatives of the City designated as described above.

24.6. Gratuities and Conflicts of Interest

Neither the Contractor nor any of its employees, agents and representatives shall offer or give to an officer, official, or employee of the City gifts, entertainment, payments, loans, or gratuities. The Contractor represents and warrants that it has not previously offered or given any gifts, entertainment, payments, loans, or gratuities in violation of such prohibitions.

24.7. Survival

The Dispute resolution provisions contained in Section 19, and all other provisions, which by their inherent character should survive termination of the Contract, shall survive the termination of the Contract.

24.8. Limitation on Third-Party Beneficiaries

It is not intended by any of the provisions of the Contract Documents to create any third-party beneficiary hereunder, or to authorize anyone not a party hereto to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof, except to the extent that specific provisions (such as the Warranty and indemnity provisions) identify third parties and state that they are entitled to benefits hereunder. The duties, obligations, and responsibilities of the parties to the Contract Documents with respect to such third parties shall remain as imposed by law. The Contract Documents shall not be construed to create a contractual relationship of any kind between the City and a Subcontractor or any other Person except the Contractor.

24.9. No Personal Liability

The City's authorized representatives are acting solely as agents and representatives of the City when carrying out the provisions of or exercising the power or authority granted to them under the Contract Documents. They shall not be liable either personally or as employees of the City for actions in their ordinary course of employment.

24.10. Notices and Communications

24.10.1. Delivery of Notices

Notices under the Contract Documents shall be in writing and: (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) sent by a recognized overnight mail or courier service, with delivery receipt requested; or (iv) sent by email communication followed by a hard copy or with receipt confirmed by telephone, to the following addresses (or to such other address as may from time to time be specified in writing by such Person):

All correspondence shall be sent to the Contractor's Project Manager or as otherwise directed by such Project Manager. The address for such communications shall be:

First Name Last Name, P.E.(Name) Project Manager(Title) Address(Street)
City, State Zip(State/Zip)
Telephone: phone
E-mail: e-mail address

All communications to the City shall be marked with the City's Project Director, with copies to such additional Persons as may be designated by the City's Project Director, at the address set forth below:

Leree Reese, P.E.

Grant Avenue Parkway Project Director

City of Springfield - Public Works

840 Boonville Road

Springfield, MO 65802

lreese@springfieldmo.gov

24.10.2. Receipt of Notices

Notices shall be deemed received when actually received in the office of the addressee (or by the addressee if personally delivered) or when delivery is refused, as shown on the receipt of the U.S. Postal Service, private carrier or other Person making the delivery. Notwithstanding the foregoing, Notices sent by e-mail after 4:00 p.m. Central Standard Time and all other Notices received after 5:00 p.m. Central Standard Time (as applicable) shall be deemed received on the first Business Day following delivery (that is, in order for an e-mail to be deemed received on the same Day, the e-mail must have been received before 4:00 p.m.).

24.10.3. Copies of Correspondence to the City

The Contractor shall copy the City on all written correspondence pertaining to the Contract between the Contractor and any Person other than the Contractor's Subcontractors, consultants and attorneys.

24.11. Further Assurances

The Contractor shall promptly execute and deliver to the City all such instruments and other documents and assurances as are reasonably requested by the City to further evidence the obligations of the Contractor hereunder, including assurances regarding assignments of Subcontractors contained herein.

24.12. Severability

If any clause, provision, Section or part of the Contract is ruled invalid under Section 19 or otherwise by a court of competent jurisdiction, then the parties shall: (i) promptly meet and negotiate a substitute for such clause, provision, Section or part, which shall, to the greatest extent legally permissible, effect the original intent of the parties, including an equitable adjustment to the Contract Price to account for any change in the Work resulting from such invalidated portion; and (ii) if necessary or desirable, apply to the court or other decision maker (as applicable) which declared such invalidity for an interpretation of the invalidated portion to guide the negotiations. The invalidity or unenforceability of any such clause, provision, Section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract did not contain such invalid or unenforceable clause, provision,

Section or part.

24.13. Headings

The captions of the Sections of the Contract Documents are for convenience and shall not be deemed part of the Contract or considered in construing the Contract.

24.14. Governing Law

The Contract Documents shall be governed by and construed in accordance with the law of the State of Missouri. Venue for any legal action in connection with the Contract shall lie in the Circuit Court of Greene County, Missouri.

24.15. Entire Agreement

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

24.16. Counterparts

This instrument may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24.17. Anti-Discrimination Against Israel Certification

By signing the contract, below, the Contractor certifies that it is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or persons or entities doing business in the State of Israel as defined by Section 34.600 RSMo. This certification shall not apply to contracts with a total potential value of less than One Hundred Thousand Dollars ($100,000) or to contractors with fewer than ten (10) employees.

IN WITNESS WHEREOF, the parties have executed the Contract as of the date and year first set forth above.

Executed by the Contractor this _____ day of _____ , 2021.

Executed by the City this _____ day of _____ , 2021.

[CONTRACTOR], a Joint Venture	**CITY OF SPRINGFIELD**
By:	**Reviewed By:**
_____	_____
Signature	Assistant Director of Public Works or Acting Assistant
	Recommended By:
_____	_____
Typed or Printed Name	Director of Public Works or Acting Director
_____	
Title	
	Certificate of Director of Finance I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.
_____	_____
Date	Director of Finance or Acting Director
	Approved as to Form
	_____
	City Attorney or Assistant City Attorney
	By:
	_____
	City Manager or his/her designee

APPENDIX A – Acronyms and Definitions

As used in the Design-Build Contract, and in the other Contract Documents (unless otherwise specified therein), the following acronyms and terms shall have the meanings set forth below.

ACRONYMS	
Abbreviation	Title or Description
AADT	Annual Average Daily Traffic
AASHTO	American Association of State Highway & Transportation Officials
AC	Alternating Current
ACHP	Advisory Council on Historic Preservation
ACI	American Concrete Institute
ACM	Asbestos-Containing Materials
ADA	Americans with Disabilities Act
ADT	Average Daily Traffic
AMRL	AASHTO Materials Reference Laboratory
ANSI	American National Standards Institute (formerly ASA and USASI)
ASTM	American Society of Testing Materials
BAFO	Best and Final Offer
BMP	Best Management Practices
CADD	Computer-Assisted Drafting and Design
CAT	Community Advisory Team
CCTV	Closed Circuit Television
CD	Collector-Distributor Road
CERCLA	Comprehensive Environmental Response, Compensation & Liability Act, 42 U.S.C. §§ 9601, et. Seq.
CFR	Code of Federal Regulations
CITY	City of Springfield, Missouri
COE	(U.S.) Army Corps of Engineers
CPM	Critical Path Method
CR	Community Relations
CSR	Code of State Regulations
CU	City Utilities of Springfield
dB	Decibels
DBE	Disadvantaged Business Enterprise

ACRONYMS	
Abbreviation	Title or Description
DRB	Dispute Resolution Board
DMS	Dynamic Message Sign
DTM	Digital Terrain Model
DRB	Dispute Resolution Board
EEO	Equal Employment Opportunity
EPA	(U.S.) Environmental Protection Agency
EPD	Escrowed Proposal Documents
EPG	Missouri Department of Transportation Engineering Policy Guide
FAR	Federal Acquisition Regulation
FAST	Federal-Aid Acceptance Sampling and Testing
FEIS	Final Environmental Impact Statement
FEMA	Federal Emergency Management Agency
FHWA	Federal Highway Administration
FTP	File Transfer Protocol
HDPE	High Density Polyethylene
IAS	Independent Assurance Sampling
IGA	Intergovernmental Agreement
ISO	International Organization for Standards
ISP	Information or Internet Service Providers
ITP	Instructions to Proposers
LA	Landscape Architect
ITS	Intelligent Transportation Systems
LED	Light Emitting Diode
LFD	Load Factor Design
LRFD	Load and Resistance Factor Design
LOS	Level of Service
MDC	Missouri Department of Conservation
MDNR	Missouri Department of Natural Resources
MHTC	Missouri Highway and Transportation Commission
MoDOT	Missouri Department of Transportation
MOT	Maintenance of Traffic
MOU	Memorandum of Understanding

ACRONYMS	
Abbreviation	Title or Description
mph	Miles per Hour
MRCC	Missouri Regional Certification Committee
MSDS	Material Safety Data Sheet
MSE	Mechanically Stabilized Earth
MUA	Master Utility Agreement
MUTCD	Manual on Uniform Traffic Control Devices
NAD	North American Datum
NAVD	North American Vertical Datum
NCHRP	National Cooperative Highway Research Program
NEC	National Electrical Code
NEPA	National Environmental Policy Act
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
NGS	National Geodetic Survey
NHS	National Highway System
NIST	National Institute of Standards & Technology
NSBA	National Steel Bridge Association
NTP1	First Notice to Proceed
NTP2	Second Notice to Proceed
OSHA	Occupational Safety & Health Administration
PAL	Pre-Acceptance List
PCCP	Portland Cement Concrete Pavement
PCO	Potential Change Order
PE	Professional Engineering, or, in the context of Right of Way, PE shall mean Permanent Easement
PIP	Public Information Plan
PLS	Professional Land Surveyor
PTI	Post-Tensioning Institute
PVC	Polyvinyl Chloride
QA	Quality Assurance
QC	Quality Control

ACRONYMS	
Abbreviation	Title or Description
QM	Quality Manual
RCO	Request for Change Order
RCP	Request for Change Proposal
RFC	Released for Construction
RFP	Request for Proposals
RFQ	Request for Qualifications
ROD	Record of Decision
ROM	Rough Order of Magnitude
ROW	Right of Way
RSMo	Revised Statutes of the State of Missouri
SEMA	State Emergency Management Agency
SHPO	State Historic Preservation Office
STD	State Transportation Department
SUE	Subsurface Utility Engineering Investigation
TAT	Technical Advisory Team
TCE	Temporary Construction Easement
TCP	Traffic Control Plan
TMC	Transportation Management Center
TRB	Transportation Research Board (of National Research Council)
TYP	Typical
UE	Utility Easement
UIS	Utility Information Sheet
UL	Underwriters Laboratories
USA	United States of America
USACE	United States Army Corps of Engineers
USC	United States Code
USDOT	United States Department of Transportation
USGS	United States Geological Survey
USFWS	U.S. Fish & Wildlife Service
VE	Value Engineering
VECP	Value Engineering Change Proposal
WBS	Work Breakdown Structure

DEFINITIONS	
Term	Meaning
Abandonment	After a Utility Owner has decommissioned a Utility, the Work necessary for each Utility (including appurtenances) for a Utility that is not removed, using proper Utility Owner and/or industry procedures (e.g., flushing, capping, filling with grout or sand) or other procedures Approved by City. Contractor is responsible to coordinate with the Utility Owner when it is necessary for the Utility Owner to be involved in the decommission of a Utility (including appurtenances).
Acceleration Costs	Those fully documented increased costs reasonably incurred by the Contractor; (i.e., costs over and above what the Contractor would otherwise have incurred) which are directly attributable to increasing the performance level of the Work in an attempt to complete necessary Activities of the Work earlier than otherwise anticipated, such as for additional equipment, additional crews, lost productivity, overtime and shift premiums, increased supervision, and any unexpected movement of materials, equipment, or crews necessary for resequencing in connection with acceleration efforts.
Activity or activity	Parts of the Work including finished products or functional processes required as subcomponents of the Work Breakdown Structure as defined by the Contractor.
Additional Applicable Standards	Standards, manuals, specifications and technical requirements that have been submitted by Contractor, accepted by the City, and incorporated as Applicable Standards in Book 3.
Affected Area	As related to mined land reclamation, the total disturbed surface of a pit or quarry such as sand, gravel, topsoil, or borrow, that is being mined or will be mined. The area includes, but is not limited to, the excavation area, plant, and stockpile areas, parking and storage areas, and the haul roads.
Affidavit of Final Completion	The meaning set forth in Book 1, Section 20.5.
Affiliates	Affiliates (except as otherwise provided in 13 CFR Part 21) means that concerns are affiliates of each other when, either directly or indirectly: i) One concern controls or has the power to control the other; or ii) A third party or parties controls or has the power to control both; or iii) An identity of interest between or among parties exists such that affiliation may be found. In determining whether affiliation exists, all appropriate factors will be considered, including common ownership, common management, and Contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the size of firms in the DBE program.
Applicable Laws	See Legal Requirements.

DEFINITIONS	
Term	Meaning
Applicable Standards	The standards included in Book 3, including Additional Applicable Standards submitted by the Contractor and accepted by the City.
Application for Final Payment	The application described in Book 1, Section 11.6.1.
Approve or Approval	Formal conditional determination in writing by the City Project Director that a particular matter or item is good or satisfactory for the Project. Such determination may be based on requirements beyond those set forth in the Contract Documents and may reflect preferences of the City.
Architectural and Engineering Services	All Work relating to the design, including preparation and interpretation of architectural and engineering plans and specifications, development of design solutions for conformance with all codes and public safety requirements and other design related decision-making, and any other activities, collectively, which are required to be practiced by an architect or engineer in accordance with the laws of the State of Missouri.
As-Built Documents	The documents to be provided by the Contractor as described in Book 2, Section 3.16.
As-Built Schedule	The last Monthly Progress Schedule submitted shall be identified by the Contractor as the As-Built Schedule. The meaning set forth in Book 2, Section 2.1.6
Auxiliary Lane	The portion of the roadway adjoining the traveled way and designated for speed change, or for other purposes supplementary to through traffic movement.
Award	The action of the City Accepting the Proposal for the Work, subject to the execution and approval of a satisfactory Contract therefore and bond to secure the performance and payment thereof, and to such other conditions as may be specified or as required by law. (with the understanding that the order of priority of the various Contract Documents shall be as set forth in Book 1, Section 1.2, and that the City shall have the right to require compliance with the requirements of the Contract Documents, even though it may necessitate performance of Work by the Contractor not contemplated in the Proposal Documents)
Backfill	Material used to replace or the act of replacing material removed during construction.
Baseline Schedule	The meaning set forth in Book 2, Section 2.
Betterment	As related to Utilities, a betterment is generally defined as the upgrading; (e.g. increase in capacity) of a Utility being relocated that is not attributable to the construction of the Project or is made solely for the benefit of and at the election of the Utility Owner (not including a technological improvement which is able to achieve such upgrade at a cost equal to or less than the cost of a “like for like” replacement or relocation). The use of new materials or compliance with current standards in the performance of the Utility Work is not considered a Betterment.

DEFINITIONS	
Term	Meaning
Book 1	The Contract Document designated as Book 1 in the RFP.
Book 2	The Contract Document designated as Book 2 in the RFP.
Book 3	The Contract Documents designated as Book 3 in the RFP.
Book 4	The Contract Documents designated as Book 4 in the RFP.
Book 5	The documents included in Book 5 – Informational Documents are for information only and are not Contract Documents to be relied upon by the Contractor. Cross references in the Contract Documents to the Informational Documents do not incorporate the Informational Documents or portions of the Informational Documents as Contract Documents or requirements.
Bridge	A structure having a clear span greater than 20 feet (6.1 m) measured on a horizontal plane along the centerline of roadway; also a multiple span structure where the total length of spans is in excess of 20 feet (6.1 m). For both single and multiple span bridges, the clear span shall be construed to mean the total distance from stream face to stream face of end bents or outer walls of the structure.
Bridge Rehabilitation Checklist	A checklist outlining required repairs associated with the Rehabilitation of a specific bridge along with estimated quantities. Additional general bridge information is also included in this checklist. Checklists can be found in Book 4. The Contractor shall be responsible for verifying estimated quantities.
Business Day	A day that City is open for business, excluding holidays, Saturdays and Sundays.
Calendar Day	Each and every day shown on the calendar, including Saturdays and Sundays, beginning and ending at midnight.
Certified Invoice	Any invoice or billing endorsed by the Contractor, certifying that material, specialty work, Subcontract work, rental, lease, services, etc. were acquired for the Project and that the invoiced or billed amount represents the actual costs.
Certified Test Report	A test report from the manufacturer or an independent testing laboratory, including a signature by a person having legal authority to act for the manufacturer or the independent testing laboratory stating that the test results show that the product or assembly to be incorporated into the Project has been sampled and tested and the samples have passed all specified tests.
Change Order	The meaning set forth in Book 1, Sections 12 and 13.
Claim	A separate demand by the Contractor for: (i) a time extension which is disputed by the City, or (ii) payment of money or damages arising from work done by or on behalf of the Contractor in connection with the Contract which is disputed by the City. A claim will cease to be a Claim upon resolution thereof, including resolution by delivery of a Change Order or Contract amendment signed by all parties.

DEFINITIONS	
Term	Meaning
Commercial Vehicle(s)	A vehicle used on highways, in interstate commerce, that meets one of the following criteria: (i) has a Gross Vehicle Weight Rating (GVWR) or Gross Combination Weight Rating (GCWR), or gross vehicle weight or gross combination weight of 10,001 pounds or more, whichever is greater; (ii) is designed to transport more than eight passengers (including the driver) for compensation; (iii) is designed to transport 16 or more people, including the driver and is not used to transport passengers for compensation; (iv) functions to transport hazardous materials in quantities requiring the vehicle to be placarded.
City	The City of Springfield, Missouri or the Project Director for the Project, acting directly or through a representative authorized in writing, who is responsible for administrative supervision of the Project, whichever the context requires.
City-Directed Changes	Any changes in the Work (including changes in the standards applicable to the Work), which the City has directed the Contractor to perform as described in Book 1, Section 13.
Community Information Group	A group of individuals representing key governmental and civic groups that provide input on the public's priorities for the Project as well as facilitate dissemination of information to the public.
Completion Deadlines	Any or all of the following deadlines, depending on the context: any Location Completion Deadline or Project Completion Deadline.
Constructive	When used in connection with the terms "change in the Work," "delay," "suspension," or "acceleration," that change in the Work, delay, suspension, or acceleration which, but for the express terms of the Contract Documents, could be inferred or implied at law.
Contaminated Groundwater	Extracted groundwater including contaminants above legally permitted discharge levels so as to require treatment prior to re-use or disposal. Contaminated Groundwater, which may legally be re-used without treatment, including use for dust control, or which merely requires dilution prior to re-use or disposal, shall specifically be excluded from the definition.
Contract	Depending on the context: (i) the Design-Build Contract, or (ii) collectively, the Contract Documents, which establish the rights and obligations of the City and the Contractor.
Contract Deadlines	The deadlines set forth in Book 1, Section 4.3.
Contract Documents	Contract Documents shall mean the following documents, including appendices: Book 1 including Change Orders, Book 2, Book 3, Book 4, Proposal Documents, and Statement of Qualifications.
Contract Drawings	The drawings included in Book 4.
Contract Price	The total Contract price defined on Form DB-901. The meaning set forth in Book 1, Section 11.1.1.
Contract Schedule	The meaning set forth in Book 2, Section 2.1.
Contractor	The meaning set forth in the first page of Book 1.

DEFINITIONS	
Term	Meaning
Contractor-Related Entities	Contractor, Major Participants, Subcontractors, their employees, agents and officers and all other Persons for whom Contractor may be legally or contractually responsible.
Contractor Specifications	The specifications describing the Work that are developed by the Contractor.
Contractor's Engineer	A professional Engineer registered in the State of Missouri who is responsible for engineering and administrative supervision of the Project on behalf of the Contractor, who is either an employee of the Contractor, or a consulting Engineer under contract to the Contractor.
Cost	Cost will mean the actual cost incurred, as distinguished from forecasted cost and determined in accordance with prevailing principles applicable to public contracts including Contract Cost Principles and Procedures, 48 CFR, Part 31 and Government Auditing Standards, as published by the Comptroller General of the United States.
Critical Path	The precedence of Activities with total Float less than or equal to zero on each applicable Contract Schedule.
Culvert	A structure not classified as a bridge that provides an opening under any portion of a Roadway.
Day	Days used in the Contract Documents will mean calendar Days, unless specified otherwise.
DBE Owned and Controlled	A small business concern that is at least 51 per centum owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more such individuals. The socially and economically disadvantaged owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements.
DBE Performance Plan	The plan provided by the Contractor and Approved by the City as described in Book 1, Appendix C (or, prior to such Approval, the draft DBE Performance Plan included with the Proposal Documents).
Defect or Defective Condition	Nonconforming Work.
Delay and Disruption Damages	The meaning set forth in Book 1, Section 13.7.2.
Design-Build Contract	The Design-Build Contract executed by the City and the Contractor (to which this Appendix A is attached), and any and all amendments thereto.

DEFINITIONS	
Term	Meaning
Design Documents	All drawings (including plans, elevations, sections, details, and diagrams), specifications, reports, calculations and records, at any stage of development or revision necessary for design of the Project in accordance with the Contract Documents.
Differing Site Conditions	"Differing Site Conditions" shall mean (a) subsurface or latent conditions encountered at the exact boring holes identified in the geotechnical reports included in Book 4, which differ materially from those conditions indicated in the geotechnical reports for such boring holes, or (b) physical conditions of an unusual nature, differing materially from those ordinarily encountered in the area and generally recognized as inherent in the type of Work provided for in the Contract. The term shall specifically exclude all such conditions of which Contractor had actual or constructive knowledge as of the Proposal Due Date. The foregoing definition specifically excludes (w) Utility facilities, (x) Hazardous Substances, (y) non-contaminated water and (z) any conditions which constitute or are caused by a compensable event listed in Book 1, Section 13.9.
Directive Letter	The letter described in Book 1, Section 13.1.2.
Disadvantaged Business Enterprise or DBE	A Disadvantaged Business Enterprise is a for-profit small business concern, as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, subject however to the business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of Work the firm performs and 49 CFR part 26; that is owned and controlled by one or more socially and economically disadvantaged individuals who are citizens (or lawfully admitted permanent residents) of the United States; and is certified by the Missouri Regional Certification Committee (MRCC).
Divided Highway	A highway with separated Traveled Ways for traffic in opposite directions. Traveled Ways separated by painted Medians will not be considered divided.
Drainage Ditch	An open depression constructed for the purpose of carrying off surface water.
Effective Date	The date of execution of the Contract by the City.
Engineer	Shall be defined as the "Contractor's Engineer". The Contractor acknowledges and agrees that the City will be responsible for certain oversight and other matters with respect to the Project, and that as a result certain rights in favor of the Engineer may be exercised by and inure to the benefit of the City rather than the Contractor's Engineer. In the event any question arises regarding whether any such rights are applicable to the City or how to apply such rights, the City’s interpretation regarding such matter shall control.
Environmental Approvals	Documents including the CE2, COE Section 404 Permit, COE Section 401 Certificate, and the Section 106 programmatic agreement.

DEFINITIONS	
Term	Meaning
Environmental Laws	All Legal Requirements now or hereafter in effect relating to the environment or to emissions, discharges, releases, or threatened releases of Hazardous Substances into the environment, including into the air, surface water or groundwater, or onto land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances or otherwise relating to the protection of public health, public welfare, or the natural environmental (including protection of nonhuman forms of life, land, surface water, groundwater, and air), including the statutes listed in the definition of Hazardous Substances; the National Environmental Policy Act, as amended, 42 U.S.C. §§ 4321 et seq.; the Occupational Safety and Health Act, as amended, 29 U.S.C. §§ 651 et seq.; and the Hazardous Materials Transportation Act, as amended, 49 App. U.S.C. §§ 1801; the Endangered Species Act, as amended, 16 U.S.C. §§ 1531 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq.; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703 et seq.; and the Eagle Protection Act, 16 U.S.C. § 668, each as amended.
Equal or Better Change Order	The meaning set forth in Book 1, Section 13.2.
Equipment	All machinery, tools, and apparatus together with supplies for upkeep and maintenance, necessary for the proper construction and acceptable completion of the Work.
Error	An Error, omission, inconsistency, inaccuracy, or deficiency.
Escrowed Proposal Documents	The Escrowed Proposal Documents (EPDs) shall contain information regarding the Proposer's assumptions made in developing Price Allocation. The Proposer shall submit a hard copy of the EPDs in such a format as it used in preparing its Proposal.
Event of Default	A default as described in Book 1, Section 16.1.1, following Notice and opportunity to cure to the extent permitted by Book 1, Section 16.1.2 and issuance by the City of Notice that an Event of Default has occurred.
Existing Utility Plans	The set of plans included in Book 5, Reference Documents – Utilities, which is labeled "Existing Utility Plans."
Federal Requirements	All Legal Requirements applicable to Work financed with federal funds and the provisions required to be included in FHWA-assisted contracts, including the provisions set forth in Book 1, Appendix B.
Final Acceptance	Acceptance of the Project as described in Book 1, Section 20.6.
Final Acceptance Deadline	The deadline described in Book 1, Section 4.3.4.
Final Design Documents	A compiled set of Design Documents created at the end of the design phase as described in Book 2, Section 3.14.

DEFINITIONS	
Term	Meaning
Final Proposal and Price Allocation	City will request the Proposers to submit their Proposal and Price Allocation. City will evaluate the Proposals and determine the apparent successful Proposer. City intends to meet with the apparent successful Proposer and to negotiate into its Proposal ideas from the unsuccessful Proposals, if any, and to clean up any contractual issues and ensure the enforceability of the Additional Applicable Standards.
First Notice to Proceed (NTP1)	A first written Notice issued by the City to the Contractor to proceed with certain limited Work on the date specified therein.
Fixed Price	The set Contract Price of $22,000,000
Float	Float is defined as the amount of time between the early start date and the late start date, or the early finish date and the late finish date, for each and every Activity in the schedule. Float shall be for the benefit of all parties to the Contract and not for the exclusive benefit of the Contractor. Suppression or consumption of Float by extended Activity duration, dummy Activities, or preferential sequencing shall not be allowed. Critical Activities shall be defined as Activities with a total Float less than one Day.
Force Account Change Order	The meaning set forth in Book 1, Section 13.5.
Governmental Approval	Any approval, authorization, certification, consent, decision, exemption, filing, lease, license, permit, agreement, concession, grant, franchise, registration or ruling, required by or with any Governmental Person in order to design and construct the Project.
Governmental Person	Any federal, State, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity. The term includes the City of Springfield, the State of Missouri and agencies and subdivisions thereof, other than the City of Springfield Public Works Department and the Missouri Department of Transportation.

DEFINITIONS	
Term	Meaning
Hazardous Substances	Any of the following: Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 USC Sections 2601 et seq.; the Clean Water Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; all as amended, or any other federal, State or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect. Any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a State or federal court, Petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles, and Asbestos or asbestos-containing Materials in Structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).
High Water	Any flood event that is 3' above the Ordinary High Water elevation.
Highway	A public way for purposes of vehicular travel, including the entire area within the ROW.

DEFINITIONS	
Term	Meaning
Holidays	City of Springfield public legal Holidays are: January 1 - New Year's Day Third Monday in January - Dr. Martin Luther King Day Third Monday in February – President's Day Last Monday in May – Memorial Day July 4 – Independence Day First Monday in September - Labor Day November 11 - Veterans Day Fourth Thursday in November - Thanksgiving Day December 25 - Christmas Day. When any of the above Holidays falls on Sunday, the holiday will be observed on the following Monday; when any of the above Holidays falls on a Saturday; the holiday will be observed on the immediately preceding Friday.
Incidental Utility Work	Abandonment, Protection of Existing Utilities and Utility Removal Work.
Including, or including, includes, included	All references in the Contract Documents to "Including", "includes" or "included" shall mean "including, but not limited to".
Incremental Costs	Those costs, if any, which the Contractor incurs as a result of a particular circumstance, which the Contractor would not have incurred but for the circumstance. In determining such costs, one would determine the total cost that the Contractor would have incurred had the circumstance not occurred, and subtract such amount from the costs actually incurred; the difference is the "increment." (For example, if the Contractor originally has to Relocate three water lines, and a fourth water line is discovered in the same general area which can be Relocated by the same crew, then if the Contractor is entitled (pursuant to Book 1, Section 13) to a Change Order increasing the Contract Price on account of such newly discovered water line, the City will be charged with only the costs of keeping the crew working the additional time to Relocate the fourth water line, and will not be charged any portion of the expense of moving the crew to the Site in the first place.)
Indemnified Parties	The City and its agents, consultants, and their respective successors and assigns and their respective shareholders, officers, directors, agents and employees (collectively referred to as the "Indemnified Parties")

DEFINITIONS	
Term	Meaning
Independent Assurance Sampling (IAS)	The intent of the IAS process is to confirm that Inspectors are knowledgeable in the specification governing the testing procedures and follow through with completing the Tests correctly and have Equipment that is in good working condition and is properly calibrated, where applicable. This IAS process is considered system based and the audit of a given Inspector does not have to take place on a Federal-aid Project. The Inspector should use the same diligence and attention to detail at all times, regardless of whether the Project has Federal-aid status. Inspectors on Off- System Projects s will be audited on the specific Project. in most instances.
Informational Documents	See Book 5 definition.
Initial Technical Proposal	The initial technical concepts presented during the series of confidential meetings where the parties will discuss the Proposers' concepts, and how they align with the desires of the City on this Project.
Inspection	The act of viewing or looking carefully at construction, manufacturing, design, and maintenance practices, processes, and products, including document control and shop drawing review, to ensure that the practices, processes, and products comply with the quality requirements contained in the Contract Documents.
Inspector	The Contractor's authorized representative assigned to perform Inspection of Contract performance.
Instructions to Proposers (ITP)	The RFP Document identified as Instructions to Proposers.
ITS Work	All elements of the Work necessary for completion of the ITS Elements, including providing equipment to meet specified performance measures, development of computer software, installation of Equipment, testing and acceptance of Equipment and software, integration of newly installed components with existing ITS infrastructure and maintenance of ITS components.
Key Personnel	The Persons listed on Contract Form DB-103, subject to revision in accordance with the Contract Documents.
Laboratory	The testing Laboratory of the Contractor, the Central Laboratory, or any other certified testing Laboratory.
Lane Closure Duration Deadlines	Achievement of all Work necessary to meet a Lane Closure Completion and Duration Deadline as described in Book 1, Section 4.3.1.
Late Finish Cost Schedule	The late start dates set forth on each applicable Contract Schedule, subject to revision in connection with any Change Orders, which revise the Contract Schedules.
Lead Workers	Hourly employees in direct charge of the specific operations on a Person. Formerly referred to as the foremen.

DEFINITIONS	
Term	Meaning
Legal Requirements	All applicable federal, State and local laws, codes, ordinances, rules, regulations, judgments, decrees, directives, guidelines, policy requirements, orders and decrees of any Governmental Person having jurisdiction over the Project or Site, the practices involved in the Project or Site, any Work, or any Utility Work being performed by a Utility Owner. The term "Legal Requirements" does not include Governmental Approvals or tax laws.
Lien	Any pledge, Lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument, and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).
Liquidated Damages	The damages described in Book 1, Section 17.1.
Load Rating for Design-Build Bridges	The Load Rating for Design-Build Bridges is included in Book 4
Local Traffic	Traffic that has either its origin or its destination at some point within the limits of the Project. Local Traffic will also include that traffic on all side Roads that lead into the Project where such traffic does not have a satisfactory outlet over a public Road or Street.
Location Completion Deadlines	Achievement of all Work necessary to meet Location Completion Deadlines as described in Book 1, Section 4.3.2.
Long-Term Rehabilitating/Rehabilitation	Bridge rehabilitation such that regular maintenance work will not be required for 30 years (estimated service life) or more.
Lump Sum Change Order	The meaning set forth in Book 1, Section 13.4.
Maintenance of Traffic Plan	The plan provided by the Contractor and Approved by the City as described in Book 2, Section 17.
Major Participant	Any of the following entities: (1) All general partners or joint venture members of the Submitter; all individuals, Persons, partnerships, limited liability partnerships, corporations, limited liability companies, business associations, or other legal entities, however organized, directly or indirectly holding a 15% or greater interest in the Submitter; (2) the lead engineering/design firm(s); (3) each Subcontractor that will perform Work valued at 10% or more of the construction Work; and (4) each Subconsultant that will perform 20% or more of the design Work.
Master Utility Agreement	An agreement made between the City and a Utility Owner that provides a general framework for addressing Utility conflicts associated with the Project.
Materials	All components required for use in the construction of the Project.
Median	The portion of a Divided Highway separating the Traveled Ways for traffic in opposite directions.
MHTC	Missouri Highways and Transportation Commission

DEFINITIONS	
Term	Meaning
Missouri Regional Certification Committee	The MRCC consists of certifying and non-certifying members who are recipients of USDOT funds within the State of Missouri. The MRCC is organized for the purposes of certifying DBEs through a "one-stop shop" in Missouri under 49 CFR Part 26.
MoDOT	Missouri Department of Transportation
Monthly Progress Schedule	The meaning set forth in Book 2, Section 2.1.4.
National Pollutant Discharge Elimination System (NPDES) Permit	The Plan referred to in Book 2, Section 5.
New Environmental Approval	Any of the following: A new Governmental Approval of the same type as an Environmental Approval; and a renewal, revision, modification or amendment to one or more of the Environmental Approvals.
Nonconforming Work	Work performed that does not meet the requirements of the Contract Documents.
Notice	The meaning set forth in Book 1, Section 24.10.
Notice of Final Acceptance	The Notice delivered to the Contractor under Book 1, Section 20.6 stating that final City acceptance of the Project has occurred.
Notice of Termination (or Partial Termination)	A Notice issued by the City to terminate the Contract and the performance of Work by the Contractor, either in whole or in part, pursuant to Book 1, Section 15.1.
NTP1 Payment Cap	The meaning set forth in Book 1, Section 4.2.1 and Section 11.3.2. See Book 2, Section 25 for amount.
Ordinary High Water	As defined by the Corps of Engineers: A line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
Original Baseline Schedule	The meaning set forth in Book 2, Section 2.1.2.
Overburden	Any material that overlays material designated for Road or bridge construction.
Partial Acceptance	Acceptance by the City of a Location after Location Completion. Partial Acceptance relieves the Contractor of maintenance responsibilities and it begins the Warranty period.

DEFINITIONS	
Term	Meaning
Pavement Structure	The combination of one or more of the following courses placed on a Subgrade to support and distribute the traffic load to the Roadbed. Subbase. The layer or layers of specified or selected material placed on a Subgrade to support a base course, Surface Course, or both. Base Course. The layer or layers of specified or selected material placed on a Subbase or a Subgrade to support a Surface Course. Surface Course. One or more layers of a Pavement Structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called “Wearing Course.”
Payment Bond	The Payment Bond described in Book 1, Section 8.2.
Payment Cap	The maximum amount that can be paid.
PCO Notice	The potential change order Notice described in Book 1, Section 13.4.3.
Performance Bond	The Performance Bond described in Book 1, Section 8.1.
Person	Any individual, corporation, company, voluntary association, partnership, trust, unincorporated organization, or Governmental Person, including the City or MoDOT.
Plans of Adjustment (POA)	The combination of a Utility Information Sheet and corresponding Relocation Exhibit that defines the expected Relocation of one facility (including provision of temporary services as necessary) anticipated to be in conflict with the Design-Build Project Work.
Preliminary Baseline Schedule	The initial Project schedule for the purpose of initiating Work on the Project. The Preliminary Baseline Schedule will be used to evaluate progress and payment for up to the first 180 Days of the Project.
Process Control	A method for keeping a process within boundaries and/or the act of minimizing the variation of a process. Process control activities may include sampling, testing, inspection, and corrective action performed by a contractor in addition to Quality Control (QC) requirements to improve the likelihood that the final product will meet the specified level of quality.
Profile Grade	The trace of a vertical plane usually intersecting the top surface of the proposed rail or wearing surface and usually along the longitudinal centerline of the Roadbed. Profile grade means either elevation or gradient of such trace according to the context.
Project	The Design-Build Project as described by the Contract Documents within the Project limits described in the graphic plot provided by the Contractor in its Proposal.
Project Completion Deadline	Achievement of all Work necessary to meet the Project Completion Deadline as described in Book 1, Section 4.3.3.
Project Director	The Person designated by the City to direct the Project and to receive delivery of Notices to the City.

DEFINITIONS	
Term	Meaning
Project Manager	The person designated by the Contractor to supervise the Project Persons performing Work, and to receive delivery of Notices to the Contractor.
Proposal or Proposal Documents	Those documents constituting the Contractor's proposal in response to the RFP, including any best and final offers or supplements to proposals as may have been requested by the City.
Proposal Due Date	The date the Final Technical Proposal and Price Allocation was due as specified in the Instructions to Proposers.
Proposer	An individual, firm, partnership, corporation, joint venture, or combination thereof that was shortlisted under the City's Request for Qualifications that submits a proposal in response to the RFP.
Protection of Existing Utilities	Any Activity undertaken to avoid damaging a Utility which does not involve removing or Relocating that Utility, including staking the location of a Utility, avoidance of a Utility's location by construction Equipment, installing steel plating or concrete slabs, encasement in concrete, temporarily de- energizing power lines, and installing physical barriers. For example, temporarily lifting power lines without cutting them would be considered Protection of Existing Utilities; whereas temporarily moving power lines to another location after cutting them would be considered a temporary Utility Relocation.
Public Information Plan	The public information plan as described in Book 2, Section 4.
Punch List	The list of Work items with respect to the Project that remain to be completed.
Quality Assurance (QA)	All those planned and systematic actions necessary for the Contractor to certify to the City that all Work fully complies with the requirements of the Contract Documents and that all Materials incorporated in the Work, all Equipment used, and all elements of the Work will perform satisfactorily for the purpose(s) intended.
Quality Control (QC)	The Activities performed by the Contractor, designer, producer or manufacturer to ensure and document that a product meets the requirements of the Contract Documents. Activities may include checking, Materials handling and construction procedures, calibrations and maintenance of Equipment, shop drawing review, document control, production process control, and any sampling, testing, and Inspection done for these purposes.
Quality Manual	The plan provided by the Contractor and Approved by the City as described in Book 2, Section 3 (or, prior to such Approval, the draft quality program manual included with the Proposal Documents).
Real-Time Notice	Information about construction Activities as they happen. This information will be disseminated to Stakeholders through a variety of tools to give them access to current Project conditions.

DEFINITIONS	
Term	Meaning
Record Set	A reproduction of a drawing or set of drawings, design calculations, or other record of engineering Work required to be performed by the Contractor's Engineer in accordance with the Rules of Procedures of the State Board of Registration for Professional Engineers and Land Surveyors.
Recovery Schedule	The schedule described in Book 2, Section 2.1.5, and which Contractor is required to provide under Book 1, Section 4.5.
Regular Dealer	A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the Materials, supplies, articles or Equipment of the general character described by the specifications and required under the Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business, as provided in 49 CFR § 26.55, and firms are certified as such by the MRCC.
Released for Construction Documents	The documents described in Book 2, Section 3.13.
Relocation or Relocate	As related to Utilities, each Relocation, (including provision of temporary services as necessary) of any and all Utilities that is necessary or advisable in order to accommodate or permit construction of the Project.
Remediation Work	After identification by the Contractor that a Hazardous Substance(s) exists, sampling, treatment, and/or off-Site disposal of Hazardous Substances and Materials containing Hazardous Substances, as Approved by the City.
Removal	All Work necessary to remove any existing Utilities for which leaving the existing Utility in place is not feasible or not allowed, or which is required to be removed in order to accommodate or permit construction of the Project.
Request for Change Order (RCO)	A Contractor-initiated request for a change order under Book 1, Section 13.4.3.
Request for Change Proposal (RCP)	A proposal issued by the City under Book 1, Section 13.4.1.
Request for Proposals	The Request for Proposals for this Design-Build Project, including all addenda thereto.
Review Documents	Review Documents shall be incomplete or partial Released for Construction Documents that are being used by the Contractor during its design review process.
Revised Baseline Schedule	The Revised Baseline Schedule is defined as the Original Baseline Schedule with cost and schedule changes from Approved Change Orders, including Work Orders that became Change Orders, incorporated.
Right of Way (ROW)	Land acquired by the City for the construction and maintenance of a Roadway, including fee simple title, temporary easements, utility easements, permanent easements, etc.
Road	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Roadbed	The graded portion of a Roadway between the outside Shoulder lines, including the base course, Surface Course, Shoulders and Median.

DEFINITIONS	
Term	Meaning
Roadbed Material	Material in cuts, embankments, and in embankment foundations from the Subgrade down that supports the pavement structure.
Roadside	A general term denoting the area adjoining the outer edge of the Roadway. Extensive areas between the Roadways of a Divided Highway may also be considered Roadside.
Roadside Development	Those items necessary for the preservation of landscape Materials and features. The Rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers. Suitable planting and other improvements as may increase the effectiveness and enhance the appearance of the Roadway.
Roadway	The portion of a Highway within the limits of construction, including bridges and other Structures.
Routine Maintenance Activity	The type of Work performed on a routine; (e.g., daily or weekly) basis to maintain the Roadway surfaces, Shoulders, Roadsides, facilities, and Structures; such as litter pickup, graffiti Removal, and vegetation control.
ROW Plans	The plans developed by the City in accordance with Book 2 Section 8.
Safety Management Plan	The plan provided by the Contractor and Approved by the City as described in Book 2, Section 20.
Salvable Material	Material that can be saved or salvaged. Unless otherwise specified in the Contract, all Salvable Material shall become the property of the Contractor.
Second Notice to Proceed (NTP2)	A written Notice issued by the City to the Contractor to proceed with the remainder of the Work on the date specified therein.
Service Line	As related to Utilities, a Utility line, the function of which is to directly connect the improvements on an individual property to another Utility line located off such property, which other Utility line connects more than one such individual line to a larger system. (The term “Service Line” also includes any Utility on public or private property that services Structures located on such property.)
Shall or shall	When used in the Contract Documents, states a mandatory duty on the part of the Contractor.
Shop Drawings	A general term that includes drawings, diagrams, illustrations, samples, schedules, calculations, and other data, which provide details of the construction of the Work and details to be used by the Engineer for inspection.
Shoulder	The portion of the Roadway contiguous with the Traveled Way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and Surface Courses.

DEFINITIONS	
Term	Meaning
Sidewalk	That portion of the Roadway constructed for pedestrian use.
Site	The parcels of ROW identified on the ROW drawings or upon which the Project is to be constructed and installed as well as all other areas in the vicinity used by the Contractor for construction Work.
Small Business Concern	A small business concern, with respect to firms seeking to participate as DBEs in DOT-assisted Contracts, means a small business as defined pursuant to the Small Business Act, 13 CFR §121.
Socially and Economically Disadvantaged Individuals	Persons who are citizens or lawful permanent residents of the U.S. and who are: i) Any individual whom the MRCC finds to be a socially and economically disadvantaged individual on a case-by-case basis. ii) Any individual in the following groups, members of which are reputably presumed to be socially and economically disadvantaged: (1) Native Americans – Persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or (2) Asian- Pacific Americans – Persons having origins from Japan, China, Taiwan, Korea, Burma, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Territories of the Pacific Islands, the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; or (3) Hispanic Americans – Persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race; or (4) Black Americans – Persons having origins in any of the Black racial groups of Africa; or (5) Subcontinent Asian Americans – Persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; or (6) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration, at such times as the Small Business Administration designation becomes effective; or (7) Women.
Specialty Item	Work requiring highly specialized knowledge, abilities, or Equipment not ordinarily available in the type of contracting organization qualified and expected to bid on the Contract as a whole, and generally limited to minor components of the overall Contract.
Stakeholder	An individual or group whose interests may be impacted similarly (whether real or perceived) by the construction of the Project.
Stabilization	Modification of soils or aggregates by incorporating Materials that increase load bearing capacity, firmness, and resistance to weathering or displacement.

DEFINITIONS	
Term	Meaning
Standards of the Industry	Practices, procedures, methods and standards that: (i) are consistent with current industry practices established for, or employed by, leading participants in the design, construction, operation, and maintenance industries; (ii) comply with Applicable Laws and applicable industry underwriters' and the fire and life safety codes and standards; and (iii) promote reliability, efficiency, safety, and security. Standards of the Industry include, without limitation, taking reasonable steps to assure that sufficient personnel are employed and available to perform the Work and that such personnel are adequately skilled, experienced, and trained to design, construct, install, operate, and maintain the Work properly and efficiently, and that appropriate coordination, monitoring, and testing is performed to assure that all elements of the Work are designed, constructed, and installed so as to function as required by the Contract Documents.
State	The State of Missouri, acting by and through the Commission.
Stipend	The Stipend for this Project shall be $112,500 and will be provided to responsible Proposers that provide fully responsive Proposals but are not awarded the Contract.
Storm Water Pollution Prevention Plan	The Plan referred to in Book 2, Section 5.
Street	A general term denoting a public way for purposes of vehicular travel, including the entire area within the ROW.
Structures	Bridges, Culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, soundwalls, buildings, storm drains, service pipes, underdrains, foundation drains, fences, guardrail, signs, end sections, traffic signals, light standards, and other features which may be encountered in the Work and not otherwise classified.
Subbase	Layer(s) of specified material thickness placed on a Subgrade to support a base course.
Subcontract	Any Subcontract to perform any part of the Work or provide any Materials, Equipment or supplies for any part of the Work between the Contractor and a Subcontractor, or between any Subcontractor and its lower tier Subcontractor, at any tier.
Subcontractor or Subconsultant	Any Person or company with whom the Contractor has entered into any Subcontract and any other Person with whom any Subcontractor has further Subcontracted any part of the Work, at any tier.
Subgrade	The top surface of a Roadbed upon which the pavement structure, Shoulders, and curbs are constructed.
Subgrade Treatment	Modification of Roadbed Material by Stabilization.

DEFINITIONS	
Term	Meaning
Substructure	That part of a bridge structure below the bearings of simple and continuous spans; all buttresses and piers below the skewbacks of arches; all parts of rigid frames, or integral bents below tops of footings or tops of caissons; and also, all parts of the abutments, backwalls and wingwalls, except handrails and handrail posts.
Superintendent	The Contractor's authorized employee responsible for the construction Work related to the Project.
Superstructure	All parts of a bridge structure not defined as Substructure.
Supplier	Any Person other than employees of the Contractor not performing Work at the Site that supplies machinery, Equipment, Materials or systems to the Contractor or any Subcontractor in connection with the performance of the Work; Persons who merely transport, pick up, deliver, or carry Materials, personnel, parts, or Equipment or any other items or Persons to or from the Site shall not be deemed to be performing Work at the Site.
Surety	A corporate body duly authorized to do business in the State of Missouri, and which has issued one or more of the Payment and Performance Bonds.
Surface Course	One or more layers of a Pavement Structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate. The top layer is sometimes called the "Wearing Course."
Technical Criteria	The Performance Requirements described in Books 2, 3 and 4 that establishes the minimum acceptable standards of quality, Materials, and performance for the Work, and which will be used as a basis for reviews, and as a basis for Final Acceptance.
Technical Proposals	The Technical Proposal Discussions and the Proposal and Price Allocation, as described in the Instructions to Proposers.
Temporary Structures	Structures required for the use of traffic while construction is in progress and not designated to remain a part of the permanent Roadway.
Test	The procedure and method of acquiring and recording physical data and comparing it to set standards and submitting a statement to such conditions or operations as will lead to its Acceptance or rejection (deficiency, Defective Condition, Nonconformance) of the item.
Test-Based Acceptance	Acceptance based on each Test meeting minimum requirements.
Test Procedure	Methods that detail the practice of acquiring the Test data.
Through Traffic	Traffic that has neither its origin nor its destination within the limits of the Project.
Traffic Control Plan	The plan described in Book 2, Section 17.
Traveled Way	The portion of the Roadway for the movement of vehicles, exclusive of Shoulders and Auxiliary lanes.

DEFINITIONS	
Term	Meaning
Unit Price	Unit Prices shall be deemed to include all costs for labor, material, overhead and profit, and shall not be subject to change regardless of any change in the estimated quantities.
United States Department of Transportation (USDOT)	United States Department of Transportation or any executive department or agency thereof, or as the context may require, the USDOT Secretary or other Person who may at the time be acting in the capacity of Secretary, or an authorized representative or any other Person otherwise authorized to perform the functions to be performed hereunder by USDOT.
USA	Any of the 50 states, the District of Columbia, Puerto Rico and any other territories and possessions of the United States of America.
Utility or utility	(i) A privately, publicly or cooperatively owned line, facility and/or system for producing, transmitting or distributing communications, power, cable television, electricity, light, heat, gas, oil, crude products, water, steam, waste, signal systems and other products that directly or indirectly serve the public; and/or (ii) a privately owned irrigation facility. The necessary appurtenances to each utility facility shall be considered part of such Utility. Without limitation, any Service Line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such Service Line. The term “Utility” is sometimes also used to refer to the owner or operator of any such line, facility and/or system (a “Utility Owner”). The term “Utility” shall specifically exclude existing storm water facilities, traffic signals and Street lights, without regard to whether or not such items are included in the definition of “Utility” in the MUAs.
Utility Agreement	A MUA and/or a Work Order, and other agreements entered into with Utility Owners in Book 4.

DEFINITIONS	
Term	Meaning
Utility Delay	Any failure by a Utility Owner to meet any time parameters for performance by such Utility Owner which are set forth in the applicable Work Order, which failure by the Utility Owner delays the Critical Path so as to impair the Contractor's ability to meet a Completion Deadline; provided, however, that: (i) to the extent that such failure is excused under a "force majeure" provision in the applicable MUA or in the Work Order, such failure shall not be the basis for calculating a Utility Delay against the Utility Owner; however, the Contractor shall be entitled to an extension of any Completion Deadline(s), (ii) once the Contractor has issued a Design Acceptance Letter for a particular Utility-Owner furnished design pursuant to Book 2, Section 7, any subsequent failure by such Utility Owner to meet the time parameters in the applicable Work Order resulting from any failure of such design to comply with the requirements of Book 2, Section 7 shall not constitute a Utility Delay, and (iii) once the Contractor has issued a Construction Inspection Acceptance Letter for construction by a particular Utility Owner pursuant to Book 2, Section 7, any subsequent failure by such Utility Owner to meet the time parameters in the applicable Work Order resulting from any failure of such construction to comply with the requirements of Book 2, Section 7 shall not constitute a Utility Delay. Any time parameters set forth in a MUA shall not be the basis for calculating a Utility Delay. Time extensions as related to Utility Delays are described in Book 1 Section 6.2.
Utility Easements	All permanent easements and/or other permanent interests in real property owned by Utility Owners in connection with existing Utilities.
Utility Information Sheet (UIS)	A form, completed prior to NTP1 for each Utility impacted by the Project, which documents the existing condition of such Utility and a preliminary Relocation recommendation to mitigate the potential conflict. The UISs are found in Book 5, Utilities. The information was prepared by the City in cooperation with the Utility Owner. The form was signed by the City and the Utility Owner.
Utility Owner	The owner or operator of any Utility.
Utility Owner Identification Number	The number that has been assigned to each Utility Owner on the UISs.
Utility Relocation Plans	The design plans for Relocation of a Utility impacted by the Project to be prepared by the Contractor or the Utility Owner, as determined pursuant to Book 2, Section 7.
Utility Tracking Report	A City report summarizing Utility conflicts, as shown on the UISs, for all Utility Owners within the ROW, found in Book 5.
Utility Work	The meaning set forth in Book 2, Section 7.1.
Value Engineering Change Proposal (VECP)	The meaning set forth in the Book 1, Section 13.3.
Verification/Verify	The act of testing or inspecting performed by qualified testing or inspecting personnel employed by the City or its designated agent to independently establish Conformity to the Contract.

DEFINITIONS	
Term	Meaning
Vision Message	The Project message communicated by the City Public Information Team, which will include the overall goals, strategies, direction, and philosophy of the Project.
Warranty	Any Warranty by the Contractor in Book 1, Section 21.
Wheel Path	Wheel Paths are the two sections of each through-traffic lane that bear the wheel loading. The center of each Wheel Path is located 3 feet from the center of the lane; each Wheel Path is 2 feet wide.
Will or will	When used in the Contract Documents, states a mandatory duty on the part of the Engineer or on the part of both the City and the Contractor, which is indicated by the context of use.
Work	All duties and services to be furnished and provided by Contractor as required by the Contract Documents, including the administrative, design, engineering, quality control, quality assurance, Relocation, procurement, legal, professional, manufacturing, supply, installation, construction, supervision, management, testing, Verification, labor, Materials, Equipment, documentation and other efforts necessary or appropriate to achieve Final Acceptance except for those efforts which the Contract Documents specify will be performed by the City or other Persons. In certain cases the term is also used to mean the products of the Work.
Work Breakdown Structure	The meaning set forth in Book 4.
Work Order	An ordering agreement (as the same may be amended from time to time) among the City, a Utility Owner and the Contractor, providing detailed information and terms relating to the Relocation of a particular Utility, which is executed pursuant to a MUA.
Written Permission of the City	A letter signed by the authorized representative of the City granting specific permission and outlining limitations of the permission.

APPENDIX B – Federal Requirements

1. General. The Work will be financed in whole or in part with Federal funds, and the Contractor shall observe the federal laws, rules and regulations applicable to Persons, which are so funded, including the requirements set forth in this Appendix and all documents linked hereto.

2. Federal Aid Participation. The Work shall be subject to the Inspection of the proper officials of the United States Government. Inspections made by authorized Federal representatives shall not make the United States Government a party to this Contract and will not interfere with the rights of the Contract parties.

3. FHWA Buy America Requirements:

   A. FHWA Federal-aid Projects are subject to 23 CFR § 635.410, Buy America requirements.

   B. Where steel or iron products are to be permanently incorporated into the contract work, steel and iron material shall be manufactured in the USA except for "minor usage" as described herein. Furthermore, any coating process of the steel or iron shall be performed in the USA. The use of pig iron and processed, pelletized and reduced iron ore manufactured outside of the USA will be permitted in the domestic manufacturing process for steel or iron material.

   Any sources other than the USA as defined will be considered foreign. The required domestic manufacturing process shall include formation of ingots and any subsequent process. Coatings shall include any surface finish that protects or adds value to the product.

   “Minor usage” of foreign steel, iron or coating processes will be permitted, provided the cost of such products does not exceed 1/10 of one percent of the total contract cost or $2,500.00, whichever is greater. If foreign steel, iron or coating processes are used, invoices to document the cost of the foreign portion, as delivered to the Project, shall be provided and the engineer ’s written approval obtained prior to placing the material in any work.

   Buy America requirements include a step certification for all fabrication processes of all steel or iron materials that are accepted per Missouri Standard Specifications for Highway Construction, Sec 1000.

   Items designated as Category 1 will consist of steel girders, piling, and reinforcing steel installed on site. Category 1 items require supporting documentation prior to incorporation into the Project showing all steps of manufacturing, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410 Buy America Requirements. This includes the Mill Test Report from the original producing steel mill and certifications documenting the manufacturing process for all subsequent fabrication, including coatings. The certification shall include language that certifies the following. That all steel and iron materials permanently incorporated in this Project was procured and processed domestically and all manufacturing processes, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410.

   Items designated as Category 2 will include all other steel or iron products not in Category 1 and permanently incorporated in the Project. Category 2 items shall consist of, but not be limited to items such as fencing, guardrail, signing, lighting and signal supports. The prime contractor is required to submit a material of origin form certification

prior to incorporation into the Project from the fabricator for each item that the product is domestic. The Certificate of Materials Origin form (link to certificate form) from the fabricator must show all steps of manufacturing, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410 Buy America Requirements and be signed by a fabricator representative. The Engineer reserves the right to request additional information and documentation to verify that all Buy America requirements have been satisfied. These documents shall be submitted upon request by the Engineer and retained for a period of 3 years after the last reimbursement of the material.

Any minor miscellaneous steel or iron items that are not included in the Missouri Standard Specifications for Highway Construction, Sec 1000, shall be certified by the prime contractor as being procured domestically. Examples of these items would be bolts for signposts, anchorage inserts, etc. The certification shall read "I certify that all steel and iron materials permanently incorporated in this Project during all manufacturing processes, including coating, as being completed in the United States and in accordance with CFR Title 23 Section 635.410 Buy America Requirements procured and processed domestically in accordance with CFR Title 23 Section 635.410 Buy America Requirements. Any foreign steel used was submitted and accepted under minor usage". The certification shall be signed by an authorized representative of the prime contractor.

4. Convict Produced Materials:

   A. FHWA Federal-aid Projects are subject to 23 CFR § 635.417, Convict produced Materials.

   Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid Highway construction Project if such Materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison; or (ii) produced in a prison facility in which convicts, during the 12 month period ending July 1, 1987, produced Materials for use in Federal aid Highway construction Persons, and the cumulative annual production amount of such Materials for use in Federal aid Highway construction does not exceed the amount of such Materials produced in such facility for use in Federal aid Highway construction during the 12 month period ending July 1, 1987.

5. Performance of Previous Contract: In addition to the provisions in Section II, "Nondiscrimination," and Section VII, "Subletting or Assigning the Contract," of the required contract provisions contained in FHWA Form 1273 (Appendix F), the Contractor shall comply with the following:

The Contractor has executed the “Certification of Compliance with EEO Clause Requirements” Form DB-410 located in the proposal. No request for Subcontracting any portion of the Contract in excess of $10,000 will be considered under Section VII of the required contract provisions contained in FHWA Form 1273 unless such request is accompanied by the form of Certification referred to above, executed by the proposed Subcontractor.

FEDERAL PROVISIONS:

(All documents linked below are incorporated into Book 1 Appendix B, Federal Requirements)

Trainee Notification (Form OJT-1)
https://www.modot.org/sites/default/files/documents/OJT_1_Trainee_Notification.pdf

Contractor Monthly Trainee Report (Form OJT-2)

https://www.modot.org/sites/default/files/documents/OJT_2_Contractor_Monthly_Trainee_Repo rt.pdf

Training Completion Report (Form OJT-3)
https://www.modot.org/sites/default/files/documents/OJT_3_Training_Completion.pdf

Trainee Contact (Form OJT-4)
https://www.modot.org/sites/default/files/documents/OJT-4_Trainee_Contact.pdf

APPENDIX C – DBE Program

The Disadvantaged Business Enterprise (DBE) goals for this Project are: 10% Construction Activities 12% Professional Services

1. Policy Statement

It is the policy of the City of Springfield (City) that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, and other small businesses shall have an equal opportunity to participate in the performance of Design-Build Contracts financed in whole or in part with Federal funds. The City of Springfield, Missouri and its contractors will not knowingly exclude any person from participation in bidding or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, national origin, religion, age, sexual orientation, gender identity, veteran's status, or disability.

A Contract, for purposes of Appendix C, means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

For the purposes of Appendix C, a Subcontracting arrangement is generally considered to exist when a Person or firm assumes an obligation to perform a part of the Contract Work and the following conditions are present:

> i) The Person or firm performing the Work is particularly experienced and equipped for such Work ii) Compensation is related to the amount of Work accomplished rather than being on an hourly basis. iii) Choice of Work methods, except as restricted by the specifications, and the furnishing and controlling of labor and Equipment are exercised by the Subcontractor with only general supervision being executed by the prime Contractor. iv) Personnel involved in the operation are under the direct supervision of the Subcontractor and are included on the Subcontractor's payroll. v) All conditions involved shall be considered and no one condition alone will normally determine whether a Subcontract actually exists. In all cases, a DBE Subcontractor must be an independent organization, and the ownership and control by the socially and economically disadvantaged individual(s) must be real and continuing. The firm will not be considered independent if prime Contractor or another Subcontractor or Supplier provides significant operating and management support for the DBE firm.

City desires to maximize the opportunity for DBE firms certified in the state to participate in this Project funded by the City. The City also desires to make it easier for Contractors bidding on the Project to locate and provide sufficient certified DBE firms to achieve the DBE goal set by City.

The Contractor shall be entitled to use the DBE firms certified by the Missouri Regional Certification Committee (MRCC), to fulfill the DBE goals established by City.

It is the contractor's responsibility to ensure firms identified for participation are approved certified DBE firms. The MRCC DBE Directory is at the following web site:

https://www6.modot.mo.gov/MRCC/common/publicSearch.faces

2. Contractor Assurances

The Contractor will not knowingly exclude any person from participation in bidding or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, national origin, religion, age, sexual orientation, gender identity, veteran's status, or disability. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of its Subcontracts. Failure by the Contractor to carry out these requirements is a material breach of the Contract, which may result in termination of the Contract or such other remedy as the City deems appropriate.

The Contractor agrees to ensure that DBEs have a full and equal opportunity to participate in the performance of Contracts and Subcontracts financed in whole or in part with Federal funds. In this regard the Contractor shall take all necessary and reasonable steps in accordance with this Appendix to ensure that DBEs have an equal opportunity to compete for and perform Work on Contracts. **The Contractor shall ensure that this Appendix is included, in its entirety, in all Subcontracts awarded on The Design-Build Project (Project).**

3. Bank Services

The Contractor, and each of its Subcontractors, is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services, and the fees charged for services, typically will not be eligible for DBE credit toward the DBE goal on this Project. Any questions on this subject should be directed to the City Project Director. See Section 4 below.

4. DBE Program Information

DBE Program information may be obtained from the MoDOT External Civil Rights Director, 1617 Missouri Boulevard, P.O. Box 270, Jefferson City, MO 65102-0270. Phone (573) 751-2859, Fax (573) 526-0558, E-Mail dbe@modot.mo.gov. It is the duty of the Contractor, and each Subcontractor and Surety, to take the steps necessary to determine the legal obligations and limitations under the DBE Program, as an element of responsibility. It is also the duty of each certified DBE firm and the Contractor to know, understand and comply with the legal obligations and limitations under the DBE Program, as a requirement of program participation. A Surety providing a bid or Contract bond will be bound by those bonds to the duties of the Surety's principal.

5. Individual Contract DBE Goals

The Contractor shall establish individual Contract DBE goals as appropriate for each Subcontract, or consultant, Subconsultant, regular dealer, and service provider agreements in amounts to ensure that the Contract DBE goal is met or exceeded. The City will monitor the Contractor's Activities to determine if they are conducted in a manner consistent with the requirements of 49 CFR Part 26, the Contract requirements and the Contractor's DBE Plan. The City has the right to review all Subcontracts,

consultant, Subconsultant, regular dealer, and service provider agreements for program compliance prior to or after award or selection. The City has the sole discretion to Approve or deny such DBE Subcontracts, consultant, Subconsultant, regular dealer, and service provider agreements based upon their compliance with the requirements of 49 CFR Part 26.

6. Submittal of Documents

The following shall be submitted:

6.1. Final DBE Performance Plan

The Contractor shall submit the final DBE Performance Plan for Approval within sixty Days after NTP2 of the Contract. The Contractor shall use the Draft DBE Performance Plan that was submitted as part of their proposal as starting point. The final DBE Performance Plan shall contain at a minimum, the following elements:

6.1.1. DBE Goals

The plan shall set forth the Contractor's plan to meet the Project goal for DBE participation, with meaningful design and construction representation, throughout the Contract. It shall include the following information:

1. The estimated dollar amount of DBE Subcontracts to be awarded and paid for during each of Contractor's fiscal year, separately for design and construction; and
2. The areas of anticipated Work to be Subcontracted to DBE firms during each of Contractor's fiscal year.

The plan shall provide a detailed description of the scopes of Work/services anticipated throughout the life of the Project and for a uniform distribution of DBE Subcontracts and Subconsultant agreements throughout the Contract. DBE Subcontracts shall be distributed among the Work classifications on the basis of the Contractor's needs and the availability of DBE firms in the various classifications.

6.1.2. DBE Commitments

The Contractor shall submit the following documentation of DBE Commitments:

1. Form DB-401 DBE Provisions (summary of DBE Contracts)
2. Form DB-402 DBE Provisions (Subcontracted Work)

6.1.2.1. Subcontract Information

Whenever a DBE Subcontract is Signed the Contractor shall promptly provide the City with the following information regarding the Subcontract:

1. The name and business address of the Subcontractors.
2. The total dollar amount of the subcontract.
3. The specific Work items covered by the Subcontract.
4. The amount of the Subcontract to be credited to design or construction.

5. The estimated quantities of each Work item.
6. Individual Unit Prices (if applicable).
7. Cost loaded schedule of participation by the DBE firm.

6.1.3. Civil Rights Compliance Manager

The DBE Performance Plan shall provide for at least one employee or Subcontractor (the Civil Rights Compliance Manager), who has a bachelor's degree in business administration, public administration or related field, and is knowledgeable and has at least four years of experience in the areas of civil rights compliance, including Contract compliance, DBE administration and OJT administration, or who has other substantially equal qualifications Approved by the City. The responsibilities of the Civil Rights Compliance Manager shall include managing and implementing the DBE Performance Plan, and ensuring compliance with 49 CFR, Part 26, the Plan and with the nondiscrimination provisions set forth in the Standard Federal Equal Opportunity Construction Contract Specification, and the On-the Job Training Provision, both of which are included in Appendix B, Federal Requirements, and Appendix F, FHWA 1273. The Civil Rights Compliance Manager shall be responsible for developing, managing and implementing the DBE Performance Plan on a day-to- day basis, for carrying out technical assistance activities for DBEs, and for disseminating information on available business and Subcontracting opportunities so that DBEs are provided an equitable opportunity to compete and perform the Work on behalf of the Contractor. The Civil Rights Compliance Manager will also be responsible for day-to-day management of the Affirmative Action Requirements and On the Job Training Provision set forth in Appendix B, Federal Requirements, and Appendix F, FHWA 1273. The Civil Rights Manager will work with the City Project Director to ensure that all rules and regulations are carried out in accordance with City's DBE requirements and the federal regulations. All DBE participation will be reviewed and Approved by the City prior to being counted towards the Project DBE goal.

6.1.4. DBE Outreach Program

Describe in detail the processes Contractor will use to achieve the following:

1. Develop a proactive outreach program for DBEs;
2. Assist DBEs in identifying Subcontracting opportunities on the Project, and assist Subcontractors in identifying concerns for their specific Subcontracting needs;
3. Provide for financial assistance for DBEs, in cooperation with any existing City or MoDOT programs;
4. Provide for training for DBEs, and coordinate with City and MoDOT's External Civil Rights Division on training matters;
5. Provide technical business assistance for DBEs; and

6. Work cooperatively with City, including the obligation to forward to the City any complaints received regarding the Contractor's DBE Program.

7. Mentor Protégé Development Plan can be included as part of the DBE Performance Plan. Any Mentor Protégé Development Plan must be approved by the Mentor Protégé Oversight Committee. The following links provide additional information:

https://www.modot.org/sites/default/files/documents/ecr/ecr/documents/modotmentorprotegeprogram-finalrevision-06-17-2014.pdf

https://www.modot.org/sites/default/files/documents/ecr/ecr/documents/mentorapplication.pdf

https://www.modot.org/sites/default/files/documents/ecr/ecr/documents/modotprotegeapplication-revised.pdf

6.2. Monthly DBE Progress Reports

The Contractor shall keep records regarding the progress of DBE participation. The Contractor shall provide DBE progress reports to the City simultaneously with its monthly invoice, *(and at more frequent intervals if requested by the City)*, including the following information for each DBE Subcontract separately for design and construction:

A. The name of the DBE Subcontractor.

B. Dollar amount of the Subcontract.

C. Quantities (or other measure of performance) completed as of the month just ended.

D. Dollar amount paid under the Subcontract as of the end of the month (separately stating the amount paid during the month in question with a cumulative total for the month and all prior periods).

E. Dollar amount retained, if any, as of the end of the month.

F. Certification of release of retainage, if any, to Subcontractors within a month after the Subcontractor's satisfactory completion of the Work.

G. Certification of payment to Subcontractors within one month of Contractor's receipt of payment from the City in accordance with Section 34.057, RSMo.

H. Dollar amount of outstanding invoices and of uncompleted Work remaining on the Subcontract.

I. Expected completion date of Subcontract.

J. Any performance problems with DBE Subcontractors and how the problems were resolved.

K. The report shall also include a narrative summary stating whether the Contractor is on target with respect to its DBE goals, whether it has exceeded its goals (and stating the amount of the excess), or whether it is behind (and stating the amount of the deficit).

L. If a monthly report shows that the Contractor is not on track to achieve the DBE goals stated in the DBE Performance Plan, the Contractor shall

provide with the report a written plan to remedy the deficit to be Approved by the City. The Contractor shall submit a revised plan within ten (10) working Days if the plan is not Approved. The Contractor shall also provide with the report a certification in the form of an affidavit, documenting what good faith efforts it undertook to meet the goals and what good faith efforts it will make in the future to do so. Specific documentary evidence of the Contractor's good faith efforts must accompany such certificate.

6.3. Good Faith Efforts

If the Contractor's Monthly DBE Utilization Reports indicate that the DBE Goal is not on track to being met, the Contractor shall also submit completed copies Form DB- 403 – DBE Provisions (Summary of Quotes) and Form DB-404 – DBE Provisions (Good Faith Effort) as described below on an annual basis from the date of Approval of its Final DBE Performance Plan.

1. Form DB-403 – DBE Provisions (Summary of Quotes), providing information on all DBE and non-DBE firms that submitted a bid/proposal for the Project, and the firms being used on the Project as Contractors, Subcontractors, consultants, Subconsultants, Suppliers or service providers. **This form is not required if the Contractor is on track to meet the DBE Goal for this Contract and provided 100% Commitments for professional services and construction.**
2. Form DB-404 - DBE (Good Faith Efforts) showing the good faith efforts that the Contractor has made to provide equal opportunities to DBE firms, and including a certification on behalf of the Contractor and its Subcontractors and Subconsultants the Contractor has made a Good Faith Effort to ensure that DBEs have an equal opportunity to compete for and perform on the Contract. **This form is not required if the Contractor is on track to meet the DBE Goal for this Contract and provided 100% Commitments for professional services and construction.**

6.3.1. Continued Good Faith Efforts

During the term of the Contract, the Contractor shall continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully bid and perform on the Contract, and that the Contractor meets its DBE goal. These efforts shall include but not be limited to the following:

1. Negotiating in good faith to secure a Contract, Subcontract, Consultant, Subconsultant, Supply or Service Provider agreement with DBEs whether or not committed to prior to Contract award;
2. Continuing to provide assistance to DBE Contractors, Subcontractors, Consultants, Subconsultants, Suppliers or Service Providers in obtaining bonding, lines of credit, etc., if required by the Contract;
3. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting the City's statement of no objection to substitute the DBE;
4. Timely payment of all monies due and owing to DBE Contractors, Subcontractors, consultants, Subconsultants, Suppliers and service

providers;

5. Timely submittal of complete and accurate DBE payment reports in accordance with the reporting requirements specified in the Contract herein;
6. Timely submittal of "Good Faith Efforts" information and documentation to the City throughout the Contract, as Contracts are let and new vendors, Subcontractors, Subconsultants, Suppliers and service providers are selected;
7. Informing the City in writing in a timely manner of any problems anticipated in attaining the DBE participation goal for the Project; and
8. If the Contractor or its Contractor, Subcontractor, consultant, Subconsultant, Supplier, or service provider requests a substitution of a DBE firm, the Contractor or its Contractor, Subcontractor, consultant, Subconsultant, Supplier or service provider must exert good faith efforts to replace the DBE firm with another DBE firm, and must include all documentation to substantiate its good faith efforts, subject to the City's statement of no objection.

7. Counting DBE Participation Toward Goals

The City will recognize and grant DBE credit for Work Subcontracted and performed by DBE Subcontractors ONLY in the types of Work for which DBE certification has been granted. It is recommended that the Contractor contact the MoDOT External Civil Rights Director referred to in Section 4 above if they need direction and guidance, or if they have any questions.

For the purposes of Appendix C DBE joint venture means an association of a DBE firm and one or more other firms formed to carry out a single, for-profit business enterprise for which purpose the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the Work of the Contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. DBE Joint Ventures must be pre-Approved by the MoDOT External Civil Rights Director.

The Contractor may count toward the DBE goals a portion of the total dollar value of the Contract with a DBE joint venture equal to the percentage of the ownership and control of the DBE partner in the joint venture and commensurate with the Work performed by the DBE firm with its own Equipment and resources.

The Contractor may count toward the DBE goals only expenditures to a DBE that performs a commercially useful function in the Work pursuant to a Contract, as defined in 49 CFR § 26.55. If the City determines, in its sole discretion, that the firm does not perform a commercially useful function in the transaction, no credit toward goals shall be granted. Contractor's civil rights compliance manager shall certify to the City that each DBE firm counted for participation in determining availability percentages serves a commercially useful function, which includes the requirements set forth in 49 CFR § 26.55. Upon request by the City, Contractor shall provide information to enable the City to Verify such determination.

The Contractor may count toward the DBE goals expenditures to all tiers of DBE

Subcontracts.

The Contractor may count toward the Contract goal expenditures for Materials and supplies obtained from DBE Suppliers and manufacturers, provided that the DBE assumes the actual and Contractual responsibility for the provision of the Materials and supplies.

a. DBE Manufacturers. The Contractor may count the entire expenditure to a DBE manufacturer (i.e., a Supplier that produces goods from raw Materials or substantially alters them before resale).

b. Other Suppliers. The Contractor may count 60 percent of their expenditure to DBE Suppliers who are not manufacturers, provided the DBE Supplier is certified by the MRCC as a regular dealer in the product involved and performs a commercially useful function in the supply process.

A regular dealer is a firm that owns, operates or maintains a store, warehouse or other establishment in which the Materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question.

A Supplier of bulk goods may qualify as a regular dealer if the Supplier either maintains an inventory or owns or operates distribution Equipment. With respect to the distribution Equipment (e.g., a fleet of trucks) the term "or operates" is intended to cover a situation in which the Supplier leases the Equipment on a regular basis for its entire business. It is not intended to cover trucks owned or leased by another party (e.g., a prime Contractor). It also does not cover leases of trucks on an ad hoc basis for a specific job.

c. Service Providers/Brokers. A business that simply transfers title of a product from manufacturer to ultimate purchaser or a firm that puts a product into a container for delivery would not be considered a regular dealer. The Contractor would not receive credit based on a percentage of the cost of the product for working with such firms.

However, fees received by a service provider/broker may be counted toward goals. For example, use of a minority sales representative or distributor for a steel company, if performing a commercially useful function, will entitle the Contractor receiving the steel to count only the fee paid to the representative or distributor toward their Contract goal. No portion of the steel would count toward the goal.

If a DBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the Contractor, the commercially useful function the trucking company is performing is not that of a Supplier, but simply that of a transporter of goods. Unless the trucking company is itself the manufacturer of or a regular dealer in the product, credit cannot be given based on a percentage of the cost of the product. Rather, credit would be allowed for the cost of the transportation service only.

The Contractor can only count DBEs who are certified by the MRCC at the time the Subcontractor begins to perform Work on the Project. The Contractor may count toward the Contract goal expenditures to a DBE Subcontractor if, during the term of the original Subcontract or during the term of a change order extending the original Contract for Work within the scope of the original Subcontract, the DBE graduates from the DBE

program.

The Contractor shall maintain records of payments to DBE Subcontractors listing all DBEs that worked under this.

8. Contractor's Responsibility

It is the Contractor's responsibility to determine the level of professional competence and financial responsibility of any proposed DBE Subcontractor. The Contractor shall ascertain that the proposed DBE Subcontractor is particularly experienced and equipped for such Work. It is also the Contractor's responsibility to ensure that if a DBE firm is Subcontracting Work to a non-DBE firm, that only the Work performed by the DBE firm with its own Equipment and resources be submitted for Approval to be counted towards the Project DBE goal.

9. Changes and Substitutions

Any change in previously identified DBE firms, or any reduction in the scope of Work to be performed by a DBE firm, or any change in or variance from the Approved DBE Performance Plan, will require the City's prior written Approval.

The Contractor may propose a substitution of a DBE Subcontractor who is unable to perform successfully. However, substitutions of any DBE Subcontractor(s), reductions in scope for DBE Subcontracts, substitution of Work item(s), or decreases of total dollar amount(s) committed to DBE Subcontracts will not be allowed without prior submission of written justification to the City and Approval of the City.

The Contractor shall submit any substitutions using the DBE Subtitution Form located on MoDOT's ECR webpage:

https://www.modot.org/sites/default/files/documents/DBE_Substitution_Form%20.pdf

The Contractor shall make good faith efforts to replace any DBE Subcontractor who fails to perform its obligations with another DBE.

Unauthorized substitutions and/or under-runs in total dollar amounts may result in a withholding of part or all of progress payments as described Section 10.

10. Contract Sanctions

Noncompliance with any of the provisions of the Contract Documents is a material breach of this Contract. Noncompliance shall result in one or more of the following remedies:

a. If the Contractor fails to provide documentation required by this Appendix, the City shall have the discretion to withhold all or part of the monthly progress payments until such time that the Contractor provides the required documentation. The amount withheld shall be within the sole discretion of the City.

b. If the Contractor fails to comply with its DBE Performance Plan or with the requirements of this Appendix in any other manner, the City shall have the discretion to withhold all or part of the monthly progress payments until such time that the Contractor comes into Compliance. The amount withheld shall be within the discretion of the City.

c. Failure on the part of the Contractor to achieve the DBE participation goal may result in Liquidated Damages for breach of Contract and non-compliance. If it is determined by the City that the Contractor's failure to meet all or part of the DBE participation goal is due to the Contractor's inadequate good faith efforts, the Contractor may be required to pay DBE Liquidated Damages equal to the amount of the unmet goal.

APPENDIX D – City's Design-Build Workforce Program

The Federal standards of 2.0% minorities per trade and 6.9% women per trade shall be the Contract goals for all counties in this Project. These workforce goals are determined by the U.S Department of Labor for construction and professional services.

The workforce goals will be applied to professional services to the cumulative effort of the Contractor, Consultants, Subcontractors, and Subconsultants as a whole broken down by gender and ethnicity.

The workforce goals for construction will be applied per craft broken down by gender and ethnicity.

1. Workforce Diversity Policies

Projects utilizing federal funds include contract provisions for minority and female workforce utilization in the various trade crafts used to complete design-build contracts. These federal contract workforce goals are described in Section 7. These goals are included in all City federal aid contracts and are under the authorization and enforcement of the U.S. Department of Labor (US DOL).

The Federal workforce requirement (Table D1 in Section 7) is authorized in 41 CFR Part 60-4 and Executive Order 11246 which set Equal Employment Opportunity goals with Affirmative Action requirements.

The required federal aid workforce provisions noted above, coupled with the following additional contract provisions, constitute City's Design-Build Workforce Program (Program).

This provision does not require pre-qualification nor is it a condition of award.

The Program does not eliminate or limit any actions the US DOL may take in relation to this contract's federal provisions.

The Program goals included in the contract are separate from any Disadvantaged Business Enterprise (DBE) or On-The-Job Training (OJT) provision that may be included as contract provisions. DBE and OJT goals may or may not be included in a contract based on the individual size of contracts, type of contract work, anticipated length of contract, available and willing resources or other reasons.

Contractor, for the purpose of this provision, means the prime Contractor and any and all Subcontractors.

It is expected that the awarded Contractor's aggregate construction and professional services workforce on the Project meets or exceeds the workforce goals of minority and female residents in the county(s) where the work is to occur.

When the aggregate of the Contractor's and all the Subcontractors' existing construction and professional services workforce meets or exceeds the Contract goals, the OJT goal (Appendix E) as part of the Contract will not be applicable. The goals shall be maintained for the life of the Project. If at any time during the life of the Project the workforce goal is not being met, then the OJT goal (Appendix E) will become effective, and goals of the OJT program will be required to be met in whole.

2. Contractor's Workforce Development Plant

The Contractor shall submit their Workforce Plan related to the Project goals prior to NTP2. The Contractor shall submit workforce data in one of the following ways: (1) a company-wide employment data report that includes the prime Contractor's company-wide workforce and the anticipated Project workforce of all the Subcontractors that will be working on the Project; or (2) the prime Contractor can submit the anticipated workforce that will be utilized on the Project including the prime and Subcontractor(s) workforces on the Project. The workforce data shall include the prime and all Subcontractors' workforces. One report shall be submitted for the Project that shall include the cumulative workforce of the prime and Subcontractor(s). City will provide the Contractor with comments regarding their Workforce Plan prior to NTP1.

The Contractor's workforce plan (either company-wide or Project specific approach) may include existing construction support and professional services staff.

2.1. Workforce Development Plan Instructions

At a minimum, the Plan shall include the following items:

1. The identified Stakeholders and the strategies and tactics to reach workforce utilization for construction and professional services.
2. Identify the strategy to start the Project with a diverse workforce for both construction and professional services.
3. Strategies for meeting and/or exceeding the federal standards of for minorities per trade and women goals per trade.
4. Approach to hiring and retaining graduates of pre-apprentice and apprenticeship training programs who are minorities, women, or economically disadvantaged individuals.
5. Commitment to providing necessary documentation for trainees to be accepted into the apprentice program.
6. Approach to maximizing relationships with pre-apprenticeship and apprenticeship programs and hiring agencies.
7. Approach to incorporating diversity and sensitivity training to reduce and eventually eliminate harassment and other barriers.
8. Strategies to maintain a diverse workforce for both construction and professional services throughout the duration of the Project.

3. Required Project Documentation

The Contractor must submit the following documents when awarded the contract:

3.1. Monthly Cumulative Workforce Utilization Reports

This report is contract specific. Two cumulative reports shall be submitted to the City with each invoice submittal. The first report will be used to report the Contractor's own workforce compliance data for construction and professional services with regard to the City's design-build contract. The second report will be used to report consolidated workforce compliance data for construction and professional services of the prime and all Subcontractors retained by the Contractor on the City's design-build contract. The reporting shall include the workforce hours per each craft broken down by gender and ethnicity for construction and shall include the cumulative hours of the professional services staff broken down by gender and ethnicity. The report will include a cumulative workforce for the Project to date as well as the previous report's data.

3.2. Annual Workforce Utilization Report - Federal-Aid Highway Construction Contractors Annual EEO Report (FHWA Form 1391)

This report is not contract specific. It is used to report on the utilization of females and minorities, by craft, per Project. The report (Form PR-1391) "Federal-aid Highway Construction Contractors Annual EEO Report", must be submitted to City by the 1st of September with data from the last working week on the Project during the month of July. The reporting shall include the number of individuals per each craft broken down by gender and ethnicity on Project. The report will be used to report the Contractor's own workforce compliance data for construction and professional services with regard to the Project. The Contractor shall be responsible for ensuring that Subcontractors also submit this report annually.

3.3. Final Cumulative Report - Submittal Required for Final Contract Payment

A final City Project Cumulative Workforce Utilization report shall serve as the final report and must be submitted before final payment will be made. The report shall include the workforce hours and number of individuals per each craft broken down by gender and ethnicity for construction and shall include the cumulative hours of the professional services staff broken down by gender and ethnicity for the Project from NTP1 to Final Acceptance. The Contractor shall note the submittal of the final reports by notation entitled "Final Cumulative Report."

4. Methods for Securing Workforce Participation and Good Faith Efforts

By submitting a Proposal, the Contractor agrees, as a material term of the Contract, to carry out City's Design-Build Workforce Program by making good faith efforts to utilize minority and female workers on the Contractor's job sites to the fullest extent consistent. The Contractor shall agree that the Program is incorporated into this document and agree to follow the Program. If the Contractor is unable to meet or exceed workforce goals at the time of Proposal, it shall be required to objectively demonstrate to City at the conclusion of the Project that the goals have been met or demonstrate a good faith effort has been made, or otherwise be subject to additional provisions included in this specification.

The Contractor's attention is directed to TABLE D2, Section 7 – Missouri Workforce Data as an aid in its workforce planning and good faith efforts to meet the contract provisions. Table D2 represents the minority and female workers as determined by the 2010 Census Equal Employment Opportunity (EEO) Tabulation Detailed Census Occupation by Sex and Race/Ethnicity by Residence Geography Civilian Labor Force 16 years and over.

4.1. Good Faith Effort Determination

If the Contractor is unable to secure minority and female participation to meet or exceed the construction and professional services workforce goals of the contract, the Contractor shall be required to make good faith efforts to achieve the Program goals. The request to accept good faith efforts shall include documentation to prove that the Contractor has made good faith efforts to meet the goal(s).

City will examine the Contractor's request and documentation of good faith efforts. City, through consultation with MoDOT's External Civil Rights (ECR) Division, may determine that the Contractor has demonstrated that good faith efforts to secure minority and female participation have been made.

In evaluating good faith efforts, the ECR Division will take into consideration the affirmative actions listed in Appendix D, Section 6 Federal Provisions (including provisions of Executive Order 11246).

City's Program allows the Contractor flexibility to implement a Project specific workforce and/or develop a long-term company workforce that can be utilized across various areas of the state to meet the Program's goals and the Federal Provisions. Missouri's census data is provided for the Contractor's use. The Contractor's workforce shall meet or exceed the provisions of this contract; otherwise the Contractor is required to secure a good faith effort determination at the completion of the Project.

4.2. Example Situations and Analysis

4.2.1. Example 1

In the event the Contractor's company-wide workforce exceeds the Contract's workforce goal:

Example:

Contractor's aggregate full-time company-wide construction and professional services workforce = 200 staff

Existing female staff = 20 (10%)

Existing minority staff = 30 (15%)

The Projects contract workforce goals are 6.9% for female and 14.7% minority and the contract includes a 3,000-hour training goal. The prime Contractor is not using any Subcontractors.

Analysis: Since the existing aggregate fulltime staff for female and minority utilization exceeds the contract's workforce goals, the Contractor is not required to fulfill the training provision. Also, the Contractor's aggregate construction and professional services workforce exceeds the contract's workforce goals. No training reimbursement or workforce reimbursement will be provided to the Contractor as its existing workforce meets the contract provisions for training and workforce. The Contractor will be required to verify the actual utilization of contract/aggregate workforce utilization (including Subcontracts) at the end of the specific contract; otherwise, the Contractor would still be required to secure a good faith effort determination.

4.2.2. Example 2

In the event the Contractor's Project and company-wide construction and professional services workforce falls short of the Project workforce goals as noted in Table D1, this Contract provides for reimbursement of $10.00 per hour as a remedy to the Contractor and as an aid in the long-term growth of experienced trades persons in the building of roads and bridges in Missouri.

4.2.3. Example 3

In the event the Contractor's company-wide construction and professional services workforce and Project workforce falls short of the goals and the On-the-Job Training provision is included in the Contract, it is possible that the utilization of the training hours will meet the Project workforce goals. It is the Contractor's responsibility to secure a good faith effort in the event it does not meet or exceed the goals established in Table D1 at the completion of the Project.

Example: Awarded Contract = $1,250,000 (includes 1,000 hours OJT Training goal)

Contractor's company-wide construction and professional services workforce does not meet the Project workforce goals; therefore, the training goal is applicable to the Project. (Workforce numbers are verified through the submittal of documentation of the Contractor's construction and professional services staff noting gender and ethnicity)

Contractor's total planned construction and professional staff hours to complete Project = 10,000 hrs (including Subcontracts)

Existing female employees planned = 3% (300 hrs.) Existing minority employees planned = 10% (1,000 hrs.)

Goals: 6.9% female, therefore 10,000 hrs. * 0.069 = 690 hrs.

12.0% minority, therefore 10,000 hrs. * 0.12 = 1,200 hrs.

Gap: 390 hrs. in female utilization 200 hrs. in minority utilization

Contractor's OJT plan is to use a minority female for 1,000 hrs.

Analysis: The Contractor's plan meets the OJT goal. The Contractor's OJT training utilization also exceeds the 590-hour workforce gap by using minority/ female workers. In addition, the Contractor would be allowed the reimbursement provided for in the OJT provision towards the 1,000 hrs. (1,000 hrs.* dollar per hour allowed). No additional reimbursement would be allowed for the workforce provision.

4.2.4. Example 4

In the event the Contractor's utilization of the training hours (if included in the Contract) is not enough to supplement any gaps in meeting the Project workforce goals, the remaining gap to meet the Project workforce goals noted in Table D1 will be provided reimbursement of $10.00/hr. (for the gap hours only. The training provision will specify the reimbursement allowed for training. The $10.00/hr. reimbursement for the workforce provision will be available as a remedy to the Contractor in efforts to meet the workforce goals. It is the Contractor's responsibility to secure a good faith effort in the event the workforce used does not meet or exceed the goals established in Table D1. Any workforce reimbursement will be pre- approved by City as necessitated by the Contractor's approved Project workforce utilization plan.

Example: Awarded Contract = $1,250,000 (includes 500-hour OJT Training goal and workforce provisions)

Contractor's company-wide construction and professional services workforce does not meet the workforce goals; therefore, the training goal is applicable to the Project. Workforce numbers are verified through the submittal of the Contractor's company-wide construction and professional services staff noting gender and ethnicity.

Contractor's total planned construction and professional services hours to complete contract = 10,000 hrs.

Existing female employees planned = 3% (300 hrs.) Existing minority employees planned = 10% (1,000 hrs.)

Goals: 6.9% female, therefore 10,000 hrs.*0.069 = 690 hrs.

12.0 % minority, therefore 10,000 hrs.*0.12 = 1,200 hrs.

Gap: 390 hrs. in female utilization

200 hrs. in minority utilization

Contractor's OJT plan is to use a minority female for 500 hrs.

Analysis: The Contractor's plan meets the OJT provision and will be provided the reimbursement specified in the training provision. Since the Contractor used a minority female, the 500 hours of attained OJT training can be used towards the 590-hour gap, but there still remains a gap to attain the workforce goals. The Contractor decided to apply the 500 hours towards the 390 hours of gap in female hours and to hire a minority male carpenter for the remaining 90 hours.

5. Compliance

5.1. Compliance Determination

After completing the preliminary analysis of the data and information submitted by the Contractor towards the good faith effort determination, an on-site Project review will be performed by the City which may include, but is not limited to, conducting interviews, a physical tour of job site, an exit conference, etc.

When more than one county falls within the Project limits, the Contractor's plan will be evaluated based on its own merits prior to the NTP 2. The Contractor shall follow through on the plan and request changes from the City, if necessary.

Verification of work performed by classification and time assigned to Project operations used in the Contractor's plan shall be the responsibility of the Contractor (including Subcontracts).

All documentation and on-site information will be reviewed by the City in making a determination of whether the Contractor made sufficient good faith efforts to prove compliance with the City's Design-Build Workforce Program.

5.2. Corrective Actions

If the goal was not met or a good-faith effort was not approved, the Contractor shall be found in non-compliance when there is sufficient evidence to make a determination that the Contractor failed to effectively implement the Program. The following progressive corrective action steps may be implemented:

5.2.1. Voluntary Corrective Action Plan (VCAP)

A Contractor found in non-compliance of minor deficiencies can develop and submit an acceptable VCAP within 15 days following the finding. The Contractor's written and signed commitment, outlining specific actions taken, or proposed, to correct the deficiencies cited in a compliance review constitute the VCAP. Failure to submit an acceptable VCAP is grounds for a finding of non-compliance.

5.2.2. Corrective Action Plan (CAP)

Contractors who have major deficiencies, which include underutilization of minorities and females, signs of discrimination, etc. will be issued a show-cause notice and will be required to enter into a Corrective Action Plan (CAP) in order to correct the deficiencies. Show Cause Notice: A written notification finding the Contractor in non- compliance with the equal opportunity requirements. The notice informs the Contractor of the specific basis for the determination and allows the Contractor 30 days from the date the notification was sent for the Contractor to provide an explanation and documentation why sanctions should not be imposed. The CAP will include a mandatory written and signed commitment outlining specific actions the Contractor has taken, or proposes, to correct the deficiencies cited in a finding of non-compliance. The statement must include time limits and goals to remedy each violation of the equal opportunity requirements as specified in the show cause notice.

5.3. Liquidated Damages

In addition to any corrective action plans, if the Contractor fails to achieve the Project workforce goals or a good-faith effort determination, the City may sustain damages, the exact extent of which would be difficult or impossible to ascertain, as this impacts the cost of future road and bridge Projects. Therefore, in order to liquidate those damages, the City shall be entitled, at its sole discretion, to deduct and withhold the following amounts:

If the Contractor failed to meet or exceed the workforce goals of this Contract or establish a good faith effort determination on this Project, the sum of **one thousand five hundred dollars ($1,500)** will be assessed.

5.4. Administrative Reconsideration

The Contractor shall be offered the opportunity for administrative reconsideration upon written request related to findings and/or actions determined by the City. The Administrative Reconsideration Committee shall be composed of individuals not involved in the original City determination(s).

5.5. Independent Third-Party Compliance Monitor (Monitor)

City may hire a Monitor. The Monitor shall be responsible for monitoring the Project's workforce utilization for the Contractor and Subcontractors. The Contractor and its Subcontractors shall allow the Monitor access to their reports, be available to answer the Monitor's questions and allow the Monitor access to the site and to Contractor and Subcontractor employees.

6. Federal Provisions

6.1. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity

The Contractor's attention is called to the "Equal Opportunity Clause" and the Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are shown in Appendix D, Section 7:

Construction Contractors, which are participating in an approved Hometown Plan. (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such Contractors are required to comply with the goals in Appendix D, Section 7.

These goals are applicable to all of the Contractor's Project work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Project work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its

federally involved and non-federally involved work.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its Projects. The transfer of minority, or female employees or trainees from Contractor to Contractor or from Project to Project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Project Subcontract in excess of $10,000 at any tier for work under the Contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the Subcontract; and the geographical area in which the Subcontract is to be performed.

6.2. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

As used in these specifications:

9. "Covered area," means the geographical area described in the solicitation, which this Contract resulted;
10. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of labor, or any person to who the Director delegates authority;
11. "Employer Identification Number" means the Federal Social Security number used on the Employer's quarterly Federal Tax Return, U.S. Treasury Department Form 941;
12. "Minority" includes;
    a. Black (all person having origins in any of the Black African racial groups not of Hispanic origin);
    b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    c. Asian and pacific islander (all persons having origins in any of the original peoples of the Far East, southeast Asia, the Indian Subcontinent, or the Pacific Islands; and
    d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

Whenever the Contractor, or any Subcontractor at any tier, Subcontracts a portion of the work involving any construction trade, it shall physically include in each Subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligation under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

The Contractor shall implement the specific affirmative action standards provided in the following paragraphs of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction.

Contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, nor the regulations promulgated pursuant thereto.

In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goal, the Contractor must employ such apprentices and trainees during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

1. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
2. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
3. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
4. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
5. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant of the Contractor's employment needs, especially those programs funded or approved by the Department of labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.
6. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
7. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, General foreman, etc., prior to the initiation of construction work at any job site. A written

record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

8. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
9. Direct recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
10. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer vacation employment to minority and female youth both on the site and in other areas of contractor's workforce.
11. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
12. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
13. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
14. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
15. Document and maintain a record of all solicitations of offers for Subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
16. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

Contractors are encouraged to participate in voluntary associations, which assist in fulfilling one or more of their affirmative action obligations. The efforts of a Contractor association, joint Contractor union, Contractor community, or other similar group of

which the Contractor is a member and participant, may be asserted as fulfilling anyone or more of its obligations provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

A single goal for minorities and a separate single goal for women has been established to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non- minority. Consequently, the group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in a violation of the executive Order if a specific minority group of women is underutilized).

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing Subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive order, the Implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4-.8.

The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Action of 1977 and the Community Development block Grant

Program).

6.3. Operating Policy Statement

The Contractor shall accept as his operating policy the following statement, or one of equal coverage, which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

"It is the policy of this company that applicants will not knowingly be excluded or otherwise discriminated against on the basis of race, color, sex, national origin, religion, age, sexual orientation, gender identity, veteran's status, or disability. Such action shall include employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on the job training."

6.4. Supplemental Reporting Requirements

The Contractor will keep such records as are necessary to determine compliance with the Contractor's equal employment opportunity obligations. The records kept by the Contractor will be designed to indicate the number of minority and non-minority group members and women employed in each work classification on the Project.

All such records must be retained for a period of three years following completion of the Contract work and shall be available at reasonable times and places for inspection by authorized representatives of the City, MoDOT, and the Federal Highway Administration.

6.5. Nondiscrimination in Employment

The following provisions are added by the State to the Required Contract Provisions of Federal-Aid Contracts.

The Contractor is advised that the exemptions referred to in the Required Contract Provisions, Federal-Aid Contracts under Section II, Nondiscrimination, Paragraph 3g, with respect to contracts and Subcontracts, are substantial and are to be found in Chapter 60, Office of Federal Contract Compliance, Equal Employment Opportunity, Department of labor (33 Federal Register 7804-7812, May 28, 1968, effective July 1, 1968, Chapter 60, Title 41, Code of Federal Regulations), by which contracts and Subcontracts of $10,000 or less and certain contracts and Subcontracts for indefinite quantities are exempt.

The two pertinent exemption clauses are as follows: 60-1.5 Exemptions

General:

(1) Transactions of $10,000 or under. Contracts and Subcontracts not exceeding $10,000, other than Government bills of lading, and other than contracts and Subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or Subcontract thereunder, the

amount of such contract or Subcontract rather than the amount of the Federal financial assistance shall govern. No agency, Contractor, or Subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause: Provided, that where a Contractor has contracts or Subcontracts with the Government in any 12-month period which have an aggregate total value (or can reasonably be expected to have an aggregate total value) exceeding $10,000, the $10,000 or under exemption does not apply, and the contracts are subject to the order and the regulation issued pursuant thereto regardless of whether any single contract exceeds $10,000.

(2) Contracts and Subcontracts for indefinite quantities. With respect to contracts and Subcontracts for indefinite quantities (including, but not limited to, open end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed $10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds $10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

6.6. Statements and Payroll

The following provisions are added by the state to the Required Contract Provisions of Federal-Aid Contracts.

The Contractor is advised that the Final Certification referred to in Appendix F, on Form FHWA 1273, Section V. Paragraph 3 is no longer required to be completed.

TABLE D1 – Federal Workforce Goals

TABLE D1 – Federal Workforce Goals for Minority Participation for Each Trade The Goal for Female Participation for Each Trade is 6.9% Statewide for Missouri.					
County	**Goal (Percent)**	**County**	**Goal (Percent)**	**County**	**Goal (Percent)**
Adair	4	Grundy	10	Perry	11.4
Andrew	3.2	Harrison	10	Pettis	10
Atchison	10	Henry	10	Phelps	11.4
Audrain	4	Hickory	2.3	Pike	3.1
Barry	2.3	Holt	10	Platte	12.7
Barton	2.3	Howard	4	Polk	2.3
Bates	10	Howell	2.3	Pulaski	2.3
Benton	10	Iron	11.4	Putnam	4
Bollinger	11.4	Jackson	12.7	Ralls	3.1
Boone	6.3	Jasper	2.3	Randolph	4
Buchanan	3.2	Jefferson	14.7	Ray	12.7
Butler	11.4	Johnson	10	Reynolds	11.4
Caldwell	10	Knox	4	Ripley	11.4
Callaway	4	Laclede	2.3	St. Charles	14.7
Camden	4	Lafayette	10	St. Clair	2.3
Cape Girardeau	11.4	Lawrence	2.3	St. Francois	11.4
Carroll	10	Lewis	3.1	Ste. Genevieve	11.4
Carter	11.4	Lincoln	11.4	St. Louis City	14.7
Cass	12.7	Linn	4	St. Louis County	14.7
Cedar	2.3	Livingston	10	Saline	10
Chariton	4	McDonald	2.3	Schuyler	4
Christian	2	Macon	4	Scotland	4
Clark	3.4	Madison	11.4	Scott	11.4
Clay	12.7	Maries	11.4	Shannon	2.3
Clinton	10	Marion	3.1	Shelby	4
Cole	4	Mercer	10	Stoddard	11.4
Cooper	4	Miller	4	Stone	2.3
Crawford	11.4	Mississippi	11.4	Sullivan	4
Dade	2.3	Moniteau	4	Taney	2.3
Dallas	2.3	Monroe	4	Texas	2.3
Daviess	10	Montgomery	11.4	Vernon	2.3
DeKalb	10	Morgan	4	Warren	11.4
Dent	11.4	New Madrid	26.5	Washington	11.4
Douglas	2.3	Newton	2.3	Wayne	11.4
Dunklin	26.5	Nodaway	10	Webster	2.3
Franklin	14.7	Oregon	2.3	Worth	10
Gasconade	11.4	Osage	4	Wright	2.3
Gentry	10	Ozark	2.3		
Greene	2	Pemiscot	26.5		

TABLE D2 – Missouri Minority and Female Workforce Data

If the Contractor's utilization changes during the Project and/or the available workforce changes from what is approved at any time, it is the Contractor's responsibility to remedy, in coordination with City, the conditions as outlined and made available through this provision.

TABLE D2 – Missouri Minority and Female Workforce Data

The data shown below is developed from the 2010 Census Equal Employment Opportunity (EEO) Tabulation Detailed Census Occupation by Sex and Race/Ethnicity by Residence Geography Civilian Labor Force 16 years and over.

County	Minority %	Female %	County	Minority %	Female %	County	Minority %	Female %
Adair	2.7	1.4	Grundy	3.9	1.2	Perry	3.9	5.7
Andrew	3.6	3.1	Harrison	3.6	3.1	Pettis	11.6	5.2
Atchison	3.6	3.1	Henry	3.3	2.8	Phelps	1.8	3.8
Audrain	3.1	2.3	Hickory	10.7	4.7	Pike	5.6	3.7
Barry	13.5	1.9	Holt	3.6	3.1	Platte	16.0	3.0
Barton	4.8	4.3	Howard	11.6	5.2	Polk	10.7	4.7
Bates	4.8	4.3	Howell	4.6	2.7	Pulaski	9.2	4.6
Benton	3.3	2.8	Iron	3.2	1.5	Putnam	3.9	1.3
Bollinger	2.2	4.6	Jackson	32.1	3.8	Ralls	5.8	4.3
Boone	12.0	4.8	Jasper	14.9	3.1	Randolph	5.1	8.1
Buchanan	9.9	6.1	Jefferson	4.5	2.8	Ray	5.4	2.4
Butler	4.5	2.7	Johnson	11.1	4.3	Reynolds	3.2	1.5
Caldwell	3.6	3.1	Knox	2.7	3.4	Ripley	4.5	2.7
Callaway	3.1	2.3	Laclede	1.1	7.0	St. Charles	3.8	2.8
Camden	1.6	4.0	Lafayette	5.4	2.4	St. Clair	3.3	2.8
Cape Girardeau	3.9	5.7	Lawrence	13.5	1.9	St. Francois	1.0	2.8
Carroll	5.4	2.4	Lewis	2.7	3.4	Ste. Genevieve	1.0	2.8
Carter	4.5	2.7	Lincoln	5.6	3.7	St. Louis City	50.7	4.4
Cass	12.5	5.1	Linn	5.1	8.1	St. Louis City	27.2	3.6
Cedar	4.8	4.3	Livingston	5.1	8.1	Saline	11.6	5.2
Chariton	5.1	8.1	McDonald	13.5	1.9	Schuyler	2.7	3.4
Christian	2.5	5.8	Macon	5.1	8.1	Scotland	2.7	3.4
Clark	2.7	3.4	Madison	2.2	4.6	Scott	12.2	2.9
Clay	11.8	2.5	Maries	9.2	4.6	Shannon	4.6	2.7
Clinton	3.0	1.7	Marion	5.8	4.3	Shelby	5.8	4.3
Cole	9.7	1.1	Mercer	3.9	1.3	Stoddard	2.2	4.6
Cooper	1.8	4.0	Miller	1.8	4.0	Stone	9.3	3.9
Crawford	3.2	1.5	Mississippi	12.2	2.9	Sullivan	3.6	1.3
Dade	4.8	4.3	Moniteau	1.8	4.0	Taney	9.3	3.9
Dallas	10.7	4.7	Monroe	5.8	4.3	Texas	3.4	2.9
Daviess	3.6	3.1	Montgomery	1.3	1.8	Vernon	4.8	4.3
DeKalb	3.0	1.7	Morgan	1.8	4.0	Warren	1.3	1.5
Dent	1.8	3.8	New Madrid	12.2	2.9	Washington	3.2	1.5
Douglas	3.4	2.9	Newton	9.6	6.7	Wayne	2.2	4.6
Dunklin	17.6	4.8	Nodaway	3.6	6.7	Webster	1.1	7.0
Franklin	2.2	3.4	Oregon	4.6	2.7	Worth	3.6	3.1
Gasconade	1.3	1.8	Osage	9.2	4.6	Wright	3.2	2.9
Gentry	3.6	3.6	Ozark	3.4	2.9			
Greene	9.5	3.4	Pemiscot	17.6	4.8			

APPENDIX E – City's Design-Build On-The-Job Training (OJT) Program

The On-the-Job Training (OJT) goals for this Project are:

2 OJTs for Construction labor hours – 1000 hours per trainee

There are three conditions of City's Design-Build Workforce Program (Appendix D) where OJT may be required to be applied differently:

1. If the aggregate of all of the Contractors, Consultants, Subcontractors, and Subconsultants working on the Project's existing construction and professional services workforce meets or exceeds the Contract workforce goals (Appendix D), the OJT goal as part of the Contract will not be applicable. The goals shall be maintained for the life of the Project. If at any time during the life of the Project the workforce goal is not being met, then the OJT goal will become effective, and the goals of the OJT program will be required to be met in whole.
2. If the workforce goals (Appendix D) are not being met, the OJT goals will be applied. The OJT should be applied to the area of need, i.e. if the goal for women carpenters is not being met, then one or both of the construction OJTs should fill this need.
3. If the workforce goals (Appendix D) continue to not be met after the OJT goals for the Project have been applied, the Contractor may utilize additional OJT as needed to assist with good faith efforts (GFE).

1. Policy Statement

The Contractor shall comply with the City's OJT Policy ensuring that OJTs shall have full and equal opportunity to participate in the roadway construction industry. The Contractor shall meet the OJT goal established for the Project or make a good faith effort (GFE) to meet the OJT goal.

The Contractor will be given an incentive of $10.00 per hour for each hour worked by an Approved OJT individual, as set forth in the Design-Build OJT Program.

No payment shall be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeymen/professional, is caused by the contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of Appendix E.

2. Description

This provision supplements subparagraph 7e of the Contract Provision entitled "Standard Federal Equal Opportunity Construction Contract Specification" (41 CFR 60-4.3) and in the implementation of CFR Part 230, Subpart A, Appendix B.

3. Purpose

It is the policy of the City to require full utilization of all available training and skill-

improvement opportunities to assure the increased participation of minority groups, disadvantaged persons and women in all phases of the roadway construction industry. The intent of the On-the-Job Training Program is to recruit entry-level individuals, when feasible, and provide them with meaningful training intended to lead to journey-level employment. Under the Design-Build OJT Program, the Contractor shall make every reasonable effort to enroll minority, disadvantaged persons and women trainees to the extent such persons are available within a reasonable recruitment area. This training provision is not intended and shall not be used to discriminate against any applicant for training.

The Contractor is hereby advised that it is no excuse for a union, with which the Contractor has a collective bargaining agreement providing for exclusive referral, to fail to refer minority and female employees (23 CFR 230.411(e)(1)). Contractors are hereby made aware that if union referral practices prevent the contractor from meeting the EEO requirements, the contractor should make written notification to City immediately. Furthermore, the FHWA Form FHWA-1273 EEO bid conditions are to be included in the Contractor's affirmative action plan. The EEO bid conditions specifically state, "In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies. Unions are not allowed to discriminate based on race, color, national origin or sex, union membership or non-membership, or domicile.

Contractors can sometimes demonstrate that they referred minorities and women to the unions for referral back to them, or the Contractors can demonstrate efforts made to request minorities and women from the union when they see their work force is deficient in certain construction trades. These efforts should be documented and will be verified by the City.

4. City's Responsibility to FHWA

4.1. Program Administration

The OJT Program is only intended to be utilized if the contractor is failing to attain the affirmative action goals in its contract, Appendix D, which are determined by the county in which the Project is located. The affirmative action goals are broken down by minority and female goals. If the contractor is meeting or exceeding the minority and female goals in all crafts being utilized on the Project, then the OJT requirements are not applicable. If the contractor is not obtaining the minority and female goals in each craft, then the OJT goal will be dependent upon the actual participation achieved and the authentic contract as outlined in the contract. All training goals, including the number of training hours, on federally funded Projects are to be established by the City with Federal Highway Administration (FHWA) oversight. The following guidelines will be utilized in selecting Projects and determining the goal to be set:

1. Availability of minorities and women for training.
2. The potential for effective training.
3. Duration of the contract.
4. Dollar value of the contract (# of working Days).

   Under $1,000,000 – 0

Over $1,000,000 to $3,000,000 – 1-2

Over $3,000,000 to $5,000,000 – 2-3

Over $5,000,000 to $10,000,000 – 3-4

Over $10,000,000 to $15,000,000 – 4-5

Over $15,000,000 to $20,000,000 – 5-6

Over $20,000,000 – * 6-7

* One Additional trainee per $5,000,000 of estimated construction Contract amount over $20,000,000.

5. Total normal work force that the average bidder could be expected to use.
6. Geographical location.
7. Type of work.
8. The need for additional journeymen in the area.
9. The need to correct underutilization of minorities and females in specific trades.
10. A satisfactory ratio of trainees to journeymen expected to be on the contractor's workforce during normal operations (considered to fall between 1:10 and 1:4).
11. Recognition of the suggested minimum goal for the State.

The intent of the program is to recruit entry-level individuals when feasible and provide them with meaningful training, which will normally be expected to lead them towards journey-level employment. The unions, Associated General Contractors (AGC), and the Contractors have voiced concern over the lack of young people seeking employment in the roadway construction trades. This, coupled with an aging workforce, could cause us to experience a major shortage of trained roadway construction workers in the near future. The industry is already experiencing a shortage of minority and female construction workers in most trades with the only exception being possibly Laborers in some areas. If the Contractors do not voluntarily train as many people as possible with beneficial training, they will have no one to work on contracts, which will affect their bidding ability as well as their business.

Trainee goals will be set in 1,000-hour increments or 1 slot (person) per 1,000 hours per Project. For example, if the trainee goal on the Project is 2,000 hours, a maximum of 2 trainees will be approved for the Project. In the event a trainee leaves the Project for valid reasons, the trainee shall be replaced as soon as possible. No apprentice/trainee can be assigned less than 500 hours on a contract. City will not assign training on contracts that will not support the 500 hours. Providing less than 500 hours is not considered to be beneficial training nor helping to achieve journey-level status. Therefore, a trainee/apprentice, regardless of craft, must have been trained on the contact for at least 500 hours to be eligible for reimbursement. However, the contractor may transfer the trainee, with City's approval, to another City roadway highway construction Project in order to continue the training. Upon reaching the 500 hours, the contractor will be compensated as noted herein. If the enrollee is transferred to a non-federal Project, the City, upon availability of funding, may have the option of reimbursing the contractor for those hours completed that achieve the 500-hour minimum and for any hours that continue the successful training of the individual(s). The same

documentation will be required to be submitted in order to determine if hours will be approved. However, if the trainee is moved to another federally funded enhancement, then a “change order” could be requested for the additional hours and thus offer the Contractor the necessary credit so as to accomplish the 500-hour plateau. FHWA and City will only approve training programs meeting the requirements of the Design-Build OJT Program. A program will be approved if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training will also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid roaday construction contracts.

No individual shall be employed as a trainee in any classification in which they have successfully completed a training course leading to journeyman status or in which the individual has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. It is the Contractor’s responsibility to verify that the individual has not been trained or worked at the journey level and their records shall document the findings. Training under the Design-Build OJT Program should only be directed toward those trades where underutilization/under representation exists. Flagging/traffic control programs are not considered as meeting the intent of the Design-Build OJT Program. However, other programs that include flagger training will be approved if the flagging portion is limited.

A contractor may choose to transfer a trainee to another Project, whether City or not. The contractor must submit monthly trainee reports for that Project to the City where the hours will be credited. The contractor must submit with the monthly trainee reports, copies of the certified payrolls so the City can verify the number of hours worked on the Project, as well as the wage the trainee was being paid. Once the Project Director reviews the monthly reports, copies of the monthly reports should be sent to the ECR Division. The Project Director should include with the report a note indicating the hours that are being transferred from the other Project. Both job numbers must be included in the note. The contractor cannot bank hours from one Project and transfer those hours to another Project to fulfill a trainee requirement.

4.2. Approval Process General

The intended training plan must be submitted 30 Days prior to work commencing. Failure to submit the plan will result in withholding of the first monthly progress payment. A written explanation outlining why the delay occurred may be submitted to the City for consideration. A revised training plan must be resubmitted when modifications to the plan or schedule occur. The plan must contain the trades proposed in which to accomplish the training item in the contract, the number of trainees, hours assigned to the trade, and the estimated beginning work date for the trainee/apprentice. Acceptable training programs include:

1. BAT Programs – Apprenticeship programs approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training.

2. Any other program, such as the Missouri Manpower Programs, which have been approved by FHWA and MoDOT on an annual basis.

4.3. Apprentice/Trainee Approval Forms

Submittal of the Trainee Notification (Form OJT-1), Appendix B – After the training plan has been approved, the Trainee Approval Form should be submitted prior to the trainee commencing work on the Project. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower-level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification will be permitted only with the approval of the ECR Division with concurrence from the FHWA Division Office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training. Reimbursement to the Contractor for off-site training as indicated above may only be made when the Contractor does one or more of the following and the trainees are concurrently employed on federal-aid Projects:

- Contributes to the cost of the training.
- Provides the instruction to the trainee.
- Pays the trainee's wages during the off-site training period.

4.4. Good Faith Efforts (GFE)

Substantial Compliance – Although the OJT Program is specifically designed to increase minority and female participation on federal aid roadway construction Projects where underutilization exists, it is not intended to be discriminatory. Contractors and Subcontractors may utilize a non-minority male apprentice/trainee if sufficient documented GFEs are taken to fill the specific training position with either minorities or females. The Contractor shall enroll minorities, women or economically disadvantaged individuals, where possible, and document their GFEs, prior to the hiring of non-minority males not identified as economically disadvantaged. The Contractor may suggest that a Subcontractor fulfill a portion of the contract work. However, he/she shall determine how many, if any, of the trainees are to be trained by the Subcontractor, and secure approval from the City. Nevertheless, the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this Design-Build OJT Program. The Contractor shall apply the requirements of the Design-Build OJT Program to such Subcontracts. Where feasible, 25% of apprentice or trainees in each craft shall be in their first year of apprenticeship training. The Contractor shall be aware that even if a trainee has been previously approved to work on a prior City Project, that trainee may not be approved on future Projects if the trainee is not in their first year of apprenticeship training.

A GFE requires that the Contractor furnish evidence of his/her systematic and direct recruitment efforts through the use of public and private sources likely to yield minorities and females. The following example represents one element of GFEs: The Contractor must submit letters that are Project specific (where is the Project, how long it will last, type of pay) and targeted for the crafts utilized and must be sent to Community Based Organizations (CBOs) (two or three that are likely to refer minorities or females), and unions/apprenticeships (if union shop). The letters must be forwarded prior to job startup to alert CBOs to the possibility of the Contractor needing assistance finding minorities

and females.

These letters should be ongoing and targeted when the Contractor needs assistance in locating minorities and/or females in a specific craft. The Contractor's letters should also address anything the Contractor has done to hire minorities and/or females as well as files including employee referrals. The Contractor in his or her letter **must** request a response and the Contractor must note the results of the Contractor's request for assistance. GFEs must be two-way communications with documented results. If a union contractor, contact the union first, then any and all other resources to include two or three CBOs.

The Contractor shall, upon requests, be able to provide documentation of written solicitations to the unions, local or regional community action agencies, or other sources likely to refer minorities or women, such as the St. Louis Agency on Training and Employment or (SLATE), if applicable. Such efforts may be considered good-faith efforts if they were **results oriented**. If the Contractor's efforts are repetitive mechanical exercises that have never produced a referral or are "stuffing" - that is copies of letters not sent, then the non-productive activity cannot be considered to have been made in good faith. If, however, the Contractor can demonstrate that it employed referrals form the sources contacted on prior occasions and some efforts were not productive due to the lack of availability from usually dependable and responsive sources, then the non-productive effort can be considered good faith. In the absence of reasonable representation in any craft, the Contractor should be able to provide proof of its having requested referrals of minorities and women (i.e., records of telephone requests, including dates and times, persons talked with, and for which crafts minorities and women were requested). Letters should be detailed and include the type of vacancy to be filled, location of the Project, potential employment opportunities with the company, and current as it relates to the specific job opportunity (ies).

All sources relied upon by the Contractor in advertising for vacancies and recruiting employees, especially those that resulted in referrals and employment should be identified and reported. Lists of minority organizations and other recruiting sources that have not been used or which have not been used recently or which if used have never referred anyone for employment should not be considered to meet the GFE test. All efforts reported by the Contractor to contact recruiting sources will be verified with the recruiting source listed. Contractors often send these recruiting sources "form" letters indicating they are under contract for a federal Project. To be considered valid, recruitment letters should be specific. For example, recruitment letters should specify the positions for which referrals are sought, the number of employees needed, position requirements, estimated dates, who to contact, wage/salary range, and other information sufficient to elicit interest and references of potential employees. Form letters without specific information **will not** be considered good- faith efforts.

The terms and conditions of employment practiced by the Contractor should be explored to allow the Contractor the opportunity to demonstrate whether there is adequate representation of minorities and women throughout the life of the contract.

While it is the Contractor's prerogative to select who will be hired, recalled, rehired, or name requested, it is also the Contractor's responsibility to ensure equal employment opportunity for minorities and women.

The hours of minority and female employment and training should be substantially uniform throughout the length of the contract, and in each trade, and the Contractor is required to make a GFE to employ minorities and women evenly on each Project when

there are opportunities to do so. The Contractor should not wait to hire minorities and women at the "eleventh hour" or “bicycle” employees from Project to Project.

In the event the ECR Division denies the GFE submitted by the contractor, the contractor shall have the right to an administrative reconsideration hearing. The request for an administrative reconsideration hearing must be made within seven (7) Days of the receipt of the denial letter. The administrative reconsideration committee may be constituted, as the City deems appropriate and fair, provided that no committee member on the reconsideration committee shall have taken part in the original City determination that the contractor failed to meet the OJT contract goal and/or failed to make adequate GFES to do so.

If the Administrative Reconsideration Committee does not find the contractor met the OJT contract goal, and/or does not find that the contractor made adequate and sufficient GFEs to do so, then The Administrative Reconsideration Committee will recommend that liquidated damages as outlined in the non-compliance sanctions section be carried out. If the Administrative Reconsideration Committee does find that the contractor has met a GFE, then no liquidated damages will be assessed.

4.5. Ethnicity Verification

When there is a questionable ethnic claim concerning an individual submitted for participation in the OJT Program, further documentation of that claim may be necessary to ensure eligibility. Acceptable documentation for ethnicity verification includes, in order of preference:

- Birth certificate
- Naturalization papers
- Native American – Indian Tribal roll, tribal voter registration certificate, or another official document
- History of individual having held himself to be a member of the minority group or community (driver’s license, school, medical, and service records)
- Recognition of applicant in a particular minority community as a minority through sworn and notarized statements from bona fide members of the community who are clearly disinterested parties.
- Proof of membership and interaction in recognized minority organizations
- If requested, the Contractor will be required to obtain this information from the employee claiming the minority status.
- If an individual requesting minority status cannot provide acceptable documentation and does not manifest the visual characteristics of the ethnic group claimed, the individual cannot claim minority status for the purpose of the OJT Program.
- If a person manifests the visual characteristics of an acceptable ethic minority group, the contractor may consider the person to be a member of that group

4.6. Economically Disadvantaged Verification

When a contractor submits a trainee, who is economically disadvantaged the following information should be submitted with the trainee notification to verify this status:

- The previous year’s tax return verifying the individual’s income is less than the federal poverty guidelines.
- Verification of enrollment in food stamps received from Missouri Department of

Social Services
- Verification of housing assistance received from Missouri Department of Social Services

4.7. Beneficial Training

City will ensure its contractors provide on-the-job training aimed at developing or contributing to full journey level status in the type of trade(s) involved. Training shall be consistent with the trainee/apprentice program. Training tasks will be consistent with the approved trade classification for the specific contract. The Contractor shall furnish the trainee a copy of the program the Contractor will follow in providing the training. The Contractor shall provide each trainee and Resident Engineer documentation showing the type and length of training that will be completed including classroom and on-the-job hours. This includes providing information on the Contractor Monthly Trainee Report (Form OJT-2) and Trainee Notification (ECR Form OJT-1), both shown in Appendix B, as to the total working and classroom hours the trainee/apprentice has completed to date.

4.8. Training Reimbursement Process

Submittal of a certified invoice requesting payment for training is required. Except as otherwise noted herein, the Contractor will be reimbursed $10.00 per hour of training given an employee on this contract in accordance with an approved training program.

Payments will not be made if the failure to provide the required training is caused by the Contractor and a lack of good faith on the part of the Contractor to meet the training requirements has been determined. For example, if the goal on the Project is 1,000 hours and only one trainee reaches the 500 hours minimum threshold, then the Contractor will be reimbursed for the 500 hours and must continue to train a new trainee for the remaining 500 hours or they will be assessed liquidated damages for failure to achieve the OJT goal of 1,000 hours. However, if the trainee goal on the Project is 1,000 hours and the trainees receive less than the 500-hour minimum, the Contractor will not secure credit for any of the hours under 500 that the trainees completed. If the trainee goal on the Project is not met, then the remaining hours will be subject to the sanctions as outlined in this Design-Build OJT Program noted below. If a trainee quits the Project voluntarily, then the Contractor is required to fill the trainee slot as soon as possible and shall be reimbursed according to these standards. The hours completed by the previous trainee will not be counted toward the new enrollee if the original unskilled party has not obtained the 500 hours.

Training will not be reimbursed if the Contractor fails to provide beneficial training. This includes only partially meeting the training goal on the Project.

Requests may be submitted to the ECR Division to increase the Training Hours assigned to a contract. Approval of such requests by the ECR Division will be granted on a case-by-case basis.

Additional hours of the training item must not exceed 25% or 500 hours of the contract quantity of hours assigned or 1,000 hours, whichever is less.

This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided those sources do not specifically prohibit the contractor from receiving other reimbursement.

4.9. Monitoring

City will monitor contractors to ensure trainees and apprentices are receiving beneficial training in the type of trades submitted. Training shall be consistent with the training program or those OJT Programs the FHWA and City have approved.

It is normally expected that the trainee/apprentice will begin training on the Project as soon as possible, utilizing the skills involved and remaining on the Project as long as training opportunities exist in the work classifications or until the completion of the training program.

Onsite Interviews use the Trainee Contact (form OJT-4), Appendix B and are performed to determine:

- Whether apprentice/trainee is receiving training in designated craft
- Workplace environment
- If trainee/apprentice is experiencing problems on the job site
- If the apprentice/trainee is being treated fairly

City monitors contracts with training through onsite visits, Contractor Monthly Trainee Report (Form OJT-2) and construction reports. These reports are generated by the Contractor and are to be disseminated to the City. If there are problems, the City will contact the Contractor to address the deficiencies.

- If there are deficiencies, the Contractor must provide a corrective action plan addressing the deficiencies.
- No payment will be made under the bid item “Training” if the Contractor fails to provide the required training.
- Payment will not be made if the Contractor fails to submit trainee reports in a timely manner.

4.10. Wages

Trainees will be paid at the rate set by the training program. The appropriate minimum journeyman's rate paid cannot be less than the amounts set out in the CFR Part 230, Subpart A, Appendix B. For example, at least 60 percent of the appropriate minimum journey person’s rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period and 90 percent for the last quarter of the training period. The appropriate rates approved by the Department of Labor or Transportation in connection with the existing programs shall apply to all apprentice or trainees being trained for the same classification who are covered by the Design-Build OJT Program.

Professional service trainees shall be minorities, women or economically disadvantaged individuals, and have no previous experience relating to the proposed training category and shall be compensated according to the following formula. Trainees will be paid at least 60% of the appropriate minimum professional services wage for the assigned position for the first half of the training curriculum, 75% for the third quarter of the training curriculum, and 90% for the last quarter of the training curriculum.

4.11. Reports

The Contractor shall provide for the maintenance of records and furnish monthly reports (Form OJT-2), Appendix B documenting the Contractor's performance under this

provision. All trainee notifications must be submitted prior to the start of the Project. If a trainee has been previously approved by the City, the Contractor must still notify the City of the name of the individual(s) and proposed craft the trainees will be trained in, as well as indicate which Project the trainees will be working on. The trainee notifications or listing of the proposed trainees must be submitted via fax, mail or electronically to the City. If the Contractor fails to submit the trainee notification or list of proposed trainees prior to the onset of the Project, the Contractor will be subject to the sanctions as outlined in this Design-Build OJT Program.

4.12. Non-Compliance Sanctions

Progress payments shall be withheld for failing to comply with all OJT Program requirements unless the City accepts GFEs.

Sanctions (Violations of EEO/OJT Provisions):

When the job is 50% complete the Contractor must have at least 50% of the trainee hours assigned on that job completed. The percentage of job completion is based on the total value of the contract paid to the Contractor. The remaining amount of the hours must be completed before the completion of the Project or the Contractor will be subject to liquidated damages unless a GFE is submitted to and approved by the City.

If the training hours have not been obtained and a GFE has not been displayed upon Project completion, the Contractor will be assessed liquidated damages in the amount of $20.00 per hour for those hours not realized. For instance, if the Project goal was 1,000 hours and only

450 hours were met, then liquidated damages would be assessed at 550 x $20.00 =

$11,000.00.

If the City approves a GFE, then liquidated damages will not be assessed.

If the Contractor does not achieve the full OJT goal, they will not receive partial credit for hours completed. For instance, if the goal on the Project was 1,000 hours and only 450 were completed, then no reimbursement will be given for any hours fulfilled. If the goal on the Project is 2,000 hours and only 1,500 hours are completed and no GFE is demonstrated, the contractor will receive credit for the 1,500 hours and also be assessed liquidated damages in the amount of the 500 hours that were not met.

In the event the Contract exceeds the trainee goal on the Project, the Contractor must submit a request to ECR to obtain an extension of hours. The maximum amount of hours beyond those enumerated in the contract cannot exceed 500 hours per 1,000. For instance, if the goal was 1,000, the Contractor can be granted an extra 500 hours subject to the **advance** approval of the ECR Division, and concurrence from FHWA.

Trainee reports must be submitted with each invoice submittal. Failure to submit the reports in a timely manner may result in hours completed during that month not being credited. In cases of voluntary or involuntary trainee termination or when the trainee completes the hours specified in the program, the contractor must complete the trainee completion form within five working Days. The Contractor's failure to submit the proper reports in a timely manner may result in the loss of reimbursement for the training hours for that month.

Failure to satisfactorily comply with the OJT requirements will also be reflected in the Contractor's performance evaluation

APPENDIX F – FHWA 1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. 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 applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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

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

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

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

APPENDIX G – Contractor Provided Insurance Requirements

Appendix G provides the required amounts of minimum limits of liability required. Reference Book 1 Section 9 for specifics on each insurance type.

TABLE G1	Per Claimant*	Per Occurrence*
9.2.2 Minimum Limits of Liability for Commercial General Liability Insurance	$500,000	$3,000,000

*per Project Endorsement required

TABLE G2	Per Claimant	Per Occurrence
9.2.3 Minimum Limits of Liability for Commercial Automobile Liability Insurance	$500,000	$3,000,000

TABLE G3	Each Occurrence*	Annual Aggregate*
9.2.4 Minimum Limits of Liability for Excess (Umbrella) Liability Insurance	$8,000,000	$8,000,000
9.2.5 Minimum Limits of Liability for Contractor's Pollution Legal Liability Coverage	$5,000,000	$10,000,000
9.2.7 Minimum Limits of Liability for Navigable Waters Insurance Protection	N/A	N/A
9.2.8 Minimum Limits of Liability for Professional Liability Insurance	$2,000,000	$2,000,000
9.2.8.1 Minimum Limits of Liability for Professional Liability Insurance – Design Work by Others	$2,000,000	$2,000,000

APPENDIX H – Liquidated Damages and Other Penalties

TABLE H1		
Item	**Occurrence (or portion of)**	**Damage**
Contractor's failure to achieve a Location Completion by the Location Completion Deadline	Per Day	$4,800
Contractor's failure to achieve Project Completion by the Project Completion Deadline	Per Day	$4,800
Contractor's failure to meet the Long-Term Closure Deadlines (All Roadways)	Per Day	$2,300
Contractor's failure to achieve Final Acceptance by the Final Acceptance Deadline (unless failure to achieve Final Acceptance was no fault of the Contractor)	Per Day	$2,000
Contractor's failure to make a good faith effort to meet the DBE participation goal	n/a	Appendix C
Contractor's failure to make a good faith effort to meet the Workforce Program goal	n/a	Appendix D
Contractor's failure to make a good faith effort to meet the On-the-Job training requirements	n/a	Appendix E
Contractor's failure to comply with the federal wage requirements	n/a	Appendix F
Maximum Liquidated Damages	n/a	$2,500,000

APPENDIX I – Forms Incorporated by Reference

City Certification Regarding Potential Conflicts of Interest

Form DB-101, Major Participant Information

Form DB-103, Resume Summary

Form DB-104, Receipt of Addenda

Form DB-105, Conflict of Interest

Form DB-201, Additional Applicable Standards

Form DB-202a, Design Exception Summary

Form DB-202b, Design Exception Details

Form DB-203, Request for Clarification (RFP)

Form DB-301, Items to be Used in Place or Rehabilitated

Form DB-302, Location Completion Deadlines

Form DB-303, Lane Closure Duration Deadlines

Form DB-401, DBE Provisions (Summary of DBE Contracts)

Form DB-402, DBE Provisions (Subcontracted Work)

Form DB-403, DBE Provisions (Summary of Quotes)

Form DB-404, DBE Provisions (Good Faith Effort)

Form DB-410, Equal Employment Opportunity

Form DB-501, Proposal Bond

Form DB-502, Performance Bond

Form DB-503, Payment Bond

Form DB-601, Proposal Letter

Form DB-602, Proposal Checklist

Form DB-701, Equal or Better Change Proposal

Form DB-703, Change Order Form

Form DB-801, Non-Collusion Affidavit

Form DB-803, Use of Contract Funds for Lobbying

Form DB-804, Buy America Certification

Form DB-805, Opinion of Counsel

Form DB-901, Price Allocation Form

Envision Forms

Grant Avenue Right of Way Acquisition Form

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Exhibit B

Budget Adjustment
020

Revenues:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
46140	20	73020	414110	102834	00000	$ 2,714,000	Contribution from City Utilities for Grant Avenue Parkway
Net Revenue Adjustment						$ 2,714,000	

Expenditures:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
46140	20	73020	509110	102834	00000	$ 2,714,000	Grant Avenue Parkway Improvement Project
Net Expenditure Adjustment						$ 2,714,000	

Fund Balance Appropriation:

Fund		Title	Amount

Explanation: To amend the FY2021-22 budget by appropriating $2,714,000 from City Utilities for the Grant Avenue Parkway Improvement Project.

Requested By:

Dan Smith 9/15/21
Department Head Date

Approved By:

9/15/21
Director of Finance Date

City Manager Date

Authorization:

Council Bill No. 2021-249
Ordinance No.
1st Reading
2nd Reading
Journal Imp No.

One-rdg. X
P. Hrngs. _____
Pgs. 10
Filed: 09-28-21

Sponsored by: McGull

COUNCIL BILL 2021-254 RESOLUTION _____

A RESOLUTION

DECLARING an intent to initiate annexation of approximately 2 acres of private property, generally located at 3284 North Mulroy Road, and referenced as Annexation A-5-2021, into the City of Springfield. (Staff recommends approval.)

WHEREAS, the owner of the private property generally located at 3284 North Mulroy Road has petitioned for annexation into the City of Springfield; and

WHEREAS, the property to be annexed is within the Urban Service Area and is immediately adjacent to the City of Springfield; and

WHEREAS, the City is required to announce its intention to initiate annexation procedures as required by law.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as follows, that:

Section 1 – City Council hereby announces its intention to initiate annexation of approximately 2 acres of private property, generally located at 3284 North Mulroy Road and more completely described in “Exhibit A,” which is attached hereto and incorporated herein by this reference, into the City of Springfield.

Section 2 – The City Manager, or designee, is hereby authorized to do all things necessary and convenient to carry out the intent of this Resolution.

Section 3 – This Resolution shall be in effect immediately upon adoption.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Resolution: _____

Approved as to form: Jill Burris, Assistant City Attorney

Approved for Council action: Jason A. Hage, City Manager

EXPLANATION TO COUNCIL BILL 2021 -254

FILED: 9-28-21

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: Declaring the intent of the City of Springfield, to annex approximately 2 acres of private property generally located at 3284 North Mulroy Road into the City of Springfield. (Staff recommends approval.)

BACKGROUND INFORMATION:

The owner of the private property generally located at 3284 North Mulroy Road is requesting annexation into the City of Springfield (See "Exhibit B," Location Sketch). The owner of the property has signed a petition requesting voluntary annexation into the City of Springfield (See "Exhibit C," Annexation Petition). The proposed annexation does not include any right-of-way of Mulroy Road. The property is within the City of Springfield's Urban Service Boundary and is completely surrounded by the City of Springfield. The owner is proposing to annex and rezone for a new retail development and subdivision.

This Resolution only initiates the proposed annexation and does not annex the property. The property is currently zoned Greene County R-1, Suburban Residence District. The owner is requesting that the property be rezoned to a HC, Highway Commercial District which will be concurrently reviewed with the annexation public hearing in November. The City Council is required to hold a public hearing before the proposed annexation can be approved (see "Exhibit D," Annexation Schedule).

If this request is approved, staff will submit a Council Bill for a public hearing to consider annexation of this property.

REMARKS:

Staff recommends approval to initiate the annexation based on the following:

1. The area to be annexed is contiguous to the City of Springfield and within the Urban Service Area. See "Exhibit B" for the location of the private property to be annexed.

2. The *Growth Management and Land Use Plan* of the *Comprehensive Plan* supports the annexation.

3. The property owner has petitioned the City for annexation.

4. All City services can be provided to the property.

5. The City will receive sales and property tax revenue once annexed.

RECOMMENDATIONS:

Staff recommends the initiation of the annexation of the subject property.

Submitted by:

Daniel Neal, Senior Planner

Reviewed by:

Brendan Griesemer, AICP
Acting Director

Approved by:

Jason Gage, City Manager

EXHIBITS:
Exhibit A, Legal Description
Exhibit B, Location Map
Exhibit C, Annexation Petition
Exhibit D, Annexation Schedule

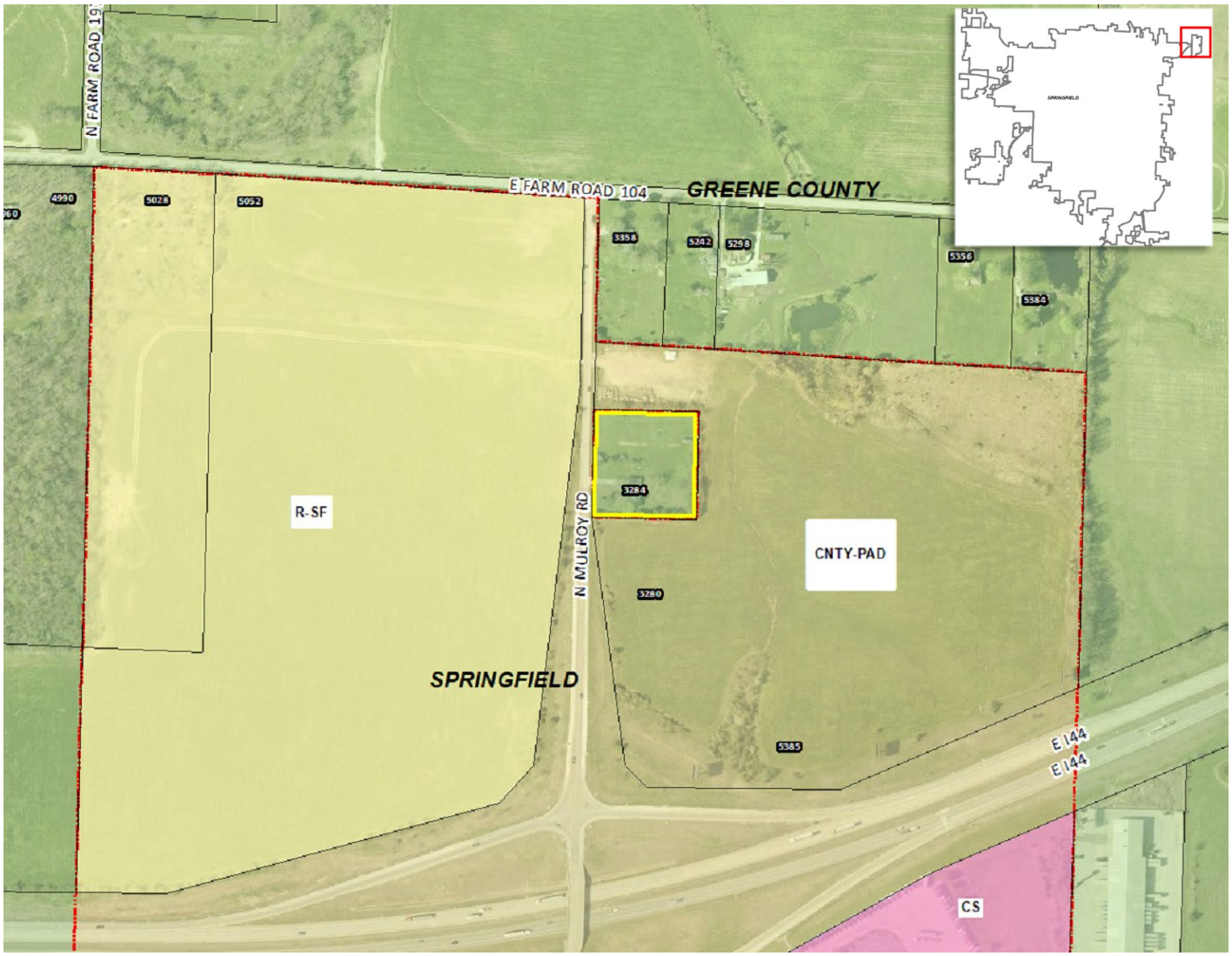
Exhibit A

A-5-2021
ANNEXATION DESCRIPTION

VIVIAN L. MCKINZIE TRACT-

BEGINNING 596.2 FEET SOUTH OF THE NORTHWEST CORNER OF THE EAST HALF (E½) OF LOT THREE (3) IN THE NORTHWEST FRACTIONAL QUARTER (NWFR¼) OF SECTION ONE (1), TOWNSHIP TWENTY-NINE (29), RANGE TWENTY-ONE (21); THENCE EAST PARALLEL TO THE NORTH LINE OF SAID EAST HALF (E½) OF LOT THREE (3) 295.3 FEET; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID EAST HALF OF LOT THREE (3) 295.3 FEET; THENCE WEST PARALLEL TO SAID NORTH LINE 295.3 FEET; THENCE NORTH 295.3 FEET TO BEGINNING, EXCEPT THE WEST 20 FEET THEREOF USED FOR ROAD PURPOSES.

Exhibit B



LOCATION:

LOCATION:	3284 N. Mulroy Road
CURRENT ZONE:	County R-1, Suburban Residence District
PROPOSED ZONE:	HC, Highway Commercial District
CASE NUMBER:	A-5-2021

Exhibit C

Voluntary Annexation Application

****E-PLANS INSTRUCTIONS****

****PLEASE FOLLOW STEPS 1 & 2 BEFORE SUBMITTING THIS APPLICATION****

1. Pre-apply and, if needed, pay your processing fees online at this LINK
2. Wait for a "pre-screen complete" e-mail from the City of Springfield with instructions for e-plans review process.
3. Complete this application and upload a digital (pdf) copy through e-plans.

Office Use Only	
Case No.	
Date Filed	
Received By	
Receipt No.	

Fee Amount Paid? $ $1,734.00
*See Fee Schedule

Date of application: 8-30-2021

Property Location: 3284 N. Mulroy Road Springfield, Mo. 65803

Property Owner's Information (full name(s) of all legal property owners listed on deed):

Name of current property owner(s): Vivian L. McKinzie (Parcel #881201200009, 1.86 Ac.)

If corporation, Corporate Official:

Mailing Address: 3284 N. Mulroy Rd., Springfield, Mo. Zip Code: 65803

Telephone: 417 337-4244 E-mail: wlmoe@sbcglobal.net

PROPERTY OWNER'S SIGNATURE: Vivian L. McKinzie
(if corporation, need signature of one official)

Contact Person Handling Application:

Name(s): John Chamberlin

If corporation: Corporate Official:

Mailing Address: 1828 Walnut Street, Suite 04-101 Zip Code: 64108

Telephone: 816 319-2698 E-mail: john.chamberlin@kimley-horn.com

Current Use of the Property: Residential

Current County Zoning: County - Suburban Residence (R-1)

Proposed City Zoning: HC Highway Commercial

LAND DESCRIPTION (attach legal description of property and label as Exhibit A):

Exhibit A
See Attached.

PETITION

TO: THE CITY OF SPRINGFIELD, MISSOURI, A MUNICIPAL CORPORATION

We, the undersigned petitioner(s), submit to the City Council of the City of Springfield, Missouri as follows:

1) The undersigned are the fee and simple owner(s) of record of the real estate in Greene County, Missouri more fully described in Exhibit A, and

2) The request and petition to the City of Springfield, Missouri to annex the land described in Exhibit A is not now a part of any corporate limits of any incorporated City, and

3) The land described in Exhibit A is contiguous to the existing corporate limits of the City of Springfield, Missouri, and

4) The request and petition is voluntarily made and is submitted under the provisions of Section 71.012RSMo. 1986, as amended (Voluntary Annexation).

SIGNED: Vivian R. McKinzie

SIGNED: _____

STATE OF MISSOURI
COUNTY OF GREENE SS.

MARRIED PERSON'S ACKNOWLEDGEMENT

On this _____ day of _____, 20___, before me, a Notary Public in and for said state, personally appeared _____, and _____to me known to be the persons described in and who executed the foregoing document, and acknowledged that he/she executed the same as his/her free act and deed.

And the said person further declared himself/herself to be married.

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

"Notary Seal"

Notary Public: _____

Print Name: _____

STATE OF MISSOURI
COUNTY OF GREENE SS.

ACKNOWLEDGEMENT OF CORPORATE OFFICIAL

On this ____ day of _____, 20___, before me appeared _____, to me personally known, who, being by me duly sworn did say that he/she is the _____ of _____, and that the seal affixed to foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors, and acknowledged said instrument to be the free act and deed of said corporation.

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

"Notary Seal"

Notary Public: _____

Print Name: _____

STATE OF MISSOURI
COUNTY OF GREENE SS.

UNMARRIED PERSON'S ACKNOWLEDGEMENT

On this 27 day of August, 2021, before me, a Notary Public in and for said state, personally appeared Vivian McKinzie, to me known to be the person described in and who executed the foregoing document, and acknowledged that he/she executed the same as his/her free act and deed.

And the said person further declared himself/herself to be single and unmarried.

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

"Notary Seal"

Notary Public: Katelyn Choate

Print Name: Katelyn Choate

KATELYN CHOATE
Notary Public - Notary Seal
STATE OF MISSOURI
Greene County
My Commission Expires: May 21, 2022
Commission # 18513333

Exhibit D

ANNEXATION SCHEDULE
ANNEXATION A-5-2021

ANNEXATION:

Initiate annexation ..... October 4, 2021

City Council public hearing ..... November 1, 2021

City Council second reading and vote ..... November 15, 2021

One-rdg. X
P. Hrngs. _____
Pgs. 13
Filed: 09-28-21

Sponsored by: Simpson

COUNCIL BILL 2021-255 RESOLUTION _____

A RESOLUTION

AMENDING the Major Thoroughfare Plan, a portion of the Transportation Plan element of the Springfield-Greene County Comprehensive Plan, by removing two future collectors from Figures 20-2 and 20-9. (Planning and Zoning Commission and Staff recommends approval.)

WHEREAS, City Council adopted the Transportation Plan as an element of the Springfield-Greene County Comprehensive Plan, the master plan for development of the City, on June 11, 2001; and

WHEREAS, the Major Thoroughfare Plan, a portion of the Transportation Plan, provides an overall framework for making decisions on thoroughfare improvements and extensions, identifies locations of future major transportation corridors, and serves as a general guide for securing street rights-of-way; and

WHEREAS, the Planning and Zoning Commission and City Council have the authority to amend the Major Thoroughfare Plan per Section 11.6 in the City Charter; and

WHEREAS, staff has determined that the proposed collectors at 5505 West Sunshine Street (Collector between Farm Road 156 and Mapleleaf Lane), and at 3800 West Sunshine Street (Zimmer Road connection to McCurry Street), do not provide for an adequate system of thoroughfares to ensure logical development of the community, safe and efficient movement of people and goods, and economical expenditure of public funds, and therefore should be removed from the Major Thoroughfare Plan Figures 20-2 and 20-9; and

WHEREAS, the Planning and Zoning Commission held a public hearing on September 9, 2021, and recommended approval of the above revisions.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as follows, that:

Section 1 – City Council hereby amends the Transportation Plan of the Springfield-Greene County Comprehensive Plan by removing the proposed collectors at

5505 West Sunshine Street (Collector between Farm Road 156 and Mapleleaf Lane), as depicted on "Exhibit B," which is attached hereto and incorporated by reference; and at 3800 West Sunshine Street (Zimmer Road connection to McCurry Street), as depicted on "Exhibit C," which is attached hereto and incorporated by reference, from the Major Thoroughfare Plan, which is attached hereto and incorporated by reference as "Exhibit A."

Section 2 – The Director of Planning and Development and the City Clerk are directed to maintain official copies of the Major Thoroughfare Plan in their offices.

Section 3 – This Resolution shall be in effect immediately upon adoption.

Passed at meeting: _____

_____
Mayor

Attest:_____, City Clerk

Filed as Resolution: _____

Approved as to form:_____, Assistant City Attorney

Approved for Council action:_____, City Manager

EXPLANATION TO COUNCIL BILL 2021- 255

FILED: 09-28-21

ORIGINATING DEPARTMENT: Public Works and Planning and Development

PURPOSE: To amend the Major Throughfare Plan Figure 20-2 and 20-9 in the City of Springfield Transportation Plan, to remove two future collectors (Zimmer Road connection to McCurry Street and the connections between Farm Road 156 and Mapleleaf Lane).

BACKGROUND INFORMATION:

The Springfield-Greene County Comprehensive Plan Transportation Plan Element was adopted by City Council on June 11, 2001. A portion of this document identifies the Major Thoroughfares within the City. It is intended to provide an overall framework for making decisions on thoroughfare improvements and extensions; identifies locations of future major transportation corridors and serves as a general guide for securing street right(s)-of-way.

The Transportation Plan states that the street classifications for the Major Thoroughfare Plan should be regularly updated by the Springfield Metropolitan Planning Organization, and subsequently adopted by Springfield City Council, the Missouri Department of Transportation, and the Greene County Commission, as part of their policies concerning the location and function of all major streets. (Page 20-25)

REMARKS:

1. The Major Thoroughfare Plan ("Exhibit 1 - Exhibit A") represents future roadway functions. It is intended to provide an overall framework for making decisions on thoroughfare improvements and extensions. It identifies locations of future major transportation corridors and serves as a general guide for securing rights-of-ways. Future roads are shown in general locations, the actual location may vary.

2. The Planning and Zoning Commission and City Council have the authority to amend the Major Thoroughfare Plan per Section 11.6. in the City Charter.

3. Staff has determined that the proposed collector at 5505 West Sunshine Street (Collector between Farm Road 156 and Mapleleaf Lane) and at 3800 West Sunshine Street (Zimmer Road connection to McCurry Street) do not provide for an adequate system of thoroughfares to ensure logical development of the community, safe and efficient movement of people and goods, and economical expenditure of Public Funds and therefore should be removed from the Major Thoroughfare Plan Figure 20-2 and 20-9.

FINANCIAL: There is no financial impact to the City with the adoption of the updated plan.

RECOMMENDATION: The Planning and Zoning Commission held a public hearing on September 9, 2021 and recommended approval, by a vote of 9 to 0 (see "Exhibit 1 - Attachment 1,"). The Department of Public Works and Planning and Development Staff recommend passage of this Resolution.

Submitted by:

Dawne Gardner, AICP

Recommended by:

Brett Foster, PE

Dan Smith,
Director of Public Works

Approved by:

Brendan Griesemer
Acting Director, Planning and Development

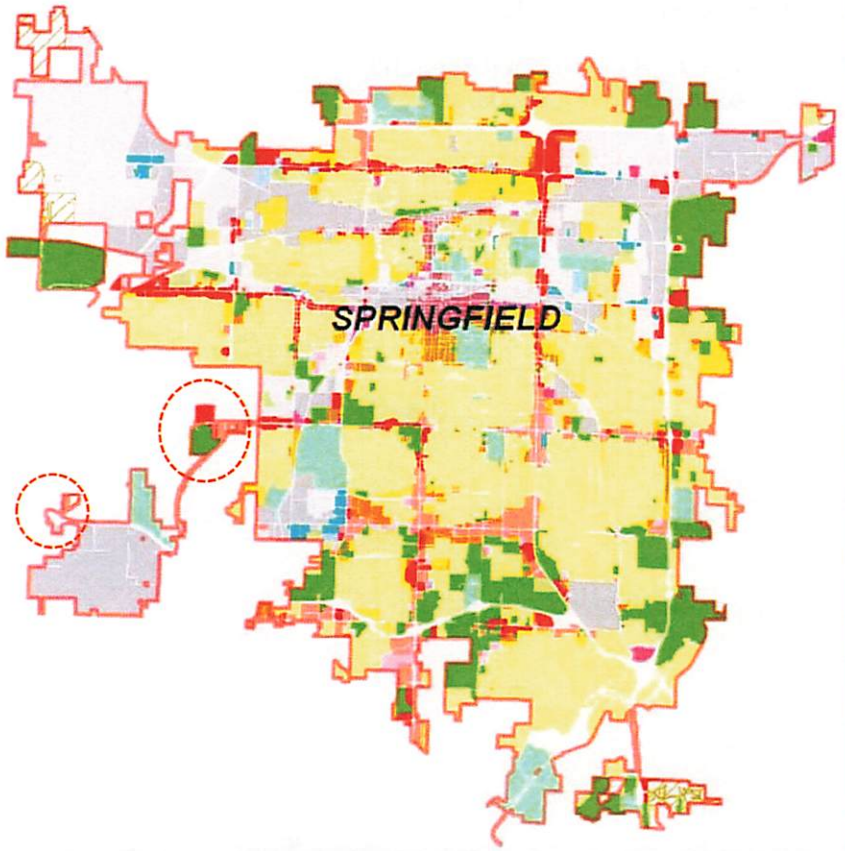
Jason Gage
City Manager

EXHIBITS:
Exhibit 1, Development Review Staff Report
ATTACHMENTS:
Exhibit A, Major Thoroughfare Plan Ozarks Transportation Organization
Exhibit B, Proposed Removals from Plan
Exhibit C, Future Thoroughfare Plans
Exhibit D, Transportation Plan Recommendations
Attachment 1, Planning and Zoning Record of Proceeding

Exhibit 1

PLANNING AND ZONING COMMISSION PUBLIC HEARING: SEPTEMBER 9, 2021

CITY COUNCIL PUBLIC HEARING: October 4, 2021



CASE: Transportation Plan Amendment

LOCATION: 5505 West Sunshine Street and 3800 West Sunshine Street

STAFF: Dawne Gardner, AICP 864-1863

Choose an item.

STAFF RECOMMENDATIONS:
Approve

PROPOSED MOTION: Move to approve as submitted in the staff report. Required vote is a majority of those present (5 members are a quorum).

SUMMARY OF REQUEST:

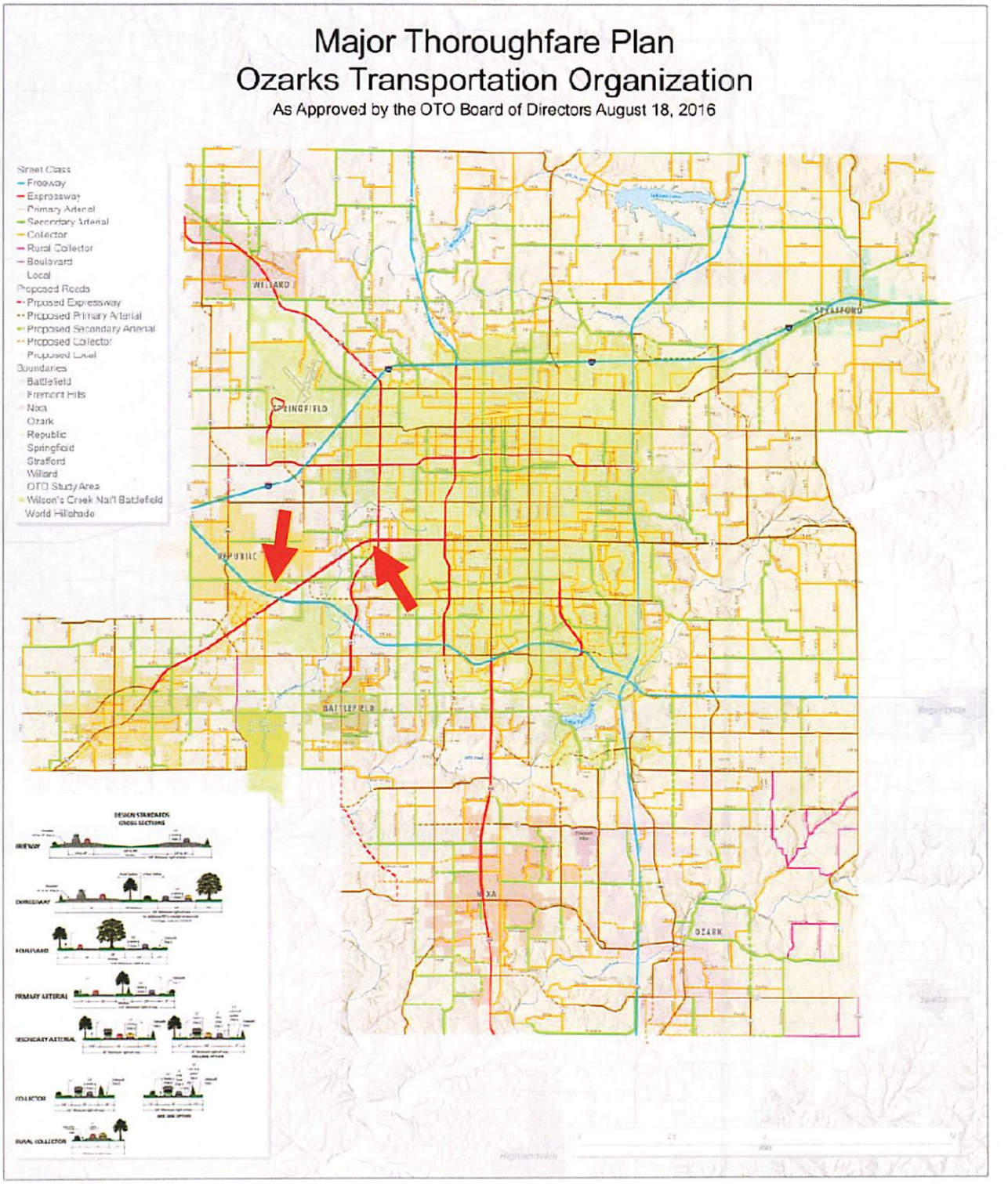
To amend the Major Throughfare Plan Figure 20-2 and 20-9 in the City of Springfield Transportation Plan to remove two future collectors (Zimmer Road connection to McCurry Street and the connections between Farm Road 156 and Mapleleaf Lane).

FINDINGS FOR STAFF RECOMMENDATIONS:

1. The Springfield-Greene County Comprehensive Plan Transportation Plan Element was adopted by City Council on June 11, 2001. A portion of this document identifies the Major Thoroughfares within the City.
2. The Major Thoroughfare Plan ("Exhibit A") represents future roadway functions. It is intended to provide an overall framework for making decisions on thoroughfare improvements and extensions. It identifies locations of future major transportation corridors and serves as a general guide for securing rights-of-ways. Future roads are shown in general locations, the actual location may vary.
3. The Planning and Zoning Commission and City Council have the authority to amend the Major Thoroughfare Plan per Section 11.6. in the City Charter.
4. Staff has determined that the proposed collector at 5505 West Sunshine Street (Collector between Farm Road 156 and Mapleleaf Lane) and at 3800 West Sunshine Street (Zimmer Road connection to McCurry Street) do not provide for an adequate system of thoroughfares to ensure logical development of the community, safe and efficient movement of people and goods, and economical expenditure of Public Funds and therefore should be removed from the Major Thoroughfare Plan Figure 20-2 and 20-9.

Transportation Plan:

Exhibit A

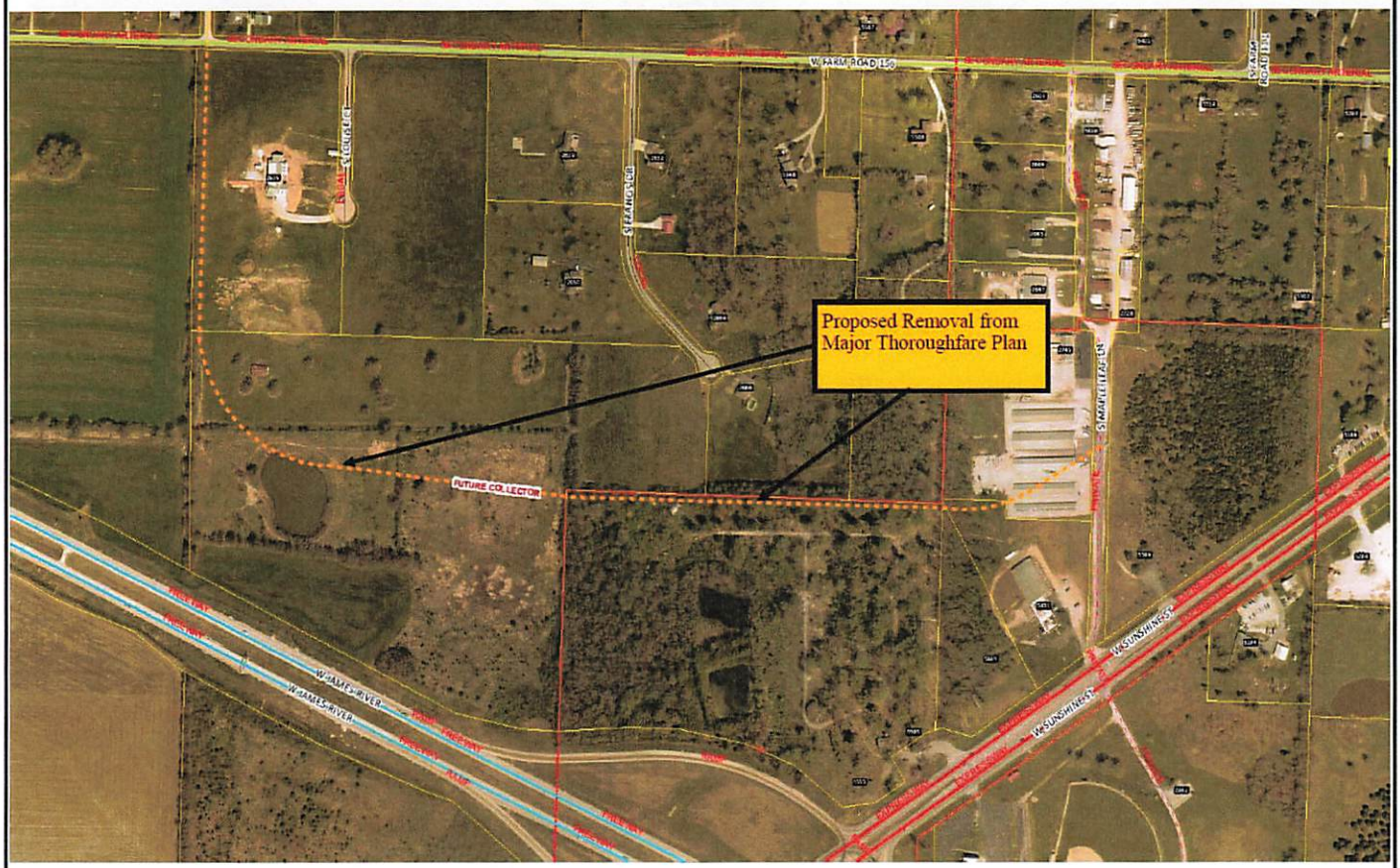


DISCLAIMER

Amended:
February 16, 2017
June 15, 2017
April 10, 2018
August 10, 2018
August 15, 2019
August 20, 2020

PLAN AMENDMENTS:

Exhibit B



City of Springfield, Missouri

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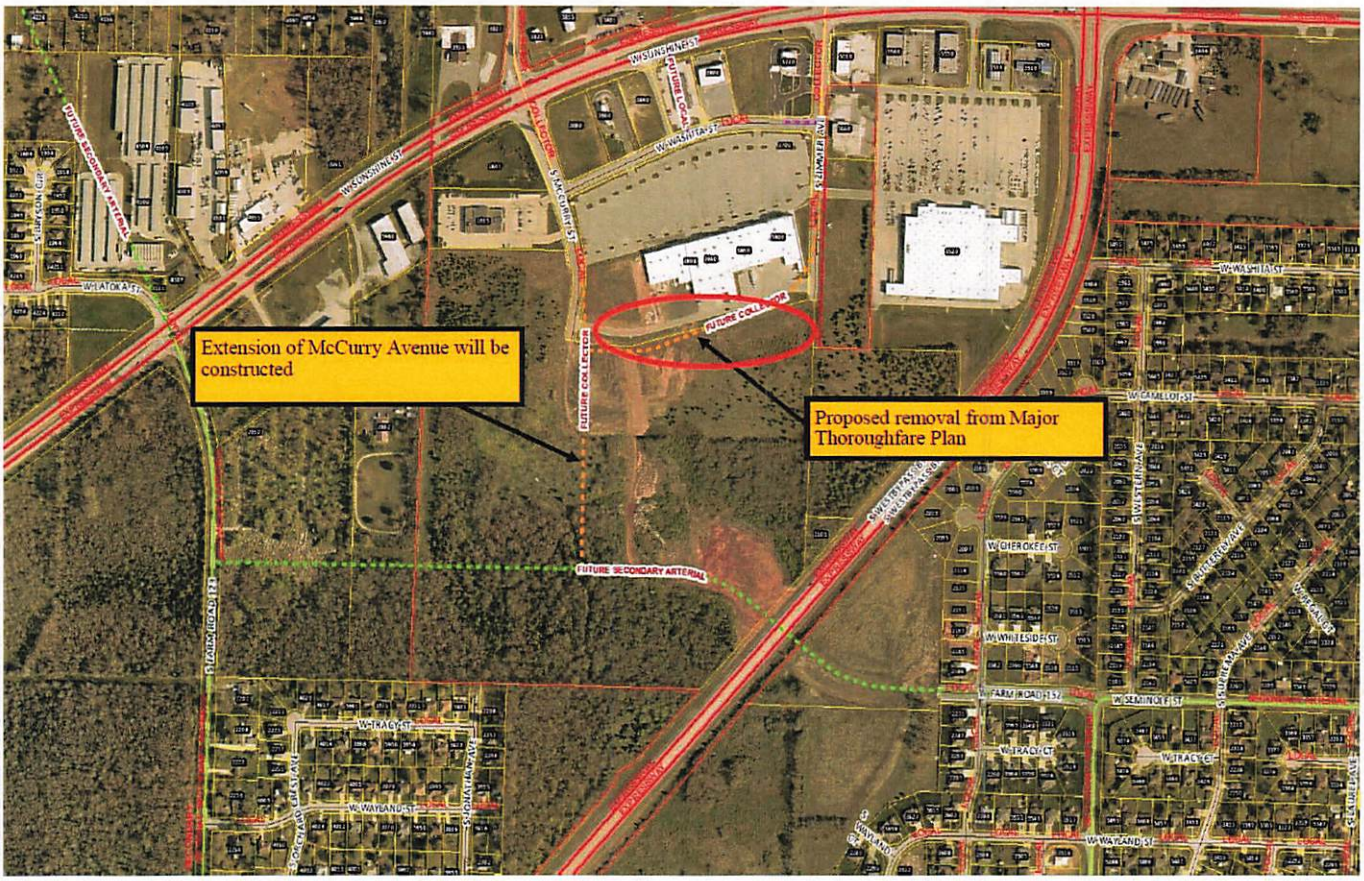
Exhibit C



City of Springfield, Missouri

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Exhibit D

TRANSPORTATION PLAN RECOMENDATIONS:

The Street Classifications for the Major Thoroughfare Plan should be regularly updated by the Springfield MPO, and subsequently adopted by the Springfield City Council, the Missouri Department of Transportation, and the Greene County Commission, as part of their policies concerning the location and function of all major streets. (Page 20-25)

PLANNING AND ZONING COMMISSION AUTHORITY:

Section 11.2. Planning and zoning commission—Powers and duties.
The city planning and zoning commission shall have the power and shall be required to:

(1) Prepare and recommend to the city council a master plan, and amendments thereto, for the physical development of the City, as defined in this Article.
(2) Prepare and recommend regulations pertaining to subdivision and development of land to the city council.
(3) Review and approve subdivisions and development of land in accordance with the authority and procedures established by the city council.
(4) Prepare for the city council an official map of the City and make recommendations with respect to proposed changes in such map.
(5) Review and make recommendations with respect to proposed changes in the zoning ordinance and zoning map.
(6) Hold public hearings on requests for rezoning, amendments to the zoning ordinance, amendments to the comprehensive plan, and such other planning and zoning matters as may be required by law or the provisions of this Charter. Rules with respect to the conduct of public hearings shall be adopted by the commission.
(7) Review and recommend proposed capital improvements which in the opinion of the commission are necessary or desirable to be constructed.
(8) Promote public interest in and understanding of the comprehensive plan and of zoning and planning.
(9) Perform such other investigations and studies as may be referred to it by the city council or the city manager and make recommendations thereto.
(10) Meet not less than once each month and keep a public record of its resolutions, findings and determinations.

Section 11.6. Adoption of master plan.
The commission may adopt the master plan as a whole by a single resolution or may by successive resolutions adopt successive parts of the plan, said parts corresponding to major geographical sections of the city or to functional divisions of the subject matter of the plan, and may adopt any amendment or extension thereof or addition thereto. The adoption of the plan, or any such part, amendment, extension or addition shall be by resolution carried by the affirmative vote of not less than a majority of the commission, but before the adoption of the plan or any such part or any modification, extension or addition, the commission shall hold at least one public hearing on the proposed action. An attested copy of the plan or part thereof shall be certified to the council. Neither the master plan, nor any element of the plan, shall have the legal effect set out in Section 11.7 of this chapter unless the plan, or the element of the plan in question, shall have been approved by the city council.
Section 11.7. Legal status of master plan.

(1) *Master plan to provide general guidelines.* The master plan shall be prepared and maintained as a general guide for the orderly and efficient development and redevelopment of the City of Springfield. The master plan shall be kept current through review not less than every five years. When required by this Charter or otherwise deemed necessary, such review shall include proposed revisions or alterations in the master plan and public hearings thereon.
(2) *Regulations to generally conform to master plan.* All rezoning of land, subdivision plats, development proposals, and the zoning ordinance, subdivision ordinance and the zoning map should generally conform with the guidelines set forth in the master plan and should be reviewed for consistency with the master plan; provided, however, inconsistencies with the master plan shall not constitute cause to invalidate any such matter. The master plan shall not have the effect of a regulatory ordinance.
(3) *Master plan to guide public improvements.* The master plan shall provide guidelines for the location of public streets, parks and other public ways, grounds and spaces, public buildings and structures, facilities of public or private utilities, and the acquisition of real property by the city for public use. To that end the planning and zoning commission shall review the following:
    (a) All proposals to construct or extend public streets.
    (b) All proposals to improve land as a park.
    (c) All proposals to lay out or improve other public ways, grounds or spaces.
    (d) All proposals to construct public buildings and structures.
    (e) All proposals to lay out and construct facilities of public utilities, whether publicly or privately owned.

(f) All proposals to acquire real property for public purposes.

In reviewing and approving all such proposals, the function of the planning and zoning commission shall be to determine whether they are generally consistent with the master plan of the city. No such proposals shall be constructed or authorized until the location, extent and character thereof has been submitted and approved by the planning and zoning commission.

In case of disapproval, the commission shall communicate its reasons to the city council, and the city council, by vote of not less than two-thirds of its entire membership, may overrule the disapproval and, upon the overruling, the city council or the appropriate board or officer may proceed, except that if the proposal is by an agency other than an agency of the city and the authorization or financing does not fall within the province of the city council, then the submission to the planning commission shall be by the agency having jurisdiction, and the planning commission's disapproval may be overruled by that agency by a vote of not less than two-thirds of its entire membership. The acceptance, widening, removal, extension, relocation, narrowing, vacation, abandonment, change of use, acquisition of land, sale or lease of any street or other public facility is subject to similar submission and approval, and the failure to approve may be similarly overruled.

In the event the commission shall fail to act within thirty days after the date of official submission of a proposal (which date shall be the date that the matter is placed upon the agenda of the commission) to the commission, then the proposal shall be deemed to have been approved by the commission, unless a longer period for review by the commission shall have been authorized by the council or by the public officials submitting the proposal. In any case in which the commission finds that it is not reasonably able to complete its review of a proposal within thirty days, it may extend the time for such review for not more than thirty days.

STAFF COMMENTS:

1. The Springfield-Greene County Comprehensive Plan Transportation Plan Element was adopted by City Council on June 11, 2001. A portion of this document identifies the Major Thoroughfares within the City.
2. The Major Thoroughfare Plan ("Exhibit A") represents future roadway functions. It is intended to provide an overall framework for making decisions on thoroughfare improvements and extensions. It identifies locations of future major transportation corridors and serves as a general guide for securing rights-of-ways. Future roads are shown in general locations, the actual location may vary.
3. The property at 5505 W. Sunshine St. ("Exhibit B") has been annexed into the City of Springfield, rezoned, and is pending future development. At the time of rezoning, a future collector was shown on the Major Thoroughfare Plan that goes through this property. After further investigation, and in consultation with the City of Republic, Greene County and OTO, it was determined that this future corridor is not needed based on current land uses in the area. The proposed future collector serves no connectivity purpose nor is needed for traffic relief for this, or any future, development.
4. The property at 3800 W. Sunshine St. ("Exhibit C"), also known as Springfield Plaza, has been partially developed and is moving forward with future phases of development. The Major Thoroughfare Plan shows a future collector connecting from Zimmer Road to McCurry Avenue. As part of the platting process for future development, a traffic impact study has been submitted which shows required improvements to existing streets and new street connections necessary to maintain safety and traffic flow. This study also indicates the future collector connecting Zimmer Road to McCurry Avenue is not required at this time. In the best interest of the City, and to allow flexibility for future development, the proposed collector is being proposed for removal from the Major Throughfare Plan.
5. The Major Thoroughfare Plan map currently exists as Figure 20-2 and Figure 20-9 in the Transportation Plan.
6. The proposed amendments follow the goals set forth in the Transportation Plan which are:

    i. Identify and establish future thoroughfare systems that integrates land uses with transportation system needs.
    ii. Recognize a distinct hierarchy of street classification as thoroughfare improvements and development definitions are made.
    iii. Work with Ozarks Transportation Organization to review and update the plan every 5 years in conjunction with their Long Range Transportation Plan review/update.

7. Missouri State Statute Chapter 89.400.1 requires a municipality to file a certified copy of any adopted major street plan in the office of the county recorder. The city will file a copy of the Major Thoroughfare Plan with the Greene County Recorder's office upon adoption by the Planning & Zoning Commission and the Springfield City Council.

NEIGHBORHOOD MEETING:

A neighborhood meeting is not required.

PUBLIC NOTIFICATIONS:

The public notice was advertised in the Daily Events at least 15 days prior to the public hearing.

RECORD OF PROCEEDINGS
Special
Planning and Zoning Commission – September 9, 2021

Major Thoroughfare Plan Amendment
3700 - 3800 blocks of unnamed collector between McCurry Avenue and Zimmer Avenue and 5400 - 5800 blocks of unnamed collector between West Farm Road 156 to Maple Leaf Lane (Private Drive).
Applicant: City of Springfield

Mr. Hosmer stated that this is a request to amend Figure 20-2 and 20-9 in the City of Springfield Transportation Plan to remove two future collectors (Zimmer Road connection to McCurry Street and the connections between Farm Road 156 and Mapleleaf Lane). The Springfield-Greene County Comprehensive Plan Transportation Plan Element was adopted by City Council on June 11, 2001. The Major Thoroughfare Plan ("Exhibit A") represents future roadway functions. It is intended to provide an overall framework for making decisions on thoroughfare improvements and extensions. It identifies locations of future major transportation corridors and serves as a general guide for securing rights-of-ways. Future roads are shown in general locations, the actual location may vary. The Planning and Zoning Commission and City Council have the authority to amend the Major Thoroughfare Plan per Section 11.6. in the City Charter. The proposed amendments follow the goals set forth in the Transportation Plan which are:

- Identify and establish future thoroughfare systems that integrates land uses with transportation system needs.
- Recognize a distinct hierarchy of street classification as thoroughfare improvements and development definitions are made.
- Work with Ozarks Transportation Organization to review and update the plan every 5 years in conjunction with their Long-Range Transportation Plan review/update.

The property at 5505 W. Sunshine Street has been annexed into the City of Springfield, rezoned, and is pending future development. At the time of rezoning, a future collector was shown on the Major Thoroughfare Plan that goes through this property. After further investigation, and in consultation with the City of Republic, Greene County and OTO, it was determined that this future corridor is not needed based on current land uses in the area. The proposed future collector serves no connectivity purpose nor is needed for traffic relief for this, or any future, development.

The property at 3800 W. Sunshine Street also known as Springfield Plaza, has been partially developed and is moving forward with future phases of development. A traffic impact study has been submitted which shows required improvements to existing streets and new street connections necessary to maintain safety and traffic flow. In the best interest of the City, and to allow flexibility for future development, the proposed collector is being proposed for removal from the Major Throughfare Plan.

Staff has determined that the proposed collectors do not provide for an adequate system of thoroughfares to ensure logical development of the community, safe and efficient movement of people and goods, and economical expenditure of Public Funds and therefore should be removed from the Major Thoroughfare Plan. Staff recommends approval.

Mr. Jobe asked about the collectors from Southwest Springfield that is rapidly growing and noted his concerns.

Mr. Hosmer noted that Seminole will be extended as a connector and believes the areas of removal will not be an issue.

Ms. Gardner noted the vacant area (south of the developed Springfield Plaza) and will be required to do a traffic study and will show the best connection based on what is developed.

Mr. Jobe asked what Seminole Street has been designated.

Ms. Gardner stated that Seminole has been designated as a future secondary arterial and plans are moving forward.

Mr. Doennig opened the public hearing.

No speakers.

Mr. Doennig closed the public hearing.

COMMISSION ACTION:
Mr. Knuckles motioned to **approve** Major Thoroughfare Plan Amendment (3700 - 3800 blocks of unnamed collector between McCurry Avenue and Zimmer Avenue and 5400 - 5800 blocks of unnamed collector between West Farm Road 156 to Maple Leaf Lane - Private Drive). Ms. Bruce seconded the motion. Ayes: Doennig, Coltrin, Ogilvy, Knuckles, Colony, Bruce, Jobe, Broekhoven, and Lebeck. Nays: None. Abstain: None. Absent: None.

Bob Hosmer, AICP
Planning Manager

One-rdg. _____
P. Hrngs. _____
Pgs. 16
Filed 09-28-21

Sponsored by Schilling

First Reading _____ Second Reading _____

COUNCIL BILL 2021-256 GENERAL ORDINANCE _____

AN ORDINANCE

AMENDING General Ordinance 6662, which rezoned approximately 72.33 acres of property generally located adjacent to Grant Avenue between College Street and Catalpa Street to the Grant Avenue Parkway District, and which is referenced as Zoning Case Z-11-2021, to correct the legal descriptions of Subdistricts B and C within the Grant Avenue Parkway District.

_____

WHEREAS, on June 28, 2021, City Council adopted General Ordinance 6662 rezoning approximately 72.33 acres of property generally located adjacent to Grant Avenue between College Street and Catalpa Street to the Grant Avenue Parkway ("GAP") District; and

WHEREAS, after City Council adopted General Ordinance 6662, which is also referenced as Zoning Case Z-11-2021, City staff determined that the legal descriptions included in said ordinance inaccurately described Subdistricts B and C within the GAP District; and

WHEREAS, the legal descriptions of Subdistricts B and C within the GAP District must be corrected to ensure appropriate application of GAP District Standards; and

WHEREAS, following proper notice, a public hearing was held before the Planning and Zoning Commission, a copy of the Record of Proceedings from said public hearing being attached hereto and incorporated herein by this reference as "Exhibit B," and said Commission made its recommendation; and

WHEREAS, proper notice was given of a public hearing before City Council, and said hearing was held in accordance with law.

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

Section 1 – City Council hereby amends General Ordinance 6662 to correct the legal descriptions of Subdistricts B and C within the GAP District by repealing the legal descriptions set forth in “Exhibit A – Legal Description Zoning Case Z-11-2021” of General Ordinance 6662 in its entirety and replacing it with “Exhibit A – Corrected Legal Description Zoning Case Z-11-2021,” which is attached hereto and incorporated by reference.

Section 2 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-256

FILED: 09-28-21

ORIGINATING DEPARTMENT: Planning and Development

PURPOSE: To correct the legal description that described the area to be rezoned as part of Zoning Case Z-11-2021/General Ordinance 6662, which rezoned approximately 72.33 acres of property generally located adjacent to Grant Avenue between College and Catalpa Streets from an R-SF, Single-Family Residential District, R-TH, Residential Townhouse District, R-MD, Medium Density Multifamily Residential District, GR, General Retail District, CC, Center City District and IC, Industrial Commercial District to Grant Avenue Parkway District, specifically for Subdistricts B and C. (Planning and Zoning Commission and Staff recommend approval).

BACKGROUND INFORMATION:

CORRECTED LEGAL FOR ZONING CASE Z-11-2021/GENERAL ORDINANCE 6662

On June 28, 2021, City Council approved General Ordinance 6662 rezoning approximately 72.33 acres along Grant Avenue between College and Catalpa Streets to Grant Avenue Parkway District. Following City Council's approval, staff determined there was an error in the legal description for Subdistricts B and C in General Ordinance 6662. The error did not change the boundary of what was being rezoned, but rather inaccurately described Subdistricts B and C within the Grant Avenue Parkway District. The purpose of this bill is to correct the legal description.

REMARKS:

The Planning and Zoning Commission held a public hearing on September 9, 2021, and recommended approval, by a vote of 9 to 0.

The Planning and Development Department staff recommends the application be approved (see the attached Development Review Staff Report).

Submitted by:

Alana D. Owen

_____

Alana D. Owen, AICP, Senior Planner

Recommended by:

Brendan Griesemer, AICP
Acting Director

Approved by:

Jason Gage, City Manager

EXHIBITS:
Exhibit A, Legal Description
Exhibit B, Record of Proceedings
Exhibit C, Development Review Staff Report
ATTACHMENTS:
Attachment 1: Neighborhood Meeting Summary

Exhibit A

CORRECTED LEGAL DESCRIPTION
ZONING CASE Z-11-2021

A proposal to rezone the following described property from an IC, Industrial Commercial District and a CC, Center City District to Grant Avenue Parkway District, Subdistrict A:

All of Lots 1, 2, 19, and 20 of Block 1 of M. M. McCluers Addition and all of Lots 1 through 4 of John M. Wood's Addition and the vacated alley lying West and adjacent in Woods Addition to the City of Springfield, Greene County, Missouri.

And also:

All of Lots 4, 5, 6 and the West 80 feet of Lot 7 of Abbott's Subdivision in the City of Springfield, Greene County, Missouri.

And also:

All of Lots 5 through 7 of John M. Wood's Addition to the City of Springfield, Greene County, Missouri.

And also:

Beginning at the Southeast corner of Walnut Street and Grant Avenue in the City of Springfield, Greene County, Missouri; Thence East along the South right of way of Walnut Street 263.32 feet; Thence South, parallel with Grant Avenue a distance of 250 feet; Thence West, parallel with Walnut Street a distance of 263.54 feet to the East right of way of Grant Avenue; Thence North, along the said East right of way a distance of 250 feet to the point of beginning.

And the following described property from a GR, General Retail District and R-MD, Medium Density Multifamily Residential District to a Grant Avenue Parkway District, Subdistrict B:

All of Lots 10, 11, and 12 of J.H. Meinhardt's Addition in the City of Springfield, Greene County, Missouri.

And also:

All of Lots 9, 10, and 11 of Shipley's First Addition in the City of Springfield, Greene County, Missouri.

And also:

Beginning at the Northwest corner of Lot 11 of Shipley's First Addition in the City of Springfield, Greene County, Missouri; Thence North along the East line of Grant Avenue a distance of 174.81 feet to a point 250 feet south of the southeast corner of the intersection of Walnut Street and Grant Avenue; Thence East, parallel with Walnut Street, a distance of 263.54 feet; Thence South, parallel with Grant Avenue, a distance of 174.53 feet to a point on the North line of Lot 12 of Shipley's First Addition; Thence West, along the said North line of Lot 12 and also Lot 11, a distance of 263.0 feet to the point of beginning.

And also:

Beginning at the Northeast corner of Lot 9 of J.H. Meinhardt's Addition to the City of Springfield, Greene County, Missouri; Thence West along the South right of way of Pershing Street a distance of 308 feet the Northwest corner of Lot 41 in Block 11 of M.M. McCluers Addition to the City of Springfield; Thence South a distance of 160 feet to the Southwest corner of said Lot 41; Thence East along the South line of said Lot 41 a distance of 30 feet; Thence South 160 feet to the South line of Lot 60 in Block 11 of M.M. McCluers Addition; Thence East a distance of 278 feet to the Southeast corner of Lot 6 of J.H. Meinhardt's Addition; Thence North a distance of 320 feet to the point of beginning.

And the following described property from an R-SF, Single Family Residential District and GR, General Retail District to a Grant Avenue Parkway District, Subdistrict C:

(Campbell School) Beginning one hundred twenty-five (125) feet West of the northwest corner of Main and Mt. Vernon Streets in the City of Springfield, Missouri, thence north 280 feet, thence west 85 feet, thence south 280 feet, thence east 85 feet to the place of beginning (except tract 5 feet east and west by 185 feet north and south in the southeast corner), and

Beginning at a point 280 feet north of the northwest corner of Mt. Vernon Street and Main Avenue as now located in the City of Springfield, Greene County, Missouri, thence north 50 feet, thence west 268 feet, thence south 50 feet, thence east 268 feet to said point of beginning, in the City of Springfield, Greene County, Missouri, subject, however, to a joint driveway easement over the north 21 feet of the east 220 feet thereof, and Beginning at a point 185 and 8/10ths (185.8) east of the northeast comer of Grant and Mt. Vernon Streets, thence east fifty-four (54) feet to an iron pin, thence north two hundred and sixty-two and 5/10ths (262.5) feet to an iron pin, in the south line of a private alley, 17 1/2 feet wide In the rear of the of the lot herein conveyed, which said private alley leads to and connects with an alley lying north of the Campbell School running from Grant Street to the northwest corner of the lot herein conveyed, thence west fifty (50) feet to an iron pin, thence south along the line of fence now defining the east boundary of the aforesaid Campbell School lot, two hundred and sixty-two and 5/10ths (262.5) feet to a place of beginning all of the above described land being in the

southeast quarter of the northeast quarter of Section Twenty-Three (23), Township 29, Range 22, Greene County, Missouri, hereby granting to said second party, its successors and assigns, the right of ingress and egress to said lot, hereby conveyed over and across the private alley above described, and

Lots No. 1, 2, 3, 5, 6, 7, and 8 in Shipley's First Addition to the City of Springfield, Greene County, Missouri.

And also:

All of Lots 1, 2, 3, 4, 5, 15, & 16 of J.H. Meinhardt's Addition to the City of Springfield, in Greene County, Missouri, except that part taken for street purposes.

And also:

Beginning at the Southwest corner of the intersection of Grant Avenue and Mt. Vernon Street in the City of Springfield, Greene County, Missouri; Thence West along the South right of way of Mt. Vernon Street a distance of 302 feet to the Southeast corner of the intersection of Mt. Vernon Street and Douglas Avenue; Thence South along the East right of way of Douglas Avenue a distance of 186 feet to the Southwest corner of a tract described in Book 2020 on Page 035490-20; Thence East along the South line of said tract a distance of 152 feet to the Southeast corner of said tract; Thence South a distance of 1 foot to the Southwest corner of a tract described in Book 2018 on Page 023070-18; Thence East along the South line of said tract a distance of 150 feet to the West right of way of Grant Avenue; Thence North along the said West right of way a distance of 187 feet to the point of beginning. Except any part taken for road purposes.

And also:

Beginning at the Southeast corner of the intersection of Grant Avenue and Mt. Vernon Street in the City of Springfield, Greene County, Missouri; Thence South along the East right of way of Grant Avenue a distance of 199 feet to the Northwest corner of a tract described in Book 2019 on Page 043990-19; Thence East along the North line of said tract a distance of 199 feet; Thence North a distance of 13 feet; Thence East a distance of 95.5 feet to the Southeast corner of a tract described in Book 2016 on Page 001347-16; Thence North along the East line of said tract a distance of 185 feet to the South right of way of Mt. Vernon Street; Thence West along the said South right of way a distance of 294.5 feet to the point of beginning. Except any part taken for road purposes.

And the following described property from an R-SF, Single Family Residential District and R-MD, Medium Density Multifamily Residential District to a Grant Avenue Parkway District, Subdistrict D:

Commencing at the Southeast corner of the intersection of Mt. Vernon Street and

Douglas Avenue; Thence South along the East right of way of Douglas Avenue a distance of 186 feet to the Northwest corner of a tract described in Book 2017 on Page 007030-17 and the True Point of Beginning; Thence South along the East right of way of Douglas Avenue a distance of 2292 feet, more or less, to the Southwest corner of a tract described in Book 2012 on Page 043148-12; Thence East along the South line of said tract a distance of 156.66 feet; Thence North along the West line of a tract described in Book 2666 on Page 2329 a distance of 37.65 feet; Thence East along the North line of said tract a distance of 133.29 feet to the West right of way of Grant Avenue; Thence East along said West right of way a distance of 5 feet to an iron pin; Thence North along the West right of way of Grant Avenue a distance of 2245.7 feet to the Northeast corner of a tract described in Book 2020 on Page 029216-20 and being 187 feet South of the Southwest corner of the intersection of Grant Avenue and Mt. Vernon Street; Thence West along the North line of said tract a distance of 150 feet; Thence North 1 foot to the Northeast corner of a tract described in Book 2017 on Page 007030-17; Thence West along the North line of said tract a distance of 152 feet to the Point of Beginning. Except any part taken for road purposes.

And also:

Commencing at the Southeast corner of the intersection of Grant Avenue and Mt. Vernon Street in the City of Springfield, Greene County, Missouri; Thence South along the East right of way of Grant Avenue a distance of 199 feet to the Northwest corner of a tract described in Book 2019 on Page 043990-19 and the True Point of Beginning; Thence continuing South along the East right of way of Grant Avenue a distance of 403.87 feet to the Northeast corner of the intersection of Grant Avenue and State Street; Thence East along the North right of way of State Street a distance of 367.5 feet, more or less, to the Southeast corner of a tract described in Book 2005 on Page 054182-05; Thence North along the East line of said tract and the projection thereof a distance of 309 feet to the North right of way of Harrison Street; Thence East along said North right of way a distance of 8 feet to the Southeast corner of a tract described in Book 2018 on Page 043722-18; Thence North a distance of 125 feet to the Northeast corner of said tract; Thence West a distance of 190.75 feet to the Southwest corner of a tract described in Book 2016 on Page 001347-16; Thence South 13 feet to the Northeast corner of a tract described in Book 2019 on Page 043990-19; Thence West along the North line of said tract a distance of 199 feet to the Point of Beginning. Except any part taken for road purposes.

And also:

Beginning at the Southeast corner of the intersection of Grant Avenue and State Street; Thence South along the East right of way of Grant Avenue a distance of 632 feet to the Northeast corner of the intersection of Grant Avenue and Madison Street; Thence East along the North right of way of Madison Street a distance of 302 feet to the Southwest corner of a tract described in Book 2014 on Page 031032-14; Thence North a distance of 194.3 feet to the Northwest corner of said tract; Thence West a distance of 17 feet; Thence North a distance of 215 feet to the Southeast interior corner of Lot 4 of Everett

Place Subdivision in the City of Springfield, Greene County, Missouri; Thence East a distance of 21.58 feet; Thence North a distance of 219.25 feet to the South right of way of State Street; Thence West along said right of way a distance of 302.58 feet to the Point of Beginning. Except any part taken for road purposes.

And also:

All of Lots 12 through 20 in the Amended Plat of Grant Avenue Playground Addition and Lots 9 through 15 in Grant Avenue Playground First Addition, all in the City of Springfield, Greene County, Missouri.

And also:

Beginning at the Southeast corner of the intersection of Grant Avenue and Madison Street; Thence South along the East right of way of Grant Avenue a distance of 542.04 feet to a the northwest corner of a bicycle path in Grant Avenue Playground First Addition in the City of Springfield, Greene County, Missouri; Thence East along the North line of said path, 156.19 feet; Thence North a distance of 543.48 feet to the South right of way of Madison Street; Thence West a distance of 145.65, more or less to the Point of Beginning. Except any part taken for road purposes.

And the following described property from a GR, General Retail District, R-SF, Single Family Residential District and an R-TH, Residential Townhouse District to a Grant Avenue Parkway District, Subdistrict E:

All of Lots 7 through 11 in the Amended Plat of Grant Avenue Playground Addition in the City of Springfield, Greene County, Missouri.

And also:

A TRACT OF LAND IN THE SOUTHWEST QUARTER (SW1/4) OF THE SOUTHEAST QUARTER (SE1/4)OF SECTION TWENTY-THREE (23) TOWNSHIP TWENTY-NINE (29), RANGE TWENTY-TWO (22) IN SPRINGFIELD, GREENE COUNTY, MISSOURI DESCRIBED AS FOLLOWS:
COMMENCING AT A NAIL AT THE SOUTHEAST CORNER OF THE SOUTHWEST
QUARTER (SW1/4)OF THE SOUTHEAST QUARTER (SE1/4)OF SAID SECTION TWENTY-THREE (23); THENCE NORTH 2°33'38"EAST 78.19 FEET TO A POINT; THENCE SOUTH 89°11'31"WEST 55.30 FEET TO AN ALUMINUM CAPPED IRON PIN ON THE WEST RIGHT-OF-WAY LINE OF GRANT STREET AS IT NOW EXISTS IN AUGUST OF 1998, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 02°33'38"EAST ALONG SAID RIGHT-OF-WAY LINE 124.65 FEET TO A CAPPED IRON PIN; THENCE SOUTH 88°38'04" WEST 133.29 FEET TO A CAPPED IRON

PIN; THENCE SOUTH 01°09'41" EAST 37.65 FEET TO A CAPPED IRON PIN; THENCE NORTH 89°11'29" WEST 156.66 FEET TO THE EAST RIGHT OF WAY OF DOUGLAS AVENUE; THENCE SOUTH 01°32'27"WEST ALONG SAID RIGHT-OF-WAY LINE 105.54 FEET TO A CAPPED IRON PIN; THENCE SOUTH 89°11'31"EAST 263.71 FEET TO A CAPPED IRON PIN ON THE WEST RIGHT OF WAY LINE OF GRANT STREET; THENCE NORTH 44°22'46" EAST A DISTANCE OF 32.51 FEET TO THE TRUE POINT OF BEGINNING/ IN THE CITY OF SPRINGFIELD,GREENE COUNTY, MISSOURI, EXCEPT ANY PART THEREOF DEEDED, TAKEN OR USED FOR ROAD OR HIGHWAY PURPOSES.

And also:

Beginning at the Northeast corner of Lot 1 of the Grant-Douglas Subdivision in the City of Springfield, Greene County, Missouri; Thence North along the West right of way of Grant Avenue a distance of 569 feet, more or less, to the South right of way of Grand Street; Thence West along the said South right of way a distance of 315 feet, more or less, to the East right of way of Douglas Avenue; Thence South along the said East right of way a distance of 567 feet, more or less, to the extended North line of said Lot 1; Thence East a distance of 322 feet, more or less, to the Point of Beginning. Except any part taken for road purposes.

And also:

Beginning at the Northeast corner of Lot 4 of the Grant-Douglas Subdivision, in the City of Springfield, Greene County, Missouri; Thence South along the West right of way of Grant Avenue a distance of 392.52 to the Northwest corner of Grant Avenue and Catalpa Street; Thence Northwesterly along the North right of way of Catalpa Street a distance of 251.32 feet to the East right of way of Douglas Avenue; Thence North along said East right of way a distance of 288 feet to the Northwest corner of said Lot 4; Thence East a distance of 304.7 to the Point of Beginning. Except any part taken for road purposes.

And also:

Beginning at the Southwest corner of the intersection of Grant Avenue and Catalpa Street in the City of Springfield, Greene County, Missouri; Thence Southwesterly along the West right of way of Grant Avenue a distance of 207.69 feet; Thence, leaving said right of way, West a distance of 113.12 feet to the East line of vacated Douglas Avenue; Thence West a distance of 30 feet to the West line of vacated Douglas Avenue; Thence North along said West line a distance of 274.78 feet to the South line of Catalpa Street; Thence East along the said South right of way a distance of 261.55 feet to the Point of Beginning. Except any part taken for road purposes.

And also:

All of Lots 9 through 13 of Block 2 and Lots 2, 3, 4, and the West 5 feet of Lot 1 in Block 3 in Miles-George Parkview Subdivision in the City of Springfield, Greene County, Missouri.

And also:

Beginning at the Southwest corner of Lot 4 of Block 3 in Miles-George Parkview Subdivision in the City of Springfield, Greene County, Missouri; Thence East a distance of 200 feet; Thence South a distance of 170 feet; Thence West a distance of 200 feet to the East right of way of Grant Avenue; Thence North a distance of 170 feet to the point of Beginning.

And also:

Beginning At the Northeast corner of Lot 45 in Holman Place Addition in the City of Springfield, Greene County, Missouri; Thence South along the West line of the existing alley a distance of 400 feet to the Southeast corner of Lot 60 of said Addition; Thence West along the South line of Lot 60 a distance of 181.8 feet; Thence North a distance of 56 feet to the Southeast corner of a tract described in Book 2006 on Page 051183-06; Thence West along the South line of said tract a distance of 189 feet to the East right of way of Grant Avenue; Thence along the said East right of way a distance of 388.52 to a point on the extension of the North line of said Lot 45; Thence East along the North line and the extension thereof of Lot 45 a distance of 199.53 to the Point of Beginning. Except any part taken for road purposes.

And the following described property from a GR, General Retail District and R-SF, Single Family Residential District to a Grant Avenue Parkway District, Subdistrict F:

All of Lots 1, 2, and 3 of Grant-Douglas Subdivision in the City of Springfield, Greene County, Missouri.

And also:

Commencing at the Southwest corner of Lot 4 of Block 3 Miles-George Parkview Subdivision in the City of Springfield, Greene County, Missouri; Thence South along the East right of way of Grant Avenue a distance of 170 feet to the True Point of Beginning; Thence continuing South a distance of 230 feet to the Northwest corner of Lot 31 of Holman Place Addition; Thence continuing along said East right of way a distance of 350 feet, more or less, to a point on the extension of the North line of said Lot 45 of Holman Place Addition; Thence East along the North line and the extension thereof of Lot 45 a distance of 199.53 feet to the Northeast corner of said Lot 45; Thence North along the West line of the existing alley a distance of 360 feet to the North right of way of Loren Street; Thence East along the said North right of way a distance of 18.2 feet to

the Southeast corner of a tract described in Book 1804 on Page 648; Thence North along the east line of said tract a distance of 55 feet; Thence West a distance of 6 feet; Thence North a distance of 165 feet; Thence West a distance of 200 feet to the Point of beginning. Except any part taken for road purposes.

And also:

Beginning at the Northeast corner of Lot 6 of Greenhouse Estate in the City of Springfield, Greene County, Missouri; Thence East along the South right of way of Catalpa Street a distance of 780 feet, more or less, to the West line of vacated Douglas Avenue; Thence South along the said West line a distance of 245 feet, more or less, to Fassnight Creek; Thence along the center of Fassnight Creek a distance of 800 feet, more or less, to the East boundary of Greenhouse Estate; Thence North along said East boundary a distance of 310 feet, more or less, to the Point of Beginning.

Exhibit B

RECORD OF PROCEEDINGS
Special
Planning and Zoning Commission – September 9, 2021

Z-11-2021 - Corrected
465 S. Grant Avenue (Part of the Grant Avenue Parkway District)
Applicant: City of Springfield

Ms. Owen states that this is a request to correct legal description for the property at 645 South Grant Avenue to accurately describe the property as being located within Subdistrict B. No other changes are being proposed as part of this request. At the June 3, 2021 Planning and Zoning Commission meeting, Commission recommended approval to create a new zoning district, the Grant Avenue Parkway District, and accompanying zoning case, Z-11-2021, to rezone approximately 72.33 acres of land along Grant Avenue to the GAP District. City Council approved the new District and accompanying zoning case at their June 28, 2021 meeting. After the City Council meeting, staff discovered the legal description that accompanied the zoning case inaccurately identified the property located at 645 South Grant as being within Subdistrict C, however the intent is for the property to be located within Subdistrict B and was displayed with the information accompanying Z-11-2021 as being located within Subdistrict B.

Mr. Doennig opened the public hearing.

No speakers

Mr. Doennig closed the public hearing.

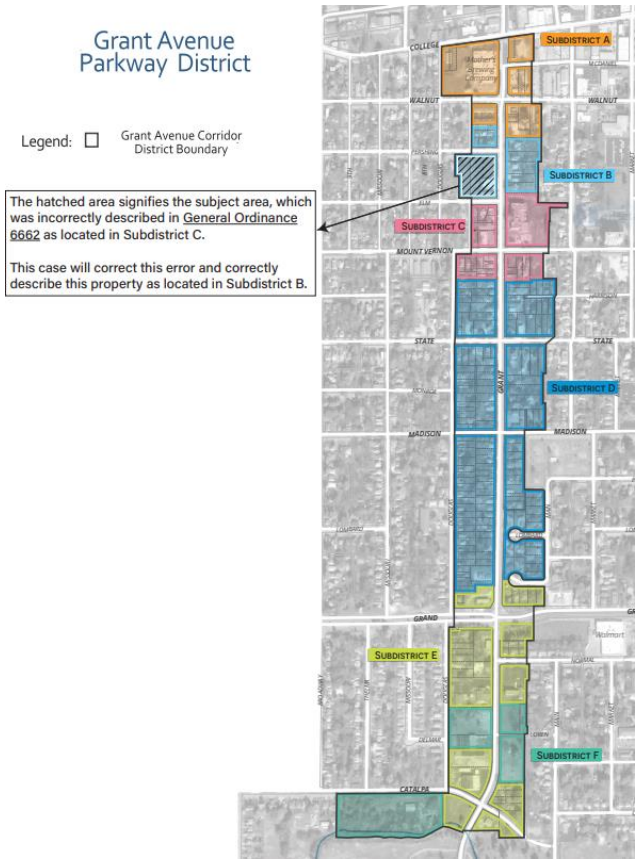
COMMISSION ACTION:
Mr. Jobe motioned to **approved** Z-11-2021 – Corrected (465 S. Grant Avenue - Part of the Grant Avenue Parkway District). Mr. Knuckles seconded the motion. Ayes: Doennig, Coltrin, Ogilvy, Knuckles, Colony, Bruce, Jobe, Broekhoven, and Lebeck. Nays: None. Abstain: None. Absent: None.

Bob Hosmer, AICP
Planning Manager

Exhibit C

Development Review Staff Report

PLANNING AND ZONING COMMISSION PUBLIC HEARING:	SEPTEMBER 9, 2021
CITY COUNCIL PUBLIC HEARING:	OCTOBER 4, 2021



CASE:
Correct legal description for Z-11-2021/General Ordinance 6662

STAFF:
Alana D Owen, AICP, 864-1831

STAFF RECOMMENDATIONS:
Approve

PROPOSED MOTION:
To correct the legal description that described the area to be rezoned as part of Z-11-2021/General Ordinance 6662 from an R-SF, Single Family Residential District, R-MD, Medium Density Multifamily Residential District, GR, General Retail District, CC, Center City District and IC, Industrial Commercial District to Grant Avenue Parkway District with Subdistricts A through F (5 members are a quorum).

SUMMARY OF TEXT AMENDMENT AND ZONING DISTRICT

At the June 3, 2021 Planning and Zoning Commission meeting, Commission recommended approval to create a new zoning district, the Grant Avenue Parkway District, and accompanying zoning case, Z-11-2021, to rezone approximately 72.33 acres of land along Grant Avenue to the GAP District. City Council approved the new District and accompanying zoning case at their June 28, 2021 meeting. After the City Council meeting, staff discovered the legal description that accompanied the zoning case inaccurately identified the property located at 645 South Grant as being within Subdistrict C, however the intent is for the property to be located within Subdistrict B and was displayed with the information accompanying Z-11-2021 as being located within Subdistrict B.

This request is to correct the legal description for the property at 645 South Grant Avenue to accurately describe the property as being located within Subdistrict B as depicted on the accompanying map. No other changes are being proposed as part of this request.

STAFF COMMENTS:

Staff recommends approval of the request to correct the legal description for Z-11-2021/General Ordinance 6662.

PUBLIC COMMENTS:

Staff held a neighborhood meeting on August 18, 2021 to discuss this request. Eight people attended the meeting. A summary of the neighborhood meeting is attached (Attachment 1).

AFFIDAVIT OF NEIGHBORHOOD NOTIFICATION AND MEETING SUMMARY

1. Request change to zoning from: GAP District- Subdistrict C to GAP District - Subdistrict B
   (existing zoning) *(proposed zoning)*
2. Meeting Date & Time: Wednesday, August 18, 2021, 5:30 pm
3. Meeting Location: Southside Baptist Church, 465 South Grant Avenue
4. Number of invitations that were sent: 192
5. How the mailing list was generated: City of Springfield Planning Department
6. Number of neighbors in attendance (attach a sign-in sheet): 8
7. List the verbal comments and how you plan to address any issues:
   (City Council does not expect all the issues to be resolved to the neighborhood's satisfaction; however, the developer must explain why the issues cannot be resolved).

   There was nobody in attendance that had questions about the proposed rezoning case. There were a few questions regarding the Grant Avenue Parkway project from attendees. I took the names and contact information and gave them to Leree Reese to follow up.

   There was a question about the possible rezoning of adjacent property owned by the Southside Baptist Church to match the GAP District zoning and the process for doing that.

8. List or attach the written comments and how you plan to address any issues:

I, Alana Owen *(print name)*, attest that the neighborhood meeting was held on August 18, 2021 *(month/date/year)*, and is at least twenty-one (21) days prior to the Planning and Zoning Commission public hearing and in accordance with the attached "Neighborhood Notification and Meeting Process."

Alana Owen
Signature of person completing affidavit

Alana D. Owen
Printed name of person completing affidavit

One-rdg. _____
P. Hrngs. _____
Pgs. 7
Filed: 09-28-21

Sponsored by: Hardinger

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021 -257 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to enter into an Intergovernmental Agreement with Ozarks Technical Community College for the provision of professional equivalency credit for eligible sworn personnel of the City of Springfield Fire Department.

WHEREAS, the Springfield Fire Department ("SFD") and Ozarks Technical Community College ("OTC") have a long tradition of providing firefighter training in the Springfield area; and

WHEREAS, SFD and OTC currently provide shared training facilities and cooperative training opportunities to SFD personnel and OTC students; and

WHEREAS, SFD and OTC share the desire to increase opportunity for continuous learning and attainment of higher education for SFD personnel while providing an avenue for the sustainment of the OTC Fire Science Technology Program; and

WHEREAS, SFD and OTC wish to enter into the proposed agreement, which would provide a pathway for eligible SFD personnel to obtain professional equivalency credit for training provided by the SFD and credited toward the completion of an Associate Degree in Fire Science Technology.

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

Section 1 – The City Manager, or his designee, is hereby authorized to enter into an Intergovernmental Agreement with OTC for the provision of professional equivalency credit for eligible sworn personnel of the City of Springfield Fire Department. Said Agreement shall be substantially in the same form and content as that document attached hereto and incorporated by reference as "Exhibit A," and to do those things necessary to carry out the intent of the Agreement.

Section 2 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-257

FILED 09-28-21

ORIGINATING DEPARTMENT: Fire

PURPOSE: Authorizing the City Manager, or his designee, to enter into an Intergovernmental Agreement ("IGA") between the City of Springfield ("City") and the Community College District of Central Southwest Missouri, a/k/a Ozarks Technical Community College ("OTC") for the provision of professional equivalency credit by OTC through the Fire Science Technology ("FST") program and within the Center of Public Safety for eligible sworn personnel of the City of Springfield Fire Department ("SFD").

BACKGROUND INFORMATION:

On August 27, 2012, the SFD and OTC entered into an Intergovernmental Agreement for the purpose of providing shared training facilities and cooperative training between the two entities. Since that time, OTC has held a portion of their FST program at SFD's Fire Station 6 and has moved components of the practical training programs to the Springfield Regional Police and Fire Training Center ("SRPFTC"), allowing for the full use of the training complex, to include the situational training room, training grounds, the SFD Fire Academy building, Training Annex warehouse, drill tower and live burn props.

New employees of the SFD attend a twenty-four-week Fire Academy consisting of numerous job-related courses, IFSAC certifications, and licensure as an Emergency Medical Technician-Basic ("EMT-B"). Non-probationary employees attend the SFD Advanced Academy Professional Development Program, attending a series of five professional development academies providing additional IFSAC certifications, at designated intervals by fire academy class cohort.

OTC and SFD share the desire to increase opportunity for continuous learning and attainment of higher education for SFD personnel while providing an avenue for the sustainability of the FST program within the Center for Public Safety. This agreement formalizes the opportunity and pathway for eligible SFD members to obtain professional equivalency credit from training provided by the SFD and credited toward the completion of an Associate Degree in the FST program.

REMARKS:

There is no on-going or shared cost to the City or OTC as a result of this agreement.

Submitted by:

David Pennington, Fire Chief

Approved by:

Jason Gage, City Manager

Exhibit A

INTERGOVERNMENTAL AGREEMENT OF EDUCATION PARTNERSHIP

Between

City of Springfield/Springfield Fire Department

And

Community College District of Central Southwest Missouri aka Ozarks Technical Community College

PURPOSE

This document is used to outline the partnership agreement for provision of professional equivalency credit by Ozarks Technical Community College (OTC) through the Fire Science Technology (FST) program within the Center of Public Safety, for eligible sworn personnel of the City of Springfield Fire Department (SFD).

BACKGROUND

On August 27, 2012, the SFD and OTC entered into an intergovernmental agreement for the purpose of providing shared training facilities and cooperative training between the two entities. Since that time, OTC has held a portion of their FST program at SFD's Fire Station 6 and has moved components of the practical training programs to the Springfield Regional Police and Fire Training Center (SRPFTC), allowing for the full use of the training complex, to include the situational training room, training grounds, the SFD Fire Academy building, Training Annex warehouse, drill tower and live burn props.

New employees of the SFD attend a twenty-four-week Fire Academy consisting of numerous job-related courses, IFSAC certifications, and licensure as an Emergency Medical Technician-Basic (EMT-B). Non-probationary employees attend the SFD Advanced Academy Professional Development Program, attending a series of five professional development academies providing additional IFSAC certifications, at designated intervals by fire academy class cohort.

OTC and SFD share the desire to increase opportunity for continuous learning and attainment of higher education for SFD personnel while providing an avenue for the sustainability of the FST program within the Center for Public Safety.

AGREEMENT

The City of Springfield, Missouri/Springfield Fire Department and Ozarks Technical Community College hereby covenant and agree as follows:

1. This agreement shall be valid from the date ratified and remain in force and effect in perpetuity unless acted upon by either party.

2. Either party may request to modify the agreement with 30 days' notice.

3. This agreement may be terminated by either party without prejudice at any time during the Initial Agreement or any Renewal Agreement term by providing at least ninety (90) days written notice to Lessor or Lessee. If notice to terminate is given, the conditions of this agreement shall be honored for SFD personnel enrolled at the time of notification and without forfeiture through the end of the academic semester in progress.

4. Eligible SFD personnel enrolled at OTC must have a minimum of 15 credit hours in residency to satisfy requirements for graduation from the FST or FSA programs. Credit granted by OTC as professional equivalency or credit by exam shall not satisfy the residency requirement.

5. OTC recognizes the SFD Fire Academy as an official fire academy, and accepts the official fire academy letter of completion, on SFD letterhead and to include the signature of the Fire Chief, as the official record of completion.

6. This agreement grants non-probationary sworn members of the SFD professional equivalency and/or prior learning credit up to, and not to exceed, 50% of the Associate of Applied Science in Fire Science Technology (FST) or Fire Service Administration (FSA).

(a). Upon submission of the official fire academy letter of completion, OTC shall provide professional equivalency credit for TEC-285, Occupational Seminar (1 credit hour), and FST-280, Capstone (3 credit hours), toward the completion of the FST or FSA degree.

7. Eligible SFD personnel enrolled at OTC may receive up to and not to exceed 24 credit hours through credit-by-exam at no cost.

(a). Upon submission of the official fire academy letter of completion, OTC recognizes the SFD Fire Academy as providing curriculum and training and shall provide 22 hours of equivalency through credit by exam.

(b). Upon submission of the official fire academy letter of completion, OTC shall provide equivalency credit based on credit by exam standards toward completion of the FST degree for the following: Firefighter I; Firefighter II; Hazardous Materials Awareness; Hazardous Materials Operations, Firefighter Safety and Survival and EMT-B.

8. OTC recognizes the SFD Advance Academy professional development program and will provide no-cost professional equivalency credit for the following certifications toward the completion of the FST or FSA degree program: IFSAC Pumping Apparatus Driver Operator; IFSAC Rope Core; IFSAC Fire Inspector; IFSAC Fire Instructor I; IFSAC Fire Instructor II; IFSAC Fire Officer I; IFSAC Fire Officer II, and IFSAC Incident Safety Officer.

9. OTC agrees to waive the facility fee for sworn SFD members when only FST and/or FSA classes are taken at the SFD location. The facility fee will be charged for any non-FST/FSA course taken at SFD or any other OTC location.

10. This agreement in no way binds each party from entering into other contracts for service or partnership.

Agreed upon by:

Community College District of Central Southwest Missouri aka Ozarks Technical Community College:

_____

Vice Chancellor for Administrative Services

Date:_____

City of Springfield:

_____

City Manager

Date:_____

THE SPRINGFIELD FIRE DEPARTMENT CAREER ACADEMY PATH

The SFD Professional Development Advanced Academy program provides our Firefighters and Officers the educational foundation and certifications necessary to provide safe and effective emergency services to our community. This program provides required training to perform in an out-of-title role and in preparation for promotional opportunities consistent with professional standards.

MO. 0-6
Fire Academy

- Hazmat Awareness & Operations
- Driver Operator Core
- Vehicle Rescue Technician
- Basic Pump Awareness
- ICS 100, 200, 700, 800
- CPR Certification
- NREMT-B

MO. 9
E/O Academy
(cohort)

- Pumping Apparatus Driver Operator
- Advanced Hose Handling Techniques
- Aerial Apparatus Driver Operator

MO. 52
Basic Officer Academy
(cohort)

- Fire Officer I
- Fire Instructor I
- SFD STICO

MO. 82
Advanced Officer Academy
(cohort)

- Fire Officer II
- Inspector I

Command Development Program

- ICS 300
- ISO IFSAC
- Fire and Cause Determination

MO. 21
Truck Academy
(cohort)

- Advanced SCBA
- Forcible Entry
- Search
- Ladders
- Tools and Maintenance
- Ventilation
- VEIS/TIC
- Aerial Positioning
- Auto Rescue
- Elevator

MO. 30
Rescue Academy
(cohort)

- Rope Core
- Confined Space Awareness
- Trench Rescue Awareness
- Auto Extrication
- Structural Collapse – Ops

MO. 42
Advanced Rescue Academy

- Rope Tech Chapter 6.1 & 6.2
- Trench Rescue Technician
- Confined Space Rescue Technician
- Structure Collapse – Tech

Exhibit B

CITY OF Springfield FIRE

One-rdg. _____
P. Hrngs. _____
Pgs. 65
Filed: 09-28-21

Sponsored by: Hosmer

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021-258 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to enter into a Wastewater Service Contract and Mutual Aid Agreement with the City of Battlefield for the purpose of continuing to provide contract wastewater service to Battlefield.

WHEREAS, Springfield owns and operates a regional Publicly Owned Treatment Works (hereinafter "POTW") and has capacity to receive and treat wastewater from surrounding communities, which will provide an environmental benefit to the region by offering more effective, efficient, and lower cost wastewater treatment than smaller, separate wastewater treatment facilities; and

WHEREAS, Springfield City Council authorized the current wastewater services agreement (Special Ordinance 23805) in February 2000 with a 20-year term to be replaced by this agreement; and

WHEREAS, the previous version of the contract to treat Battlefield's wastewater required a monthly remittance based upon a combined base charge and volume charge for each individual wastewater customer as well as a remittance of any new connection charges. The parties agree this payment method has historically proven cumbersome for both communities and a simplified method, based on a per 100 cubic feet (ccf) charge for total volume of metered flow discharged from the City of Battlefield's Sewer Collection System to the POTW at the point of connection is preferred and representative of the industry standard; and

WHEREAS, the City of Battlefield is authorized pursuant to its governing body, to pay Springfield a volume charge for wastewater disposal, as determined by the Springfield City Council from time to time, and based upon the volume of water discharged into Springfield's POTW to be determined by meter reading at the mutually agreed point of connection to the POTW; and

WHEREAS, each party desires to enter into a Mutual Aid and Assistance Agreement which provides terms of mutual assistance in times of emergency, including

provisions for reimbursement for equipment, supplies and personnel made available on an emergency basis.

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

Section 1 – The City Manager, or his designee, is hereby authorized to enter into a Wastewater Service Contract with the City of Battlefield, said contract to be substantially in form and content as “Exhibit A,” which is attached hereto and incorporated herein by this reference with such changes as shall be approved by the City Attorney, and to do all things necessary to carry out the intent of the contract.

Section 2 – The City Manager, or his designee, is hereby authorized to enter into a Mutual Aid and Assistance Agreement with the City of Battlefield, said agreement to be substantially in form and content as “Exhibit B,” which is attached hereto and incorporated herein by this reference, with such changes as shall be approved by the City Attorney, and to do all things necessary to carry out the intent of the agreement.

Section 3 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Deputy City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-258

FILED: 09-28-21

ORIGINATING DEPARTMENT: Environmental Services

PURPOSE: To authorize the City Manager, or his designee, on behalf of the City, to enter into a Wastewater Service Contract as well as a Mutual Aid and Assistance Agreement with the City of Battlefield for the purpose of continuing to provide contract wastewater service to Battlefield.

BACKGROUND INFORMATION: For decades the City of Springfield has operated a wastewater collection system and two wastewater treatment plants in accordance with our National Pollution Discharge Elimination System ("NPDES") permit with the Missouri Department of Natural Resources ("MDNR"). These permits require Springfield to adhere to the stringent standards of the Federal Clean Water Act ("CWA") regarding the operation of its sewer system and the discharge from the treatment plants.

In lieu of constructing its own treatment plant, the City of Battlefield has historically elected to send its wastewater to the City of Springfield for treatment in accordance with our NPDES permit. This service is facilitated through a contract that requires Battlefield to submit monthly remittances and enforce rules regarding operation of its sewer system and allows Springfield to recover costs associated with accepting Battlefield's wastewater. Battlefield's current wastewater contract was adopted by Springfield City Council by Special Ordinance 23805. The current contract has been in place since May 12, 2000, expired on May 12, 2020, and was administratively extended until a new contract could be put in place.

Under the current contract, Battlefield makes a monthly payment to Springfield based on the number of wastewater connections and the total wastewater volume billed to its customers during that month. The contract allows Battlefield to deduct a percentage of this remittance to defer system operation and maintenance costs. Springfield's NPDES permit includes several operational requirements, including the need to adopt and maintain sewer use ordinances that prohibit certain substances from entering its sewer system. Since Battlefield's sewer collection system flows into and forms an extension of Springfield's permitted system, Battlefield is also required to adopt and maintain similar sewer use ordinances.

For the last several decades, this agreement has served both communities well. However, following a lengthy review of the contract, the City of Springfield has proposed to restructure the current wastewater contract to provide a more streamlined approach and improve contract conformity. Under this new proposed contract, Springfield will recover expenses associated with providing wastewater treatment to the City of Battlefield through a per-gallon charge, or "wholesale" rate, that will be measured at the point of connection and billed quarterly. This updated contract will no longer require Battlefield to monthly report its number of customers and individual wastewater use. It will also eliminate fees for each new permitted sewer connection. Battlefield will simply

pay Springfield for the wastewater delivered to Springfield's treatment plant and continue to enforce rules regarding the use of its sewer system.

In addition, both parties wish to enter into a Mutual Aid and Assistance Agreement which provides terms of mutual assistance in times of emergency, including provisions for reimbursement for equipment, supplies and personnel made available on an emergency basis.

REMARKS: The Department of Environmental Services recommends approval of the proposed contract and would like to thank the City of Battlefield for their work in restructuring the agreement.

Submitted by:

Ron Petering
Assistant Director of Environmental Services

Recommended by:

Errin Kemper
Director of Environmental Services

Approved by:

Jason Gage
City Manager

Exhibit A

WASTEWATER SERVICE CONTRACT

Between

CITY OF SPRINGFIELD, MISSOURI

and

BATTLEFIELD, MISSOURI

Dated:

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Exhibit A 49

SERVICE CONTRACT

between

CITY OF SPRINGFIELD
Greene County, Missouri and

BATTLEFIELD,
Greene County, Missouri

THIS SERVICE CONTRACT, made and entered into this __ _____day of_____, 2021, (regardless of when signed by the parties hereto), is by and between THE CITY OF SPRINGFIELD, MISSOURI (herein referred to as "Springfield"), a Municipal Corporation and duly organized Constitutional Charter City, of the County of Greene, State of Missouri, and BATTLEFIELD, MISSOURI, a municipal corporation (herein referred to as the "Satellite Community").

WITNESSETH:

WHEREAS, Springfield owns and operates a regional Publicly Owned Treatment Works (hereinafter "POTW") and has capacity to receive and treat wastewater from surrounding communities, which will provide an environmental benefit to the region by offering effective, efficient, and lower cost wastewater treatment than smaller, separate wastewater treatment facilities; and

WHEREAS, Battlefield has determined it is in the best interest of its community for Springfield to treat the sewage from Battlefield and its surrounding agreed to areas; and

WHEREAS, it is in the best interest of the region for Battlefield to own, operate and maintain its own system of gravity sewers, lift stations and force mains to serve its

Community (hereinafter "Satellite Community Sewer Collection System"); and

WHEREAS, Battlefield is a customer of Springfield's POTW, Battlefield being a political subdivision within Greene County which has a wastewater service contract or user agreement with Springfield; and

WHEREAS, Springfield and Battlefield agree to cancel their previous wastewater contract or agreement, and any amendments thereto (hereinafter "Original Contract"), and replace the same with a new Wastewater Service Contract (hereinafter "Contract" or "Service Contract") for the collection and treatment of sewage from Battlefield's Sewer Collection System; and

WHEREAS, the Original Contract between Battlefield and Springfield required Battlefield to submit a monthly remittance based upon a combined base charge and volume charge for each individual wastewater customer as well as a remittance of any new connection charges. The parties agree this payment method has historically proven cumbersome for both communities and a simplified method, based on a per gallon charge for total volume of metered flow discharged by Battlefield to the POTW at agreed Connection Point(s) (identified in Exhibit A, attached hereto and incorporated herein by this reference)~~,~~, is preferred and representative of the industry standard; and

WHEREAS, Battlefield is authorized pursuant to its governing body, to pay Springfield a volume charge for wastewater disposal (hereinafter "Contract Sum"), such Contract Sum to be determined by the Springfield City Council from time to time, and based upon both the volume of water used by the residential, commercial, and industrial establishments both within and without the jurisdictional limits of Battlefield and discharged into Springfield's POTW together with such amounts, if any, of

groundwater, surface water, and storm water that is allowed to be discharged into the POTW, said volume to be determined by meter reading at or near the mutually agreed Connection Point(s) to the POTW. The Contract Sum to be fixed at such rate that shall, together with all other revenues of Springfield, ensure the provision of sufficient revenues for the operation, maintenance, rehabilitation and restoration of the POTW; and

WHEREAS, the POTW will be for the primary benefit of the users within the City of Springfield, Missouri.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

ARTICLE I

SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS

SECTION 101. Precedence; Short Title

This Service Contract to accept and receive Satellite Community's wastewater shall supersede and have precedence over any prior wastewater service contract(s) or agreement(s), and amendments thereto, between Satellite Community and Springfield. Any prior contract(s) including the Original Contract and any amendments thereto is hereby rescinded and replaced in its entirety upon execution of this Service Contract.

SECTION 102. Meanings and Construction

A. Definitions

All terms which are defined herein shall have the same meaning for all purposes of this Service Contract as amended and supplemented, and of any instrument or

document appertaining hereto and whether or not such term is capitalized when used (except where the context by clear implication otherwise requires).

"Act" or "Clean Water Act" – Refers to the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq., and applicable Missouri Clean Water law.

"Annual Fee Study" – Springfield City Council annually approves fees related to the cost recovery for certain City services and functions. Each fee undergoes an annual study to determine the cost of the service.

"Annual Average Daily Flow" – The total volume of wastewater flowing into a Connection Point during any consecutive 365 days, divided by 365 and expressed in units of MGD. This volume includes the total volume of wastewater, together with any groundwater, surface water, and storm water that may be contributed into or permitted to enter the Satellite Community Sewer Collection System.

"Bonds" – All outstanding bonds issued by Springfield to date, and all subsequent bonds issued by it, or on its behalf, for the purpose of paying the cost of acquiring, constructing, improving or extending the POTW and all refunding bonds issued by it, or on its behalf, to refinance any such bonds. The term also includes sewer system revenue bonds issued to date and all subsequent bonds issued for the purpose of paying the cost of acquiring, constructing, improving and extending a sewer system, including land and easements, interceptor sewer lines, sewage treatment facilities, and refunding bonds.

"Bond Documents" – Springfield's bond resolutions and all subsequent bond resolutions approved by Springfield's Council, together with all documents necessary

for authorizing and directing the issuance of sewer system revenue bonds and sewer system refunding bonds for the purpose of paying the cost of acquiring, constructing, improving and extending the POTW, including land and easements, interceptor sewer lines, and sewage treatment facilities.

"Connection" or "Connection Point(s)" – A piped tie-in to Springfield's POTW which conveys sewage.

"Contract" or "Service Contract" – Means the terms of this agreement between Springfield and Satellite Community and all provisions contained herein. "Original Contract" means any prior contracts between the parties and any amendments thereto which are superseded by execution of this "Service Contract."

"Contract Sum" – The amounts paid or required to be paid from time to time by Satellite Community to Springfield pursuant to Section 304 of this Service Contract.

"Domestic Waste" – The waterborne waste derived from ordinary household living processes including, but not limited to waters from water closets, urinals, lavatories, sinks, bath tubs, showers, household laundries, household garbage grinders and drinking fountains.

"Food Service Establishment" – Any establishment or operation where food is provided for individual portion service directly to the consumer, whether the food is provided free of charge or sold, and whether the food is consumed on or off the premises.

"Hauled Waste" – Waste transported by haulers and discharged to a publicly owned treatment works by a conveyance other than a pipe (e.g., by truck or rail). Hauled waste might be sewage or domestic waste, or it might include non-domestic waste, or a

combination of both types of waste. The term "hauled waste" merely refers to the waste transportation method to the POTW. Hauled waste might include: chemical toilet waste, domestic septage, ground water remediation site waste, grease and sand trap waste, restaurant grease, landfill leachate, nonhazardous commercial and industrial (categorical and noncategorical) waste, and wastewater from hydrofracturing or other drilling processes.

"Hazardous Waste" – Any waste defined as such at 40 CFR 261 and/or 10 CSR 25-4.261.

"Hereby", "Herein", "Hereinabove", "Hereinafter", "Hereinbefore", "Hereof", "Hereto", "Hereunder", and any similar term, refer to this Contract and not solely to the particular portion thereof which such word is used; "Heretofore" means before the stated date of this Contract; and, "Hereafter" means after the stated date of this Contract.

"Indirect Discharge" – The introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c), or (d) of the Act.

"Industrial User" – In this Service Contract means any non-domestic user connected to the Satellite Community Sewer Collection System.

"Industrial Waste" – Any liquid or waterborne waste from an Industrial User, other than domestic waste.

"Infiltration" – Includes any storm water, surface water or groundwater that enters a sanitary sewer collection system through broken or defective pipes, improper joints or connections, deteriorated manhole components, broken foundation drains or defective service laterals.

"Inflow" – Includes any storm water which gains access to a sanitary sewer

collection system through direct sources, including, but not limited to vented manhole lids, downspouts, area drains, indirect storm sewer connections, storm sewer cross-connections and uncapped cleanouts below grade, roof drains, cellar or basement drains, sump pumps or yard drains.

"MDNR" – The Missouri Department of Natural Resources and any successor agency.

"MGD" - Million Gallons per Day.

"Ordinances for Sewer Collection System Use" or "Ordinances" – The Satellite Community ordinances and regulations governing usage and connection to the Satellite Community Sewer Collection System, which shall be maintained and enforced at all times by the Satellite Community while this Service Contract is in effect.

"Original Contract" – Means any prior contracts between the parties and any amendments thereto which are superseded by execution of this "Service Contract."

"Publicly Owned Treatment Works" or "POTW" – For this Service Contract means the treatment works owned and operated by the City of Springfield, as defined by Section 212 of the Act, which includes any devices and systems used in the storage, treatment, recycling and reclamation of domestic and municipal sewage or industrial wastes of a liquid nature, including without limitation the interceptor trunk and connection, sewers, manholes, access junctions, metering, sampling and related structures, pump stations, treatment plants and support facilities, solid waste disposal systems and land, easements and rights-of-way, all as may be acquired or constructed by Springfield or acquired from others, whether interim or permanent facilities, whether existing or to be constructed to serve the needs of Springfield and its wastewater

customers (excluding any Satellite Community or wholesale customer), and whether acquired or constructed as initially planned facilities, as extensions or replacements thereof or improvements thereto, all as necessary or appropriate to achieve Springfield's purposes. This definition does not include Satellite Community's Sewer Collection System.

"Pretreatment Program" – The documents (rules, regulations, ordinances, contracts, or agreements), procedures and funding mechanisms developed and adopted by Springfield in response to the requirements of Title 40 CFR Part 403 - "General Pretreatment Regulations for Existing and New Sources." (hereinafter "40 CFR Part 403").

"Rate(s)" – Such charges as are recommended by the Department of Environmental Services and adopted by the City Council of Springfield and which shall always provide sufficient revenues for the operation and maintenance, including a reserve fund, of the POTW as determined by Springfield City Council;

"Sanitary Sewer Overflow" – A condition in which the wastewater flow rate in the POTW or Satellite Community Collection System exceeds the capacity of the sewer to the extent that untreated raw wastewater is discharged to waters of the State.

"Satellite Community" – For this Service Contract means the municipal entity, town, or sewer corporation that is a party to this Service Contract, other than the City of Springfield, that owns, operates and maintains its own system of gravity sewers, lift stations and force mains to serve the Satellite Community (hereinafter "Satellite Community Sewer Collection System"), but does not have a treatment plant to treat domestic sewage in an environmentally sound manner in accordance with applicable

local, state and federal laws and regulations.

"Satellite Community Sewer Collection System" or "Sewer Collection System" – For this Service Contract means a system of gravity sewers, lift stations and force mains owned by Satellite Community and connected to Springfield's POTW through a mutually agreed Connection Point(s), which provides now or hereafter for the collection and conveyance of sewage or wastewater or any combination thereof as permitted by law.

"Sewage" – The spent water of a community which may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with any groundwater, surface water, and storm water that may be contributed into or permitted to enter the POTW. Sewage shall mean the same as the word 'wastewater' and is used interchangeably.

"Urban Service Area" or "USA" – For this Service Contract means the developed, undeveloped, or agricultural land, either incorporated or unincorporated, within the sphere of influence of a city, which is served or proposed to be served, by urban facilities, utilities, and services in a specified urban service area boundary developed through the city's governing body.

"Urban Boundary Agreement" – For this Service Contract means the mutually agreed boundary between satellite community and City of Springfield, for the purpose of governing future growth of both cities.

"User Fee" – The user fees and charges assessed by a Satellite Community and collected from Satellite Community customers for wastewater services.

"Wastewater Regulations" or "Regulations for Use" – Springfield City Code

Chapter 120 - Wastewater Regulations, as may be amended from time to time by Springfield City Council.

"Wastewater" – Same as the definition for "Sewage" above.

B. Construction

This Service Contract, except where the context by clear implication herein otherwise requires, shall be construed as follows:

(1) All interpretations and applications of this Service Contract shall be construed to apply only to the extent that the terms of this Service Contract impact the services provided by Springfield to Satellite Community.

(2) Definitions include both singular and plural; pronouns include both singular and plural and cover all genders;

(3) Articles, sections, subsections, paragraphs, and subparagraphs mentioned by number, letter and otherwise, correspond to the respective articles, sections, subsections, paragraphs and subparagraphs of this Service Contract so numbered or otherwise so designated;

SECTION 103. Duration of the Contract

This Service Contract and each and every provision hereof shall remain in full force and effect for an initial period of ten (10) years, with automatic renewal for two (2) additional 5-year terms unless either party provides written notice within six (6) months of the expiration of the current term. Representatives from Springfield and the Satellite Community shall meet no later than twelve (12) months prior to expiration of this Service Contract to discuss renewal, termination, or modification of this Service

Contract. Any and all prior contracts, and amendments thereto, between Springfield and Satellite Community are hereby null and void and replaced by this current Contract. This Service Contract may be amended or terminated upon written, mutual agreement of Springfield and Satellite Community. Springfield reserves the right to terminate this Service Contract for cause with 18 months' written notice of the nature of breach provided to Satellite Community.

The occurrence of the itemized nature of breach will justify termination for cause, unless Satellite community begins, within seven (7) days of receipt of notice, to cure its breach of the terms of the contract and proceeds diligently to cure such breach within no more than 30 days of receipt of said notice. If Satellite Community is diligently proceeding to cure such default, but such cure cannot be accomplished within 30 days, Satellite Community may, as part of its cure, request a reasonable amount of additional time, up to an additional sixty (60) days to cure any breach. The total right to cure shall not exceed 90 days. If the default is cured prior to the end of the cure period, then the notice of termination shall be null and void. Either party may initiate a mediation proceeding following the procedures set forth in Section 310 below after the initial 30-day time frame.

SECTION 104. Successors

Wherever Springfield or Satellite Community is referred to herein, such provision shall be deemed to include the successors of Springfield or Satellite Community, as the case may be, whether so expressed or not. All of the covenants, stipulations, obligations and agreements by or on behalf of and other provisions, for the benefit of Springfield or Satellite Community contained herein, shall bind and shall

inure to the benefit of such successors and shall bind and shall inure to the benefit of any officer, board, commission, council, authority, agent, or instrumentality to whom or to which there shall be transferred by or in accordance with law any powers, duty or function of Springfield or Satellite Community respectively, or of its successors, the possession of which is necessary or appropriate in order to comply with any such covenant, stipulation, obligation, agreement, or other provision hereof.

SECTION 105. Parties of Interest

Nothing in this Service Contract expressed or implied is intended or shall be construed to confer upon any person, firm or corporation, other than the parties hereto, any rights, remedy or claim, legal or equitable, under or by reason of this Service Contract, this Contract being intended to be and being for the sole and exclusive benefit of the parties hereto. For the purpose of the enforcement of collection of revenue owed to Springfield, Springfield may pledge, assign and transfer the right to receive and collect Contract Sums provided for in this Service Contract; and from and after such pledge, assignment and transfer, such assignee shall have Springfield 's rights and privileges hereunder, but only as to revenue, to the extent and as conferred in such pledge, assignment and transfer.

ARTICLE II

OPERATION AND MAINTENANCE OF THE POTW AND SATELLITE COMMUNITY SEWER COLLECTION SYSTEM

SECTION 201. Operation of POTW and Satellite Community Sewer Collection System

Springfield shall treat sewage received from the Satellite Community's Sewer Collection System, for the Contract Sum as set out herein, provided that the Satellite Community shall at all times properly construct, operate, maintain, and repair all portions of its Sewer Collection System according to state and federal laws, up to and including the Connection Point(s) to Springfield's POTW. Satellite Community's failure to properly construct, operate, maintain, and repair all portions of its Sewer Collection System according to state and federal laws may, at Springfield's discretion, be construed a breach of the terms of this Service Contract.

Springfield shall at all times, operate the POTW properly and in a sound and economical manner and shall maintain, preserve, and keep the same, or cause the same to be so maintained, preserved, and kept in good repair, order, and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements and renewals so that at all times the operation of the POTW may be properly conducted in a sound and economical manner. However, nothing herein shall provide Satellite Community any right to participate in any decision making or in the operation, maintenance or management of the POTW.

SECTION 202. Rules, Regulations and Other Details

The operation, use, and services of Springfield's POTW shall be governed by Springfield City Code Chapter 120 – Wastewater Regulations, in effect as of the date of this Service Contract, and as may be further amended from time to time by Springfield City Council (hereinafter "Wastewater Regulations"). Said Wastewater Regulations,

and any amendments thereto, are publicly available and made a part of this Service Contract as though set forth, in full, and verbatim. The Pretreatment Program set forth in the Wastewater Regulations applies specifically to Industrial User discharges to the POTW or the Satellite Community Sewer Collection System (See also Sections 203 and 204 herein). Satellite Community shall comply with all valid acts, rules, regulations, orders and directives of any legislative, administrative or judicial body applicable to the POTW or Satellite Community Sewer Collection System, and shall enforce the same as to its system including Industrial Users discharging therein.

SECTION 203. Regulations for Use: Satellite Community Discharge of Wastewater

A. The Satellite Community's connections to the POTW shall be limited to the Connection Point(s) described in Exhibit A to this Service Contract and made a part hereof by reference as much as if set forth, in full, and verbatim. Said Exhibit A shall be amended only by consent of both parties, in writing.

B. In further consideration for Springfield accepting and treating Satellite Community's wastewater, Satellite Community covenants and agrees to adopt and maintain at all times, while this Service Contract is in effect, ordinances and regulations governing usage and connection to its Satellite Community Sewer Collection System, hereinafter "Ordinances for Sewer Collection System Use" or "Ordinances", that are designed to protect the POTW from pollutants which are either determined not to be susceptible to treatment by the POTW or which would interfere with the operation of the POTW. These Ordinances shall, at a minimum:

(1) Grant Satellite Community authority to enforce pretreatment regulations, in accordance with 40 CFR Part 403, that are at least as stringent as Springfield's Wastewater Regulations.

(2) Adopt "local limits" in accordance with 40 CFR Part 403for wastewater discharges that are at least as stringent as those found in Springfield's Wastewater Regulations.

(3) Prohibit any discharges of hauled waste or sewered non-domestic waste to the Satellite Community's Sewer Collection System.

(4) Prohibit any discharges containing any Hazardous Waste to the Satellite Community's Sewer Collection System.

(5) Provide authority to require all existing and future Food Service Establishments to provide grease removal devices, and to maintain applicable pumping schedules in compliance with, or at least as restrictive as, current and amended Springfield Wastewater Regulations.

(6) Require notification of applicable wastewater standards (or "Ordinances") to all new industrial and commercial development, before the issuance of any building permits.

(7) Effectively prohibit and/or correct and remove any connections to the Sewer Collection System that result in known Inflow and Infiltration.

(8) Prohibit issuance of any further permits for the connection to or use of its Sewer Collection System, and allow no such further connections, upon notice from Springfield of any of the following:

a. Satellite Community has not paid to Springfield the established

Contract Sum; or

b. Satellite Community has received notice from Springfield that it is in breach of this Service Contract; or

c. A moratorium has been placed upon Springfield's issuance of new building permits by MDNR or Springfield because of lack of capacity of its POTW.

C. Measurements for wastewater flow rate and sampling for wastewater testing shall be conducted by Springfield at Connection Point(s) to the POTW or at other locations in Satellite Community's Sewer Collection System in accordance with this Service Contract or Springfield's Wastewater Regulations. If tests conducted by either Springfield or Satellite Community indicate wastewater discharged to the POTW exceeds the flow or quality criteria set forth in Springfield's Wastewater Regulations, Springfield shall have the right, in its sole business judgement, to:

(1) Require pretreatment to an acceptable condition before discharge, in keeping with good engineering practices; and

(2) Assess a surcharge payment to cover the added cost of treatment for characteristics outside the established limits, in keeping with good engineering practices.

D. Should Springfield have validly imposed upon it a monetary penalty or fine by any court, agency or instrumentality of the State of Missouri or the United States of America having competent jurisdiction, and should such penalty be imposed,

in whole or in part, because of some action or failure to take action on the part of Satellite Community with regard to its Sewer Collection System or the users thereof and whether or not Springfield has the right to enforce such compliance directly or indirectly, Springfield, in its sole business judgment, shall have the right to both require Satellite Community to immediately reimburse Springfield for any monies so paid or so required to be paid because of said penalty or fine, and to declare Satellite Community in breach of this Service Contract.

SECTION 204. Regulations for Use: Industrial User Discharge of Wastewater

The parties specifically authorize, recognize, and acknowledge Springfield's obligation to implement and enforce the Wastewater Regulations including its Pretreatment Program, as amended, promulgated pursuant to the Act and the applicable provisions of 40 CFR Part 403. Satellite Community agrees to perform on its Sanitary Sewer Collection System any technical and administrative duties necessary to implement and enforce applicable pretreatment provisions of 40 CFR Part 403, and to adhere to applicable plumbing codes for grease removal on its Sewer Collection System. The parties specifically authorize, recognize, and acknowledge Springfield's right to perform technical and administrative duties necessary to implement and enforce the Regulations for Use and Pretreatment Program any time and specifically in the event Satellite Community fails to protect its Sewer Collection System, and thereby the POTW, from industrial wastewater in a satisfactory manner.

Because Industrial Users in Satellite Community's jurisdictional boundaries will or may contribute wastewater to the POTW which includes industrial waste, the parties

agree to the following terms and conditions:

A. If Satellite Community has not already done so, Satellite Community agrees as soon as reasonably possible (but within at least 120 days after the effective date hereof) to adopt, maintain and upkeep Ordinances for Sewer Collection System Use (hereinafter "Ordinances") which acknowledge and grant to Satellite Community the responsibility to require and monitor compliance of discharges into its Sewer Collection System and respond to and remedy violations or other instances of noncompliance of the Clean Water Act, as outlined in Section 203 above, and 40 CFR Part 403, including but not limited to:

(1) Adoption of "Local Limits" which address the same pollutant parameters and which are at least as stringent as the Local Limits enacted by Springfield, and as amended from time to time, and as set forth in the Wastewater Regulations and Pretreatment Program.

(2) Authority to perform technical and administrative duties necessary to implement and enforce the Ordinances for Sewer Collection System Use and the Pretreatment Program, consistent with 40 CFR Part 403, including, but not limited to, the following authorities and responsibilities:

i. determining the acceptability of industrial waste to the POTW from Industrial Users contributing to the Satellite Community's Sewer Collection System;

ii. conducting appropriate sampling and analysis of effluent from Industrial Users and potential high-strength customers contributing to the Satellite Community Sewer Collection System;

iii. issuing permits to Industrial Users contributing to the Satellite Community Sewer Collection System;

iv. conducting inspection and compliance monitoring of effluent from contributing Industrial Users and high-strength customers; and

v. performing an Industrial User survey to identify new or changed industry at least every calendar year; and

vi. performing enforcement for acts of noncompliance of Ordinances for Sewer Collection System Use concerning fats, oils and grease collection and/or the Pretreatment Program.

B. Before Industrial Users located outside Satellite Community's jurisdictional boundaries are allowed to discharge into Satellite Community's Sewer Collection System, Satellite Community agrees to negotiate and secure an agreement with such user that all Ordinances will be followed. Such an agreement shall be substantially equivalent to this Section 204, the substantive provisions thereof shall be substantially equivalent to Sections 203 through 206, and a draft thereof shall be forwarded to Springfield for its reasonable approval prior to execution.

C. If Springfield reasonably believes that a violation of Satellite Community's Ordinances exists and/or the alleged violation also violates Springfield's Wastewater Regulations and/or any provision within 40 CFR Part 403, Springfield shall have the authority to demand that Satellite Community commence enforcement of its Ordinances against an Industrial User or any other user of Satellite Community's Sewer Collection System, by sending written notice to Satellite Community stating the reasons for its belief that a violation exists and requesting that such enforcement

by Satellite Community be commenced.

Upon receipt of any such notice stating a reasonable belief that a violation exists, Satellite Community shall commence and diligently pursue enforcement of its Ordinances. Springfield may, at its sole discretion, assist Satellite Community with any inspection, monitoring, and sampling necessary to the enforcement action.

If Springfield gives such written notice, and Satellite Community fails to commence and diligently pursue enforcement of its Ordinances, Springfield may, at its sole business discretion, consider said failure to be in breach of this Service Contract. Any additional cost or charge to Springfield, including fines and penalties, resulting from said failure shall be borne entirely by Satellite Community, provided that the failure of Satellite Community to obtain a conviction shall not be deemed a failure to commence and diligently pursue enforcement.

D. Any failure of Springfield to give any notices referenced under this Section shall not excuse Satellite Community from complying with the terms of this section, nor create any liability on the part of Springfield.

E. Any dispute arising out of this Service Contract shall be resolved in accordance with the applicable provisions hereof, which shall in no way limit Springfield‘s power to enforce requirements directly against Industrial Users using Satellite Community’s Sewer Collection System in the event Satellite Community is unable or unwilling to take such action, nor shall it preclude Springfield from seeking other remedies against Satellite Community.

F. Any routine compliance monitoring and/or documentation compiled by the Satellite Community in the course of administering the Pretreatment Program shall be

provided to Springfield within 30 days of sample collection and shall be included in the Certified Annual Report provided in Section 312.

SECTION 205. Inflow and Infiltration

The parties recognize and acknowledge Springfield 's right to implement and enforce federal and state regulations delegated to and implemented by Springfield, as may become enacted to govern infiltration/inflow and reasonably prevent sanitary sewer overflows.

Springfield and Satellite Community will each operate and maintain its own respective wastewater collection system according to standard engineering and management practices, and in doing so, each will effectively police, monitor and control, to the most reasonable extent possible, its respective sanitary wastewater collection systems so as to preclude storm, surface or ground water that is not intentionally admitted.

Satellite Community further agrees to maintain in effect Ordinances prohibiting the connection of roof drains, porch drains, driveway drains, parking lot drains, street drains, footing drains and surface or ground water sump pumps to its Sewer Collection System and to require their immediate removal or disconnect upon discovery of such connection. Satellite Community agrees to notify Springfield of any amendment to such Ordinances. Satellite Community will further perform reasonable monitoring and inspection to avoid significant infiltration and inflow to Satellite Community's Sewer Collection System.

SECTION 206. Satellite Community's Sewer Collection System and Connection to Springfield

A. Satellite Community's Sewer Collection System: Satellite Community, at its own expense and cost, will construct, install, operate, and maintain any and all improvements to its Sewer Collection System necessary to cause all sewage originating in Satellite Community's Sewer Collection System to deliver and discharge into the POTW, and will keep its Sewer Collection System connected with the POTW.

Satellite Community shall make all improvements to its Sewer Collection System without cost to Springfield and in full compliance with applicable federal and state laws and regulations. Prior to making any improvement to its Sewer Collection System, the Satellite Community shall obtain any necessary approval from MDNR for any such improvements. Such improvements shall be made in accordance with plans and specifications approved by MDNR and shall provide MDNR with all required certifications relating to such improvements. The Satellite Community will immediately provide Springfield with a copy of any application for a Construction Permit submitted to MDNR. Satellite Community agrees it shall include the appropriate, executed "Continuing Authority and Receiving Wastewater Treatment Facility Acceptance" form, with all Sewer Extension Construction Permit Applications submitted to MDNR.

In the event any defects(s) in materials, workmanship, construction, or inspections are discovered within one year, or such longer term as may be allowed by law, of the completion of any new improvements to Satellite Community's Sewer Collection System, Satellite Community agrees to promptly prosecute all lawful remedies against the developer(s), manufacturer(s), supplier(s), contractor(s),

engineer(s), and surety(s) to correct any such defect. In the event such defects are not corrected, and the defect affects in a material way the public health, safety or environmental compliance of the POTW (including the contribution of inflow or infiltration), the Satellite Community shall not continue to issue sanitary sewer connection permits within its Sewer Collection System. If such use continues, Springfield may in its discretion, consider the failure to enforce correction or the continued issuance of connection permits to be a breach of this Service Contract entitling Springfield to discontinue treatment of sewage from the Satellite Community Sewer Collection System and seek appropriate judicial relief if indicated.

All acquisitions, additions, alterations, reconstruction, improvements or extensions to the Sewer Collection System shall become a part of the Sewer Collection System owned exclusively by the Satellite Community and shall be subject to the terms and conditions of this Service Contract.

B. Connection to Springfield: Consistent with this Service Contract, Satellite Community shall both retain full power and authority over its existing Sewer Collection System and full power and authority to provide additional sewer service to customers within the:

i. Existing city limits of Battlefield, as shown in Exhibit B (city limits as of the effective date of this contract, or any mutually agreed to written revisions to Exhibit B) including the construction or acquisition of facilities for the collection and transportation of sewage arising within the corporate limits of Battlefield.

ii. Annexation Boundary of Satellite Community - Battlefield may also provide sewer service to persons in an area outside its existing corporate limits in the area

described in Exhibit B as the Battlefield Annexation Boundary, without the express written consent of Springfield if the area where sewer service is provided is annexed into Battlefield prior to providing the sewer service. Neither Battlefield nor Springfield shall permit persons outside the Battlefield Annexation Boundary shown in Exhibit B to connect to Battlefield's Sewer System without the express written consent of both parties. Connection to Springfield's POTW by persons outside Battlefield Annexation Boundary shall be on such terms and conditions as Springfield authorizes. All sewage within the Battlefield Annexation Boundary shown in Exhibit B shall be treated by Springfield.

iii. In order to induce Springfield to provide wastewater treatment to the area within the Battlefield Annexation Boundary, Battlefield agrees it will not extend its Sewer Collection System to any area outside of the Battlefield Annexation Boundary shown on Exhibit B without the written consent of Springfield. Springfield agrees that it will not extend Springfield's POTW to provide any sewer service into the area identified in Exhibit B as the Battlefield Annexation Boundary without the written consent of Battlefield.

Whenever possible, the parties shall avoid the use of lift stations by using gravity sewers. In order to facilitate and encourage the use of gravity sewers, Battlefield may directly connect property which is located within its corporate limits to the POTW without any additional charge (other than the charges required by this agreement and any other charges which are charged by Springfield to properties outside the Battlefield

Annexation Boundary to connect to the same sewer line) when such connection avoids the construction and use of a lift station provided the connection is made upon reasonable terms and conditions as determined by Springfield's Director of Environmental Services. Springfield may also connect property outside of Battlefield Annexation Boundary shown in Exhibit B to the Battlefield Sewer System without any additional charge (other than the cost to Battlefield to pump) when such connection avoids the construction and use of a lift station provided the connection is made upon reasonable terms and conditions as determined by an engineer for Battlefield and the additional sewage does not count towards Battlefield's capacity.

Nothing herein shall be deemed to limit Satellite Community's power with regard to areas inside or outside its jurisdictional limits, in accordance with the agreed to and established Urban Boundary Agreement. Nothing herein shall be deemed to limit Satellite Community's authority to charge persons outside its jurisdictional limits for the use of Satellite Community's Sewer Collection System.

Section 207. Connection to Springfield and Division of Costs

Satellite Community shall cause or continue to cause those portions of Satellite Community's Sewer Collection System transporting sewage to be connected with the POTW at the appropriate, agreed Connection Point(s) designated in Exhibit A, attached hereto and made a part hereof by reference as much as if set forth in full and verbatim. Every such Connection point shall constitute and shall be operated by Springfield as part of the POTW and shall include all such metering and other facilities as may be necessary to cause all sewage delivered at said Connection Point(s) to be metered and

sampled as a means of determining the quantity and characteristics of the wastewater discharged into the POTW from each location. Connection Point(s) of Satellite Community's Sewer Collection System to the POTW shall be limited to the locations designated in Exhibit A, or as amended and approved by Springfield in writing, and added as an amendment to this Service Contract.

Additional Connection Point(s), if requested by Satellite Community, may be approved and furnished by Springfield provided Satellite Community pays the Connection Fee (referenced in Section 311) and bears the cost of design and construction of the junction structure(s) or other facility if required to connect, meter, and sample flows contributed at that point. Such additional Connection Point(s) will be listed in an amendment to Exhibit A upon their approval by Springfield.

SECTION 208. Covenant Against Waste

Springfield and Satellite Community covenant not to do or suffer or permit any waste or damage, disfigurement or injury to the POTW.

SECTION 209. Right of Inspection

Springfield covenants and agrees, upon reasonable notice to Springfield, and the right of Springfield to accompany, to permit Satellite Community and the authorized agents and representatives of Satellite Community to enter the POTW during usual business hours for the purpose of inspecting the same. As permitted by law, upon reasonable notice to Satellite Community, and the right of Satellite Community to accompany, Springfield shall have the right but not the obligation to inspect Satellite

Community's Sewer Collection System.

SECTION 210. No Vested Rights of Satellite Community in POTW

Satellite Community shall not acquire any vested rights in the POTW by reason of this Service Contract. All or any portion of the Contract Sums to be paid by Satellite Community shall be deemed to be current costs of wastewater treatment, and to the extent applicable, operating expenses of Satellite Community's Connection Point(s).

SECTION 211. POTW Capacity

The wastewater that Springfield agrees to receive from the Satellite Community Sewer Collection System shall not exceed an Average Annual Daily Flow of 0.75 MGD, provided, however, this provision shall not constitute a reservation of capacity but only the right to use Springfield's POTW based upon its availability.

If it appears there will be insufficient capacity for Springfield to accommodate additional flows anticipated by Satellite Community and the flow anticipated from Springfield sewer customers during the then remaining term of the Service Contract, Springfield will, using reasonable assumptions, advise Satellite Community of the estimated date when new connections to the Satellite Community's Sewer Collection System will not be permitted to connect and ultimately discharge into Springfield's POTW. Springfield may, at its sole discretion, provide Satellite Community with an estimated schedule for the construction of additional facilities to meet the increased demand and a funding proposal to pay for such construction. Springfield reserves the right, at its discretion, to terminate this Service Contract at any time, with reasonable

notice, due to insufficient capacity.

SECTION 212. Overflow Response Plan

If Satellite Community has not already done so, Satellite Community agrees as soon as reasonably possible (but in no event later than 180 days after the date hereof) to have and implement a valid Sanitary Sewer Overflow Response Plan (SSORP) for its Sewer Collection System; which plan shall be on file with MDNR.

SECTION 213. Mutual Aid Agreement

If Springfield and Satellite Community have not already done so, Satellite Community agrees as soon as reasonably possible (but in no event later than 180 days after the date hereof) to enter into a mutual aid agreement with Springfield pertaining to its Sewer Collection System, which shall outline the costs and response obligations of both parties in the event that assistance is requested.

ARTICLE III

PAYMENT BY SATELLITE COMMUNITY

SECTION 301. Agreement to Pay

Satellite Community agrees to pay Springfield for the treatment and disposal of its wastewater, as provided in Section 201 hereof, the Contract Sum provided for in Section 304 hereof.

SECTION 302. Satellite Community's Source Funds

The Contract Sum shall be paid by Satellite Community regardless of whether or not Satellite Community collects rates and charges from its connected users. If the user fees paid to Satellite Community are not sufficient to fully pay the Contract Sum or any portion thereof when due, the amount remaining unpaid, plus any delinquent charge, shall be paid by Satellite Community from its other income, revenues and property, as may be necessary to fully pay the Contract Sum.

SECTION 303. Satellite Community Collection of Charges

Satellite Community agrees to provide, by an appropriate ordinance or other governing rules, for the imposition and collection of a charge for the use of Satellite Community's Sewer Collection System or any part thereof, said charge to be sufficient to provide, and from time to time be revised to always be sufficient to provide Satellite Community with sufficient funds to pay the Contract Sum; Satellite Community further agrees to annually budget and appropriate such monies.

SECTION 304. The Contract Sum

Satellite Community's quarterly bill shall be comprised of a Volume Related Charge, High Strength Surcharges (if applicable), and Billing & Meter Charge, as

follows:

A. Volume Related Charges - those charges directly attributable to the flow, as measured by the meter, at or near the Connection Point(s) established in Section 207 and Exhibit A. In the event of gravity Connection Point(s) to Springfield's POTW where metering may not be feasible, the volume of wastewater will be estimated based on the actual water use of commercial and residential facilities, excluding sources that do not contribute wastewater volume In the event actual water use is not available for residential properties, estimated usage will be based on three ccf/month per bedroom for such residential facilities. The Volume Related Charge shall be billed based on the preceding three months of volume as determined by the flow meters and estimated volumes. The Volume Related Charge shall be established by Springfield City Council and amended from time to time.

B. High Strength Surcharges (if applicable) - Industrial Users connected to Satellite Community's Sewer Collection System who discharge Total Suspended Solids (TSS) or Biochemical Oxygen Demand (BOD) in excess of an established limit as defined in Springfield's Wastewater Regulations shall be required to pay additional surcharges as established by Springfield City Council and amended from time to time. These surcharges will be assessed to the Industrial User by Satellite Community and will be calculated based on sampling procedures established in Springfield's Wastewater Regulations. Sampling will be required as a means to determine characteristics of wastewater contributed by Industrial Users within the Satellite Community's Sewer Collection System and will be at the expense of Satellite Community.

C. Billing and Meter Charge - those charges associated with administration and billing of Satellite Communities as well as the establishment, repair, and maintenance of Springfield's meters and meter structures located at or near the Connection Point(s). These costs will be determined as part of Springfield's Annual Fee Study and may include staffing costs associated with administering the billing program, capital costs of the meters and metering structures, and the repair, operation and maintenance of the meters and structures.

The fees and charges billed by Springfield per Section 304 of this Service Contract shall be deemed to be expenses of operating Springfield's POTW, and the assessment of the same against Satellite Community users shall not require confirmation, approval, or ratification by the Satellite Community by either ordinance or resolution. The duty of Satellite Community to pass necessary implementing legislation to impose sewer charges upon its customers as required by this Service Contract is deemed to be a ministerial duty and an operating expense of the Satellite Community. In the event Satellite Community has an objection to a rate or charge included by Springfield in the fee for the use of Springfield's POTW, Satellite Community shall be obligated to collect such rate or charge and pay under protest that portion of the fee to which it objects stating therein the reason for the protest. Failure to pay under protest shall be deemed an acceptance of such rate or charge. Procedures set forth in Section 310 shall apply to any such protest.

SECTION 305. Meter Reading and Calibration

This Section 305 is subject to change due to technological improvements in

wastewater measurements. As needed, Springfield will perform maintenance of flow measuring equipment, calculate flow quantities based on the flow readings, and perform a calibration of the meters.

As needed, Springfield's staff will calibrate and verify calibration of the meter at each meter structure. With a minimum twenty-four (24) hours' notice, representatives of Satellite Community may accompany Springfield's staff and/or Contractor and observe the calibration of the meter.

Satellite Community shall have the right, at their expense, to confirm meter calibration and/or to request supporting data needed to verify meter calibration. Satellite Community shall, no later than sixty (60) days after the visit or receipt of supporting data, advise Springfield of any differences regarding the meter calibrations, and the parties shall attempt to resolve any such differences. Neither the failure of Satellite Community to observe Springfield's calculation of flow or meter calibration, nor the failure of Satellite Community to advise Springfield and record in writing any differences between Satellite Community's readings or calibrations and those of Springfield shall affect the requirements of Section 304.

If, for any reason, Springfield's metering equipment is out of service or out of repair so that flow volumes for any period cannot be ascertained, Springfield shall estimate such volumes delivered during the period when the metering equipment is out of service or out of repair based on volumes during earlier periods under similar conditions when the metering equipment was registering properly. Satellite Community shall accept such estimate unless it is able to more accurately estimate such volumes delivered to the reasonable satisfaction of Springfield, in which case Satellite

Community's estimates shall be used.

SECTION 306. Payment of Contract Sum

The Contract Sum shall be billed quarterly by Springfield, as determined in Section 304. In all events, the quarterly billing shall be due and payable upon receipt.

SECTION 307. Delinquent Payment by Satellite Community

Any Contract Sum not paid within thirty (30) days from the date of billing will be considered delinquent and an additional charge of one and one-half percent (1.5%) per month for each month or portion thereof that the bill remains delinquent will be added thereto. Upon failure to make any such payment, the right to make any additional connection to the Satellite Community Sewer Collection System shall cease and Satellite Community shall not issue any permit for the construction of any building or structure requiring a connection to the Satellite Community Sewer Collection System.

Springfield may commence legal proceedings or available administrative proceedings against any Satellite Community which is delinquent in the payment of the Contract Sum. However, failure to commence legal proceedings or available administrative proceedings in a certain time frame does not limit or waive any legal right to pursue the delinquent payment.

Any overpayment by Satellite Community shall be credited against its payment obligations to Springfield for subsequent periods, and any underpayment shall be paid by Satellite Community within fifteen (15) days after Springfield's delivery of the final statement, with interest as provided in this section 307.

SECTION 308. Contracts with Others

No municipality, or other similar entity shall be permitted to connect to the POTW unless it has first duly entered into a contractual agreement with Springfield similar to this Service Contract, for payment of Contract Sums.

SECTION 309. Satellite Community's User Charge System

In conformance with Section 303 of this Service Contract, Satellite Community shall establish and maintain a User Charge System. The purpose of Satellite Community's User Charge System is to ensure the adequate collection of revenues to support the operation, maintenance and replacement needs of the Satellite Community's Sewer Collection System as well as Satellite Community's payment of the Contract Sum to Springfield. By signing this Service Contract, Satellite Community specifically acknowledges its ongoing obligation to comply with applicable Federal User Charge Requirements.

This Section 309 shall not be construed as conferring on Springfield, and Springfield shall not have, any right of review or approval of Satellite Community's User Charge System. Satellite Community shall maintain its User Charge System in accordance with applicable law.

SECTION 310. Resolution of Disputes

Any and all billing disputes, including the measurement of metered flow for purposes of computation of the Contract Sum, and any matters involving the duties or

obligations of either party to this Service Contract, that are unable to be resolved between Springfield and Satellite Community, shall be presented in writing to the other party, and shall include specific facts supporting the dispute. Satellite Community shall have thirty (30) days from the date of receipt of Springfield's Quarterly Billing to present the written notice that it is contesting the bill. Failure by Satellite Community to notify Springfield in writing, and to pay in full the disputed portion of a bill under protest within said thirty (30) day period, shall constitute a waiver on the part of Satellite Community and Satellite Community shall be deemed to have agreed to the accuracy of said bill. In the event of a properly notified dispute concerning a bill, or any matter involving the duties or obligations of either party to this Service Contract, the parties, by their designated representatives, shall meet, confer and discuss such disputes and possible resolutions within 90 days after presentation. The representatives thereafter shall again meet, confer and discuss the disputed issues within 30 days after the conclusion of the first meeting and after conferring with the governing bodies of each of the signatories to this Service Contract, or their representatives, and shall reduce to writing their points of agreement, points of disagreement, and recommendations.

In the event the dispute is not resolved, the parties may, by mutual consent, agree to arbitrate or mediate, or if they are unable to agree to arbitration or mediation, either party may proceed to litigate the matter in court or take any other action authorized by this Service Contract. Such arbitration or mediation shall be binding or nonbinding, as the parties may at that time agree.

A. Subject to any recognized privilege, discovery shall be available to each party to the arbitration or mediation as it would be available in the Circuit Court of Greene

County under the Missouri Rules of Civil Procedure in effect at the time of demand for arbitration or mediation. Notices, time periods and other procedural matters shall be governed by the Rules of Civil Procedure, which shall be enforced by the Mediator or Arbitrator in the same manner as in the Circuit Court.

B. A pre-hearing conference shall be held not sooner than sixty (60) days after the filing of the answer, at which time a pre-hearing summary shall be filed by each party, setting forth all claims and counterclaims with specificity, all witnesses expected to be called at the hearing, all documents proposed to be introduced, and all items of claimed damages including dollar amount therefore.

C. All discovery and amendments to the pre-hearing summary shall be concluded thirty (30) days prior to the mediation or arbitration date. Failure to provide the foregoing discovery and disclosure shall render any claim supported by witnesses or documents not so disclosed excludable by the arbitration panel in its discretion.

D. In the event of any arbitration demanded by one party and agreed to by the other party, each party shall select an arbitrator, and the two so selected shall select a third. The decision of a majority of the arbitrators shall be the decision of the panel. Springfield and Satellite Community shall each be responsible for one-half of the fees of the arbitrators and administrative costs of the arbitration.

E. The arbitrators shall render a written decision, with conclusions of law and findings of fact, breaking down the items of any award on the claim or counterclaim in detail. The decision of the arbitration panel shall be final, if the parties agree in advance in writing, to submit the controversy to binding arbitration. However, the arbitrator's decisions on points of law shall be appealable.

SECTION 311. Connection Fees

In addition to other sums payable by Satellite Community hereunder, Satellite Community agrees to pay to Springfield any established Trunk Sewer Fees or other Connection Fees established by Springfield to recover the costs of infrastructure needed to serve the Satellite Community at future Connection Point(s).

SECTION 312. Annual Records and Report

A. Certified Annual Report:

It will be the responsibility of the Satellite Community to submit to Springfield, by the 60th day following the end of each fiscal year, an annual report regarding the Satellite Community's previous year's activity regarding its Sewer Collection System and use. The annual report shall be certified by an authorized representative of the Satellite Community to be true and correct to the best of Satellite Community's collective knowledge, and shall include at a minimum:

(1) Industrial Waste Survey in accordance with the requirement of 40 CFR Part 403; and

(2) If applicable, Pretreatment Annual Report in accordance with the reporting requirements of 40 CFR Part 403; and

(3) Sewer construction permits approved by MDNR along with the associated Public Improvement plans for all wastewater improvements constructed during the previous year; and

(4) Summary of compliance activities for Food Service Establishments connected to

the Satellite Community Sewer Collection System, specifically with regard to fats, oils and grease (FOG) control.

B. Failure to Comply:

Failure to provide the above referenced certified annual records and report, may, as determined by the City of Springfield, be considered a breach of this Service Contract entitling Springfield to discontinue treatment of sewage from the Satellite Community Sewer Collection System and seek appropriate judicial relief.

ARTICLE IV

MISCELLANEOUS

SECTION 401. Effective Date

The effective date of this Service Contract is the date as set out in the first paragraph of this document.

SECTION 402. Performing Duties

Springfield will faithfully and punctually perform all duties with respect to the POTW required by law and all grant or Bond Documents. Satellite Community will so perform all duties with respect to the POTW and its Sewer Collection System required by law, including the Ordinances, this Service Contract, or other governing rules of Satellite Community, and any grant or Bond documents, including but not limited to the prompt payment of the Contract Sums charged by Springfield pursuant to Article III of this Service Contract.

SECTION 403. Further Assurances

At any and all times, Springfield and Satellite Community shall (insofar as they may be authorized by law) pass, make, execute, acknowledge and deliver any and every such further resolution or ordinance (or other governing rule) respectively, and acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable to better assure, convey, grant, assign and confirm, all and singular, the Contract Sums, and other funds pledged or assigned, or intended so to be, of which Springfield or Satellite Community, as the case may be, may heretofore or hereafter become bound to pledge or to assign, and to comply with the Act.

SECTION 404. Limitations Upon Consent

Whenever, under the terms of this Service Contract, Springfield is authorized to give its written consent, Springfield in its discretion may give or may refuse such written consent; and if given, may restrict, limit or condition such consent in such manner as it shall deem advisable. Such written consent shall not be unreasonably withheld.

Acceptance by Springfield of Satellite Community's sewage in the volume or with characteristics exceeding or violating any limit or restriction provided by or pursuant to this Service Contract, in one or more instances or under one or more circumstances, shall not constitute a waiver of such limit or restriction or of any of the provisions of this Service Contract, and shall not in any way obligate Springfield thereafter to accept or to make provisions for sewage delivered and discharged into the

POTW in a volume or with characteristics exceeding or violating any such limit or restriction in any other instances or under any other circumstances.

SECTION 405. Form of Consent

All consents of any party required under this Service Contract shall be given in writing. Whenever under the terms of this Service Contract Satellite Community is authorized to give its consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its City Clerk or other designated official and under its seal (if any), of an ordinance (or other governing rule) adopted by its governing body giving such consent. Whenever under the terms of this Service Contract Springfield is authorized to give its consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its City Clerk or other designated official, and under its seal, of an ordinance or resolution adopted by Springfield and giving such consent.

SECTION 406. Conformity with Laws and Regulations

Each party hereto agrees to abide by and to conform to all applicable laws and regulations of the United States of America, the State, or any political subdivision thereof having any jurisdiction in the premises, and the Wastewater Regulations established by Springfield, as amended from time to time.

SECTION 407. Acts of God

No party hereto shall be responsible or liable in any way for Acts of God or any other act or acts or omissions beyond the control of such party which may in any way

cause an interruption or a discontinuance of service appertaining to the POTW or to Satellite Community's Sewer Collection System.

SECTION 408. Nonassignability

Other than as specifically provided herein, no party to this Service Contract may assign any interest herein to any person without the written consent of all the other parties hereto at that time; and the terms of this Service Contract shall inure to the benefit of and be binding upon the respective successors of each party hereto. Nothing herein contained, however, shall be construed as preventing the reorganization of any party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liability, disabilities, functions and duties of a party hereto, as may be authorized by law, and in the absence of any prejudicial impairment of any obligation of Service Contract hereby imposed.

SECTION 409. Amendments

This Service Contract may be amended from time to time by written agreement, duly authorized and executed by the parties hereto.

SECTION 410. Severability

If any provision of this Service Contract shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Service Contract and this Service Contract shall be construed and enforced as if such invalid or unenforceable provision had not been

contained herein.

SECTION 411. Execution of Documents; Further Acts

This Service Contract may be executed at different times by the parties in any number of counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all deeds, documents or other instruments, and take such other actions as are reasonably necessary to carry out and to give effect to the terms of this Service Contract.

SECTION 412. Waiver

No waiver by either party of any term or condition of this Service Contract shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsequent paragraph, clause, phrase, or other provision of this Service Contract.

SECTION 413. Remedies

If permitted by law, this Service Contract shall be specifically enforceable by any party hereto.

SECTION 414. Entirety

This Service Contract, inclusive of the above referenced exhibits, which are

attached hereto and made a part hereof, merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement between the parties hereto in respect thereof.

SECTION 415. Applicable Law; Jurisdiction; Captions

This Service Contract and every question arising hereunder shall be governed by and construed in accordance with the laws of the State of Missouri. Should any part of this Service Contract be litigated, venue shall only be proper in the Circuit Court of Greene County, Missouri. The captions at the beginning of Articles, Sections and Subsections are used for convenience only and are not to be used in attempting to construe any part of this Service Contract.

SECTION 416. Injunctive Relief

Satellite Community shall provide injunctive relief at the request of Springfield to restrain the violation or attempted violation of any of the provisions of this Service Contract and all Exhibits hereto. Upon failure of Satellite Community to act within ten (10) days of written request, Springfield shall be authorized to so proceed, in Satellite Community's name, if necessary. Such failure to act on the part of the Satellite Community may, in Springfield's sole business discretion, be deemed a breach of this Service Contract.

SECTION 417. Authority

Satellite Community shall have immediate and continuing right to discharge

wastewater, or as otherwise permitted hereunder, into Springfield's POTW at the agreed to Connection Point(s), on condition that Satellite Community agrees to promptly enforce the restrictions, proscriptions, penalties and other terms provided for herein against any person discharging into the Satellite Community Sewer Collection System, or POTW, in violation of the same. In the event of Satellite Community's failure to take action, Satellite Community authorizes Springfield to take all legal actions necessary to enforce the terms of this Service Contract and all exhibits thereto, in Satellite Community's name, if necessary. In the event of such failure Springfield may, in its sole business discretion, declare such failure to be a breach of this Service Contract.

SECTION 418. Notice

Any notice required by the terms of this Service Contract shall be sent via certified mail, return receipt requested, as follows:

To Springfield:

Errin Kemper, P.E. (or Acting)
Director of Environmental Services
840 Boonville Ave
Springfield, MO 65802

To Satellite Community:

Name

Address

SECTION 419. Indemnification

Satellite Community agrees to defend, indemnify and hold harmless Springfield,

and its officers, agents, and employees, from and against any and all claims, suits, actions, demands, losses, causes of action, liabilities, judgments, costs, damages, and expenses, including attorneys' fees, relating to, or in any way arising out of this Service Contract that Springfield may sustain, incur or become liable for or on account of this Service Contract, including but not limited to loss, damage, or injury to person or property related in any way to the subject matter of this Service Contract, or caused by the negligent, intentional or unintentional acts or omissions of the Satellite Community and its officers, employees or any other agents, as well as the actions of its users connected to the Satellite Community Sewer Collection System.

Springfield shall hold harmless Satellite Community from and against all claims, losses and causes of action of third parties against Satellite Community, including all claims, losses, and causes of action of third parties for personal injuries, wrongful death, and damage to property, caused by Springfield's gross negligent use, maintenance, and operation of the POTW.

IN WITNESS WHEREOF, the parties hereto have caused this Service Contract to be executed on behalf of Springfield by the Springfield City Council and attested to by the Springfield City Manager, and on behalf of Satellite Community by its authorized representative at the dates shown respectively.

CITY OF BATTLEFIELD, MISSOURI	CITY OF SPRINGFIELD, MISSOURI
By _____	By_____
Mayor	City Manager
Date: _____	Date: _____

ATTEST:

_____
City Clerk

Date:_____

ATTEST:

_____
City Clerk

Date:_____

Approved as to Form: _____ City Attorney,_____

Approved as to Form: _____, City Attorney, Springfield

Contract No: _____

Exhibit A

List, and illustrative maps, of Connection Point(s):

Location	Description	Manhole/Asset ID	Latitude	Longitude
Gravity Connection 1	NW Quadrant of FF and Republic Rd. (Exhibit A1)	N/A	37.143240	-93.366483
Gravity Connection 2	SE Quadrant of FF and Republic Rd. (Exhibit A2)	T15NW018	37.138578	-93.362243
Gravity Connection 3	Prairie View Heights 7th Addition (Exhibit A3)	T15SE039	37.131341	-93.356021
Battlefield to Springfield Forcemain	Near FR135 South of Republic Rd. (Exhibit A4)	T16NE082AV	37.137736	-93.341569

Exhibit A1 - Point of Connection 1

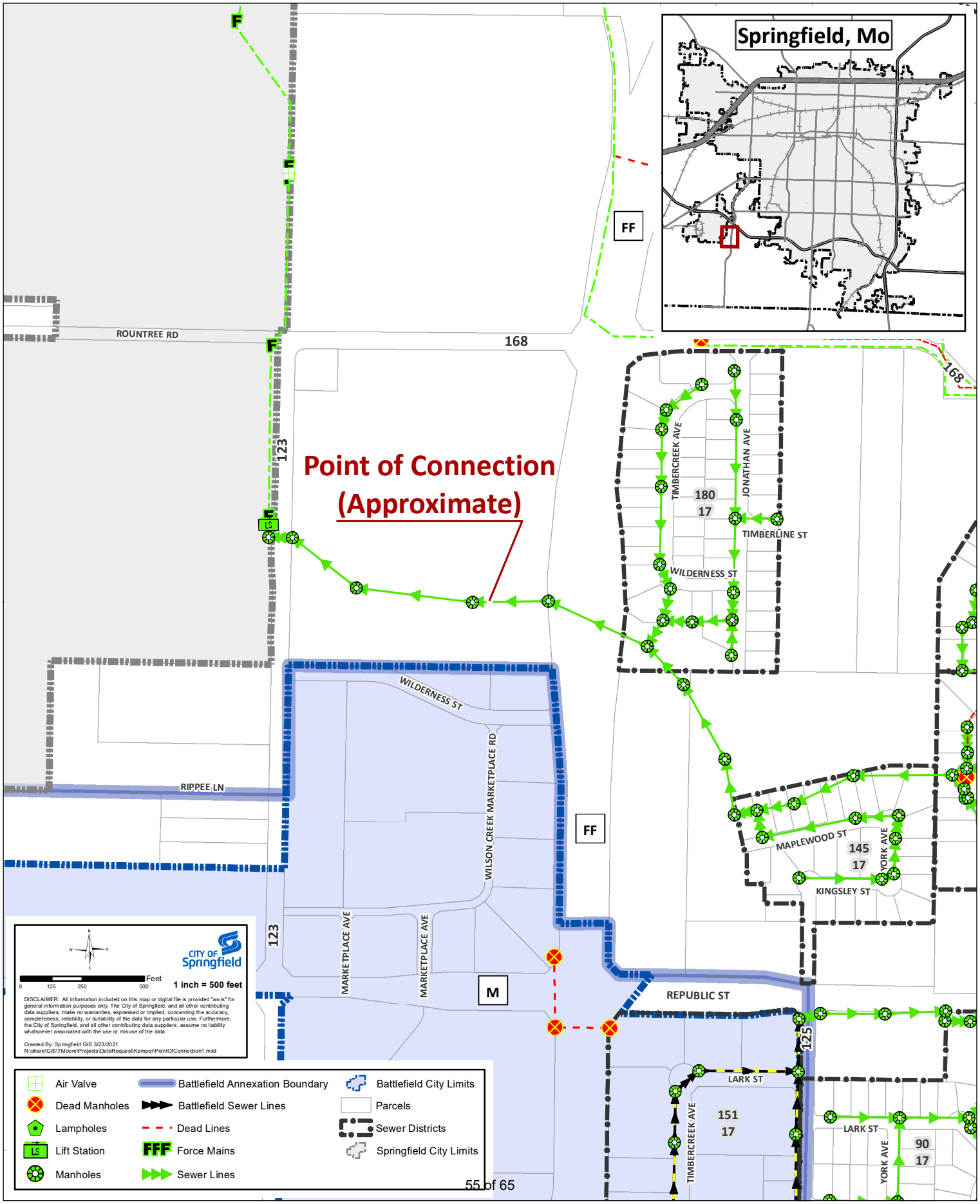


Exhibit A2 - Point of Connection 2

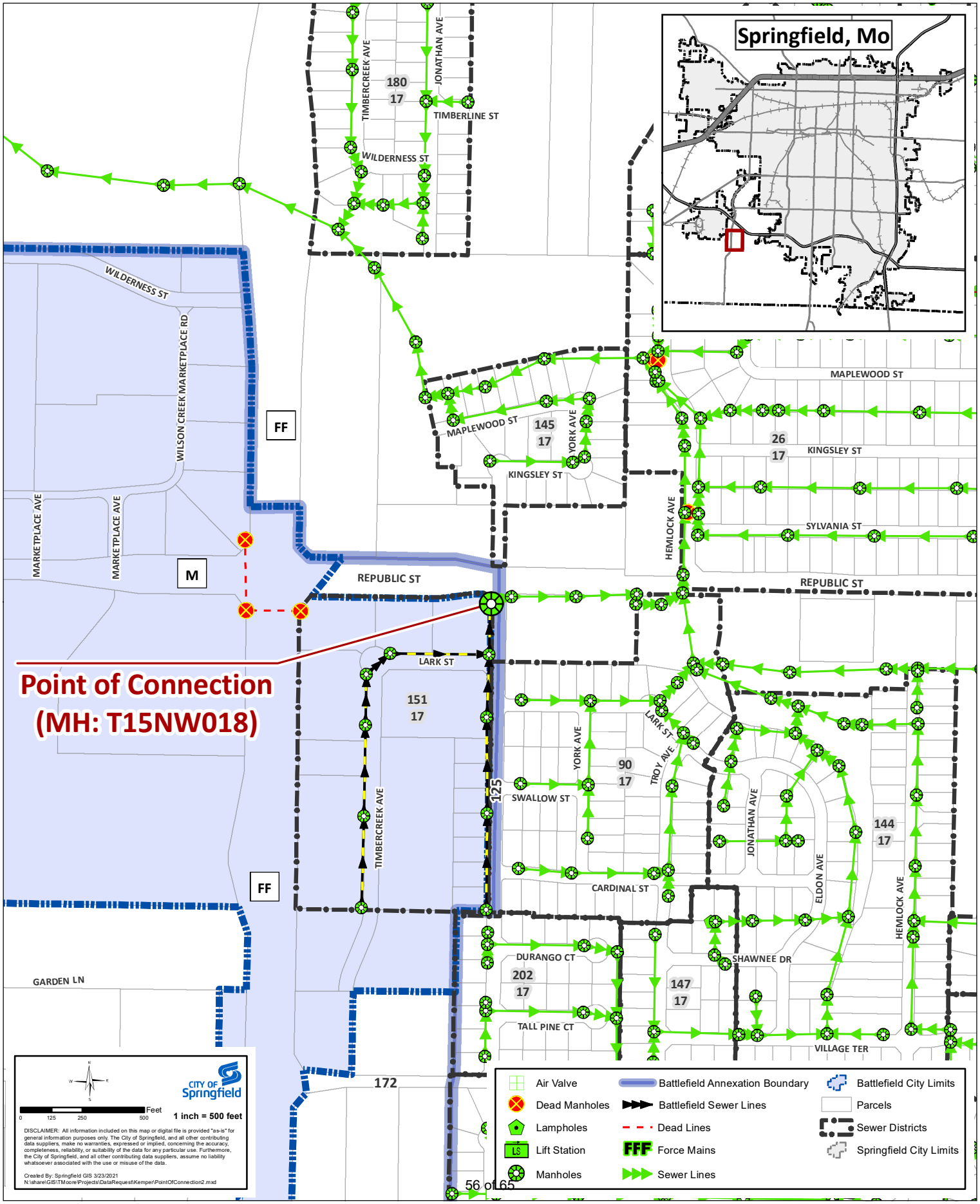


Exhibit A3 - Point of Connection 3

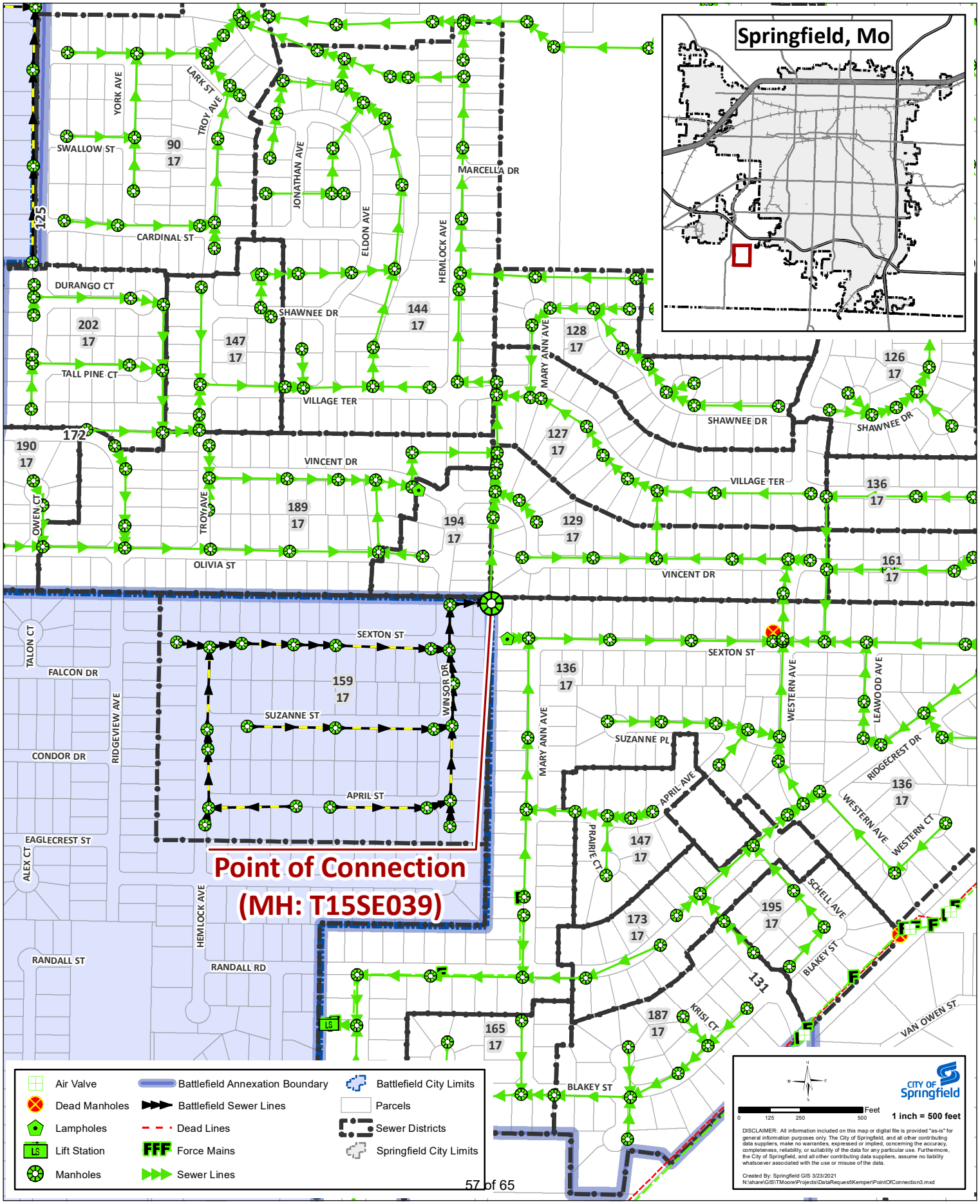


Exhibit A4 - Point of Connection 4

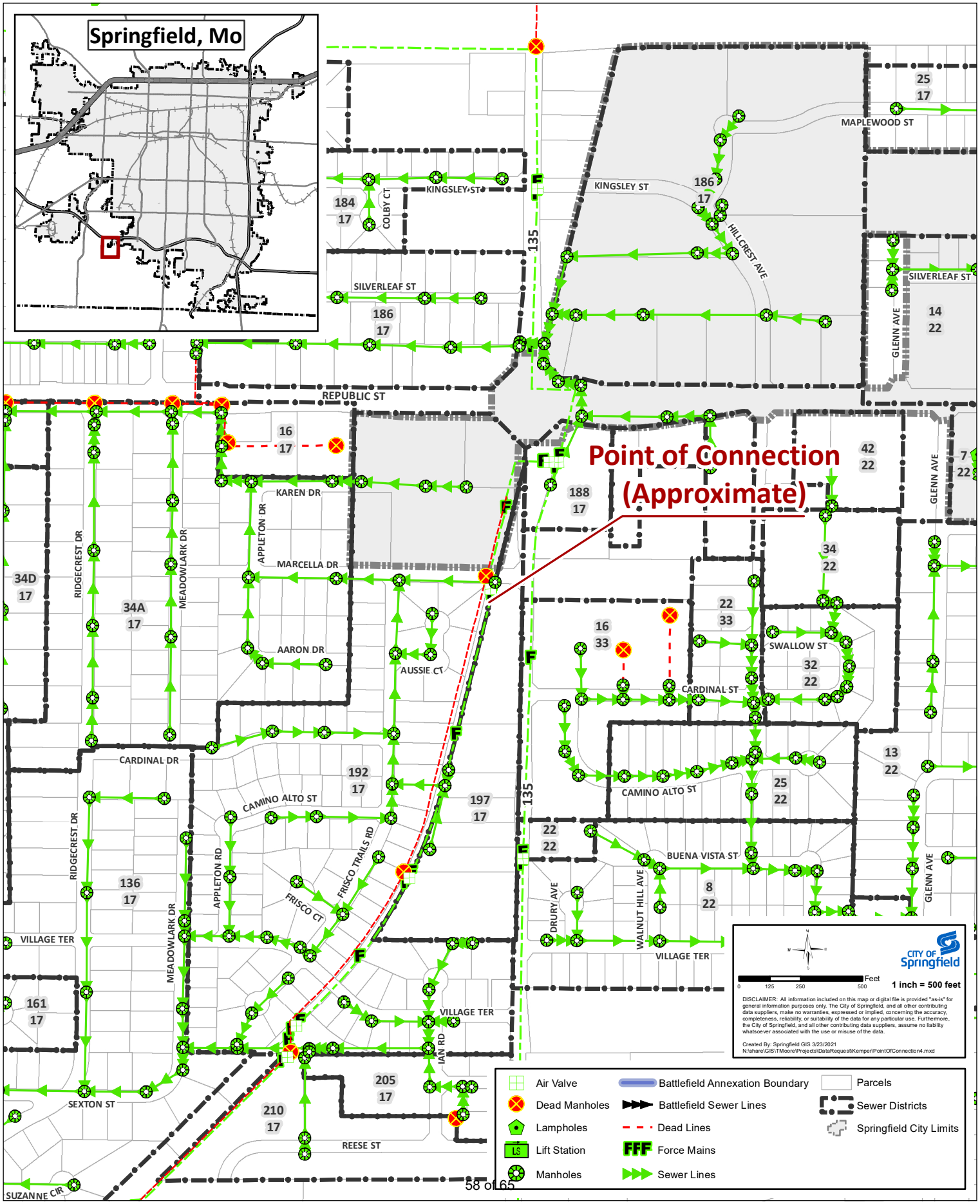
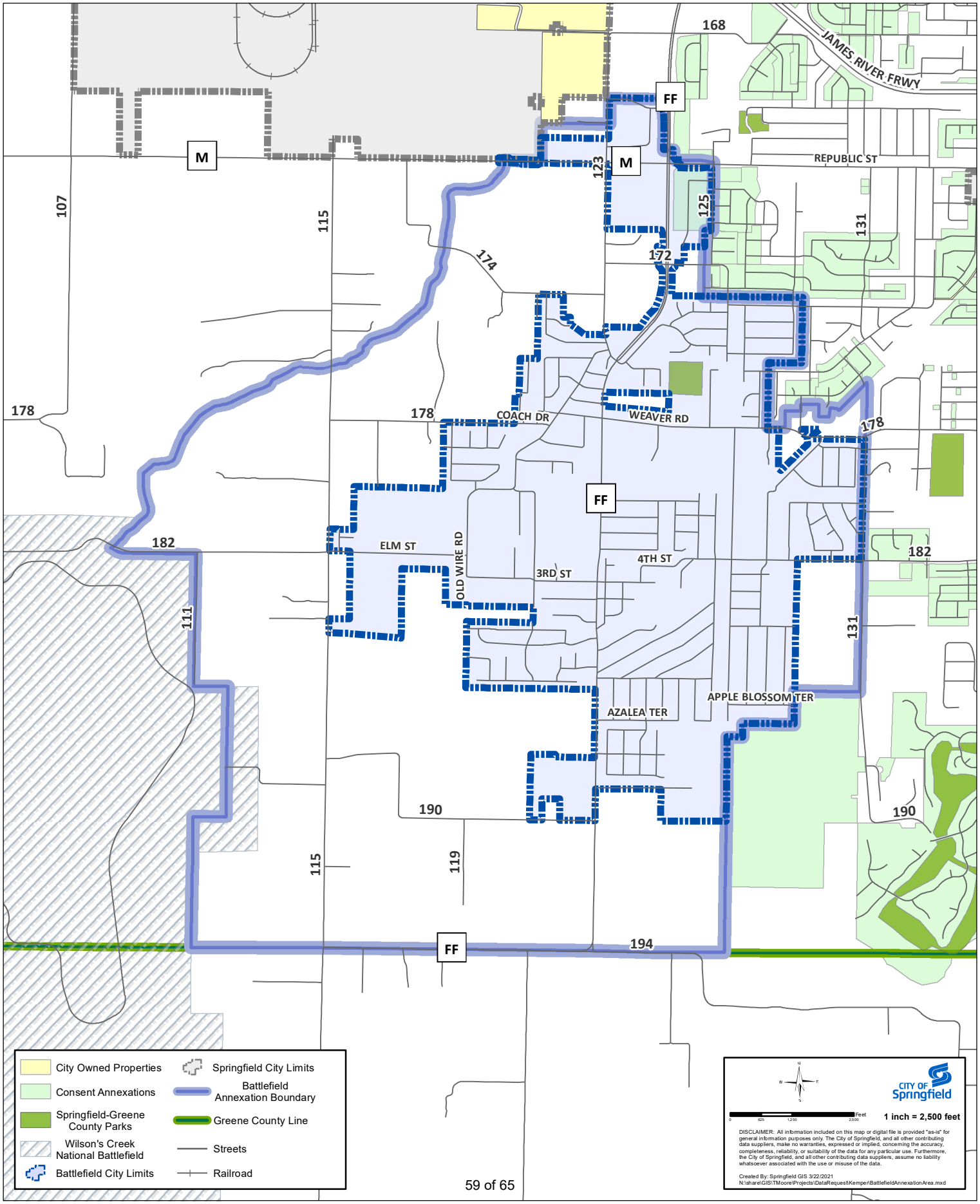


Exhibit B


168
JAMES RIVER FRWY
FF
M
M
REPUBLIC ST
123
125
131
107
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174
172
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COACH DR
WEAVER RD
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FF
182
ELM ST
OLD WIRE RD
3RD ST
4TH ST
182
111
131
APPLE BLOSSOM TER
AZALEA TER
190
190
115
119
FF
194
City Owned Properties
Consent Annexations
Springfield-Greene County Parks
Wilson's Creek National Battlefield
Battlefield City Limits
Springfield City Limits
Battlefield Annexation Boundary
Greene County Line
Streets
Railroad
CITY OF Springfield
1 inch = 2,500 feet
DISCLAIMER: All information included on this map or digital file is provided "as-is" for general information purposes only. The City of Springfield, and all other contributing data suppliers, make no warranties, expressed or implied, concerning the accuracy, completeness, reliability, or suitability of the data for any particular use. Furthermore, the City of Springfield, and all other contributing data suppliers, assume no liability whatsoever associated with the use or misuse of the data.
Created By: Springfield GIS 3/22/2021
N:\share\GIS\TMoore\Projects\DataRequest\Kemper\BattlefieldAnnexationArea.mxd

Exhibit B

MUTUAL AID AND ASSISTANCE AGREEMENT

This Agreement ("Agreement") is made and entered into by the City of Springfield ("Springfield") and the City of Battlefield (herein referred to as "Battlefield"), a municipal corporation, to provide mutual assistance in times of emergency; and to provide reimbursement for equipment, supplies and personnel made available on an emergency basis.

Article VI, Section 16 of the Constitution of the State of Missouri and Missouri Revised Statutes Section 70.220 authorize one or more political subdivision of the state to contract for the cooperative performance of any governmental service, activity or undertaking which each political subdivision is authorized by law to perform.

Ensuring that wastewater systems provide and maintain their services effectively promotes the safety, health and welfare of the residents and visitors within a collection system and is a fundamental function of government.

In consideration of the mutual covenants and agreements set forth herein, the parties agree to provide mutual assistance to one another in times of emergency as follows:

ARTICLE I
PURPOSE

1.1 Purpose. Recognizing that emergencies may require aid or assistance in the form of personnel, equipment, materials and supplies, the undersigned hereby establish this Mutual Aid and Assistance Agreement. Under this Agreement, Springfield and Battlefield agree to, when deemed appropriate by both parties, coordinate response activities and share resources during an emergency affecting the wastewater system of either Party. This Agreement sets forth the procedures, standards, and cost recovery for administering such aid in times of emergency.

ARTICLE II
DEFINITIONS

2.1 Agreement means this Mutual Aid and Assistance Agreement, including all amendments and addendums thereto.

2.2 Authorized Official means an employee, officer, or designee of the party that is authorized to request assistance; offer assistance; refuse to offer assistance or withdraw assistance under this Agreement.

2.3 Effective Date means the date established in accordance with Section 9.1.

2.4 Emergency means any occurrence that is or could reasonably be beyond the capability of the services, personnel, equipment, and facilities of the party to fully manage and mitigate internally. An emergency need not be declared pursuant to Mo. Rev. Stat. §44.010-44.130 to be an Emergency under this Agreement.

2.5 Period of Assistance means a specified period of time when the Responding Party assists the Requesting Party. The period commences when personnel, equipment, or supplies depart from Responding Party's facility and ends when the resources return to their facility (portal to portal). All protections identified in the Agreement apply during this period. The specified Period of Assistance may occur during response to or recovery from an Emergency.

2.6 Requesting Party means the party who requests aid or assistance under this Agreement.

2.7 Responding Party means the party that responds to a request for aid or assistance under this Agreement.

ARTICLE III
RESPONSIBILITIES OF THE PARTIES

3.1 Authorized Official and Contact Information. Parties shall identify an Authorized Official and alternates and shall provide contact information including 24-hour access information. This information should be updated as needed to ensure that it is current. and will be included on Springfield's quarterly wastewater billing and Battlefield's annual report as required by Section 312 of the wastewater service contract.

ARTICLE IV
REQUEST FOR ASSISTANCE

4.1 Party Request. In the event of an Emergency, a Party's Authorized Official may request mutual aid and assistance for its wastewater system from the other Party. Requests for assistance may be made orally or in writing. When made orally, the request for personnel, equipment, and supplies shall be prepared in writing and forwarded to the Requesting Party as soon as practicable, but in no event later than 3 days after the initial request. Requests for assistance shall be directed to the Authorized Official of the other Party.

When making a Request for Assistance, the Party shall provide the following information:

a. A general description of the assistance needed;
b. The part of the wastewater system for which assistance is needed;
c. The amount and type of personnel, equipment, materials and supplies needed and a reasonable estimate of the length of time they will be needed;
d. A specific time and place for a representative of the Requesting Party to meet the personnel and equipment of the Responding Party; and
e. A description of work conditions and special constraints such as availability of fuel, supplies, lodging/meal support, medical facilities, security, communications, etc.

4.2 Response to a Request for Assistance. After a Party receives a Request for Assistance, the Authorized Official shall evaluate whether or not to respond, whether resources are available to respond, or if other circumstances would hinder response. Following the evaluation, the Authorized Official shall inform, as soon as possible, the Requesting Party whether it will provide the requested assistance.

If the Party is willing and able to provide assistance, the Party shall provide the following information to the Authorized Official of the Requesting Party:

a. A description of the personnel, equipment and materials available to respond;
b. The estimated length of time the personnel, equipment and materials will be available;
c. The name of the person or persons to be designated as supervisory personnel; and
d. The estimated time when the assistance can arrive at the location designated by the Authorized Official of the Requesting Member.

4.3 Discretion of Responding Party's Authorized Official. Execution of this Agreement does not create any duty to respond to a Request for Assistance. When a party receives a Request for Assistance, the Authorized Official shall have sole and absolute discretion as to whether or not to respond, or the availability of resources to be used in such response. The decision of a Party's Authorized Official on the availability of resources shall be final.

ARTICLE V
RESPONDING PARTY PERSONNEL

5.1 Personnel. During the period of Assistance, employees of a Party remain employees of that Party. Personnel sent by a Responding Party shall remain under the direct supervision of the Responding Party.

5.2 Status. To the extent provided by law, whenever the Responding Party's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of the Responding Party.

5.3 Right to Withdraw. The Responding Party's Authorized Official retains the right to withdraw some or all of its resources at any time for any reason at the Responding Party's sole and absolute discretion. Notice of intention to withdraw must be communicated to the Requesting Party's Authorized Official as soon as practicable under the circumstances.

ARTICLE VI
COSTS OF RESPONSE AND COST REIMBURSEMENT

6.1 Cost Reimbursement to Responding Party. Unless otherwise mutually agreed in whole or in part, the Requesting Party shall reimburse the Responding Member for the categories

of costs listed in Section 6.2 to 6.4 incurred during the specified Period of Assistance. The Responding Party shall track, record and submit its costs incurred during the specified Period of Assistance as provided in Sections 6.2 to 6.4.

6.2 Personnel Costs. The Responding Party's designated supervisor(s) must keep accurate records of work performed by personnel during the specified Period of Assistance. Responding Party's personnel costs shall include the base salaries and overhead costs of responding personnel.

6.3 Equipment and Equipment Costs. Responding Party's costs for equipment used during the specified Period of Assistance shall include, but not be limited to, reasonable rental rates, all fuel, lubrication, maintenance, transportation, and loading and/or unloading of loaned equipment. If Responding Party equipment is loaned to the Requesting Party, all equipment shall be returned to the Responding Member in good working order as soon as is practicable and reasonable under the circumstances. Requesting Party must reimburse Responding Party for any damages to equipment.

6.4 Costs for Materials and Supplies. Responding party's cost for expendable or nonreturnable materials and supplies shall be based on in kind or actual replacement costs, plus handling charges.

6.5 Payment Period for Cost Reimbursement. Responding Party will provide an itemized bill to the Requesting Party for all expenses incurred by the Responding Party while providing assistance under this Agreement. The Requesting Party must pay the bill in full within 60 days following the billing date. The Requesting Party may request additional periods of time within which to pay the itemized bill, and Responding Party shall not unreasonably withhold consent to such request, provided, however, that all payment shall occur not later than one-year after the date a final itemized bill is submitted to the Requesting Party.

ARTICLE VII
RISK ALLOCATION

7.1 Immunity. All parties are governmental entities entitled to governmental immunities under law, including but not limited to Section 537.600 Rev. Stat. Mo. Nothing contained herein shall waive the rights and defenses to which each party may be entitled under law, including but not limited to all of the immunities, limitations, and defenses under Section 537.600 Rev. Stat. Mo, or any subsequent amendments thereof.

7.2 Party Responsible for Own Actions. Each Party shall bear the risk of its own actions, as it does with its day-to-day operations.

7.3 Employee Claims. The employees of a Responding or Requesting Party shall be covered by his or her employing Party for purposes of workers' compensation, unemployment insurance, and benefits under Chapter 287 Rev. Stat. Mo. regardless of whether the Party employer is a Responding or Requesting Party.

7.4 Insurance. Parties shall maintain insurance policies or maintain self-insurance programs that cover activities that it may undertake by virtue of this Agreement.

7.5 Survival of Obligations. The obligations set forth in this Article VII shall survive the termination or expiration of this Agreement.

ARTICLE VIII
DISPUTES

8.1 Disputes. If any controversy or claim arises out of, or relates to, the execution of this Agreement, including, but not limited to, alleged breach of the Agreement, the disputing Parties shall attempt to resolve the dispute by negotiation.

ARTICLE IX
EFFECTIVE DATE; MODIFICATION; TERMINATION

9.1 Effective Date. This Agreement shall be effective upon the date signed by the last party to this agreement.

9.2 Initial Term of Agreement; Renewal. The initial term of this Agreement shall be one (1) year from its effective date. Thereafter, this Agreement shall automatically renew for additional one-year terms commencing on the anniversary of the effective date of this Agreement.

9.3 Termination. Either Party may terminate this Agreement at any time, for any reason, by providing written notice to the other Party.

9.4 Effect of Termination. A Party's voluntary termination of this Agreement shall not affect in any way any liabilities or obligations incurred under the terms of this Agreement, including, but not limited to, a Party's duty to reimburse a Responding Party for costs incurred during a Period of Assistance.

ARTICLE X
MISCELLANEOUS

10.1 Prior Agreements. The terms of this Agreement shall supersede all prior agreements related to the requesting or providing of assistance for wastewater systems to the extent that such prior agreements are inconsistent with this Agreement.

10.2 Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the invalid term or provision.

10.3 Waiver. Failure to enforce strictly the terms of this Agreement on one or more occasions shall not be deemed a waiver of the right to enforce strictly the terms of this Agreement on any other occasion.

10.4 Interpretation. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Missouri.

10.5 Non-Discrimination. No Party will discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin in the course of carrying out this Agreement.

10.6 Compliance with Laws; Jurisdiction; Applicable Law. Each Party will comply with all applicable federal, state and local laws, rules and regulations without limitation to those designated within this Agreement. This Agreement and every question arising hereunder shall be governed by and construed in accordance with the laws of the State of Missouri. Should any part of this Agreement be litigated, venue shall only be proper in the Circuit Court of Greene County, Missouri.

10.7 Headings. The headings of various articles and sections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement or their interpretation.

10.8 Prohibition on Third-Parties and Assignment of Rights/Duties. This Agreement is for the sole benefit of the Parties hereto and no other person or entity has any rights under this Agreement as a third-party beneficiary. Assignments of benefits and delegations of duties created by this Agreement are prohibited and without effect.

10.9 No Authority to Bind other Parties. No Party to this Agreement has the authority to enter into contracts or agreements on behalf of another Party to this Agreement. This Agreement does not create a partnership between the Parties, and nothing contained herein shall be interpreted to create an employer-employee, master-servant, joint venture, or principal-agent relationship between the Parties in any respect.

10.10 Execution of Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto were upon the same instrument.

10.11 Entire Agreement. This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This Agreement will not be modified, amended, or altered except through a written amendment approved by all Parties.

One-rdg. X
P. Hrngs. _____
Pgs. 28
Filed: 09-28-21

Sponsored by: Lear

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021-259 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to accept federal grant funds in the amount of $46,000 from a Section 402 State and Community Highway Safety Grant from the Missouri Highways and Transportation Commission to develop a shareable version of SGF Yields, the City's pedestrian safety program; amending the budget of the Department of Public Works for Fiscal Year 2021-2022 in that amount upon award of the grant; and declaring that this bill qualifies as a one-reading bill.

WHEREAS, due to the success of the City's "SGF Yields" pedestrian safety education program, the Missouri Department of Transportation ("MoDOT") encouraged the City to apply for funding to brand a sharable version of the program and develop a "tool kit" that other communities can use to increase pedestrian safety and awareness; and

WHEREAS, on February 22, 2021, City Council adopted Resolution 10553 authorizing staff to apply for a grant from the Missouri Highways and Transportation Commission ("MHTC") to develop a shareable version of the City's SGF Yields program for use by other communities; and

WHEREAS, the City was awarded the amount of $46,000 by the MHTC.

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

Section 1 – The City Manager, or his designee, is authorized to accept a grant from the Missouri Highways and Transportation Commission in the amount of $46,000 to develop a shareable version of the "SGF Yields" pedestrian safety education program, by entering into an agreement in substantially the same form as "Exhibit A," which is attached hereto and incorporated by reference; and to do all things necessary to execute such documents as required to receive and disburse such funds.

Section 2 – City Council hereby authorizes the amendment of the budget of the Department of Public Works for Fiscal Year 2021-2022 in the accounts and in the amounts shown on Budget Adjustment No. 022, upon the awarding of grant funds, said Budget Adjustment to be in the form of "Exhibit B," which is attached hereto and incorporated herein by this reference.

Section 3 – City Council hereby finds and declares this Ordinance relates to the acceptance of a grant from a state or federal agency and pursuant to Section 2.16(25) of the City Charter, this Ordinance may be passed in one reading. Therefore, this Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: Rhonda Lewoaden, City Attorney

Approved for Council action: Jason A. Gage, City Manager

EXPLANATION TO COUNCIL BILL 2021-259

FILED: 09-28-21

ORIGINATING DEPARTMENT: Public Works

PURPOSE: Authorizing the City Manager, or his designee, to accept federal grant funds from a Section 402 State and Community Highway Safety Grant (Map-21 and FAST Act) from the Missouri Department of Transportation ("MoDOT") to develop a shareable version of SGF Yields, the City's pedestrian safety program, and amending the Fiscal Year 2021-2022 budget for the Department of Public Works in the amount of $46,000.

BACKGROUND INFORMATION: SGF Yields has measuredly achieved increasing rates of driver compliance at crosswalks in Springfield drawing the attention of other communities and states. Due to the success of the SGF Yields program, MoDOT encouraged the City of Springfield to apply for funding to brand a sharable version of the program and develop a "tool kit" that other communities can use to increase pedestrian safety and awareness. This will not only help other communities save lives but also highlight the City of Springfield as an innovator in pedestrian safety initiatives.

The Department of Public Works was awarded $46,000, without a matching funds requirement, to pay for contracted expenses and salary for City staff. Consultant resources may be used to offset normally occurring duties with SGF Yields to allow City staff time to develop the "tool kit." City Council approved application for this grant under Resolution 10553 passed February 22, 2021.

Supports the following City Council Priorities:

- Public Safety
- Quality of Place

REMARKS: Public Works recommends approval of this Council bill and budget adjustment.

Submitted by:

Martin Gugel, Assistant Director of Public Works

Recommended by:

Dan Smith, Director of Public Works

Approved by:

Jason Gage, City Manager

Exhibit A

CONTRACT

Form HS-1 **Revision Reason:** Other **Version:** 2 06/16/2021

Missouri Department of Transportation
Highway Safety and Traffic Division
P.O. Box 270
830 MoDOT Drive
Jefferson City, MO 65102
Phone: 573-751-4161
Fax: 573-634-5977

Project Title: Expansion of SGF Yields
Project Number: 22-PS-02-001
Project Category: Pedestrian/Bicycle Safety
Program Area: Police Traffic Services
Funding Source: 402 / 20.600

Name of Grantee
City of Springfield - Public Works

Type of Project: Initial
Started: 10/01/2021

Grantee County
Greene

Federal Funds Benefiting

State:	
Local:	$46,000.00
Total:	$46,000.00

Grantee Address
840 Boonville
P.O. Box 8368
Springfield, MO 65802

Source of Funds

Federal:	$46,000.00
State:	
Local:	$0.00
Total:	$46,000.00

Telephone	Fax
417-864-1902	417-864-1929

Contract Period
Effective: 10/01/2021
Through: 09/30/2022

Prepared By
Van Loo, Tara

Subrecipient Authorizing Official **Date**

Subrecipient Project Director **Date**

MHTC Authorizing Official **Date**

It is mutually agreed by the parties executing this contract to the following: the reimbursable costs shall not exceed the **total obligated amount of $46,000.00**; the recipient of funds shall proceed with the implementation of the program as detailed in attached forms (which become part of this agreement) and shall adhere to conditions specified in attachments (which become part of this agreement); all Federal and State of Missouri laws and regulations are applicable and any addendums or conditions thereto shall be binding; any facilities and/or equipment acquired in the connection with this agreement shall be used and maintained for highway safety purposes; the recipient of funds must comply with the Title VI of the Civil Rights Act of 1964, and the Federal Funds from other sources, excluding Federal Revenue Sharing Funds, will not be used to match the Federal funds obligated to this project.

IN ORDER TO RECEIVE FEDERAL FUNDING, THE SUBRECIPIENT AGREES TO COMPLY WITH THE FOLLOWING CONDITIONS IN addition TO THOSE OUTLINED IN THE NARRATIVE OF THE CONTRACT.

I. RELATIONSHIP

The relationship of the Subrecipient to the Missouri Highways and Transportation Commission (MHTC) shall be that of an independent contractor, not that of a joint enterpriser. The Subrecipient shall have no authority to bind the MHTC for any obligation or expense without the express prior written approval of the MHTC. This agreement is made for the sole benefit of the parties hereto and nothing in the Agreement shall be construed to give any rights or benefits to anyone other than the MHTC and the Subrecipient.

II. GENERAL REQUIREMENTS

The State and each subrecipient will comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4 - Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300 - Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201 - Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

III. INTERGOVERNMENTAL REVIEW OF FEDERAL PROGRAMS

The State has submitted appropriate documentation for review to the single point of contact designated by the Governor to review Federal programs, as required by Executive Order 12372 (Intergovernmental Review of Federal Programs).

IV. EQUIPMENT AND SOFTWARE

A. PROCUREMENT: Subrecipient may use its own procurement regulations which reflect applicable state/local laws, rules and regulations provided they adhere to the following:

1. Equipment and software with a cost of $3,000 or more must be purchased on a competitive bid basis, or purchased through use of state cooperative procurement;

2. Price or rate quotations shall be solicited from at least three (3) qualified sources;

3. All procurement transactions, regardless of whether by sealed bids or by negotiation, shall be conducted in a manner that provides maximum open and free competition;

4. Subrecipients shall have a clear and accurate description of the item to be purchased. Such description shall not, in competitive procurements, contain features that unduly restrict competition. A "brand name or equal" description may be used as a means to define the performance or other requirement of a procurement;

5. If for some reason the low bid is not acceptable, the Subrecipient must have written approval from the MHTC prior to bid approval and purchase.

6. Subrecipients will make a good faith effort to utilize minority and women owned businesses within resource capabilities when procuring goods and services.

7. Subrecipients will make every effort to purchase equipment as early in the fiscal year as possible . There may be no reimbursement for equipment purchased at the end of the fiscal year.

8. That all necessary affirmative steps are taken to assure that minority businesses , women's business enterprises, and labor surplus area firms are used when possible (2 CFR PART 200.322).

B. DISPOSITION: The Subrecipient shall make written request to the MHTC for instructions on the proper disposition of all items of equipment provided under the terms of this contract with a cost of $5,000 or more. Subrecipient must keep and maintain equipment with a cost of under $5,000 until it is no longer useful for its originally intended purpose.

C. REPLACEMENT: No equipment may be funded on a replacement basis. Participation in equipment and manpower projects must be in addition to the Subrecipient's previous twelve months authorized strength .

V. FISCAL RESPONSIBILITY

A. MAINTENANCE OF RECORDS: The Subrecipient agrees that the Commission and/or its designees or representatives shall have access to all records related to the grant. The Subrecipient further agrees that the Missouri Department of Transportation (MoDOT) Highway Safety and Traffic (HS) Division, the National Highway Traffic Safety Administration (NHTSA), the Federal Highway Administration (FHWA) and/or any Federal audit agency with jurisdiction over this program and the Auditor of the State of Missouri or any of their duly authorized representatives may have access, for purpose of audit and examinations, to any books, documents, papers or records maintained by the Subrecipient pertaining to this contract and further agrees to maintain such books and records for a period of three (3) years following date of final payments.

B. REIMBURSEMENT VOUCHER, SUPPORTING DOCUMENTATION AND PAYMENT SCHEDULE: The MHTC agrees to reimburse the Subrecipient for accomplishment of all authorized activities performed under this contract. Reimbursement proceedings will be initiated upon the receipt of a claim voucher and supporting documentation from the Subrecipient, as required by the MHTC. The voucher must reflect actual costs and work accomplished during the project period, to be submitted on the appropriate MHTC certified payroll form or in a format approved by the MHTC, and shall include project number, project period, hours worked, rate of pay, any other allowable expenditures, and must be signed by the person preparing the voucher and the project director or authorizing official . Vouchers should be received by the MHTC within ten (10) working days from the date of the authorizing official/project director's signature. Subrecipient should report monthly, or at least quarterly, to MHTC using the online Grant Management System. For projects where salaried positions are awarded, claim voucher and activity reports must be submitted *monthly*. Subrecipient must ensure complete, accurate and final voucher and supporting documentation is received by the MHTC no later than November 15, which is after the end of the Federal fiscal year for which the final voucher pertains. Final payment is contingent upon receipt of the complete,accurate and final voucher.

C. ACCOUNTING: The Subrecipient shall maintain all documentation in file for audit review; failure to provide supporting documentation at the time of audit could result in questioned costs. The Subrecipient must document the following: (1) Receipt of federal funds, (2) date and amount paid to employees, (3) employee's timesheet (regular hours and overtime hours). Documentation shall be kept available for inspection for representatives of the MHTC for a period of three years following date of final payments. Copies of such records shall be made available upon request.

D. OMB AUDIT: A subrecipient that expends $750,000 or more during the subrecipient's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of 2 CFR §200.501. A copy of the Audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. A subrecipient that expends less than $750,000 during the subrecipient's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO). Failure to furnish an acceptable audit may be basis for refunding federal funds to the MHTC. Cost records and accounts pertaining to the work covered by this contract shall be kept available for inspection for representatives of the MHTC for a period of three (3) years following date of final payments. Copies of such records shall be made available upon request.

VI. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA)

The State will comply with FFATA guidance, OMB Guidance on FFATA Subaward and Executive Compensation Reporting, August 27, 2010, (*https://www.fsrs.gov/documents/OMB_Guidance_on_FFATA_Subaward_and_Executive_Compensation_Reporting_08272010.pdf*) by reporting to FSRS.gov for each sub-grant awarded:

- **A.** Name of the entity receiving the award;
- **B.** Amount of the award;
- **C.** Information on the award including transaction type, funding agency, the North American Industry Classification System code or Catalog of Federal Domestic Assistance (or "Assistance Listings") number (where applicable), program source;
- **D.** Location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country; and an award title descriptive of the purpose of each funding action;
- **E.** A unique identifier (DUNS);
- **F.** The names and total compensation of the five most highly compensated officers of the entity if:
  - **1.** the entity in the preceding fiscal year received-
    - **a.** 80 percent or more of its annual gross revenues in Federal awards;
    - **b.** $25,000,000 or more in annual gross revenues from Federal awards; and
  - **2.** the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986;
- **G.** Other relevant information specified by OMB guidance.

VII. TERMINATION

If, through any cause, the Subrecipient shall fail to fulfill in timely and proper manner its obligation under this contract, or if the Subrecipient shall violate any of the covenants, agreements or stipulations of this contract, the MHTC shall thereupon have the right to terminate this contract and withhold further payment of any kind by giving written notice to the Subrecipient of such termination and specifying the effective date thereof, at least thirty (30) days before such date. The MHTC shall be the sole arbitrator of whether the Subrecipient or its subcontractor is performing its work in a proper

manner with reference to the quality of work performed by the Subrecipient-or its subcontractor under the provisions of this contract, if an award no longer effectuates the program goals or MHTC priorities. The Subrecipient and the MHTC further agree that this contract may be terminated by either party by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before such date, and in the case of partial termination the portion of the award to be terminated.

VIII. NONDISCRIMINATION

(**applies to subrecipients as well as States)**

The State highway safety agency will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies** Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324 *et seq.),* **and Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686) (prohibit discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27;
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.),* (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, sub-recipients and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

The State highway safety agency-

1. Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted.
2. Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;
3. Agrees to comply (and require any of its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;
4. Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;
5. Insert in all contracts and funding agreements with other State or private entities the following clause:

During the performance of this contract/funding agreement, the contractor/funding recipient agrees-

1. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
2. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
3. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State Office of Highway Safety, US DOT or NHTSA;
4. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
5. To insert this clause, including paragraphs 1 through 5, in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement that receives Federal funds under this program.

IX. STATUTORY AND REGULATORY REQUIREMENTS

A. COMPLIANCE: The Subrecipient must comply with the following Statutes or Rules:

1. Peace Officer Standards and Training (P.O.S.T.) Chapter 590 RSMo Department of Public Safety (DPS) certification of peace officers

2. Statewide Traffic Accident Records System (STARS) 43.250 RSMo--Law enforcement officer to file all crash reports with Missouri State Highway Patrol (MSHP).

4. Uniform Crime Reporting RSMo 43.505-Crime incident reports shall be submitted to DPS on forms or in format prescribed by DPS.

5. Racial Profiling RSMo 590.650-Law enforcement agency to file a report to the Attorney General each calendar year.

6. US DOT AND OMB REGULATIONS: The Subrecipient shall comply with all requirements of 2 CFR Parts 200 and 1201 beginning with the federal fiscal year 2016: starting October 1, 2015.

X. PRODUCTION & DEVELOPMENT COSTS Items produced with federal funds are within the public domain and are not bound by copyright restrictions. All items produced with federal funds, in whole or in part, must acknowledge this by clearly indicating that MoDOT Highway Safety and Traffic funding supported this effort. Examples may include, but are not limited to print materials; audio/video productions; and training aides such as curricula or workbooks. Any materials developed under this contract must be submitted to the MHTC for approval prior to final print and distribution. Copies of all final products are to be provided to the MHTC. The MHTC has the right to reproduce and distribute materials as the MHTC deems appropriate.

XI. INDEMNIFICATION Option 1 below only applies to State agencies, Cities, Counties and other political subdivisions or political corporations of the State of Missouri. Option 2 applies to all other entities (e.g. non-profit, private institutions).

OPTION 1:

A. To the extent allowed or imposed by law, the Subrecipient shall defend, indemnify and hold harmless the MHTC, including its members and MoDOT 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 Subrecipient's wrongful or negligent performance of its obligations under this Agreement. The Subrecipient may satisfy this requirement utilizing a self-funded program.

B. The Subrecipient will require any contractor procured by the Subrecipient to work under this Agreement:

1. To obtain a no cost permit from the MHTC's district engineer prior to working on the MHTC's right-of-way, which shall be signed by an authorized contractor representative (a permit from the MHTC's district engineer will not be required for work outside of the MHTC'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 MHTC, and the MoDOT and its employees, as additional named insured's in amounts sufficient to cover the sovereign immunity limits for Missouri public entities 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.

OPTION 2:
The Subrecipient shall defend, indemnify and hold harmless the MHTC, including its members and the MoDOT 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 Subrecipient's performance of its obligations under this Agreement.

XII. AMENDMENTS The Budget Proposal within this Agreement may be revised by the Subrecipient and the MHTC subject to the MHTC's approval without a signed amendment as long as the total contract amount is not altered and/or the intended scope of the project does not change. Prior to any revision being made to the Budget Proposal, Subrecipient shall submit a written or email request to the MHTC requesting the change. Any other 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 Subrecipient and the MHTC. All final modification requests must be submitted no later than September 30 of the project fiscal year.

XIII. MHTC REPRESENTATIVE The MoDOT Highway Safety and Traffic Division Director is designated as the MHTC's representative for the purpose of administering the provisions of this Agreement. The MHTC's representative may designate by written notice other persons having the authority to act on behalf of the MHTC in furtherance of the performance of this Agreement.

XIV. ASSIGNMENT The Subrecipient shall not assign, transfer, or delegate any interest in this Agreement without the prior written consent of the MHTC.

XV. LAW OF MISSOURI TO GOVERN This Agreement shall be construed according to the laws of the State of Missouri. The Subrecipient shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

XVI. 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.

XVII. SECTION HEADINGS All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

XVIII. NONSEGREGATED FACILITIES
(Applicable to contracts over $10,000) Subrecipient and its subcontractors, suppliers and vendors, should meet Federal requirements regarding nonsegregated facilities.

XIX. FUNDING ORIGINATION AND AUDIT INFORMATION
The MHTC funds the following NHTSA program areas:

Section	Assistance Listing #	Program Title
402	20.600	State and Community Highway Safety Programs
154	20.607	Alcohol Open Container Requirements
405b	20.616	National Priority Safety Programs
405c	20.616	National Priority Safety Programs
405d	20.616	National Priority Safety Programs
405f	20.616	National Priority Safety Programs

XX. THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)
The State will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing a drug-free awareness program to inform employees about:
1. The dangers of drug abuse in the workplace.
2. The Subrecipient's policy of maintaining a drug-free workplace.
3. Any available drug counseling, rehabilitation, and employee assistance programs.
4. The penalties that may be imposed upon employees for drug violations occurring in the workplace.
5. Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (A).

C. Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will:
   a. Abide by the terms of the statement.
   b. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

D. Notifying the agency within ten days after receiving notice under subparagraph (C)(b) from an employee or otherwise receiving actual notice of such conviction.

E. Taking one of the following actions, within 30 days of receiving notice under subparagraph (C)(b), with respect to any employee who is so convicted:
   a. Taking appropriate personnel action against such an employee, up to and including termination.
   b. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

F. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all of the paragraphs above.

XXI. POLITICAL ACTIVITY (HATCH ACT)
(applies to subrecipients as well as States)

The State will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

XXII. CERTIFICATION REGARDING FEDERAL LOBBYING
(applies to subrecipients as well as States)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

XXIII. RESTRICTION ON STATE LOBBYING
(applies to subrecipients as well as States)

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal .

XXIV. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

(applies to subrecipients as well as States)

Instructions for Primary Certification (States)

A. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1300.

B. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

C. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

D. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

E. The terms *covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of 2 CFR Part 180. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

F. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

G. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled “Instructions for Lower Tier Certification” including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1300.

H. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.

I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

J. Except for transactions authorized under paragraph F of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters- Primary Covered Transactions:

1. The prospective primary participant certifies to the best of its knowledge and belief, that its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1300.

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

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

D. The terms *covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded*, as used in this clause, have the meanings set out in the Definition and Coverage sections of 2 CFR Part 180. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

F. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled “Instructions for Lower Tier Certification” including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1300.

G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

I. Except for transactions authorized under paragraph E of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XXV. BUY AMERICA ACT

(applies to subrecipients as well as States)

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase only steel, iron and manufactured products produced in the United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

All items purchased must be compliant with the National Highway Traffic Safety Administration (NHTSA) interpretation of the Buy America Act including, but not limited to:

1. Items valued over $5,000 per unit must be manufactured or assembled in the United States of America, or as allowed by a current Buy America Act waiver issued by the NHTSA;
2. All vehicles must be manufactured or assembled in the United States of America regardless of cost.

www.nhtsa.gov/staticfiles/administration/programs-grants/Buy-America-Act-revised-11202015.pdf

Furthermore, the State and each subrecipient will follow the guidelines of 2 C.F.R. § 200.322, Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States.

XXVI. PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

(applies to subrecipients as well as States)

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

XXVII. POLICY ON SEAT BELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Subrecipient is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program, or statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's website at www.nhtsa.dot.gov. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in the Washington, D.C. metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to provide technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1 (888) 221-0045 or visit its website at www.trafficsafety.org.

XXVIII. POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or -rented vehicles, Government-owned, leased or rented vehicles, or privately-owned when on official Government business or when performing any work on or behalf of the Government. States are also

encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

XXIX. PARTICIPATION IN HIGHWAY SAFETY PARTNERSHIPS

All subrecipients are strongly encouraged to participate in Highway Safety sponsored functions including, but not limited to, Missouri Coalition for Roadway Safety regional meetings, applicable subcommittees and conferences; working groups; dedicated enforcement workshops; and grant application and contract award workshops. Subrecipient agencies with positions that are funded via Highway Safety grants are expected to participate (or send a representative) in the above functions as much as possible.

XXX. PROHIBITION ON TELECOMMUNICATIONS AND VIDEO SURVEILLANCE (2CFR PART 200.322)

The National Defense Authorization Act of Fiscal Year 2019 (Pub. L. 115-232) prohibits Federal grant funds from being obligated or expended to procure or obtain (or to enter into, extend, or renew a contract to procure or obtain) certain covered telecommunications equipment, services, or systems. States and subrecipients should refer to the Super Circular for more information on what equipment and companies this prohibition covers.

Equipment regularly purchased under NHTSA grants that may be subject to this provision could include : mobile phones, landlines, and the internet. Note that this provision prohibits purchasing these (and other) items produced by certain companies; items produced by non-prohibited companies are still potentially allowable.

CONTRACT REQUIREMENTS

THE FOLLOWING REQUIREMENTS ONLY APPLY TO CONTRACTS THAT INCLUDE TRAINING

Subrecipients offering the MHTC-funded courses must adhere to the following standard elements required for training contracts:

A. A course schedule must be presented to the MHTC program coordinator prior to the proposed training. The schedule should include: title of course; date(s); time; exact location; and agenda. Any changes to the course schedule must have prior approval from the MHTC.

B. Each student must complete a survey form at the completion of the workshop/training. The survey will ask a series of questions concerning adequacy of: training received; instructor's presentation; training facility/location; and worth of the training.

C. The Subrecipient must provide a sign-up sheet for every class when submitting a reimbursement request for the course (a typed list of everyone who registered is not acceptable). The sign-up sheet must capture the following information:

1. Title of the class
2. Date(s) and location of class
3. Printed Name and signature of attendees (unless otherwise prohibited)
4. Name of agency/organization of each attendee

D. To ensure cost effectiveness, every effort should be made to enroll a minimum of fifteen (15) students per class.

E. Copies of the student evaluations, number of students enrolled/number of students attending, agenda/syllabus/curriculum, and participant sign-up sheets must be retained in Subrecipient's files after the training has been conducted and available for MHTC review upon request.

THE FOLLOWING REQUIREMENTS APPLY TO LAW ENFORCEMENT AGENCIES ONLY

A. PROBLEM IDENTIFICATION

Subrecipient must develop a selected traffic enforcement plan by evaluating crash data involving fatal, disabling and moderate injuries. This will be done on an annual basis to determine the highest crash locations, to include: month of year, day of week, time of day, and causation factors. This plan must be used to determine locations utilized in site selection for conducting enforcement efforts. Any changes to the enforcement plan must be made in writing to the MHTC project coordinator in advance of enforcement efforts.

B. PROJECT ACTIVITIES

1. Enforcement activities by the Subrecipient must remain at the current level. Enforcement efforts provided by this contract must be in addition to current enforcement activities.

2. Officers will be permitted to issue multiple citations and/or written warnings to drivers who have committed several violations.

3. High visibility enforcement is a key strategy to reducing traffic crashes; therefore, law enforcement officers working overtime projects are strongly encouraged to make at least three (3) contacts per hour when conducting an enforcement project.

4. Subrecipient is expected to participate in associated national or state mobilization efforts in conjunction with, or at the direction of, the Highway Safety and Traffic Division. These mobilizations include, but are not limited to: Click It or Ticket campaign, Drive Sober or Get Pulled Over campaign, Youth Seat Belt enforcement campaign, Child Passenger Safety campaign, Holiday Impaired Driving campaign, and quarterly enforcement efforts. Mobilization reporting efforts shall be completed using the online mobilization reporting form located at: https://mobilization.rejis.org/.

5. Only law enforcement work performed by a duly licensed, Peace Officer Standards and Training certified law enforcement officer will be reimbursed.

6. The Subrecipient will not be eligible for reimbursement for any individual law enforcement officer working under this grant in excess of 40 hours for any two week pay period. The Subrecipient will not be eligible for reimbursement for any individual law enforcement officer working under this grant where said officer is claiming to have worked as a law enforcement officer for more than 16 hours in any 24 hour period.

C. PARTNERSHIPS

Law Enforcement agencies are strongly encouraged to participate in the Law Enforcement Traffic Safety Advisory Council (LETSAC) and attend the general meetings and annual conference. Agencies located within the metropolitan areas of St. Louis or Kansas City should participate in Operation Impact (traffic safety task force).

D. ALLOWABLE COSTS

Full-time, part-time and reserve officers are eligible to participate in overtime enforcement projects. Part-time and reserve officers must have the same authority as a full-time permanent officer. MHTC will reimburse Subrecipient at officer's standard rate of pay in accordance with Subrecipient policies and procedures regarding standard rate of pay and overtime rate of pay. The Subrecipient will not be reimbursed at the overtime rate for work that according to Subrecipient's own policies and procedures does not constitute overtime. Non-POST certified personnel may be allowed, at the sole discretion of MHTC, in a support/administrative role.

Exceptions to allowable costs may be made with prior written permission of the MHTC.

E. DRUNK DRIVING ENFORCEMENT PROJECTS

1. Those officers conducting standardized field sobriety testing must have 24 hours of Standardized Field Sobriety Test training to participate in grant funded enforcement efforts.

2. Agency should participate in quarterly enforcement efforts and the national impaired driving crackdowns held annually.

F. SOBRIETY CHECKPOINTS

Unless otherwise prohibited by state statute or appropriation,

1. The MHTC will fund enforcement agencies to conduct sobriety checkpoints in accordance with standards outlined in the Sobriety Checkpoint Reference Manual and the Sobriety Checkpoint Supervisor Training program.

2. Sobriety checkpoint enforcement efforts must be coupled with appropriate public information efforts to increase the perceived risk of arrest and to enhance the actual risk of arrest.

3. Enforcement statistics and the agency's sobriety checkpoint operations plan must be submitted with reimbursement vouchers.

PROBLEM IDENTIFICATION

For the last decade, pedestrian fatality crashes have increased sharply across the country. The latest Governor's Highway Safety report estimates that pedestrian fatalities have risen by 53% from 2009 to 2018, while all other traffic fatalities have increased by only 2%. Many different factors are to blame including in approximately 2009 broadband became available and cell phone use became mainstream. While data collection for cell phone use is difficult, the National Safety Council estimates that about 26% of crashes involve a distracted driver.

Also, the vehicle market has shifted from the largest segment being sedans, to now Sport Utility Vehicles (SUV). SUV and pedestrian crashes have entirely different crash sequences, since the heavier and taller vehicles strike the pedestrian's body higher and often run over the victim, compared to lower profile sedans where impacts are often reduced. Studies suggest that since the shift to SUVs, the mortality risks for pedestrians has increased by 29%.

Another factor in pedestrian fatalities are poverty and the lack of nearby availability of groceries or food , often referred to as "food deserts." Smaller neighborhood stores no longer exist and often citizens are forced to walk to convenience stores or big box stores that are typically located along major thoroughfares. On these larger thoroughfares, safe crossing opportunities are often spaced far apart or are lacking altogether. This often results in many pedestrians crossing mid-block on these routes. Also, in most States, the unwillingness of drivers to yield to pedestrians who do seek out crosswalks only exasperates the issue. Pedestrians may ask, "Why walk out of our way if nobody stops for you at crosswalks?". The attitude that roads are for vehicular traffic alone largely prevails among drivers, while pedestrians point at the drivers who often feel they always have the right-of-way.

Overall, there is an almost hostile attitude between the driver and pedestrian population group, partially rooted in today's "me first" culture that leads to an increased degree of carelessness and desensitization on both sides. Another factor playing into the equation is the lack of understanding of right-of-way law. Most drivers do not associate the neon yellow crosswalk signs with yielding or stopping. To the broad majority of drivers, the signs mean "people could be crossing, don't hit them," and nothing more. On the pedestrian side, folks are often timid at crosswalks and feel they are inconveniencing drivers asking them to stop. Most pedestrians don't feel comfortable to step into the street (often for good reasons) to trigger the yield requirement for drivers. Many pedestrians have no idea that they have the right-a-way in the crosswalk. For most people, a crosswalk is just a painted section of road, where they may or should cross. As a result, there's not much practical benefit to crosswalks in most States.

There are several examples of the issues that fuel the nation's increase in pedestrian fatalities. Currently, about one in six traffic deaths involve a pedestrian. In Springfield, the ratio is even higher. In recent years, one in four traffic fatalities involved a pedestrian. For all crashes, from non-injury to fatality crashes, we find that about half the pedestrians hit in crosswalks where the pedestrian has the right of way. The other half involves pedestrians who failed to yield to traffic, typically by crossing mid-block or during a green light at a signal. For fatality and disabling injury crashes, we find that most involve a failure to yield on the pedestrian side while crossing major roadways midblock in the dark.

Whether it is the driver, or the pedestrian, that fails to yield, the habits and contributing circumstances that lead to these crashes are very different for each group. Hence, any education or countermeasures must be tailored for both driver or pedestrian compliance. However, such efforts should not assign blame, but promote mutual respect and understanding of the needs and rights of both motorist and pedestrians.

The City of Springfield kicked off their pedestrian safety campaign, SGF Yields, in the summer of 2017. The program utilizes "Mr. Walker" neon yellow statues of the familiar MUTCD pedestrian, which are placed strategically across the city. Mr. Walker quickly became popular with the public and functions as the City's "spokesperson" for safety messages to our citizens via PSA, flyers, social clips and more. Another important part of the campaign are the heart shaped crosswalk ahead signs (similar to W11-2). The MUTCD look-alike signs intuitively communicate an attitude of caring and yielding. Drivers that have noticed the heart shaped signs, tend to remember their message when they later come across the standard traffic signs (positive mental association). We have had many reports from citizens that say they never were aware of the "neon yellow" sign, but since the program they can't help but notice the crosswalk ahead and school zone assemblies.

The SGF Yields program has grown significantly since its inception. In addition to the Mr. Walker and heart sign installations, we have added traffic safety education for schools and implemented low-cost engineering measures. We conduct six (6) quarterly crosswalk compliance studies that are shared with the public via billboard signs (social norming). We are doing policy work to make local code more pedestrian friendly. Also, we are working with the public to ignite a grass roots movement towards mutual care and kindness between drivers and pedestrians. Ongoing, light-hearted citizen communication is key to successful progress and messaging.

Mr. Walker has two key messages: "Drivers, yield to pedestrians" and "Pedestrians, use crosswalks." However, we decided to focus on drivers first in our education efforts. If drivers aren't yielding at crosswalks, it is difficult to encourage

pedestrians to go out of their way to use crosswalks. Therefore, the main focus has been on getting drivers to yield and feel good about it. We are a little over three years into the program and our six quarterly crosswalk compliance studies show that more and more Springfield drivers are yielding to pedestrians. At the start of the program, only 25% of drivers would yield to a pedestrian that has set one foot into the roadway. By the end of 2020, over 40% of drivers were yielding. Starting in March of 2021, the Springfield Police Department and SGF Yields are partnering to begin "Edu-Forcement" in Springfield, which we expect will drive up crosswalk compliance to 70% or more. This type of crosswalk enforcement strives to educate the public by primarily handing out warnings. Enforcement locations are announced ahead of time and marked by "enforcement ahead" signs.

Now that we are nearing a point where there are more drivers yielding than not yielding, it is time to shift the focus on pedestrian compliance. As mentioned earlier, this will require an entirely different approach to reach the demographic linked to the population most associated with major pedestrian accidents. SGF Yields recently started two committees which will help support and direct us in our upcoming endeavors. The first group, the SGF Yields Citizen Action Group meets monthly, and is made up of citizens who support a walking-friendly community by raising awareness and publicly supporting the enforcement efforts. SGF Yields is enjoying broad popularity and we want to make sure that the public understands that this enforcement is not about revenue, but a response to the citizen's push for safety and walkability. The second group, the SGF Yields Coalition meets quarterly and is mostly made up of public agencies. This group's focus will be to help develop effective communication and measures to help address pedestrian compliance issues with emphasis on preventing the most common type of pedestrian fatality.

SGF Yields was designed to build trust with the community by using a combination of public art, education and positive messaging. This will ultimately lead to the current phase involving enforcement. As noted above, SGF Yields continues to grow and has reached a point where we don't have enough staff time available to design and produce all the items we want to, including the planned expansion to address pedestrian compliance.

Currently, SGF Yields is managed by one full-time employee in the City's Traffic Engineering department, Mandy Buettgen-Quinn. She spends currently about 3/4th of her time on SGF Yields, which is not sustainable due to other vital tasks necessary for public safety provided by Traffic Engineering. All public interactions for SGF Yields are managed by the City's Public Information Office (PIO). PIO's employees spend a considerable amount of time designing graphics and developing messages for print pieces, press releases tailored to produce earned media, and much more. Unfortunately, PIO is also responsible for many other responsibilities which sometimes lessens the ability to facilitate SGF Yield's need in a timely manner.

SGF Yields has been approached from a number of State and community representatives that would like to create this type of program for their communities. One outlying community already has a "Mr. Walker" lease. A second community approached SGF Yields managers and is now starting crosswalk compliance studies to support their Vision Zero program. We would love to share our campaign with others, however, it would take a significant effort to bring all aspects of the program into a generic and user-friendly format. Furthermore, someone would have to manage that effort to make sure the messaging stays consistent and no errors are made that result in less desirable outcomes. Unfortunately, the City does not currently have staff time to directly develop or oversee such expansion of the SGF Yields program.

GOALS/OBJECTIVES

SGF Yields needs to procure assistance to allocate resources for the following:

A. Develop, promote, and provide guidance for a "packaged" version of SGF Yields that can be shared with, and implemented by, other communities to improve pedestrian safety.
B. Develop and expand the pedestrian compliance efforts of the current SGF Yields program.

If this grant was received, the City of Springfield would have resources to further expand existing and planned efforts for pedestrian safety in Springfield, as well as create a sharable version of SGF Yields for other communities. Through these expanded efforts, we will be able to increase driver and pedestrian education and awareness with the goal of less fatalities and injuries.

DETAILED PLAN FOR USE OF FUNDING:

A) Develop, promote, and manage a sharable version of SGF Yields, similar to a "tool box", that can be shared with other communities:

DEVELOP:

1. Develop production specifications and estimates for Mr. Walker and Student Walker signs, and heart shaped SGF Yield Signs, including important considerations for placement to prevent sight obstructions, vandalism, theft and other issues.
2. Guidance for program launch and rollout ideas and opportunities.
3. Edit existing, or provide examples of, PSAs to be sharable with other communities
4. Edit existing, or provide examples of, safety message clips including yield here, make eye contact, RRFBs, school buses, white cane law, etc. to be shareable with other communities.
5. Edit existing school curriculum and prepare go-by guide and presentations for classrooms, along with potential props and engagement ideas, such as walk to school days, art/science projects, etc. that will be used by other communities.
6. Produce generic presentations to be used for education and program rollout and updates.
7. Modify branding for the program that can be used for any location.
8. Develop a how-to guide for crosswalk compliance studies, along with public outreach, graphics, etc.
9. As they become available, recommendations and best practices will be made available for participating communities as follows:

    i. When and how to conduct any potential crosswalk enforcement
    ii. Review of local code, including potential changes
    iii. How to use social media, and how to encourage media stories and citizen involvement
    iv. Where to look for funding
    v. How to utilize public events and purchase of safety-enhancing giveaways
    vi. How to review crosswalk locations and appropriate pedestrian safety measures
    vii. What to integrate into existing websites

10. Carefully establish parameters for what other communities can do and cannot do, what needs permission, and what does not need approval, this includes communications guidelines.
11. Estimate time commitments for any of the activities mentioned, as well as recommendations to what type of skill set a local program manager should have.

PROMOTE:

1. All of the items above would have to be structured in a user-friendly and attractive format.
2. The program must be made available electronically by web or shareable file source.
3. The program must be promoted, via publications and conference presentations.

ASSISTANCE & GUIDANCE (this would likely not apply in the first year and would require funding or transfer to a consultant)

1. Once communities have signed up, provide an initial conversation/training to help develop an implementation plan. Whichever aspects of the program a community wishes to accomplish, recommendations will be made for how to phase order and timing of implementation.
2. Be available at regular intervals for assistance or advice as necessary to assist in implementation.
3. City would approve certain public communications, graphics, etc. (details to be established)

4. City could potentially maintain a website where new graphics etc. are shared with the participating communities.
5. City would periodically check in with agencies to make sure campaign messages stay positive and within guidelines to protect the program's reputation and effectiveness.

B) Develop and expand the pedestrian-compliance efforts of the SGF Yields program in Springfield:

The pedestrian compliance is a crucial piece of SGF Yields that we need more resources for if we want to save lives. Currently the City does not have resources available to pursue the pedestrian compliance efforts in a fully effective campaign.

While we haven't made much progress yet on the pedestrian compliance associated with jaywalking, we do have a clear plan. Once established, the plan for pedestrian compliance and jaywalking could also be included in the sharable version of SGF Yields. To date, we have the following plan for implementation:

· We must bring together different local agencies to truly understand the dynamics that influence jaywalking across major thoroughfare roadways. Through this understanding, we can build an effective communication and education plan to prevent fatality crashes.

· Local data shows that, most of the time, these crashes occur at night and mid-block. We find that the victims often do not own a vehicle and are hence more likely to jaywalk across major thoroughfares.

· To prevent these pedestrian fatalities, we need to first learn how to better identify and communicate with the average potential victim, who often falls within a predominant demographic that is not easily reached by PSAs, Facebook, and other communications. The agency and focus groups to help us facilitate this work would most likely be made up of partner organizations that focus on social services for homeless and low-income families, as well as engineering and planning groups.

· After determining those most likely to be injured in crashes, we will develop effective messages and measures based on what methods and messaging could have the biggest impact to at-risk groups.

· We would identify and partner with local agencies that would assist in outreach to increase awareness of the problem and provide input for influencing crossing at proper locations and/or the need for additional marked crossings.

· The program's success would be measured by local crash data and observations. Observation studies at locations with high frequencies of jaywalking would help verify any changes of habits as a result of program efforts.

PROJECT DESCRIPTION

If approved, this grant would provide funding to pay for billable time and resources, exclusively dedicated to SGF Yields and its expansion. Billable time and resources would be either City of Springfield staff or contracted assistance from consultants. Most likely the efforts will be split between multiple people of different expertise areas, such as engineering or public information, graphic design, educators, etc.

Realistically, a considerable amount of the expansion work will have to fall on the existing SGF Yield's program managers since they are most familiar with the program. That would mean that other currently scheduled SGF Yields-related tasks must be handled by consultants to offset staff time to work on expansion efforts. This consultant services for SGF Yield's tasks as described herein would be charged to monies from this grant to allow City Staff to work on the SGF Yields expansion.

We estimate that our experienced staff would need the following time for specific tasks:

1. Develop & promote (and possibly assist with) a sharable version of SGF Yields: Up to 3 hrs/day all year
2. Help with development of the pedestrian-compliance piece (meetings, design of communication pieces or presentations, time distributing education and incentives, etc.): Up to 2 hrs/day, for 6 months

Assuming a person works about 230 days a year and assuming staff costs are around $50/ hour:

Item 1

3 hours per day, throughout the year: Estimated 690 hours at $34,500.

Item 2

2 hours per day, for about 6 months: Estimated 230 hours at $11,500.

Total: Estimated 920 hours at $46,000.

The 920 hours is an estimated cost to provide staff time and resources to complete the sharable version of SGF yields and the pedestrian-focused program. This reflects the time that may need to be charged to different types of consultant services to accomplish other SGF Yields related tasks to offset staff time as noted above. Consultant services could be provided by engineering firms, universities, planners, educators, marketing agencies, and graphic design firms as most cost effective to offset City Staff hours or provide assistance to the SGF Yields expansion.

Examples of consultant services to be reimbursed will generally be as follows:

- Administering SGF Yields traffic safety education program for elementary schools. (ideally done by an educator)
- Performing pedestrian and driver compliance studies and compliance sign placement and maintenance. (engineering or other technicians)
- Basic design work and program management for SGF Yields and/or the expansion as needed including production of documents. (graphic design/advertisement)
- Organize, conduct and/or or document meetings for SGF Yields. (clerical or similar)
- Specific task as to be determined directly related to the expansion of SGF Yields.

SUPPLEMENTAL INFORMATION

	Question	Answer
1	Does your agency have and enforce a safety belt use policy?	Yes
2	If NO, please explain.	
3	Does your agency have and enforce a policy restricting cell phone use while driving?	Yes
4	If NO, please explain.	
5	What type of agency do you represent (e.g. state government, local government, not for profit, for profit)?	
	Local government, particularly Public Works	
6	Will this project have an impact statewide, regionally, or locally?	
	This program would have a local and statewide impact	
7	What target group will this project impact (e.g. young, older, impaired)?	
	Pedestrians and drivers	
8	What age group does your project focus on?	
	All ages	
9	Does your agency have adequate manpower to fully expend the funds requested in this application?	No
10	If NO, please explain.	
	This project would require that we get help by a consultant.	
11	Have any significant changes occurred with your agency within the last year that would affect performance, including personnel or system changes?	No
12	If YES, please explain.	
13	Are you aware of any fraud, waste or abuse on grant projects in your office/agency within the last 5 years?	No
14	If YES, please explain.	
15	If your agency received Highway Safety grant funding in the last three (3) fiscal years and there were unexpended balances, please explain why.	
	We have received multiple Blueprint for Safer Roadways grants through MoDOT and have always spent more than 90% of them, if not every penny.	
16	Did your political entity receive more than 80% of its annual gross revenues in Federal Awards in your preceding fiscal year?	No
17	Did your political entity receive $25,000,000 or more in Federal Awards in your preceding fiscal year?	No

18 If you answered NO to either question 16 and 17, DO NOT answer this question. If you answered YES to both question 16 and 17, and the public does not have access to this information, list the names and compensation amounts of the five most highly compensated employees in your business or organization (the legal entity to which the DUNS number it provided belongs).

19 Does this project employ proven best practices or would it be considered a pilot project?

Both.
SGF Yields makes use of best practises in the area of public information, awareness/education, engineering and enforcement.
While portions of SGF Yields are established, we are wanting to expand our focus to pedestrian compliance and offer up the program and tools to other communities.

20 Is training going to be provided as part of this contract? No

21 If Yes, enter types of training courses that will be provided and the estimated number of each course.

No formal training outside of aiding other communities with the program.

PROJECT EVALUATION

The MHTC will administratively evaluate this project. Evaluation will be based, at a minimum, upon the following:

1. Timely submission of monthly reimbursement vouchers and appropriate documentation to support reimbursement for expenditures (i.e., personal services, equipment, materials)
2. Timely submission of periodic reports (i.e., monthly, quarterly, semi-annual) as required
3. Timely submission of the Year End Report of activity (due within 30 days after contract completion date)
4. Attaining the Goals set forth in this contract*
5. Accomplishing the Objectives* established to meet the project Goals, such as:
- Programs (number and success of programs held compared to planned programs, evaluations if available)
- Training (actual vs. anticipated enrollment, student evaluations of the class, student test scores on course examinations, location of classes, class cancellation information)
- Equipment purchases (timely purchase of equipment utilized to support and enhance the traffic safety effort; documentation of equipment use and frequency of use)
- Public awareness activities (media releases, promotion events, or education materials produced or purchased)
- Other (any other information or material that supports the Objectives)
6. The project will be evaluated by the Highway Safety and Traffic Division through annual crash analysis.

Evaluation results will be used to determine:
- The success of this type of activity in general and this particular project specifically;
- Whether similar activities should be supported in the future; and
- Whether grantee will receive funding for future projects.

*Evaluation and requests to fund future projects will not be based solely on attaining Goals and/or Objectives if satisfactory justification is provided.

Progress would be evaluated based on the items outlined in the Goals/Objectives section.

A successful project would yield a structured "tool box" that allows interested agencies to understand, plan and implement the basic program structure, potentially expanding into other program aspects (school education, enforcement, etc).

The result would be a living document where we can add new flyers and other educational pieces as they become available, including the pedestrian-safety educational outreach shown under "item 2".

ADDITIONAL FUNDING SOURCES

We are currently in the process of accepting a Blueprint to Safer Roadways grant in the amount of $6500. This grant will purchase items and prints for SGF Yield's school outreach portion, pay statue maintenance and the like. We have also submitted another application for "round 2" to help fund reflective and safety-related giveaways to help educate pedestrians and bicyclists, while making them more visible. This ties into "item 2" above.

BUDGET

Category	Item	Description	Quantity	Cost	Total	Local	Total Requested
Consultant Services							
	Production Support	Consultant services to be used for developing the sharable version of SGF Yields and the pedestrian outreach, as well as help with existing SGF Yields efforts, to free up our SGF Yields manager's time. Different types of hourly consultant services based on the breakdown on the Project Descriptions page will be used: Services would need to be potentially provided by engineering, universities, planners, educators, marketing or graphic design firms and the like, or by city staff members if available.	920.00	$50.00	$46,000.00	$0.00	$46,000.00
					$46,000.00	**$0.00**	**$46,000.00**
				Total Contract	**$46,000.00**	**$0.00**	**$46,000.00**

ATTACHMENTS

Document Type	Description	Original File Name	Date Added
PDF	PDF Document	Supporting Docs - small.p	03/08/2021

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Exhibit B

Budget Adjustment
022

Revenues:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
46040	20	73020	416010	000000	00000	$ 46,000	U.S. Department of Transportation, National Highway Traffic Safety Administration federal grant funds through a Section 402 State & Community Highway Safety Grant from the Missouri Department of Transportation
Net Revenue Adjustment						$ 46,000	

Expenditures:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
46040	20	73020	504580	000000	00000	$ 46,000	Development of a Shareable Version of SGF Yields, the City's Pedestrian Safety Program
Net Expenditure Adjustment						$ 46,000	

Fund Balance Appropriation:

Fund		Title	Amount

Explanation: To amend the FY2021-22 budget by appropriating federal funds through the Missouri Department of Transportation, Section 402 State & Community Highway Safety Grant, for $46,000 for the development of a shareable version of the City's pedestrian safety program SGF Yields.

Requested By:

Dan Smith 09/29/21
Department Head Date

Approved By:

09/29/21
Director of Finance Date

City Manager Date

Authorization:

Council Bill No. 2021-259
Ordinance No.
1st Reading
2nd Reading
Journal Imp No.

One-rdg. X
P. Hrngs. _____
Pgs. 9
Filed: 09-28-21

Sponsored by: Ollis

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021-260 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to accept a 'Show-Me-Zero Grant' in the amount of $8,000 from the Missouri Highways and Transportation Commission to support continuation of the City's pedestrian safety education program "SGF Yields;" amending the budget of the Department of Public Works for Fiscal Year 2021-2022 in that amount upon award of the grant; and declaring that this bill qualifies as a one-reading bill.

WHEREAS, the City of Springfield applied for a grant, pursuant to the authority granted in Springfield City Code Section 2-11, from the Missouri Highway and Transportation Commission to support continuation of the "SGF Yields" program for pedestrian safety education; and

WHEREAS, the City was awarded the amount of $8,000; and

WHEREAS, this project supports City Council Priorities of Public Safety and Quality of Place.

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

Section 1 – The City Manager, or his designee, is authorized to accept a grant from the Missouri Highways and Transportation Commission in the amount of $8,000 to support continuation of the "SGF Yields" pedestrian safety education program, by entering into an agreement in substantially the same form as "Exhibit A," which is attached hereto and incorporated by reference; and to do all things necessary to execute such documents as required to receive and disburse such funds.

Section 2 – City Council hereby authorizes the amendment of the budget of the Department of Public Works for Fiscal Year 2021-2022 in the accounts and in the amounts shown on Budget Adjustment No. 023, upon the awarding of grant funds, said

Budget Adjustment to be in the form of “Exhibit B,” which is attached hereto and incorporated herein by this reference.

Section 3 – City Council hereby finds and declares this Ordinance relates to the acceptance of a grant from a state or federal agency and pursuant to Section 2.16(25) of the City Charter, this Ordinance may be passed in one reading. Therefore, this Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021- 260

FILED: 09-28-21

ORIGINATING DEPARTMENT: Public Works

PURPOSE: To authorize the City Manager, or his designee, to accept a Show-Me Zero Grant (formerly Blueprint for Safer Roadways Grant) from the Missouri Department of Transportation ("MoDOT") enabling the City to continue the pedestrian safety program SGF Yields and amending the Fiscal Year 2021-22 budget for the Department of Public Works in the amount of $8,000.

BACKGROUND INFORMATION: In 2016, the Traffic Operations Division first applied for a Blueprint for Safer Roadways Grant to fund a pedestrian safety campaign SGF Yields. The program was designed to raise awareness among pedestrians and motorists regarding crosswalks and crossing safety. The program has two main objectives: to change Springfield's driver culture so that motorists automatically yield to pedestrians at a crosswalk; and to convince pedestrians that crossing streets within crosswalks, where drivers are more likely to expect them, provides a greater level of safety.

REMARKS: With less than 60 days between the grant announcement on June 9, 2021 and the application deadline of July 21, 2021, sufficient notice was not given to obtain City Council's authorization to apply for this grant; however, in such circumstances the City Manager is authorized to make grant applications pursuant to City Code Section 2-11.

Supports the following City Council Priorities:

- Public Safety
- Quality of Place

REMARKS: Public Works recommends passage of this council bill and budget adjustment.

Submitted by:

Martin Gugel, P.E.
Assistant Director of Public Works

Recommended by:

Dan Smith, P.E.
Director of Public Works

Approved by:

Jason Gage
City Manager

Exhibit A

CCO Form: HS02
Approved: 01/05 (BDG)
Revised: 05/21 (GH)
Modified:

Award name/number: BPC-SW-9E-Z
Award year: 2022

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
SHOW ME ZERO PROGRAM AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the

City of **City of Springfield**, a municipal corporation in the State of Missouri (hereinafter, "City"); OR

County of _____, (hereinafter referred to as "County"); OR

Department of _____, a department within the executive branch of the government of the State of Missouri (hereinafter, "Department"); OR

_____, a recognized vendor with the State of Missouri (hereinafter, "Vendor")

WITNESSETH:

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

(1) PURPOSE: The Commission has authorized State Road Funds to be used to support regional Show Me Zero activities. The purpose of this Agreement is to grant the use of such State Road Funds to the City.

(2) ACTIVITY: The State Road Funds, which are the subject of this Agreement, will support the following activity to further Missouri's Show Me Zero Program:

SGF Yields - Hand out items, Media projects & Statue Maintenance.

(3) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or 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 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 MoDOT, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities 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. The City shall cause insurer to increase the insurance amounts in accordance with those 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.

(4) 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 representatives of the City and the Commission.

(5) COMMISSION REPRESENTATIVE: This Commission's District 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.

(6) NONDISCRIMINATION CLAUSE: The City shall also comply with all state and federal statutes applicable to the City 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. Sections 2000d and 2000e, *et seq*.); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq*.).

(7) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(8) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(9) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(10) ACCESS TO RECORDS: The City and its Contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(11) REIMBURSEMENT: With regard to work under this Agreement, the City agrees that funds to implement Show Me Zero activities shall only be available for reimbursement of eligible costs which have been incurred by City. The City shall supply to the Commission copies of all bid information; purchase orders; invoices; and name, date, hours worked, and rate of pay (on Program Agreements that include salaries). Any costs incurred by City prior to authorization and notification to proceed from the Commission are **not** reimbursable costs. The Commission shall not be responsible for any costs associated with the activity herein unless specifically identified in this Agreement or subsequent written amendments. The Commission shall not provide more than **Eight thousand** dollars ($ 8,000.00) for this Show Me Zero safety project.

(12) USE OF FUNDS: Any employee of City whose salary or wages are paid in whole or in part with federal funds is prohibited from participating in certain partisan political activities, including, but not limited to, being a candidate for elective office pursuant to Title 5 United States Code (hereinafter, "U.S.C."), Sections 1501-1508. If an employee of City participates in activities prohibited by the Hatch Act, City shall no longer pay that employee's salary or wages with federal funds unless the requirements of 5 U.S.C. Sections 1501-1508 are not applicable to that employee pursuant to 5 U.S.C. Section 1502(c).

(13) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission shall have the privilege of inspecting and reviewing the work being performed per this Agreement. The City shall also maintain all financial documents, reports, papers and other evidence pertaining to costs incurred in connection with this Program Agreement, and make such materials readily available for review at reasonable times and at no charge during this Agreement period and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission or any authorized representatives of the State of Missouri; copies shall be furnished, upon request, to authorized representatives of the Commission or State.

(14) 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.

(15) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The City shall refund any overpayments as determined by the final audit.

(16) 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.

(17) 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.

[Remainder of Page Intentionally Left Blank]

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

Executed by the City this ___ day of _____, 20____.

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

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

_____

Title: District Traffic Engineer

CITY OF SPRINGFIELD

By_____

Title_____

By_____

Title _____

By _____

Title_____

ATTEST:

By _____

Title_____

Approved as to Form:

_____

Title _____

Ordinance No _____

*Note: If agency is a County with a county commission form of government, 3 signatures are required.

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Exhibit B

Budget Adjustment
023

Revenues:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
46120	20	73020	416020	000000	00000	$ 8,000	Missouri Department of Transportation State Grant Revenues - Show-Me Zero State Grant
Net Revenue Adjustment						$ 8,000	

Expenditures:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
46120	20	73020	501260	000000	00000	$ 8,000	Pedestrian Safety Program "SGF Yields"
Net Expenditure Adjustment						$ 8,000	

Fund Balance Appropriation:

Fund		Title	Amount

Explanation: To amend the FY2021-22 budget by appropriating a Show-Me Zero State Grant from the Missouri Department of Transportation for $8,000 to continue the pedestrian safety program SGF Yields.

Requested By:

Dan Smith 09/29/21
Department Head Date

Approved By:

09/29/21
Director of Finance Date

City Manager Date

Authorization:

Council Bill No. 2021-260
Ordinance No.
1st Reading
2nd Reading
Journal Imp No.

One-rdg. _____
P. Hrngs. _____
Pgs. 103
Filed: 09-14-21

Sponsored by: Simpson

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021-250 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to enter into a supplemental agreement with Missouri Highways and Transportation Commission and TransCore ITS, LLC, for continued maintenance of Advanced Traffic Management System software and hardware at the Transportation Management Center of the Ozarks.

WHEREAS, the City previously entered into an agreement, first supplemental agreement, and second supplemental agreement with the Missouri Highways and Transportation Commission and TransCore ITS, LLC, for development, implementation, and maintenance of software and hardware to support the Advanced Traffic Management System ("ATMS"), as well as cost apportionment between the parties; and

WHEREAS, the second supplemental agreement added additional services which will enhance and expand upon the initial agreement, address areas identified in development and implementation of the system, and extend the term of the agreement through August 31, 2021, to be consistent with state-wide interoperability; and

WHEREAS, this third supplemental agreement addresses the need for continued maintenance of software and hardware to support the ATMS through August 31, 2022; and

WHEREAS, the City is responsible for 25 percent of actual costs, not to exceed $149,082.38, and the City's 25 percent share of the third supplemental agreement would be paid from funds remaining in the existing contract totaling approximately $19,447.00, which are funded from the 1/8-Cent Transportation Sales Tax Intelligent Transportation Systems ("ITS") and Signal System Improvements Program, and are already budgeted.

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

Section 1 – The City Manager, or his designee, is hereby authorized to enter into a supplemental agreement with the Missouri Highways and Transportation Commission and TransCore ITS, LLC, said agreement to be in substantially the same form as "Exhibit 1," which is attached hereto and incorporated herein by reference as though fully set forth.

Section 2 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-250

FILED: 09-14-21

ORIGINATING DEPARTMENT: Public Works

PURPOSE: Authorizing the City Manager, or his designee, to enter into a supplemental agreement ("Exhibit 1") with Missouri Highways and Transportation Commission ("MHTC") and TransCore ITS, LLC (hereinafter, "Consultant"), for a no-cost time extension for maintenance of Advanced Traffic Management System ("ATMS") software and hardware to be operated by the Missouri Department of Transportation ("MoDOT") and the City of Springfield at the Transportation Management Center of the Ozarks ("TMC") for traffic management and traveler information services throughout the regional roadway network.

BACKGROUND INFORMATION: MHTC, the Consultant, and the City previously entered into the original agreement (Special Ordinance 26817, "Exhibit 2") in 2017, a supplemental agreement (Special Ordinance 27231, "Exhibit 3") in 2019, and a second supplemental agreement (Special Ordinance 27427, "Exhibit 4") in 2021 for the purpose of defining the services to be provided by the Consultant and cost apportionment between MoDOT and the City for the development, implementation, and maintenance of TransSuite ATMS software. This third supplemental agreement includes no additional services beyond the scope of services provided in the original agreement and all previous supplemental agreements. This is a no-cost time extension for maintenance services of the existing software. This supplemental agreement would extend the contract term through August 31, 2022, at which time new or updated ATMS software is expected to be in place.

The TransSuite software provides TMC staff with integrated traffic management functionality through deployment of Event Management for incidents, roadwork, and special events; traffic sensor data processing; data storage and retrieval of field data for performance measure reporting; closed-circuit television ("CCTV") traffic monitoring camera control; dynamic message sign ("DMS") control; computer-aided dispatch ("CAD") interface that supports importing of traffic incidents from 911; and data feeds to the public website and external partners. The software is also utilized in Kansas City and St. Louis, which provides for enhanced interoperability among all three TMCs in Missouri.

Previous total contract amount was $596,329.50, for which the City was responsible for twenty-five percent (25%) of actual costs, not to exceed $149,082.38, made payable directly to the Consultant. The City's share (25%) of any additional costs during the time extension would be paid from funds remaining in the existing contract, which total $19,447.00, are funded from the 1/8-cent Transportation Sales Tax Intelligent Transportation Systems ("ITS") and Signal System Improvements Program and are already budgeted.

Supports the following 2021 City Council Priorities:

- Quality of Place
- Fiscal Sustainability and Accountability
- Economic Vitality
- Public Safety

REMARKS: This agreement is an example of the City and MoDOT working together to improve regional traffic management and traveler information. Public Works recommends approval of this Council Bill.

Submitted by:

_____
Kirk Juranas, Assistant Director of Public Works

Recommended by:

_____
Dan Smith, Director of Public Works

Approved by:

_____
Jason Gage, City Manager

Exhibit 1

CCO Form:	DE44	Supplemental Agreement No. 2021-08-65318
Approved:	01/00 (BDG)	Route: Various
Revised:	04/20 (BDG)	County: Various
Modified:		Job No.: 8Q3181

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
DESIGN CONSULTANT SUPPLEMENTAL AGREEMENT # 2021-08-65318
(FEDERAL ASSISTANCE)

THIS 3rd SUPPLEMENTAL AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), the City of Springfield (hereinafter, "City"), and Transcore ITS, LLC (hereinafter, "Consultant").

WITNESSETH:

WHEREAS, the Commission, City, and the Consultant entered into an Agreement on February 6, 2017, to perform professional services in the preparation of Advanced Transportation Management System (ATMS) software and maintenance for Route Various, Various County, designated as Job No. 8Q3001 (hereinafter, "Original Agreement"); and

WHEREAS, the Commission, City, and the Consultant have previously entered into the 1st Supplemental Agreement(s) to the Original Agreement on October 21, 2019; and

WHEREAS, the Commission, City, and the Consultant have previously entered into the 2nd Supplemental Agreement(s) to the Original Agreement on February 1st, 2020; and

WHEREAS, the Commission, City, and the Consultant now desire to enter into Supplemental Agreement No. 3 to otherwise complete, extend or continue the Original Agreement and all previous Supplemental Agreements as provided herein.

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

(1) SCOPE OF SERVICES: The Services to be provided by the Consultant under Supplemental Agreement No. 3 include no additional services which are beyond the scope of services provided in the Original Agreement and all previous Supplemental Agreements. This is a no-cost time extension for the scope of services of the original agreement.

(2) FEES AND PAYMENTS:

(A) The Consultant shall be reimbursed in accordance with Section (10) of the Original Agreement and all previous Supplemental Agreements.

(B) The costs of this Supplemental Agreement shall be integrated with the cost of the Original Agreement and all previous Supplemental Agreements.

(3) DBE PARTICIPATION: In the Original Agreement, the Consultant agreed to use DBE firms to complete an established DBE goal of at least 0% of the total services by dollar value. This DBE goal shall apply to all additional services under the Original Agreement, unless otherwise modified by the Commission by Supplemental Agreement. After evaluation of the work associated with this Supplemental Agreement, it was ultimately determined that a 0% DBE goal would apply to this supplemental work.

(4) SUBCONSULTANTS: Pursuant to Section (8) of the Original Agreement and in addition to any other firms expressly permitted by the Commission to perform subconsultant services, the Commission consents to transfer of a portion of the Consultant's services to the following firms:

Firm Name	Complete Address	Nature of Services
N/A		

(5) PERIOD OF SERVICE: Exhibit IV, Schedule, of the Original Agreement and any revisions included in previous Supplemental Agreements is hereby further revised to include time for the performance of these additional services. The projected completion date shown on Exhibit IV or included in the last previous Supplemental Agreement is now revised to August 31, 2022, which includes time for performance of all remaining services in the Original Agreement and all previous Supplemental Agreements and the services in this Supplemental Agreement and submittal of all deliverables.

(6) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this Supplemental Agreement No. 3, the Original Agreement and all previous Supplemental Agreements between the parties shall remain in full force and effect and the terms of the Original Agreement and all previous Supplemental Agreements between the parties shall extend and apply to this Supplemental Agreement. The Original Agreement, Supplemental Agreement No. 1, Supplemental Agreement No. 2, and all Exhibits attached to or referred to in this Supplemental Agreement No. 3 are hereby incorporated herein and shall be considered a part of this Supplemental Agreement No. 3 for all purposes as if fully set forth herein.

[remainder of page intentionally left blank]

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

Executed by the Consultant on _____(DATE).

Executed by the City on _____(DATE).

Executed by the Commission on _____(DATE).

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: _____

Title: _____

ATTEST: (Commission seal)

_____
Secretary to the Commission

APPROVED AS TO FORM:

_____
Commission Counsel

TRANSCORE ITS, LLC

By: _____

Title: _____

ATTEST: (Consultant seal, if existing)

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Title: _____

CITY OF SPRINGFIELD

_____
Deputy City Manager

ATTEST:

_____
City Clerk

_____
Director of Finance

_____
Contract Paralegal

_____
Approved as to Form:

_____
Assistant City Attorney

Ordinance No._____

Exhibit 2

2017-0049

CCO Form: DE01-FA
Approved: 07/99 (DPP)
Revised: 06/15 (AR)
Modified:

Project Design Consultant Agreement
Route: Various
County: Various
Job No.: 8Q3001, 8Q3073, 8Q3107

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
PROJECT DESIGN CONSULTANT AGREEMENT
(FEDERAL ASSISTANCE)

THIS AGREEMENT is entered into by TransCore ITS, LLC (hereinafter, "Consultant") and the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Springfield (hereinafter, "City"). Collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Commission and City of Springfield have undertaken a regional Intelligent Transportation Systems (ITS) program called Transportation Management Center of the Ozarks (hereinafter referred to as "TMC of the Ozarks") located in Springfield, MO; and

WHEREAS, the Parties have selected the Consultant to perform professional services in the preparation of Advanced Transportation Management System (ATMS) software and maintenance for Route Various, Various County, from n/a to n/a, designated as Job No. 8Q3001.

NOW, THEREFORE, in consideration of the payments to be made and the covenants set forth in this Agreement to be performed by the Commission, the Consultant hereby agrees that it shall faithfully perform the professional services called for by this Agreement in the manner and under the conditions described in this Agreement.

(1) DEFINITIONS: The following definitions apply to these terms, as used in this Agreement:

(A) "AASHTO" means the American Association of State Highway and Transportation Officials.

(B) "COMMISSION" means the Missouri Highways and Transportation Commission, an executive branch agency of state government, which acts by and through its Director, Chief Engineer and others in the Missouri Department of Transportation.

(C) "CONSULTANT" means the firm providing professional services to the Commission and City as a party to this Agreement.

(D) "CONSULTANT'S REPRESENTATIVE" means the person or persons designated in writing by the Consultant to represent that firm in negotiations, communications, and various other contract administration dealings with the Commission's Engineers.

(E) "DELIVERABLES" means all software, drawings, and documents prepared in performance of this Agreement, to be delivered to and become the property of the Commission pursuant to the terms and conditions set out in Section (13) of this Agreement.

(F) "DISADVANTAGED BUSINESS ENTERPRISE (DBE)" means an entity owned and controlled by a socially and economically disadvantaged individual as defined in 49 C.F.R. Part 26, which is certified as a DBE firm in Missouri by the Commission. Appropriate businesses owned and controlled by women are included in this definition.

(G) "ENGINEER" means the Chief Engineer or any other authorized representative of the Commission. Where the specific term "Chief Engineer" is used, it shall mean the Chief Engineer exclusively.

(H) "FHWA" means the Federal Highway Administration within the USDOT, headquartered at Washington, D.C., which acts through its authorized representatives.

(I) "INTELLECTUAL PROPERTY" consists of copyrights, patents, and any other form of intellectual property rights covering any data bases, software, inventions, training manuals, systems design or other proprietary information in any form or medium.

(J) "SUBCONSULTANT" means any individual, partnership, corporation, or joint venture to which the Consultant, with the written consent of the Engineer, subcontracts any part of the professional services under this Agreement but shall not include those entities which supply only materials or supplies to the Consultant.

(K) "SUSPEND" the services means that the services as contemplated herein shall be stopped on a temporary basis. This stoppage will continue until the Commission either decides to terminate the project or reactivate the services under the conditions then existing.

(L) "TERMINATE," in the context of this Agreement, means the cessation or quitting of this Agreement based upon the action or inaction of the Consultant, or the unilateral cancellation of this Agreement by the Commission.

(M) "USDOT" means the United States Department of Transportation,

headquartered at Washington, D.C., which acts through its authorized representatives.

(N) "SERVICES" includes all professional engineering and related services and the furnishing of all equipment, supplies, and materials in conjunction with such services as are required to achieve the broad purposes and general objectives of this Agreement.

(O) "TMC of the Ozarks" means the Missouri Highways and Transportation Commission and the City of Springfield, and their representatives, as engaged in the regional ITS program.

(2) SCOPE OF SERVICES:

(A) The services covered by this Agreement shall include furnishing the professional, technical, and other personnel and the equipment, material and all other things necessary for Advanced Traffic Management System (ATMS) software, central traffic signal system software, and maintenance management software, as well as maintenance of all software and hardware provided.

(B) The specific services to be provided by the Consultant are set forth on Exhibit A to this Agreement, titled "Scope of Services," which is attached hereto and made a part of this Agreement.

(3) ADDITIONAL SERVICES: The Commission reserves the right to direct additional services not described in Exhibit A as changed or unforeseen conditions may require. Such direction by the Commission or its Engineer shall not be a breach of this Agreement. In this event, a supplemental agreement will be negotiated and executed prior to the Consultant performing the additional or changed services, or incurring any additional cost for those additional services. Any changes in the maximum compensation and fee, or time and schedule of completion, will be covered in the supplemental agreement.

(4) INFORMATION AND SERVICES PROVIDED BY THE COMMISSION:

(A) At no cost to the Consultant and in a timely manner, the Commission will provide available information of record which is pertinent to this project to the Consultant upon request. The Consultant shall be entitled to rely upon the accuracy and completeness of such information, and the Consultant may use such information in performing services under this Agreement.

(B) The Consultant shall review the information provided by the Commission concerning the project site, including without limitation, boring logs and subsurface data, pile driving and load testing, utility locations and layout survey data and will as expeditiously as possible advise the Engineer of any of that information which the Consultant believes is inaccurate or inadequate or would otherwise have an effect on its design or any of its other activities under this Agreement. In such case, the

Commission shall provide the Consultant with new or verified data or information upon which the Consultant is entitled to rely. The Consultant shall not be liable for any errors, omissions, or deficiencies in the Consultant's services resulting from inaccurate or inadequate information furnished by the Commission which inaccuracies or inadequacies are not detected by the Consultant unless the errors should have been detected by the Consultant through reasonable diligence.

(5) RESPONSIBILITY OF THE CONSULTANT:

(A) The Consultant shall comply with applicable state and federal laws and regulations governing these services, as published and in effect on the date of this Agreement. The Consultant shall provide the services in accordance with the criteria and requirements established and adopted by the Commission and City; and if none are expressly established in this Agreement, published manuals and policies of the Commission and FHWA which shall be furnished by the Commission upon request; and, absent the foregoing, manuals and policies of AASHTO, as published and in effect on the date of this Agreement.

(B) Without limiting the foregoing, design criteria and project planning will be in accordance with the information set out in Exhibit A. In addition, coordination meetings between the consultant, the TMC of the Ozarks, St. Louis Gateway Guide, and Kansas City Scout will be held on a quarterly basis.

(C) The Consultant shall be responsible for the professional quality, technical accuracy, and the coordination of designs, drawings, specifications, and other services furnished under this Agreement. At any time during construction of the Commission project associated with this Agreement or during any phase of work performed by others on said project that is based upon data, plans, designs, or specifications provided by the Consultant, the Consultant shall prepare any data, plans, designs, or specifications needed to correct any negligent acts, errors, or omissions of the Consultant or anyone for whom it is legally responsible in failing to comply with the foregoing standard. The services necessary to correct such negligent acts, errors, or omissions shall be performed without additional compensation, even though final payment may have been received by the Consultant. The Consultant shall provide such services as expeditiously as is consistent with professional performance. Acceptance of the services will not relieve the Consultant of the responsibility to correct such negligent acts, errors, or omissions.

(D) Completed plans, plans submitted for review by permit authorities, and plans issued for construction shall be signed, sealed, and dated by a professional engineer registered in the State of Missouri. Incomplete or preliminary plan(s), when submitted for review by others, shall not be sealed, but the name of the responsible engineer, along with the engineer's Missouri registration number, shall be indicated on the plan(s) or included in the transmittal document. In addition, the phrase "Preliminary - Not for Construction," or similar language, shall be placed on the incomplete or preliminary plan(s) in an obvious location where it can readily be found, easily read, and

not obscured by other markings, as a disclosure to others that the plan(s) are incomplete or preliminary. When the plan(s) are completed, the phrase "Preliminary - Not for Construction" or similar language shall be removed and the plan(s) shall thereupon be sealed.

(E) The Consultant shall cooperate fully with the Commission and its Engineers, consultants, and contractors on adjacent projects, and with municipalities and local government officials, public utility companies and others as may be directed by the Engineer. This shall include attendance at meetings, discussions, and hearings as requested by the Engineer. The minimum number and location of public meetings and public hearings shall be defined in Exhibit A.

(F) In the event any lawsuit or court proceeding of any kind is brought against the TMC of the Ozarks, arising out of or relating to the Consultant's activities or services performed under this Agreement or any project of construction undertaken employing the deliverables provided by the Consultant in performing this Agreement, the Consultant shall have the affirmative duty to assist the TMC of the Ozarks in preparing the TMC of the Ozarks's defense, including, but not limited to, production of documents, trials, depositions, or court testimony. Any assistance given to the TMC of the Ozarks by the Consultant will be compensated at an amount or rate negotiated between the TMC of the Ozarks and the Consultant as will be identified in a separate agreement between the TMC of the Ozarks and the Consultant. To the extent the assistance given to the TMC of the Ozarks by the Consultant was necessary for the TMC of the Ozarks to defend claims and liability due to the Consultant's negligent acts, errors, or omissions, the compensation paid by the TMC of the Ozarks to the Consultant will be reimbursed to the TMC of the Ozarks.

(6) NO SOLICITATION WARRANTY: The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, 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 will have the right to terminate this Agreement without liability, or at 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, plus costs of collection including reasonable attorney's fees.

(7) DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS:

(A) DBE Goal: The following DBE goal has been established for this Agreement. The dollar value of services and related equipment, supplies, and materials used in furtherance thereof which is credited toward this goal will be based on the amount actually paid to DBE firms. The goal for the percentage of services to be awarded to DBE firms is _0_% of the total Agreement dollar value.

(B) Consultant's Certification Regarding DBE Participation: The consultant's signature on this Agreement constitutes the execution of all DBE certifications which are a part of this Agreement.

1. Policy: It is the policy of the U.S. Department of Transportation and the Commission that businesses owned by socially and economically disadvantaged individuals (DBE's) as defined in 49 C.F.R. Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Thus, the requirements of 49 C.F.R. Part 26 and Section 1101(b) of the Transportation Equity Act for the 21st Century (TEA-21) apply to this Agreement.

2. Obligation of the Consultant to DBE's: The Consultant agrees to assure that DBEs have the maximum opportunity to participate in the performance of this Agreement and any subconsultant agreement financed in whole or in part with federal funds. In this regard the Consultant shall take all necessary and reasonable steps to assure that DBEs have the maximum opportunity to compete for and perform services. The Consultant shall not discriminate on the basis of race, color, religion, creed, disability, sex, age, or national origin in the performance of this Agreement or in the award of any subsequent subconsultant agreement.

3. Geographic Area for Solicitation of DBEs: The Consultant shall seek DBEs in the same geographic area in which the solicitation for other subconsultants is made. If the Consultant cannot meet the DBE goal using DBEs from that geographic area, the Consultant shall, as a part of the effort to meet the goal, expand the search to a reasonably wider geographic area.

4. Determination of Participation Toward Meeting the DBE Goal: DBE participation shall be counted toward meeting the goal as follows:

A. Once a firm is determined to be a certified DBE, the total dollar value of the subconsultant agreement awarded to that DBE is counted toward the DBE goal set forth above.

B. The Consultant may count toward the DBE goal a portion of the total dollar value of a subconsultant agreement with a joint venture eligible under the DBE standards, equal to the percentage of the ownership and control of the DBE partner in the joint venture.

C. The Consultant may count toward the DBE goal expenditures to DBEs who perform a commercially useful function in the completion of services required in this Agreement. A DBE is considered to perform a commercially useful function when the DBE is responsible for the execution of a distinct element of the services specified in the Agreement and the carrying out of those responsibilities by actually performing, managing and supervising the services involved and providing the desired product.

D. A Consultant may count toward the DBE goal its expenditures to DBE firms consisting of fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for the performance of this Agreement, provided that the fee or commission is determined by the Commission to be reasonable and not excessive as compared with fees customarily allowed for similar services.

E. The Consultant is encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals.

5. Replacement of DBE Subconsultants: The Consultant shall make good faith efforts to replace a DBE Subconsultant, who is unable to perform satisfactorily, with another DBE Subconsultant. Replacement firms must be approved by the Commission.

6. Verification of DBE Participation: Prior to final payment by the Commission, the Consultant shall file a list with the Commission showing the DBEs used and the services performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in this Agreement. Failure on the part of the Consultant to achieve the DBE participation specified in this Agreement may result in sanctions being imposed on the Commission for noncompliance with 49 C.F.R. Part 26 and/or Section 1101(b) of TEA-21. If the total DBE participation is less than the goal amount stated by the Commission, the Commission may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate such damages, the monetary difference between the amount of the DBE goal dollar amount and the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the Consultant's payments as liquidated damages. If this Agreement is awarded with less than the goal amount stated above by the Commission, that lesser amount shall become the goal amount and shall be used to determine liquidated damages. No such deduction will be made when, for reasons beyond the control of the Consultant, the DBE goal amount is not met.

7. Documentation of Good Faith Efforts to Meet the DBE Goal: The Agreement goal established by the Commission is stated above in Subsection (7)(A). The Consultant must document the good faith efforts it made to achieve that DBE goal, if the agreed percentage specified in Paragraph (7)(B)(8) below is less than the percentage stated in Subsection (7)(A). Good faith efforts to meet this DBE goal amount may include such items as, but are not limited to, the following:

A. Attended a meeting scheduled by the Department to inform DBEs of contracting or consulting opportunities.

B. Advertised in general circulation trade association and

socially and economically disadvantaged business directed media concerning DBE subcontracting opportunities.

C. Provided written notices to a reasonable number of specific DBEs that their interest in a subconsultant agreement is solicited in sufficient time to allow the DBEs to participate effectively.

D. Followed up on initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested in subconsulting work for this Agreement.

E. Selected portions of the services to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down subconsultant agreements into economically feasible units to facilitate DBE participation).

F. Provided interested DBEs with adequate information about plans, specifications and requirements of this Agreement.

G. Negotiated in good faith with interested DBEs, and not rejecting DBEs as unqualified without sound reasons, based on a thorough investigation of their capabilities.

H. Made efforts to assist interested DBEs in obtaining any bonding, lines of credit or insurance required by the Commission or by the Consultant.

I. Made effective use of the services of available disadvantaged business organizations, minority contractors' groups, disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBE firms.

8. DBE Participation Obtained by Consultant: The Consultant has obtained DBE participation, and agrees to use DBE firms to complete, 0 % of the total services to be performed under this Agreement, by dollar value. The DBE firms which the Consultant shall use, and the type and dollar value of the services each DBE will perform, is as follows:

DBE FIRM NAME, STREET AND COMPLETE MAILING ADDRESS	TYPE OF DBE SERVICE	TOTAL $ VALUE OF THE DBE SUBCONTRACT	CONTRACT $ AMOUNT TO APPLY TO TOTAL DBE GOAL	PERCENTAGE OF SUBCONTRACT DOLLAR VALUE APPLICABLE TO TOTAL GOAL
Vireo	Public Relations	N/A	N/A	N/A

9. Good Faith Efforts to Obtain DBE Participation: If the Consultant's agreed DBE goal amount as specified in Paragraph (7)(B)(8) is less than the Commission's DBE goal given in Subsection (7)(A), then the Consultant certifies that the following good faith efforts were taken by Consultant in an attempt to obtain the level of DBE participation set by the Commission in Subsection (7)(A):

(8) SUBCONSULTANTS:

(A) The Consultant agrees that except for those firms and for those services listed below, there shall be no transfer of engineering services performed under this Agreement without the proper written consent of the Commission. Subletting, assignment, or transfer of the services or any part thereof to any other corporation, partnership, or individual is expressly prohibited. Any violation of this clause will be deemed cause for termination of this Agreement.

EXCEPTIONS

Firm Name	Complete Address	Nature of Services
gbaSI	9801 Renner Blvd, Suite 300, Lenexa, KS 66219	IT Support
Vireo	929 Walnut Street, Suite 700, Kansas City, MO 64106	Program Support

(B) The Consultant agrees, and shall require the selected Subconsultants, to maintain books, documents, papers, accounting records, and other evidence pertaining to direct costs and expenses incurred under the Agreement and to make such materials available at their offices at reasonable times at no charge to the Commission and their designees and/or representatives during the Agreement period and for three (3) years from the date of final payment under the Agreement, for inspection by the Commission or any of its authorized representatives (or any authorized representative of the federal government), and copies thereof shall be furnished.

(C) Unless waived or modified by the Commission, the Consultant agrees to require, and shall provide evidence to the Commission, that those Subconsultants shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance, for not less than the period of services under such subcontract agreements, and in not less than the following amounts:

1. Commercial General Liability: $500,000 per person up to $3,000,000 per occurrence;

2. Automobile Liability: $500,000 per person up to $3,000,000 per occurrence; and

3. Worker's Compensation in accordance with the statutory

limits; and Employer's Liability: $1,000,000.

(D) The subletting of the services will in no way relieve the Consultant of its primary responsibility for the quality and performance of the services to be performed hereunder and the Consultant shall assume full liability for the services performed by its Subconsultants.

(E) The payment for the services of any Subconsultants will be reimbursed at cost by the Commission in accordance with the submitted invoices for such services, as set forth in Section (10), titled "Fees and Payments."

(F) The Consultant agrees to furnish a list of any Commission-approved DBE Subconsultants under this Agreement upon the request of the Commission.

(G) The Consultant agrees that any agreement between the Consultant and any Subconsultant shall be an actual cost plus fixed fee agreement if the amount of the agreement between the Consultant and Subconsultant exceeds twenty-five thousand dollars ($25,000).

(9) EXECUTIVE ORDER:

(A) The Consultant shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6th) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement. By signing this Agreement, the Consultant hereby certifies that any employee of the Consultant assigned to perform services under this Agreement is eligible and authorized to work in the United States in compliance with federal law. In the event the Consultant fails to comply with the provisions of Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the Consultant has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.

(B) The Consultant shall include the above-provision concerning said Executive Order within every subcontract. The Consultant shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

(10) FEES AND PAYMENTS:

(A) The amount to be paid to the Consultant by the Parties as full

remuneration for the performance of all services called for in this Agreement will be on the basis of the Consultant's actual costs plus a fixed fee of $28,942.27, except that the combined costs and fee will not exceed a maximum amount payable of $339,987.85 which is shown in Exhibit B, "Estimate of Costs," attached hereto and made a part of this Agreement. Payment under the provisions of this Agreement is limited to those costs incurred as restricted by Commission reimbursement policy and in accordance with generally accepted accounting principles, to the extent they are considered necessary to the execution of the item of service. The Commission will be responsible for seventy five percent (75%) of the total project costs, currently estimated at two hundred fifty four thousand nine hundred ninety dollars and eighty nine cents ($254,990.89). The Commission's share will come from its Southwest District TMC of the Ozarks operating budget, payable directly to TransCore. The City will be responsible for twenty five percent (25%) of the total project costs, currently estimated at eighty four thousand nine hundred ninety six and ninety six cents ($84,996.96), payable directly to TransCore.

1. Quarterly coordination meeting costs will be shared by the TMC of the Ozarks, St. Louis Gateway Guide, and Kansas City Scout. The entire cost paid to the consultant for each meeting will be charged to one of the three aforementioned TMC groups, to be determined on a rotating basis.

(B) The Consultant's actual costs shall include the hourly salary of each associate and employee, salary-related expenses, general overhead, and direct non-salary costs as allowed by 48 C.F.R. Part 31, the Federal Acquisition Regulations (FAR), and 23 C.F.R. 172, Administration of Engineering and Design Related Service Contracts. The hourly salary of each associate and employee is defined as the actual productive salaries expended to perform the services. The other billable costs for the project are defined as follows:

1. Salary-related expenses are additions to payroll cost for holidays, sick leave, vacation, group insurance, worker's compensation insurance, social security taxes (FICA), unemployment insurance, disability taxes, retirement benefits, and other related items.

2. General overhead cost additions are for administrative salaries (including non-productive salaries of associates and employees), equipment rental and maintenance, office rent and utilities, office maintenance, office supplies, insurance, taxes, professional development expenses, legal and audit fees, professional dues and licenses, use of electronic computer for accounting, and other related items.

3. Direct non-salary costs incurred in fulfilling the terms of this Agreement, such as but not limited to travel and subsistence, subcontract services, reproductions, computer charges, materials and supplies, and other related items, will be charged at actual cost without any override or additives.

4. The additions to productive salaries for Items 9(B) 1 and 2 will be established based on the latest audit. If an audit determines that overhead has increased or decreased during the course of the services, the Consultant shall notify the Commission and utilize the latest audited data as the basis for interim payments and adjust overhead for prior periods. Upon completion of the services outlined under this Agreement, the final payment for these items will be based on accounting records of the Consultant incurred during the period of the Agreement. If, however, the Consultant's overhead has remained reasonably uniform during the period of the Agreement, the Consultant's latest audited rates may be accepted as a basis for establishing final payment for payrolls earned in the last fiscal year.

5. The property and equipment used on this project such as automotive vehicles, survey equipment, office equipment, etc., shall be owned, rented, or leased by the Consultant, and charges will be made to the project for the use of such property at the rate established by company policies and practices. Approval of the Commission will be required prior to acquisition of reimbursable special equipment.

(C) The Consultant shall submit separate invoices for services rendered to the Commission and City not more than once every month. The invoice must be on the form provided by the Commission and must include all information required pursuant to section 134.5.1.1 of the Commission's Engineering Policy Guide, as amended. A graphic progress report indicating the current status of the services shall be submitted along with each invoice. Upon receipt of the invoice and progress report, the Commission and City will, as soon as practical, but not later than 45 days from receipt, pay the Consultant for the services rendered, including the proportion of the fixed fee earned as reflected by the estimate of the portion of the services completed as shown by the progress report, less partial payments previously made. A late payment charge of one and one half percent (1.5%) per month shall be assessed for those invoiced amount not paid, through no fault of the Consultant, within 45 days after the Commission's and City's receipt of the Consultant's invoice. The Commission and City will not be liable for the late payment charge on any invoice which requests payment for costs which exceed the proportion of the maximum amount payable earned as reflected by the estimate of the portion of the services completed, as shown by the progress report. The payment, other than the fixed fee, will be subject to final audit of actual expenses during the period of the Agreement.

(11) <u>PERIOD OF SERVICE</u>:

(A) The services, and if more than one then each phase thereof, shall be completed in accordance with the schedule contained in Exhibit C, "Schedule," attached hereto and made a part of this Agreement. The Consultant and the Commission will be required to meet this schedule.

(B) The Commission will grant time extensions for delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant. Requests for extensions of time shall be made in writing by the Consultant,

before that phase of work is scheduled to be completed, stating fully the events giving rise to the request and justification for the time extension requested. Such extension of time shall be the sole allowable compensation for all such delays, except as otherwise provided in Section (3) for additional/changed work and differing/unforeseen conditions.

(C) The Consultant and Commission agree that time is of the essence, and the Consultant and Commission will be required to meet the schedules in this Agreement. In the event of delays due to unforeseeable causes beyond the control of and without fault or negligence of the Consultant, no claim for damage shall be made by either party. The anticipated date of completion of the work, including review time, is stated in Exhibit C of this Agreement. An extension of time shall be the sole allowable compensation for any such delays, except as otherwise provided in Section (3) for additional/changed work and differing/unforeseen conditions.

(D) As used in this provision, the term "delays due to unforeseeable causes" includes the following:

1. War or acts of war, declared or undeclared;

2. Flooding, earthquake, or other major natural disaster preventing the Consultant from performing necessary services at the project site, or in the Consultant's offices, at the time such services must be performed;

3. The discovery on the project of differing site conditions, hazardous substances, or other conditions which, in the sole judgment of the Engineer, justifies a suspension of the services or necessitates modifications of the project design or plans by the Consultant;

4. Court proceedings;

5. Changes in services or extra services.

(12) <u>SUSPENSION OR TERMINATION OF AGREEMENT</u>:

(A) The Commission may, without being in breach hereof, suspend or terminate the Consultant's services under this Agreement, or any part of them, for cause or for the convenience of the Commission, upon giving to the Consultant at least fifteen (15) days' prior written notice of the effective date thereof. The Consultant shall not accelerate performance of services during the fifteen (15) day period without the express written request of the Commission.

(B) Should the Agreement be suspended or terminated for the convenience of the Commission, the Commission will pay to the Consultant its costs as set forth in Subsection (10)(B), including actual hours expended prior to such suspension or termination and direct costs as defined in this Agreement for services performed by the Consultant, a proportional amount of the fixed fee based upon an

estimated percentage of Agreement completion, plus reasonable costs incurred by the Consultant in suspending or terminating the services. The payment will make no other allowances for damages or anticipated fees or profits. In the event of a suspension of the services, the Consultant's compensation and schedule for performance of services hereunder shall be equitably adjusted upon resumption of performance of the services.

(C) The Consultant shall remain liable to the Commission for any claims or damages occasioned by any failure, default, or negligent errors and/or omission in carrying out the provisions of this Agreement during its life, including those giving rise to a termination for non-performance or breach by Consultant. This liability shall survive and shall not be waived, or estopped by final payment under this Agreement.

(D) The Consultant shall not be liable for any errors or omissions contained in deliverables which are incomplete as a result of a suspension or termination where the Consultant is deprived of the opportunity to complete the Consultant's services.

(E) Upon the occurrence of any of the following events, the Consultant may suspend performance hereunder by giving the Commission 30 days advance written notice and may continue such suspension until the condition is satisfactorily remedied by the Commission. In the event the condition is not remedied within 120 days of the Consultant's original notice, the Consultant may terminate this agreement.

1. Receipt of written notice from the Commission that funds are no longer available to continue performance.

2. The Commission's persistent failure to make payment to the Consultant in a timely manner.

3. Any material contract breach by the Commission.

(13) <u>OWNERSHIP OF DRAWINGS AND DOCUMENTS</u>:

(A) All drawings and documents prepared in performance of this Agreement shall be delivered to and become the property of the TMC of the Ozarks upon suspension, abandonment, cancellation, termination, or completion of the Consultant's services hereunder; provided, however,

1. the Consultant shall have the right to their future use with written permission of the TMC of the Ozarks;

2. the Consultant shall retain its rights in its standard drawing details, designs, specifications, CADD files, databases, computer software, and any other proprietary property; and

3. the Consultant shall retain its rights to intellectual property developed, utilized, or modified in the performance of the services subject to the following:

A. Copyrights. TMC of the Ozarks, as the contracting agency, reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Governmental purposes:

I. The copyright in any works developed under this agreement, or under a subgrant or contract under this agreement; and

II. Any rights of copyright to which TMC of the Ozarks, its consultant or subconsultant purchases ownership with payments provided by this agreement.

B. Patents. Rights to inventions made under this agreement shall be determined in accordance with 37 C.F.R. Part 401. The standard patent rights clause at 37 C.F.R. § 401.14, as modified below, is hereby incorporated by reference.

I. The terms "to be performed by a small business firm or domestic nonprofit organization" shall be deleted from Paragraph (g)(1) of the clause;

II. Paragraphs (g)(2) and (3) of the clause shall be deleted; and

III. Subsection (l) of the clause, entitled "communications" shall read as follows: "(l) Communications. All notifications required by this clause shall be submitted to the Chief Engineer."

IV. The following terms in 37 C.F.R. 401.14 shall for the purpose of this Agreement have the following meaning:

Contractor - Consultant

Government and Federal Agency - Commission

Subcontractor - Subconsultant

4. Basic survey notes, design computations, and other data prepared under this Agreement shall be made available for use by the Commission without further compensation and without restriction or limitation on their use.

(B) The TMC of the Ozarks may incorporate any portion of the deliverables into a project other than that for which they were performed, without further

compensation to the Consultant; provided however, that (1) such deliverables shall thereupon be deemed to be the work product of the TMC of the Ozarks and the TMC of the Ozarks shall use same at its sole risk and expense; and (2) the TMC of the Ozarks shall remove the Consultant's name, seal, endorsement, and all other indices of authorship from the deliverables.

(14) DECISIONS UNDER THIS AGREEMENT AND DISPUTES:

(A) The Engineer will determine the acceptability of the drawings, specifications, and estimates and all other deliverables to be furnished, and will decide the questions that may arise relative to the proper performance of this Agreement. The determination of acceptable deliverables may occur following final payment, and as late as during the construction of the project which decisions shall be conclusive, binding and incontestable, if not arbitrary, capricious or the result of fraud and appealable only as provided in section 134 of the Commission's Engineering Policy Guide as it exists at the time the dispute arises.

(B) The Engineer will decide all questions which may arise as to the quality, quantity, and acceptability of services performed by Consultant and as to the rate of progress of the services; all questions which may arise as to the interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the Agreement on the part of the Consultant; the proper compensation for performance or breach of the Agreement; and all claims of any character whatsoever in connection with or growing out of the services of the Consultant, whether claims under this Agreement or otherwise. The Engineer's decisions shall be conclusive, binding and incontestable if not arbitrary, capricious of the result of fraud and appealable only as provided in section 134 of the Commission's Engineering Policy Guide as it exists at the time the dispute arises.

(C) If the Consultant has a claim for payment against the Commission or City which in any way arises out of the provisions of this Agreement or the performance or non-performance hereunder, written notice of such claim must be made in triplicate within sixty (60) days of the Consultant's receipt of final payment. Notwithstanding Section (23) of this Agreement, the notice of claim shall be personally delivered or sent by certified mail to the office of the Secretary to the Commission in Jefferson City, Missouri. The notice of claim shall contain an itemized statement showing completely and fully the items and amounts forming the basis of the claim and the factual and legal basis of the claim.

(D) Any claim for payment or an item of any such claim not included in the notice of claim and itemized statement, or any such claim not filed within the time provided by this provision shall be forever waived, and shall neither constitute the basis of nor be included in any legal action, counterclaim, set-off, or arbitration against the Commission.

(E) The claims procedure in Subsections (14)(C) and (D) do not apply

to any claims of the Commission against the Consultant. Further, any claims of the Commission against the Consultant under this Agreement are not waived or estopped by the claims procedure in Subsections (14) (C) and (D).

(F) Notwithstanding Subsections (14)(A) through (E) above, in the event of any material dispute hereunder, both parties agree to pursue, diligently and in good faith, a mutually acceptable resolution.

(15) SUCCESSORS AND ASSIGNS: The Commission and the Consultant agree that this Agreement and all agreements entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.

(16) INDEMNIFICATION RESPONSIBILITY:

(A) The Consultant agrees to save harmless the Commission, the City, and the FHWA from all liability, losses, damages, and judgments for bodily injury, including death, and property damage to the extent due to the Consultant's negligent acts, errors, or omissions in the services performed or to be performed under this Agreement, including those negligent acts, errors, or omissions of the Consultant's employees, agents, and Subconsultants.

(B) The Consultant shall be responsible for the direct damages incurred by the TMC of the Ozarks as result of the negligent acts, errors, or omissions of the Consultant or anyone for whom the Consultant is legally responsible, and for any losses or costs to repair or remedy construction as a result of such negligent acts, errors or omissions; provided, however, the Consultant shall not be liable to the TMC of the Ozarks for such losses, costs, repairs and/or remedies which constitute betterment of or an addition of value to the construction or the project.

(C) Neither the Commission's review, approval or acceptance of, or payment for, any services required under this Agreement, nor the termination of this Agreement prior to its completion, will be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement. This indemnification responsibility survives the completion of this Agreement, as well as the construction of the project at some later date, and remains as long as the construction contractor may file or has pending a claim or lawsuit against the Commission on this project arising out of the Consultant's services hereunder.

(17) INSURANCE:

(A) The Consultant shall maintain commercial general liability, automobile liability, and worker's compensation and employer's liability insurance in full force and effect to protect the Consultant from claims under Worker's Compensation Acts, claims for damages for personal injury or death, and for damages to property arising from the negligent acts, errors, or omissions of the Consultant and its employees, agents, and Subconsultants in the performance of the services covered by

this Agreement, including, without limitation, risks insured against in commercial general liability policies.

(B) The Consultant shall also maintain professional liability insurance to protect the Consultant against the negligent acts, errors, or omissions of the Consultant and those for whom it is legally responsible, arising out of the performance of professional services under this Agreement.

(C) The Consultant's insurance coverage shall be for not less than the following limits of liability:

1. Commercial General Liability: $500,000 per person up to $3,000,000 per occurrence;

2. Automobile Liability: $500,000 per person up to $3,000,000 per occurrence;

3. Worker's Compensation in accordance with the statutory limits; and Employer's Liability: $1,000,000; and

4. Professional ("Errors and Omissions") Liability: $1,000,000, each claim and in the annual aggregate.

(D) In lieu of the minimum coverage stated in (17)(C)(1) and (C)(2), above, the Consultant may obtain insurance at all times in an amount equal to the Commission sovereign immunity caps as stated in Section 537.600 RSMo and subsequently adjusted by the Missouri Department of Insurance. If the statutory limit of liability for a type of liability specified in this section is repealed or does not exist, the Consultant shall obtain insurance with the minimum coverage stated in (17)(C)(1) and (C)(2), above.

(E) The Consultant shall, upon request at any time, provide the Commission with certificates of insurance evidencing the Consultant's commercial general or professional liability ("Errors and Omissions") policies and evidencing that they and all other required insurance are in effect as to the services under this Agreement.

(F) Any insurance policy required as specified in Section (17) shall be written by a company which is incorporated in the United States of America or is based in the United States of America. Each insurance policy must be issued by a company authorized to issue such insurance in the State of Missouri.

(18) CONSTRUCTION PHASE OF THE PROJECT:

(A) This Agreement includes design services only, unless review of shop drawings and other construction phase services are specifically included. The

Consultant shall not be responsible for bidding, award of the construction contract, or construction administration or observation except as provided by Section (2), titled "Scope of Services," and Exhibit A to this Agreement.

(B) Because the Consultant has no control over the cost of labor, materials, equipment, or services furnished by others, or over the construction contractor(s)' methods of determining prices, or over competitive bidding or market conditions, any of the Consultant's opinions of probable project costs and/or construction cost, if provided for herein, are to be made on the basis of the Consultant's experience and qualifications and represent the Consultant's best judgment as an experienced and qualified design professional, familiar with the construction industry, but the Consultant cannot and does not guarantee that proposals, bids, or actual total project costs and/or construction costs will not vary from opinions of probable costs prepared by the Consultant.

(C) The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the construction work, since these are solely the construction contractor(s)' responsibility under the construction contract(s). The Consultant shall not be responsible for the construction contractor(s)' schedules or failure to carry out the construction work in accordance with the construction contract(s). The Consultant shall not have control over or charge of acts of omissions of the construction contractor(s), or any of its or their subcontractors, agents, or employees, or of any other persons performing portions of the construction work.

(19) NONDISCRIMINATION ASSURANCE: With regard to services under this Agreement, the Consultant agrees as follows:

(A) Civil Rights Statutes: The Consultant shall comply with all state and federal statutes related 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, 2000e), as well as with any applicable titles of the Americans With Disabilities Act (42 U.S.C. 12101, et seq.). In addition, if the Consultant is providing services or operating programs on behalf of the Commission or the Missouri Department of Transportation, the Consultant shall comply with all applicable provisions of Title II of the Americans With Disabilities Act.

(B) Administrative Rules: The Consultant shall comply with the USDOT rules relative to nondiscrimination in federally assisted programs of the USDOT (49 C.F.R. Subtitle A, Part 21) which rules are incorporated herein by reference and made a part of this Agreement.

(C) Nondiscrimination: The Consultant shall not discriminate on the grounds of race, color, religion, creed, sex, disability, national origin, age, or ancestry of any individual in the selection and retention of Subconsultants, including the

procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. Subtitle A, Part 21, Section 21.5, including in its employment practices.

(D) The Solicitation for Subcontracts, Including the Procurements of Material and Equipment: These assurances which concern nondiscrimination also apply to the Subconsultants and suppliers of the Consultant. In all solicitations either by competitive bidding or negotiation made by the Consultant for services to be performed under a subcontract (including procurement of materials or equipment), each potential Subconsultant or supplier shall be notified by the Consultant of the requirements of this Agreement relative to nondiscrimination on the grounds of the race, color, religion, creed, sex, disability, national origin, age, or ancestry of any individual.

(E) Information and Reports: The Consultant 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 which is required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Commission or the USDOT as appropriate, and shall set forth what efforts the Consultant has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the Consultant fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including but not limited to:

1. Withholding of payments to the Consultant under this Agreement until the Consultant and its Subconsultant(s) comply; or

2. The cancellation, termination, or suspension of this Agreement, in whole or in part; or both.

(G) Incorporation of Provision: The Consultant shall include these nondiscrimination provisions in every subcontract it makes relating to this project, including the procurement of materials and lease of equipment, unless exempted by federal law, or USDOT regulations or instructions. The Consultant shall take such action with respect to any subcontract or procurement as the Commission or USDOT may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided that in the event the Consultant becomes involved or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the United State to enter into such litigation to protect the interests of the United States. The Consultant shall take the acts which may be required to fully inform itself of the terms of, and to comply with, said state and federal laws.

(20) APPROVAL: This Agreement is made and entered into subject to the approval of the FHWA. The Commission shall have no liability whatsoever for any cost or loss to the Consultant if the FHWA does not approve this Agreement.

(21) ACTIONS: No action may be brought by either party hereto concerning any matter, thing, or dispute arising out of or relating to the terms, performance, non-performance, or otherwise of this Agreement except in the Circuit Court of Cole County, Missouri. The parties agree that this Agreement is entered into at Jefferson City, Missouri, and substantial elements of its performance will take place or be delivered at Jefferson City, Missouri, by reason of which the Consultant consents to venue of any action against it in Cole County, Missouri. The Consultant shall cause this provision to be incorporated into all of its agreements with, and to be binding upon, all subconsultants of the Consultant in the performance of this Agreement.

(22) AUDIT OF RECORDS: For purpose of an audit, the Consultant shall maintain all those records relating to direct costs and expenses incurred under this Agreement, including but not limited to invoices, payrolls, bills, receipts, etc. These records must be available at all reasonable times to the Commission and the FHWA or their designees and representatives, at the Consultant's offices, at no charge, during the Agreement period and any extension thereof, and for the three (3) year period following the date of final payment made under this Agreement. If the Commission has notice of a potential claim against the Consultant and/or the Commission based on the Consultant's services under this Agreement, the Consultant, upon written request of the Commission, shall retain and preserve its records until the Commission has advised the Consultant in writing that the disputed claim is resolved.

(23) NOTICE TO THE PARTIES: All notices or communications required by this Agreement shall be made in writing, and shall be effective upon receipt by the Commission or the Consultant at their respective addresses of record. Letters or other documents which are prepared in 8.5 x 11 inch format may be delivered by telefax, provided that an original is received at the same address as that to which that telefax message was sent, within three (3) business days of the telefax transmission. Either party may change its address of record by written notice to the other party.

(A) Notice to the Commission: Notices to the Commission shall be addressed and delivered to the following Engineer, who is hereby designated by the Commission as its primary authorized Engineer for administration, interpretation, review, and enforcement of this Agreement and the services of the Consultant hereunder:

Marc Lewis
Traffic Center Manager
Missouri Department of Transportation
1107 W Chestnut Expressway
Springfield, MO 65803
Telefax No.: (417) 864-1176

Telephone No.: (417) 895-7665

The Commission reserves the right to substitute another person for the individual named at any time, and to designate one or more other Engineers to have authority to act upon its behalf generally or in limited capacities, as the Commission may now or hereafter deem appropriate. Such substitution or designations shall be made by the Chief Engineer in a written notice to the Consultant.

(B) Notice to the Consultant: Notices to Consultant shall be addressed and delivered to Consultant's representative, as follows:

Rick Zygowicz
Senior Associate
TransCore, LP
150 4th Avenue North, Suite 1200
Nashville, TN 37219
Telephone No.: (414) 331-5821

The Consultant reserves the right to substitute another person for the individual named at any time, and to designate one or more Consultant's Representatives to have authority to act upon its behalf generally or in limited capacities, as the Consultant may now or hereafter deem appropriate. Such substitutions or designations shall be made by the Consultant's president or chief executive officer in a written notice to the Commission.

(24) MISCONDUCT CERTIFICATIONS: Under penalty of perjury, false declaration, and any other applicable consequences pursuant to state and federal law, the Consultant by signing this Agreement hereby certifies, unless expressly noted by submission of written exceptions, that the Consultant and its principals (any person associated with the Consultant in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any other administrative position): (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local governmental entity; (2) have not been indicted, convicted, or had a civil judgment rendered against them in any matter involving fraud or official misconduct within the past three years; and (3) have not had any public transactions terminated for cause or default in the last three years. If there are any exceptions to this certification, the Consultant shall submit those exceptions in writing, and these exceptions will be considered in determining whether to procure professional services from the Consultant. The Consultant shall not execute a subcontract for services under this Agreement with any business or person the Consultant knows to be debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by a federal agency unless authorized by the Commission.

(25) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Consultant shall comply with all

local, state, and federal laws and regulations which govern the performance of this Agreement.

(26) CONFIDENTIALITY: The Consultant agrees that the Consultant's services under this Agreement is a confidential matter between the Consultant and the Commission. The Consultant shall not disclose any aspect of the Consultant's services under this Agreement to any other person, corporation, governmental entity, or news media, excepting only to such employees, subconsultants, and agents as may be necessary to allow them to perform services for the Consultant in the furtherance of this Agreement, without the prior approval of the Commission's Engineer; provided, however, that any confidentiality and non-disclosure requirements set out herein shall not apply to any of the Consultant's services or to any information which (1) is already in the public domain or is already in the Consultant's possession at the time the Consultant performs the services or comes into possession of the information, (2) is received from a third party without any confidentiality obligations, or (3) is required to be disclosed by governmental or judicial order. Any disclosure pursuant to a request to the Commission under Chapter 610, RSMo, shall not constitute a breach of this Agreement. The content and extent of any authorized disclosure shall be coordinated fully with and under the direction of the Commission's Engineer, in advance.

(27) 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 Consultant.

(28) SEVERABILITY AND SURVIVAL:

(A) Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Commission and the Consultant.

(B) All express representations, indemnifications, or limitations of liability made or given in this Agreement will survive the completion of all services by the Consultant under this Agreement or the termination of this Agreement for any reason.

(29) PAYMENT BOND: In the event that any subconsultants are used to supply at least fifty thousand dollars ($50,000) worth of materials and/or labor not within the scope of environmental assessment services or licensed professional services as defined by chapter 327, RSMo, the Consultant shall require any such subconsultants to provide laborers and materialmen with adequate bond security. Payment bonds shall be executed by any such subconsultants with the subconsultant as principal and a surety company authorized to do business in the State of Missouri as surety, and any agent executing the same on behalf of a subconsultant or surety company must attach a current Power of Attorney setting forth sufficient execution authority. Said payment bonds must be acceptable to the Commission to cover all materials used, all labor performed, and all insurance premiums necessary to comply with Section 107.170,

RSMo, and must be provided to the Commission prior to the performance of such subconsultant services under this Agreement.

(30) CERTIFICATION ON LOBBYING: Since federal funds are being used for this agreement, the consultant's signature on this agreement constitutes the execution of all certifications on lobbying which are required by 49 C.F.R. Part 20 including Appendix A and B to Part 20. Consultant agrees to abide by all certification or disclosure requirements in 49 C.F.R. Part 20 which are incorporated herein by reference.

(31) ATTACHMENTS: The following Exhibits and other documents are attached to and made a part of this Agreement:

(A) Exhibit A: Scope of Services.

(B) Exhibit B: Estimate of Costs.

(C) Exhibit C: Schedule.

(D) Exhibit D: Work Eligibility Verification Affidavit.

(E) Figure 1: License Agreement.

(F) Figure 2: Software Processes.

[remainder of page intentionally left blank]

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

Executed by the Consultant the 2nd day of December, 2016.

Executed by the City the 20th day of January, 2017.

Executed by the Commission the 6 day of February, 2017.

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: Kathryn D. Harvey

Title: Assistant Chief Engineer

ATTEST: (Commission seal)

Secretary to the Commission

APPROVED AS TO FORM:

Commission Counsel

TRANSCORE ITS, LLC

By: Michael R. Mont

Title: Sr. Vice President

ATTEST: (Consultant seal, if existing)

By: Kelly R. Dutton

Title: Executive Assistant

APPROVED AS TO FORM:

By: Paula Flowers

Title: General Counsel

TransCore ITS, LLC JANUARY 21, 1994 DELAWARE

CITY OF SPRINGFIELD

By: Collin Rigby

Title: Asst. City Manager

ATTEST: (City seal, if existing)

By: Anita J. Cotter

Title: City Clerk

APPROVED AS TO FORM:

By:

Title: 1/25/17

City Ordinance Number _____

CERTIFICATE OF DIRECTOR OF FINANCE

Certify that the expenditure contemplated by this document is within the purpose of the appropriation which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.

Director of Finance or Acting Director

Springfield Region

Advance Transportation Management System (ATMS)

Exhibit A: Scope of Services

Prepared for:

Transportation Management Center of the Ozarks
1107 W. Chestnut Expressway
Springfield, MO 65802

Prepared by:

150 4th Avenue North
Suite 1200
Nashville, TN 37219

September 9, 2016
Version 1.1 (v1g)

TRANSCORE

Document Revision History

Revision #	Date	Purpose
1.0	Aug-1-2016	Initial draft outline
1.1	Sept-9-2016	Incorporate comments and additional budget items

TRANSCORE

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INTRODUCTION

Through this contract, TransCore shall provide technical services and TransSuite software to the Missouri Department of Transportation (MoDOT) Southwest District and the City of Springfield. Include in these services are identification of regional-specific functional requirements, advanced transportation management system (ATMS) installation, software configuration, integration, and testing at the Transportation Management Center (TMC) of the Ozarks.

In addition, TransCore will provide operational support and software updates to allow the ATMS to maintain, refine, and continually improve the services provided to the TMC customers and partners. This document defines a high-level scope of work to be provided through this contract.

High level functions have been identified by the regional partners. Springfield is seeking an ATMS that will provide the following:

1. A system that is housed at the TMC with redundant capabilities and remote backup
2. Remote system access by field staff
3. Deployment of Event Management (EM) for incidents, roadwork, and special events
4. Integration with MoDOT TMS
5. Sensor data processing from Here.com, Wavetronic, and Acyclica
6. Data storage and retrieval of field data for performance measure reporting
7. CCTV control including pan/tilt/zoom of NTCIP compliant cameras
8. DMS control for NTCIP compliant signs
9. Furnish a CAD interface that supports import of external incidents from 911
10. Facilitate data feeds to public web site and external partners sites

Potential future support would include the following:

1. Future center to center data sharing, access, and control
2. AVL interface for local support vehicles and transit
3. RWIS stations support for advanced weather monitoring
4. Support for connected vehicle initiatives
5. Video wall systems support

Throughout the course of the project, TransCore will provide software system, network assistance, and ongoing operational support and training. The following document details the scope of work covering the tasks to be performed.

1 PROJECT MANAGEMENT

This task includes all activities necessary to administer and provide quality control for the project, including regular project coordination meetings, development of minutes and action items, cost and schedule control, development of regular progress reports, and contracting activities.

1.1 Project Manager

TransCore will provide a project manager who will coordinate directly with the project staff and TransCore personnel. The manager will help facilitate the planning, execution, review, and client acceptance of each aspect of the project. The individual will provide monitoring and control services to ensure that the project stays on schedule and budget and meets all quality standards.

1.2 Software Lead

TransCore will provide a software lead to manage software staff activities and act as a technical resource during the course of the contract. The software lead will help identify solutions to issues, as well as provide ideas on requested enhancements. They will provide monitoring on system software development and provide status on schedule and budget when required.

1.3 Invoicing

TransCore shall provide monthly invoices and progress reports to summarize the project status. The format of these reports will be mutually agreed upon between the client and TransCore. Key milestones accomplished shall be documented and copies of any generated documentation during the invoice period will be provided as reference; including but not limited to project meeting minutes, submitted schedules, or progress reports, which may contain itemized work tickets, ongoing / completed tasks, and cost to date.

1.4 Meetings

It is anticipated that regular meetings will be held throughout the course of the contract. The meeting times and places will be mutually agreed to at least two (2) weeks in advance of the scheduled date. It is anticipated that the client will provide a meeting space as needed; TransCore will provide a teleconference number for those that attend remotely. Meetings will be held bi-weekly.

1.5 Project Records & Files

TransCore will maintain the project records and files. Project records will include progress reports, meeting agenda and minutes, management plan and schedule updates, project correspondence, and other deliverables. The project records will be made available upon request or at intervals as directed.

<u>Deliverables</u>

- Bi-weekly project meetings
- Meeting documentation
- Project invoicing

2 TRANSSUITE ATMS DEPLOYMENT

There is currently no existing ATMS vendor in place for the Southwest (Springfield) Region. The TransSuite initial installation will focus on identifying critical systems and devices to be supported during the setup process. The following are tasks seen as needed to support the initial TransSuite ATMS deployment.

2.1 System Hardware and COTS

TransCore will specify, procure, provide, and install all necessary servers and COTS. This will include a complete set of production servers, test servers, and also test machines for the TransCore Atlanta Technology Center. SQL Server will also be included along with MapInfo for editing map files.

2.1.1 Deployment Plan

TransCore will develop and document a detailed plan containing the steps required for a smooth system rollout. The plan will contain at a minimum the following content:

1. Steps taken to verify system functionality and correct configuration
2. Roles and responsibilities for all parties, including TMC and TransCore staff
3. Revised schedule with critical path
4. Testing and verification requirements for plan progress and acceptance

The draft deployment plan will be submitted to the client for review. Following a 1-week review period, a meeting will be held to fully review the document and respond to comments. Following the review meeting a Final ATMS Deployment Plan will be submitted.

<u>Deliverables</u>

- Draft ATMS Deployment Plan
- Review Meeting with associated comments and responses
- Final ATMS Deployment Plan

2.2 Initial Test System Installation

TransCore will install an initial version of the TransSuite ATMS software in a test environment at the client TMC. This test system will be used to will be used to verify ATMS to field communications, inbound sensor receipt and processing, and device control. In addition it will provide hands-on experience with the TransSuite ATMS for staff wishing to train on the system prior to and after system deployment.

As part of the initial test system installation, several regional configured elements will be developed and or configured for review. These items are covered in the following tasks below.

2.2.1 Acyclica Sensor Data Pull Development

TransCore will develop a TransSuite ATMS driver to allow pulling sensor data from Acyclica servers. This data will be usable by the ATMS as other traditional detector station data.

TransCore will request documentation and contact information in order to develop a fully functional interface. TransCore will work with the TMC and the vendor to clarify any questions.

Deliverables

- Operational communications to pull and display Acyclica server data

2.2.2 Thin Client Deployment

Operators in the TMC will use Windows applications on their workstations; the applications will also be installed on a terminal server machine. In addition, a thin client application will be developed to allow basic functionality for external users. TransCore will work with the client to determine the acceptable functionality for the initial installation.

Deliverables

- Thin Client Interface for Initial Test Installation.

2.2.3 ATMS Map Creation

TransCore will create the map data files for the initial installation. These map files will be in "ShapeFile" format. The shapefiles will include the relationships to DMSs, responders, and CCTVs in order to support creating events with dynamic response plans.
TransCore will work with TMC staff to identify all relationships and responder associations. In addition, TransCore will train staff to edit the map files if requested.

Deliverables

- Map Files for Initial System Installation

2.2.4 Communications Verification

TransSuite ATMS software has been installed and configured to access the field communication infrastructure; the following items will be verified following an approved testing/verification procedure.

a. Valid communication and receipt of Wavetronics detector data, (10 units)
b. Valid communication and receipt of Here.com detector data, (Freeway segments)
c. Valid communication and receipt of Acyclica detector data, (Arterial segments)
d. Valid communication and control of NTCIP cameras, (approx. 140 cameras)
e. Valid communication and control of NTCIP Dynamic Message Signs (approx. 25 signs)

TransCore will develop and submit for review the communication verification procedures and results. The communication verification procedures are intended to demonstrate correct and acceptable communication for items listed above.

Deliverables

- Communication verification procedures and results

2.3 Module Configuration

Other modules and system functions anticipated as part of the initial deployment will also be configured. These include the following:

2.3.1 Event Management (EM)

TransCore will configure the specific module for use by the TMC including adding responder plans, DMS plans, ITIS codes, counters, and external support for TMS and websites as needed.

Furthermore, TransCore will work with the TMC staff to incorporate the existing CAD data into the EM. The data integration will consume the feed currently being created by the TMC and auto generates events within the EM module. From there TMC staff will be able to add DMS, ITIS codes, counters or other information to achieve with the event for future performance measurement efforts.

2.3.2 Traveler Information System (TIS)

TransCore will configure the Traveler Information System (TIS) module to support regional signs to be monitored and controlled by the TMC. This includes adding the sign format (pixel dimensions), assigning communication channels, preparing the initial DMS library messages, and adding locations of the devices to the ATMS Map.

2.3.3 Video Control System (VCS)

TransCore will configure the Video Control System (VCS) used to monitor, manage and control cameras. The effort includes adding the cameras to the system, initial preset definitions, and adding the devices to the ATMS Map.

2.3.4 Central Communications System (CCS)

TransCore will configure the Central Communications Server (CCS) module which handles field traffic to and from the ATMS. The CCS will monitor and manage the request and data transfers between field and central.

2.3.5 Traffic Management System (TMS)

TransCore will configure the Traffic Management System (FMS) module, which supports the ability for a client to define various information and warning messages for DMS. These include the ability to define Travel Time, Variable Advisor Speed Warning, and Rural Queue Detection using one or a combination of detection systems defined in the system.

2.3.6 ATMS MAP (MAP)

TransCore will configure the ATMS Map (MAP) to initial display layers that represent cameras, detectors, and signs. The MAP will also support the display of traffic through colored segments configured with input from the client.

2.3.7 Thin Client

TransCore will configure an initial Thin Client release that will be used by internal and external partners to view resources without the need for full system access. External partner access to thin client will be discussed with the client and the final website configured accordingly.

2.3.8 Data Portal

TransCore will configure an initial Data Portal release that will be used by internal and external partners to view detector and incident information without the need for full system access. External partner access to Data Portal will be discussed with the client and the final website configured accordingly.

2.3.9 External and XML Interface Support

TransCore will complete the configuration and integration necessary to support access by third party systems or the retrieval of third party data that can be used by the central ATMS. At a minimum, may include the following:

1. Provide an XML file containing detector data for the public website or third party use
2. Provide an XML file containing incident data for the public website or third party use
3. Read and write data exchanges with Here.com
4. Provide XML format that can be read by the ATMS to support import of CAD data

Deliverables

- Configured software modules and functions in test environment.
- TransSuite ATMS Demonstration of configured systems
- Completed TransSuite ATMS ready for acceptance testing

2.4 System Testing and Acceptance

TransCore will develop and conduct system acceptance testing. The acceptance testing will be accomplished with the newest version of the TransSuite ATMS software, operating on the TMC test hardware.

2.4.1 System Acceptance Test (SAT) Procedures

TransCore will produce System Acceptance Test (SAT) procedures for the deployed systems. The testing procedure will be divided into test cases, which will be comprised of several test steps. Each test case will demonstrate acceptable performance of one or more system functions. The test procedures will be submitted at least two weeks prior to running the acceptance test.

Following a 1-week review period, a meeting will be held to fully review the test procedure and respond to comments. Following the review meeting a Final System Acceptance Test Procedure will be submitted.

Deliverables

- Draft ATMS SAT.
- Review meeting with comments and responses.
- Final ATMS SAT.

2.4.2 Perform SAT

TransCore will conduct the System Acceptance Test Procedure on-site at the TMC on the system hardware. TransCore and client staff will arrange for the scheduling of the SAT a minimum of two weeks prior to testing date. The SAT will be conducted in the presence of a representative who will have the authority to sign off on each of the successfully completed steps and sections.

Deliverables

- Completed ATMS SAT

2.5 ATMS Production System and Operation

TransCore will assist with the formal production release and operation of the TransSuite ATMS. The effort will include setup of the production (live) system, server redundancy, training, and rollout.

2.5.1 System Production Environment

TransCore will provide on-site assistance in the set-up and configuration of the ATMS production environment. TransCore will work with the central hardware for the production environment setting up the server redundancy and backup system. TransCore will document any production system environment requirements and will work with client staff for their implementation.

Deliverables

- Operational Production System Environment with TransSuite ATMS software
- Backup and redundant system configuration

2.5.2 Operator Training

TransCore will provide training on the use and operation of the TransSuite ATMS software. Training will include instruction for hardware, software and database maintenance. The training program will be developed and presented for approval prior to the actual training.

The training will be conducted at the TMC. TransCore shall be responsible for developing and distributing training materials as needed. The client will be responsible for the availability of operational workstations for staff during the training.

Please note at this training will not cover basic operations of either computers or the operating environment. Therefore, it is assumed that all participants will have a working knowledge of the Microsoft Windows environment prior to the training sessions.

Training will happen in phases with at least two training sessions prior to the system going live. The first training session will be a group introduction to the system meant to provide a high level review of the overall functions and features of the system. It will include examples and scenarios on how the system will improve their ability to service the public.

The second round of training will be done at least two weeks prior to the system going live. This training is intended to be more personalized and focused on small group or individual sessions to ensure a level of confidence can be gained by staff prior to having to use the ATMS on a

continuous and ongoing manner. The agenda for these sessions is more focused on features that will be used on a daily basis.

Deliverables

- Introduction Training,
  (2-sessions, under 4 hours, class room setting, up to 14 participants total)
- Specific functionality training
  (16 hours total, small or individual sessions, hands-on setting)

2.5.3 Workstation Setup

TransCore will provide on-site assistance in the installation of the TransSuite ATMS on the Springfield TMC operator workstations. TransCore will provide staff that can install and configure necessary software.

Deliverables

- Operational TransSuite ATMS software on Operator Workstations (approx. 6 stations)

2.5.4 System Activation

TransCore will provide on-site assistance during the system activation (live system). TransCore will work with TMC staff to train and to assist the system operators in the use of TransSuite prior to the system being activated.

Deliverables

- Operators using TransSuite ATMS software to manage Springfield regional ITS

2.5.5 Documentation

TransCore will provide software module documentation in the form of PDFs and or through the use of online help files accessible through the central software.

TransSuite ATMS is dependent upon COTS software, for these TransCore will deliver the documentation provided with this software as normally provided by the manufacturer/supplier. The client is alerted that the quantities of the documentation are generally limited to the number of licenses provided (or only one), does not include source code, and is often provided only in electronic form such as on-line help. Additional documentation for these COTS products may be purchased directly from the manufacturer/supplier by the client as deemed necessary. .

3 ONGOING SUPPORT

After installation of the core ATMS deployment, the client and TransCore shall work together to maintain the current operation level of TransSuite and develop enhancement to the software. The areas to be maintained under operational support include:

1. TransSuite® Systems
2. Third party software applications (installed by TransCore)
3. ATMS Servers

It is anticipated that both preventative and corrective maintenance will be supported under this contract. Preventative maintenance shall be done on regularly defined intervals, regardless of any issues being present. While corrective maintenance is seen as addressing issues that interrupt system performance and cannot wait to be addressed during a planned maintenance window. Operational support covers tasks that typically take 1-2 hours to address. Tasks taking longer than this are covered under Support Services.

3.1 TransSuite Systems

Ongoing support and troubleshooting of the TransSuite systems shall be provided as part of the operational support. These efforts will be focused on identification and correction of raised issues / error messages as well as potential solutions to address needs raised by client staff. TransSuite systems as defined by this contract include the software modules identified in the current Statewide License agreement or an updated agreement if necessary.

3.2 Third Party Applications

TransCore utilizes different third party applications. This software is used to perform functions critical to the successful operations of the TransSuite systems. Examples of the type of third party applications that may be part of this task include server operating systems, virtual machine packages that host the software, mapping applications, or video display bundles.

Third party applications will be updated on an as-needed basis, or as directed by the client. The following are anticipated third-party applications that shall be maintained as part of the operational support task, they include:

1. MapInfo: One (1) license

All other third party applications not called out specifically by the contract will be identified and brought to the Client's attention if they require any action or reconfiguration of the overall system; otherwise all systems will be maintained as currently installed.

3.3 ATMS Servers

TransCore shall maintain three separate environments; a production, backup, and test system. TransCore will continue to maintain these environments and update them as needed throughout the course of the contract period. Disruptions to any of the three will be planned in advance.

3.3.1 Test / Training Environment

The test environment is seen as a vital system used in troubleshooting and delivery of new software and services. TransCore will maintain this server environment, and update it as needed to review and assess new product enhancements, software corrections, or to determine capability with third party or outside agency applications that may be required by other departments. Maintenance on the test environment will be done with at least 24 hours notice to the TMC, unless directed otherwise.

This environment can also be used as a training environment. When new features are planned, updates to the environment will be done at least fourteen (14) calendar days prior to new

software systems being released on the production sites. This will allow time for TMC operators and other critical staff, to experience new features or enhancements before being released on the live production environment

3.3.2 Production Environment

The live system supports ongoing regional operations, and is seen as the most critical of the server environments. TransCore shall continue to maintain the existing production and backup environments, updating as corrections or enhancements are released. Release notes for upcoming or patches or system enhancements during the course of the performance period will be submitted prior to updating the production environments.

For the production environment any significant downtime, planned for longer than 60 minutes, TransCore shall provide at least fourteen (14) calendar days notice to allow time to alert critical staff and partners. For any unplanned downtime, TransCore will notify partner agencies in a timely manner and keep them informed on progress and estimated time until system is again available.

3.4 Documenting Support Activities

Tasks performed as part of the ongoing operational support shall be documented at the regular coordination meetings. A running list of "action items" shall be generated and tracked to ensure that activities associated with ongoing support are addressed in a timely fashion. For significant issues involving software concerns; requests shall be given a JIRA number in Atlanta's software tracking software. Updates on the status of each JIRA request shall be provided at the regular coordination meetings.

Deliverables

- Copy of third party updated licenses
- Software release notes

4 SUPPORT SERVICES

It is anticipated that during this period, TransCore shall be asked to provide non-specific support services that are critical and related to supporting the ATMS or interact with the central software systems and functions. For these activities, which can last from a few hours to a few days of effort, Support Services will be used. TransCore working with client staff will identify tasks and effort for these services which may include but is not limited to the following:

1. Supporting new device pilot deployments
2. Updating software support for an existing device new firmware
3. Supporting the Department in their system troubleshooting efforts
4. Review of JSP or bid documents
5. Providing technical review and consultation on project planning activities
6. Completing required change management requests
7. System reconfiguration to support requested data outputs
8. MapInfo Quality check and shape file generation for ATMS Map

9. System training on new, existing, or modified features as requested
10. Support management requests for system data for special events or construction projects
11. Network and database services to support field communications
12. Public relations activities involved with the ATMS and related TMC services

TransCore will alert the client when activities are likely to fall under this category and provide an estimated cost. Likely efforts that will fall under this category are explored in greater detail below.

4.1 Device Integration

TransCore will integrate and configure new or modified field devices into ATMS as requested by the Client through an issued change management request. These devices may include: detectors, CCTV, DMS, CMS, or any other devices compatible with TransCore ATMS modules. Both freeway and arterial detector integration shall include all necessary configurations in all necessary ATMS modules to obtain valid travel time segments as defined by the TMC.

4.2 New Device Integration

Upon written request, TransCore shall provide technical guidance/support to Springfield or their vendors and partners in testing new devices, not currently compatible with TransCore ATMS modules. Technical assistance maybe requested for testing new device models or testing of new ITS products and/or new technologies as they become available.

4.3 Training

The client may request additional system training on new or existing system features and enhancements. The number of participants, topics, and length will be discussed prior to scheduling. For the purposes of this maintenance contract it is assumed that one training session will be held covering system advance features and new enhancements will be covered. All documentation generated for the training will be made available electronically.

4.4 System Configuration Support

TransCore will assist with general configuration support of the system including but not limited to DMS travel time adjustments, VAS settings, or actions that promotes limited or uninterrupted function of the central system as it continues to expand or change to meet growing operational needs. With limited staff to assist with future configuration of the TransSuite system TransCore will be called to fill this need, or to make system adjustments that are determined to be vitality important; using staff provided by TransCore who have a higher degree of system proficiency.

4.5 Third Party Service Integration

For third-party services to be integrated with the central system a separate contract with detailed requirements will be requested. In that contract a process for how third party access to API or XML code will be provided as well as technical contacts for TransCore to use will be presented. Schedule and milestones will be discussed and agreed to by both the Third Party service and TransCore before work proceeds. Funds may be added to this existing contract in

the form of a supplemental to provide for separate integration and coordination efforts with third party service.

5 SYSTEM ENHANCEMENTS

It is anticipated that during this period, TransCore shall develop and implement requested specific software enhancements. TransCore working with client staff will identify and develop requirements for the desired enhancements. The work is anticipated to take place over one phase(s) and within the contract performance period, starting with date of contract execution.

5.1 Enhancement Process

The Client and TransCore will do system enhancements under a design framework that consists of the following steps.

1. Identification of potential enhancement ideas
2. Initial description of each enhancement idea
3. Preliminary budget for prioritized enhancement list
4. Simple design outline that details exact features to be provided
5. Final enhancement selection approval by MoDOT

The enhancement design process is not intended to be an exhaustive exercise, but rather a process reflecting proposed changes that are likely to be incremental in nature. Thus the design process is streamlined to accommodate a more rapid discussion and delivery of the final requested changes.

5.2 Development Stage

During the development stage, TransCore shall provide regular updates on progress made, issue encountered, or question raised by software engineers. The development is seen as an iterative process with input along the way from the client. Efforts will be made to include and keep staff engaged throughout the process.

If significant changes to scope of enhancements happen during the development process it may require re-evaluating schedule and budget. Impacts and adjustments will be discussed with the Client as it occurs.

TransCore has moved to a quarterly software release schedule. Due to the nature of development work, it may not be feasible to provide every feature requested, but rather to deploy the most desired features first, with the additional desired features during a subsequent software release. TransCore will work with the Client to ensure primary or highly desired features are prioritized during development scheduling.

TransCore will work to follow an established process for development work done under this contract. Work will happen per the processes established in Figure 2: Software Processes.

5.3 Testing

Testing during development will be performed by TransCore at their facilities. As features become ready for outside review, the test environment will be updated for review. If the test environment cannot be utilized, screenshots, or an enhancement preview using a web based conference tool may be substituted to help the client gain a better understanding of features and functions to be deployed.

Prior to formal build release, the test environment will be updated to allow for acceptance testing. TransCore will work with the Client to develop a set of test steps that will be used to demonstrate final enhancements meet expected results.

5.4 Deployment

Once cleared to be deployed, TransCore shall work with local staff to schedule an appropriate window of time to deploy on the production environments. Typical deployment will happen during business hours and avoid weeks with national or state holidays. Depending on the scope of the deployment, TransCore shall provide an estimated timeframe to complete the work so appropriate notification of partners can be provided.

Over the 48 hour window following a deployment TransCore will remotely monitor the system to ensure that the deployment has been done successfully. If any questions or comments do occur they can be provided at the next regularly scheduled meeting; or if deemed significant issued to the TransCore project manager directly by phone or email.

6 PAYMENT TERMS

The contract will be cost plus monthly invoices will be submitted. Invoices will show hours spent for services and enhancements, which will be given separate charge codes for tracking purposes. For the project a fixed fee of 12% will be used and the current TransCore audited overhead rate.

6.1 Invoice Formatting

Given the dual nature of the fixed price and cost plus elements, TransCore will work to establish appropriate invoicing formats to be used for the contract before the first submission.

7 SCHEDULE

The contract duration is for a period ending November 1, 2019. At the end of the maintenance period a new maintenance contract will be negotiated.

TRANSCORE

Exhibit B: Estimate of Costs

TRANSCORE

150 4th Avenue North, Suite 1200
Nashville, TN 37219

Consultant Contract Fee Computation - Exhibit B

Summary of Costs

Project: Springfield-ATMS
Revised: September 9, 2016

Prepared By:
Rick Zygowicz
414-331-5821
Rick.Zygowicz@TransCore.com

Prepared For:
Customer: MoDOT/City of Springfield
Contact: Marc Lewis

Labor Costs

Person		Role	Hours	Rate	Total
David Shackelford		Software Manager	655	$ 65.30	$ 42,773.40
Keith Patton		Responsible Officer	8	$ 68.25	$ 546.01
Rick Zygowicz		Project Manager	148	$ 52.89	$ 7,828.00
Glen Holcomb		Senior Software Engineer	88	$ 48.26	$ 4,247.06
James Lewis		Software Engineer	96	$ 40.74	$ 3,911.31
Eric Purser		Software Support	80	$ 37.10	$ 2,968.37
Kevin Jones		Software Support	120	$ 21.59	$ 2,590.50
Leticia Tomusiak		Quality Control Engineer	80	$ 34.60	$ 2,767.98
Michael Bayer		Senior Systems Engineer	292	$ 47.51	$ 13,873.18
Tiffany Bronk		Support Coordinator	712	$ 31.54	$ 22,457.98
Total Direct Labor			*2,279*		*$ 103,963.78*
Overhead	131.99%				$ 137,221.80
Subtotal					*$ 241,185.58*
Fee	12.00%				$ 28,942.27
Subtotal Labor Costs					**$ 270,127.85**

Direct Expenses		Total
Airfare	$	1,800.00
Hotel	$	1,513.00
Car Rental & Fuel	$	960.00
Mileage	$	1,120.00
PerDiem	$	867.00
Parking	$	100.00
Hardware & COTS	$	63,500.00
License	$	-
Subtotal Direct Expenses	**$**	**69,860.00**

Subconsultants		Total
GBAsi	$	-
Vireo	$	-
Subtotal Subconsultants	***$***	-

Project Total	**$**	**339,987.85**

TRANSCORE

Estimate of Hours

Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS
Customer: MoDOT/City of Springfield
Revised: September 9, 2016

Task	Description	Employee Name:	David Shackelford	Keith Patton	Rick Zygowicz	Glen Holcomb	James Lewis	Eric Purser	Kevin Jones	Leticia Tomusiak	Michael Bayer	Tiffany Bronk	Total
		Role:	Software Manager	Responsible Officer	Project Manager	Senior Software Engineer	Software Engineer	Software Support	Software Support	Quality Control Engineer	Senior Systems Engineer	Support Coordinator	
1	**Project Management**												
1.1	Project Manager				20								20
1.2	Software Lead		20										20
1.3	Invoicing				20								20
1.4	Meeting Coordination		60	8	60							60	188
1.5	Project Records / Files				39								39
	Task Subtotal		80	8	139							60	287
2	**TransSuite ATMS Deployment**												
2.1	System Hardware and COTS		2		9						8	8	27
2.2	Initial Test System Installation		69			8			40		16	150	283
2.3	Module Configuration		120				16			6	28	77	247
2.4	System Testing / Acceptance		4							34		32	70
2.5	Production System / Operation		48								40	68	156
	Task Subtotal		243		9	8	16		40	40	92	335	783
3	**Ongoing Support**												
3.1	TransSuite Systems		40								40	40	120
3.2	Thrid Party Applications											4	4
3.3	ATMS Servers		70								80	80	230
3.4	Documentation Support											40	40
	Task Subtotal		110								120	164	394
4	**Support Services**												
4.1	Device Integration											45	45
4.2	New Device Support		40										40
4.3	Training											16	16
4.4	System Configuration Support											50	50
4.5	Third Party Service Support		2									2	4
	Task Subtotal		42									113	155
5	**System Enhancments**												
5.1	Enhancement Process												
5.2	Development Stage		100			80	80	80	80				420
5.3	Testing		40							40	40		120
5.4	Deployment		40								40	40	120
	Task Subtotal		*180*			*80*	*80*	*80*	*80*	*40*	*80*	*40*	*660*
Project Total			655	8	148	88	96	80	120	80	292	712	2,279

TRANSCORE

Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS
Customer: MoDOT/City of Springfield
Revised: September 9, 2016

Direct Expenses

Task	Description	Airfare	Hotel	Car Rental & Fuel	Mileage	PerDiem	Parking	Hardware & COTS	License	Total
	Direct Cost:									
	Unit Rate:	$600.00	$89.00	$80.00	$0.56	$51.00	$25.00	$1.00	$0.00	
1	**Project Management**									
1.1	Project Manager									$ -
1.2	Software Lead									$ -
1.3	Invoicing									$ -
1.4	Meeting Coordination		5		2,000	5	1			$ 1,845.00
1.5	Project Records / Files									$ -
	Task Subtotal	0	5	0	2,000	5	1	0	0	$ 1,845.00
2	**TransSuite ATMS Deployment**									
2.1	System Hardware and COTS							63,500		$ 63,500.00
2.2	Initial Test System Installation	1	5	5		5	1			$ 1,725.00
2.3	Module Configuration									$ -
2.4	System Testing / Acceptance									$ -
2.5	Production System / Operation									$ -
	Task Subtotal	1	5	5	0	5	1	63,500	0	$ 65,225.00
3	**Ongoing Support**									
3.1	TransSuite Systems									$ -
3.2	Thrid Party Applications									$ -
3.3	ATMS Servers									$ -
3.4	Documentation Support									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
4	**Support Services**									
4.1	Device Integration									$ -
4.2	New Device Support									$ -
4.3	Training	1	5	5		5	1			$ 1,725.00
4.4	System Configuration Support									$ -
4.5	Third Party Service Support									$ -
	Task Subtotal	1	5	5	0	5	1	0	0	$ 1,725.00
5	**System Enhancments**									
5.1	Enhancement Process									$ -
5.2	Development Stage									$ -
5.3	Testing	1	2	2		2	1			$ 1,065.00
5.4	Deployment									$ -
	Task Subtotal	1	2	2	0	2	1	0	0	$ 1,065.00
Project Total Quantity		3	17	12	2,000	17	4	63,500	0	
Project Total Cost		$ 1,800.00	$ 1,513.00	$ 960.00	$ 1,120.00	$ 867.00	$ 100.00	$ 63,500.00	$ -	$ 69,860.00

TRANSCORE

TRANSCORE

Summary of Costs by Task

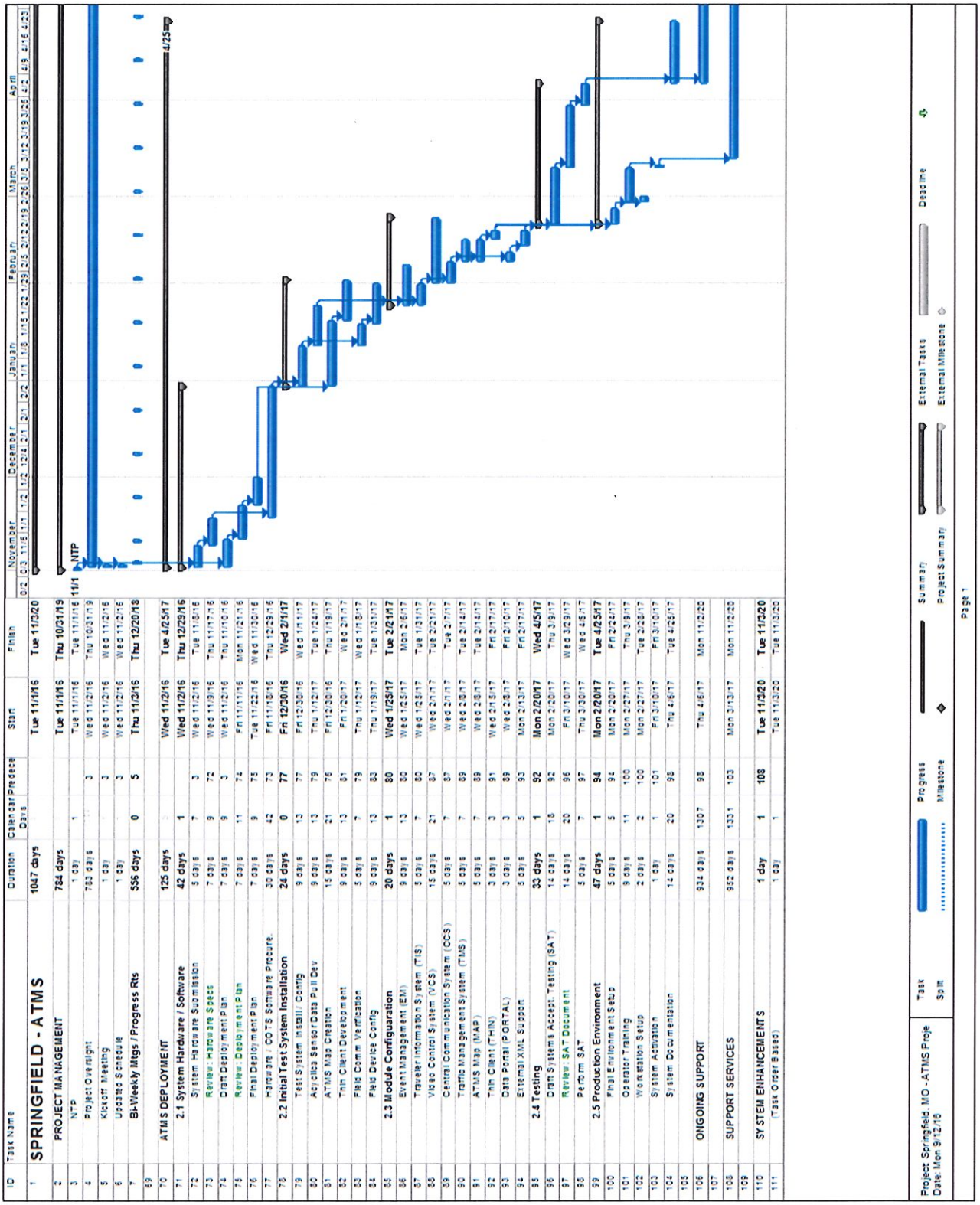
Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS
Customer: MoDOT/City of Springfield
Revised: September 9, 2016

Task	Description	Total Labor Costs	Direct Expenses	Total
1	**Project Management**			
1.1	Project Manager	$ 2,748.57	$ -	$ 2,748.57
1.2	Software Lead	$ 3,393.51	$ -	$ 3,393.51
1.3	Invoicing	$ 2,748.57	$ -	$ 2,748.57
1.4	Meeting Coordination	$ 24,762.26	$ 1,845.00	$ 26,607.26
1.5	Project Records / Files	$ 5,359.71	$ -	$ 5,359.71
	Task Subtotal	*$ 39,012.61*	*$ 1,845.00*	*$ 40,857.61*
2	**TransSuite ATMS Deployment**			
2.1	System Hardware and COTS	$ 3,219.43	$ 63,500.00	$ 66,719.43
2.2	Initial Test System Installation	$ 29,222.91	$ 1,725.00	$ 30,947.91
2.3	Module Configuration	$ 32,361.36	$ -	$ 32,361.36
2.4	System Testing / Acceptance	$ 6,357.89	$ -	$ 6,357.89
2.5	Production System / Operation	$ 18,655.29	$ -	$ 18,655.29
	Task Subtotal	*$ 89,816.87*	*$ 65,225.00*	*$ 155,041.87*
3	**Ongoing Support**			
3.1	TransSuite Systems	$ 15,003.13	$ -	$ 15,003.13
3.2	Thrid Party Applications	$ 327.82	$ -	$ 327.82
3.3	ATMS Servers	$ 28,309.50	$ -	$ 28,309.50
3.4	Documentation Support	$ 3,278.22	$ -	$ 3,278.22
	Task Subtotal	*$ 46,918.67*	*$ -*	*$ 46,918.67*
4	**Support Services**			
4.1	Device Integration	$ 3,688.00	$ -	$ 3,688.00
4.2	New Device Support	$ 6,787.03	$ -	$ 6,787.03
4.3	Training	$ 1,311.29	$ 1,725.00	$ 3,036.29
4.4	System Configuration Support	$ 4,097.77	$ -	$ 4,097.77
4.5	Third Party Service Support	$ 503.26	$ -	$ 503.26
	Task Subtotal	*$ 16,387.35*	*$ 1,725.00*	*$ 18,112.35*
5	**System Enhancments**			
5.1	Enhancement Process	$ -	$ -	$ -
5.2	Development Stage	$ 47,668.30	$ -	$ 47,668.30
5.3	Testing	$ 15,320.92	$ 1,065.00	$ 16,385.92
5.4	Deployment	$ 15,003.13	$ -	$ 15,003.13
	Task Subtotal	*$ 77,992.35*	*$ 1,065.00*	*$ 79,057.35*
Project Total		$ 270,127.85	$ 69,860.00	$ 339,987.85

Exhibit C: Schedule

ID	Task Name	Duration	Calendar Days	Predecs	Start	Finish
1	**SPRINGFIELD - ATMS**	**1047 days**			**Tue 11/1/16**	**Tue 11/3/20**
2	PROJECT MANAGEMENT	784 days			Tue 11/1/16	Thu 10/31/19
3	NTP	1 day	1		Tue 11/1/16	Tue 11/1/16
4	Project Oversight	783 days		3	Wed 11/2/16	Thu 10/31/19
5	Kickoff Meeting	1 day		3	Wed 11/2/16	Wed 11/2/16
6	Updated Schedule	1 day		3	Wed 11/2/16	Wed 11/2/16
7	Bi-Weekly Mtgs / Progress Rts	556 days	0	5	Thu 11/3/16	Thu 12/26/18
69						
70	ATMS DEPLOYMENT	125 days			Wed 11/2/16	Tue 4/25/17
71	2.1 System Hardware / Software	42 days	1		Wed 11/2/16	Thu 12/29/16
72	System Hardware Submission	5 days	7	3	Wed 11/2/16	Tue 11/8/16
73	Review: Hardware Specs	7 days	9	72	Wed 11/9/16	Thu 11/17/16
74	Draft Deployment Plan	7 days	9	3	Wed 11/2/16	Thu 11/10/16
75	Review: Deployment Plan	7 days	11	74	Fri 11/11/16	Mon 11/21/16
76	Final Deployment Plan	7 days	9	75	Tue 11/22/16	Wed 11/30/16
77	Hardware / COTS Software Procure.	30 days	42	73	Fri 11/18/16	Thu 12/29/16
78	2.2 Initial Test System Installation	24 days	0	77	Fri 12/30/16	Wed 2/1/17
79	Test System Install/ Config	9 days	13	77	Fri 12/30/16	Wed 1/11/17
80	Activ Sensor Data Pull Dev	9 days	13	79	Thu 1/12/17	Tue 1/24/17
81	ATMS Map Creation	15 days	21	76	Fri 12/30/16	Thu 1/19/17
82	Thin Client Development	5 days	13	81	Fri 1/20/17	Wed 2/1/17
83	Field Comm Verification	5 days	7	79	Thu 1/12/17	Wed 1/18/17
84	Field Device Config	9 days	13	83	Thu 1/19/17	Tue 1/31/17
85	2.3 Module Configuration	20 days	1	80	Wed 1/25/17	Tue 2/21/17
86	Event Management (EM)	9 days	13	80	Wed 1/25/17	Mon 2/6/17
87	Traveler Information System (TIS)	5 days	7	80	Wed 1/25/17	Tue 1/31/17
88	Video Control System (VCS)	15 days	21	87	Wed 2/1/17	Tue 2/21/17
89	Central Communication System (CCS)	5 days	7	87	Wed 2/1/17	Tue 2/7/17
90	Traffic Management System (TMS)	5 days	7	89	Wed 2/8/17	Tue 2/14/17
91	ATMS Map (MAP)	5 days	7	89	Wed 2/8/17	Tue 2/14/17
92	Thin Client (THIN)	3 days	3	91	Wed 2/15/17	Fri 2/17/17
93	Data Portal (PORTAL)	3 days	3	89	Wed 2/8/17	Fri 2/10/17
94	External XML Support	5 days	5	93	Mon 2/13/17	Fri 2/17/17
95	2.4 Testing	33 days	1	92	Mon 2/20/17	Wed 4/5/17
96	Draft Systems Accept. Testing (SAT)	14 days	18	92	Mon 2/20/17	Thu 3/9/17
97	Review: SAT Document	14 days	20	96	Fri 3/10/17	Wed 3/29/17
98	Perform SAT	5 days	7	97	Thu 3/30/17	Wed 4/5/17
99	2.5 Production Environment	47 days	1	94	Mon 2/20/17	Tue 4/25/17
100	Final Environment Setup	5 days	5	94	Mon 2/20/17	Fri 2/24/17
101	Operator Training	9 days	11	100	Mon 2/27/17	Thu 3/9/17
102	Workstation Setup	2 days	2	100	Mon 2/27/17	Tue 2/28/17
103	System Activation	1 day	1	101	Fri 3/10/17	Fri 3/10/17
104	System Documentation	15 days	20	98	Thu 4/6/17	Tue 4/25/17
105						
106	ONGOING SUPPORT	934 days	1307	98	Thu 4/6/17	Mon 11/2/20
107						
108	SUPPORT SERVICES	952 days	1331	103	Mon 3/13/17	Mon 11/2/20
109						
110	SYSTEM ENHANCEMENTS	1 day	1	108	Tue 11/3/20	Tue 11/3/20
111	(Task Order Based)	1 day	1		Tue 11/3/20	Tue 11/3/20



TRANSCORE

Exhibit D: Work Eligibility Verification Affidavit

WORKER ELIGIBILITY VERIFICATION AFFIDAVIT FOR ALL MHTC/MODOT CONTRACT AGREEMENTS IN EXCESS OF $5,000
(for joint ventures, a separate affidavit is required for each business entity)

STATE OF Tennessee)
) ss
COUNTY OF Davidson)

On this 13th day of September, 2016, before me appeared MICHAEL HOLLING, personally known to me or proved to me on the basis of satisfactory evidence to be a person whose name is subscribed to this affidavit, who being by me duly sworn, deposed as follows:

My name is MICHAEL HOLLING, and I am of sound mind, capable of making this affidavit, and personally certify the facts herein stated, as required by Section 285.530, RSMo, to enter into any contract agreement with the state to perform any job, task, employment, labor, personal services, or any other activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities:

I am the VICE PRESIDENT (title) of TRANSCORE ITS, LLC (business name), and I am duly authorized, directed, and/or empowered to act officially and properly on behalf of this business entity.

I hereby affirm and warrant that the aforementioned business entity is enrolled in a federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, and the aforementioned business entity shall participate in said program with respect to all employees working in connection to work under the within state contract agreement with the Missouri Highways and Transportation Commission (MHTC). I have attached documentation to this affidavit to evidence enrollment/participation by the aforementioned business entity in a federal work authorization program, as required by Section 285.530, RSMo.

In addition, I hereby affirm and warrant that the aforementioned business entity does not and shall not knowingly employ, in connection to work under the within state contract agreement with MHTC, any alien who does not have the legal right or authorization under federal law to work in the United States, as defined in 8 U.S.C. § 1324a(h)(3).

I am aware and recognize that, unless certain contract and affidavit conditions are satisfied pursuant to Section 285.530, RSMo, the aforementioned business entity may be held liable under Sections 285.525 though 285.550, RSMo, for subcontractors that knowingly employ

TRANSCORE.

or continue to employ any unauthorized alien to work within the state of Missouri.

I acknowledge that I am signing this affidavit as a free act and deed of the aforementioned business entity and not under duress.

Affiant Signature

Subscribed and sworn to before me this 13th day of September, 2016.

Notary Public

My commission expires: 8/17/2020

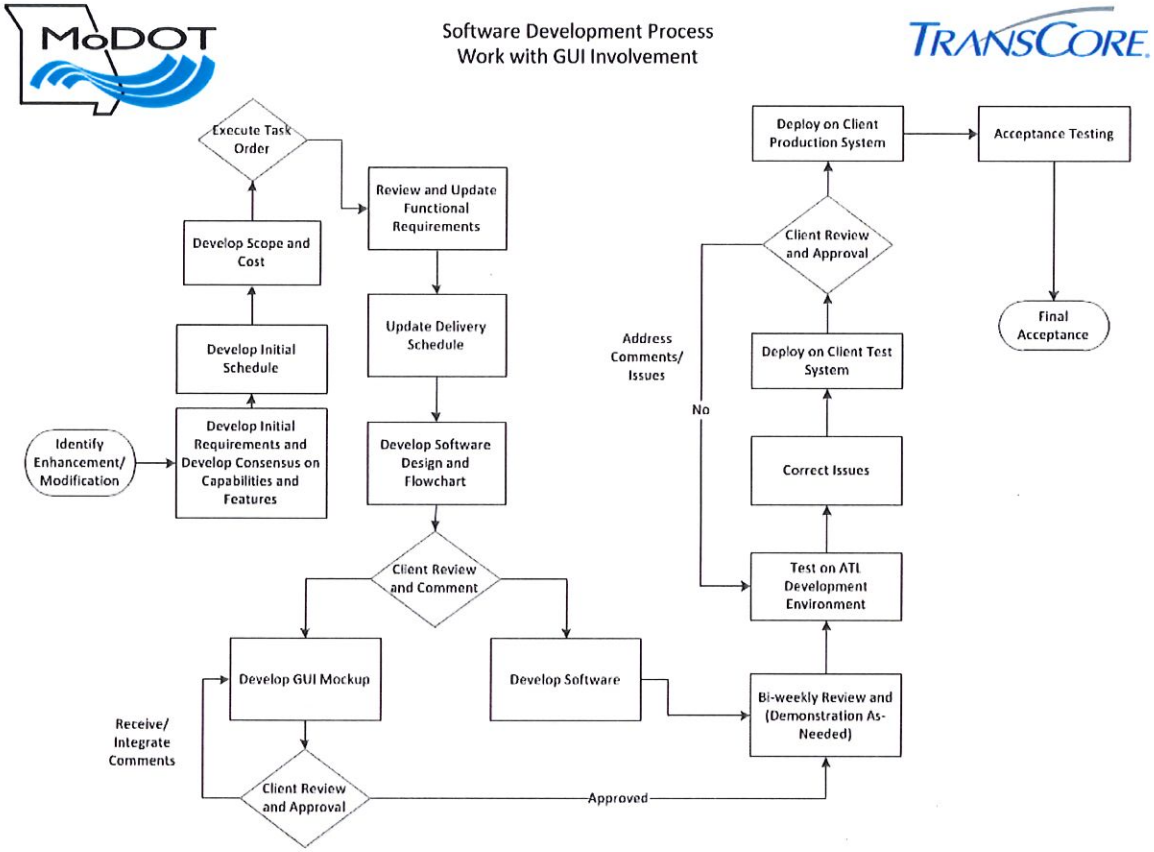
[documentation of enrollment/participation in a federal work authorization program attached]

NICHOLE RICHARDSON
STATE OF TENNESSEE NOTARY PUBLIC
CHEATHAM COUNTY

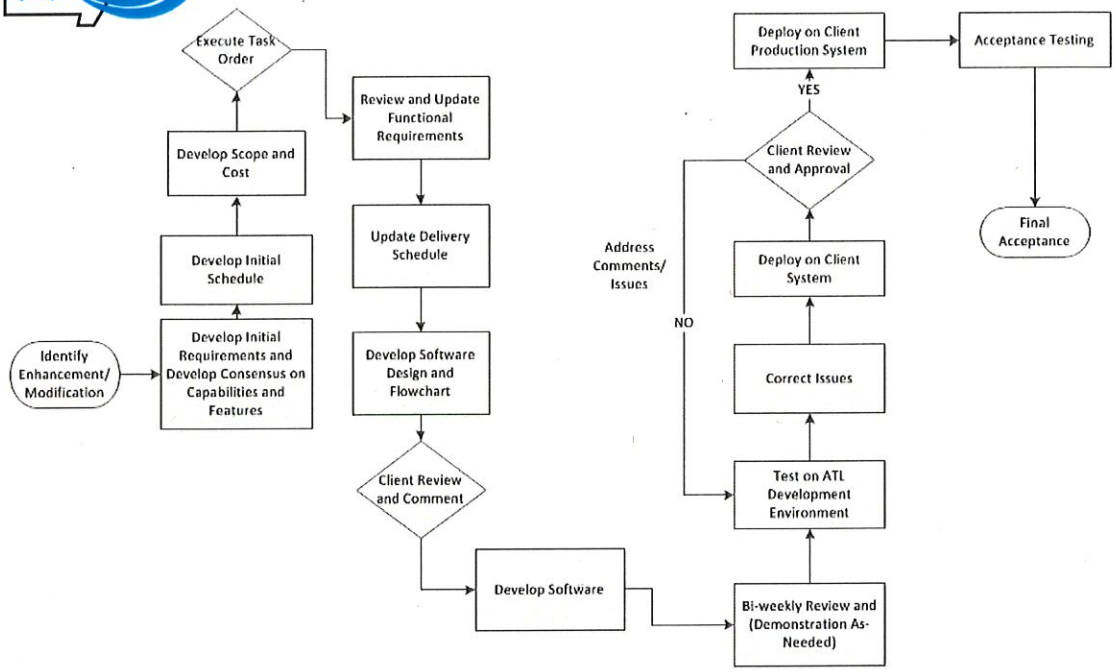
Figure 1: License Agreement

(No new license agreements need to be executed at this time…)

Figure 2: Software Processes



Software Development Process
Back End Tasks



ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 1/9/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Commercial Lines - (404) 923-3700
Wells Fargo Insurance Services USA, Inc.
3475 Piedmont Road NE, Suite 800
Atlanta, GA 30305-2886

CONTACT NAME: Candance Coleman
PHONE (A/C, No, Ext): 404-923-3590 FAX (A/C, No):
E-MAIL ADDRESS: Candance.Coleman@wellsfargo.com

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	National Union Fire Ins. Co. of Pittsburgh, PA	19445
INSURER B :	Greenwich Insurance Company	22322
INSURER C :	Commerce & Industry Insurance Company	19410
INSURER D :	XL Insurance America, Inc.	24554
INSURER E :	XL Specialty Insurance Company	37885
INSURER F :	See Below for Company Information	

INSURED
Roper Technologies, Inc; A Parent Company
TransCore ITS, LLC
150 4th Ave. N, Ste. 1200
Nashville, TN 37219

COVERAGES

CERTIFICATE NUMBER: 11314599 REVISION NUMBER: See below

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR X Contractual Liability GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT X LOC OTHER:			1929789	04/01/2016	04/01/2017	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 2,000,000 $ 1,000,000 $ 10,000 $ 2,000,000 $ 5,000,000 $ 3,000,000 $
B	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY X HIRED AUTOS ONLY SCHEDULED AUTOS X NON-OWNED AUTOS ONLY X $25,000 Com X $25,000 Coll			RAD9437765	04/01/2016	04/01/2017	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 2,000,000 $ $ $ $
C	X UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION $ $25,000			19086871	04/01/2016	04/01/2017	EACH OCCURRENCE AGGREGATE	$ 3,000,000 $ 3,000,000 $ -
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			RWD3001097 (AOS)	04/01/2016	04/01/2017	X PER STATUTE OTH-ER	
E	ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		RWR3001098 (WI)	04/01/2016	04/01/2017	E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$ 1,000,000 $ 1,000,000 $ 1,000,000
F	Professional Liability (E&O) AIG Specialty Ins. Co.			024098733 (NAIC #26883)	11/01/2015	04/01/2017	$10,000,000 Claims-made	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Advanced Traffic Management System (ATMS) Software and Services

City of Springfield and the Missouri Department of Transportation (MoDOT) are included as additional insured on the General and Auto liability with respect to liability arising out of the named insured's operations. Waiver of subrogation is granted as it relates to general and auto liability and workers' comp regarding work performed by the named insured. Umbrella follows form as it relates to additional insureds. The above general and auto liability coverage is primary and non-contributory where required by written contract, subject to the policy terms, conditions, and exclusions.

CERTIFICATE HOLDER

Missouri Department of Transportation
Attn: Steve Patterson, Safety and Claims Manager
PO Box 270
Jefferson City, MO 65102

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Jean Brandon

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ACORD 25 (2016/03)

(This certificate replaces certificate# 11314558 issued on 1/9/2017)

Exhibit 3

2019-00419-01

CCO Form: DE44
Approved: 01/00 (BDG)
Revised: 06/17 (TP)
Modified:

Supplemental Agreement No. 2019-01-47076
Route: Various
County: Various
Job No.: 8Q3107

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
DESIGN CONSULTANT SUPPLEMENTAL AGREEMENT #2019-01-47076
(FEDERAL ASSISTANCE)

THIS 1st SUPPLEMENTAL AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), the City of Springfield (hereinafter, "City"), and TransCore ITS, LLC (hereinafter, "Consultant").

WITNESSETH:

WHEREAS, the Commission, City and the Consultant entered into an Agreement on February 6, 2017, to perform professional services in the preparation of Advanced Transportation Management System (ATMS) software and maintenance for Route Various, Various County, designated as Job No. 8Q3001 (hereinafter, "Original Agreement"); and

WHEREAS, the Commission, City and the Consultant now desire to enter into Supplemental Agreement No. 1 to otherwise complete, extend or continue the Original Agreement as provided herein.

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

(1) SCOPE OF SERVICES: The Services to be provided by the Consultant under Supplemental Agreement No. 1 are additional services which are beyond the scope of services provided in the Original Agreement. These additional professional services are described and defined in Exhibit A, which is attached hereto and incorporated herein by reference.

(2) FEES AND PAYMENTS:

(A) The Consultant shall be reimbursed in accordance with Section (10) of the Original Agreement.

(B) The costs of Supplemental Agreement No. 1 shall be integrated with the cost of the Original Agreement.

(C) Estimated costs for the services in Supplemental Agreement No. 1 are defined in Exhibit B, which is attached hereto and incorporated herein by reference.

(D) The fixed fee and maximum amount payable included in Section (10) of the Original Agreement are modified as follows:

	Original Amount	Supplemental Agreement No. 1	TOTAL
Fixed Fee	$28,942.27	$17,184.65	$46,126.92
Max. Fee Payable	$339,987.85	$160,390.10	$500,377.95

(3) DBE PARTICIPATION: In the Original Agreement, the Consultant agreed to use DBE firms to complete an established DBE goal of at least 0% of the total services by dollar value. This DBE goal shall apply to all additional services under the Original Agreement, unless otherwise modified by the Commission by Supplemental Agreement. After evaluation of the work associated with this Supplemental Agreement, it was ultimately determined that a 0% DBE goal would apply to this supplemental work.

DBE FIRM NAME(S) FOR THIS SUPPLEMENTAL	TYPE OF SERVICE	TOTAL VALUE OF DBE WORK FOR THIS SUPPLEMENTAL	PERCENTAGE OF SUBCONTRACT VALUE APPLICABLE TO THE TOTAL GOAL
DBE Firm #1		$	%
DBE Firm #2		$	%
DBE Firm #3		$	%
DBE TOTAL VALUE FOR THIS SUPPLEMENTAL	$		

DBE TOTAL VALUE (including Original Contract DBE work)	$

ESTIMATED % DBE PARTICIPATION FOR THIS SUPPLEMENTAL: DBE total value for this supplemental divided by the maximum fee payable for this supplemental	%

ESTIMATED TOTAL % DBE PARTICIPATION: DBE total value (including Original Contract DBE work) divided by the total maximum fee payable (the total contract ceiling)	%

(4) SUBCONSULTANTS: Pursuant to Section (8) of the Original Agreement and in addition to any other firms expressly permitted by the Commission to perform subconsultant services, the Commission consents to transfer of a portion of the Consultant's services to the following firms:

Firm Name	Complete Address	Nature of Services
gbaSI	9801 Renner Blvd, Suite 300, Lenexa, KS 66219	IT Support
Vireo	929 Walnut Street, Suite 700, Kansas City, MO 64106	Program Support

(5) PERIOD OF SERVICE: Exhibit C, Schedule, of the Original Agreement is hereby revised to include time for the performance of these additional services. The total time to be added to Exhibit C for completion of these additional services shall be 0 days. The projected completion date shown on Exhibit C remains November 3, 2020, which includes time for performance of all remaining services in the Original Agreement and the services in Supplemental Agreement No. 1 and submittal of all deliverables.

(6) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this Supplemental Agreement, the Original Agreement between the parties shall remain in full force and effect and the terms of the Original Agreement shall extend and apply to this Supplemental Agreement.

[remainder of page intentionally left blank]

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

Executed by the Consultant this 6th day of September, 2019

Executed by the City this 4th day of October, 2019

Executed by the Commission this 21 day of October, 2019

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: _____

Title: Assistant Chief Engineer

ATTEST: (Commission seal)

_____
Secretary to the Commission

APPROVED AS TO FORM:

_____
Commission Counsel

TRANSCORE ITS, LLC

By: _____

Title: Sr Vice President

ATTEST: (Consultant seal, if existing)

By: _____

Title: office admin

APPROVED AS TO FORM:

By: _____

Title: Contracts Attorney

CITY OF SPRINGFIELD

By: _____

Title: City manager or designee

ATTEST: (City seal, if existing)

By: _____

Title: City Clerk or designee

APPROVED AS TO FORM:

By: _____

Title: City Attorney or designee

City Ordinance Number 27231

CERTIFICATE OF DIRECTOR OR FINANCE

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.

_____
Director of Finance or Acting Director

Springfield Region

Advance Transportation Management System (ATMS)

Extension No.1
Exhibit A: Scope of Services

Prepared for:

Transportation Management Center of the Ozarks
1107 W. Chestnut Expressway
Springfield, MO 65802

Prepared by:

TRANSCORE.

150 4th Avenue North
Suite 1200
Nashville, TN 37219

August 16, 2019
Version 1.6 (v1g)

TRANSCORE

Revision #	Date	Purpose
1.0	Jan-10-2019	Initial extension draft
1.1	Jan-23-2019	Incorporate comments after internal review of task descriptions
1.2	Jan-24-2019	Release draft to client for review and comment
1.3	Feb-8-2019	Revised per client comments
1.4	Jun-10-2019	Added core system support
1.6	Aug-16-2019	Revised schedule per client request

TRANSCORE

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6.10 Southbound: All Lanes Closed 18
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6.12 All Lanes Closed 20
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TRANSCORE

INTRODUCTION

Through this work, TransCore shall provide technical services and enhancement work for the Commission and City of Springfield, that will facilitate improved reporting and operations support for the regional transportation management center.

The following document details the scope of work covering the tasks to be performed under the contract period.

1. PROJECT MANAGEMENT

This task includes all activities necessary to administer and provide quality control for the project, development of action items, cost and schedule control, development of regular progress reports, and contracting activities.

1.1 Project Manager

TransCore will provide a project manager who will coordinate directly with project staff and TransCore personnel. The manager will help facilitate the planning, execution, review, and client acceptance of each aspect of the project. The individual will provide monitoring and control services to ensure that the project stays on schedule and budget and meets all quality standards.

2. ENHANCEMENT TASKS

The following tasks have been identified as part of the contract extension.

2.1 DMS Usage Reports

As part of this effort TransCore will develop and deploy two dynamic message sign reports that will enhance the ability to determine how field devices are being operated. System requirements for this enhancement include:

User Interface Requirements

- User can have the option of selecting one or more DMS for report
- Display of DMS Description and ID to allow for signs to be easy to identify for user selection
- Ability to sort signs by organization, ID, Route to help quick identify a DMS grouping to review
- Should support the ability to do a dynamic smart search function, where a user enters part of the sign's description and a list of potential devices appear based on if any part of the typed field matches any part of the description, the list would decrease as more text is entered
- Should support the ability to select a date range using both calendar or allowing user to enter a start/end date and time

Report Output Requirements

- Results should be first displayed to the user's screen but allow for them to save the displayed report as a word, pdf, or html document

Report: Total Time in Use

- Report will show the total time a DMS was active over the period selected by the user
- Report will list "Total Time Active" in "minutes:seconds"; calculated based on actual time a message of any kind was visible

- Report will list longest continuous message displayed over this period and time/date it was active; calculated based on determining the longest string of time any single message was displayed and display both the message and the start/end date/time this message was displayed
- Report will show total time each TIS function used the selected board; calculated for each TIS function, such as EM, Schedule, User, Plan, Etc over the period indicated for the user
- If more than one board is selected by the user the information in the previous bullets will be displayed for each sign selected, with each individual DMS as a header separating each section

Report: Detailed DMS Communication History

- Report will be like the currently available DMS History Report in TIS, except instead of display time/date and message duration, the report list time/date and duration of each time the DMS was not unable to be reached due to unable to communicate
- Report should provide a summary displaying total amount of time over the user selected period that sign was in comm failed condition

Deliverables:
Report: Total Time in Use
Report: Detailed DMS Communication History

2.2 Data Portal / Event Viewer: Corridor Reports

Under this task TransCore would add the ability to generate a report that provides the following items on a monthly basis.

User Interface Requirements

- Report will be accessible through the Data Portal / Event Viewer interface
- Although designed for monthly reporting other date and time ranges should be supported

Report Output Requirements

- Results should be first displayed to the user's screen but allow for them to save the displayed report as a word, pdf, or html document

Optional Requirements

- Optional output to be discussed; setup of a dashboard that shows this information in a visualized form instead of a tabular report
- Optional function to allow "saving" of filters to allow a user run any number of reports not just the summary reports to be generated below

Report: System Wide Performance

- Total Incidents Entered
- Total Confirmed Incidents
- Total Incidents from 7am to 6pm (working hours)
- Total Confirmed Incidents from 7am to 6pm (working hours)
- % of Working Hour Incidents to Total Incidents
- % of Working Hour Confirmed Incidents to Total Working Hour Incidents
- Avg Incident Duration (Detection to Clearance—for confirmed incidents only)
- Avg Lane Blockage Duration (Mainline Only)
- Response Time for MoDOT ER
- Total Construction Events
- Total number of incidents that had DMS boards lit in association

Report: Corridor Performance
Same requirements as "System Wide Performance" filtered for pre-determined corridors.

Deliverables:
Report: System Wide Performance
Report: Corridor Performance

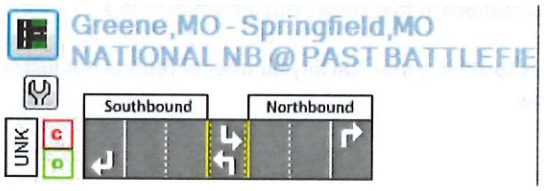
2.3 Add Center Lane to Map and Event Manager

The Event Management System currently supports locations with a single direction covering Interstate or other limited access roads. Arterials only sometimes have a median that would be able to reasonably accommodate having two locations in TransSuite, one for each direction. Arterials without a median should really be modeled as a single segment for both directions.

Event Management Interface
To better support arterial location with no median we are proposing to change Event Management from its current representation of each direction as an independent location to a single location that represent both directions. We will add new fields to support storing the opposing lane configuration and impact plans alongside the current fields. In addition, events with a bidirectional location will have the current impact level, for positive direction, and a new field for opposing impact level.

Lane Closures
The current way of entering lane closures looks like the following:

The UI will change to a more graphical representation of the buttons like the following:



Impact Plans
Additional configuration of opposing impact plans and event opposing impact level will be available.

Cameras
Arterial locations tend to have camera coverage on cross streets in addition to main streets. Minimally Event Management should support associating the cross street to left and to right cameras with buttons like the current before and after cameras.

Location Data
To support the bidirectional segments in TransSuite location data we will need to add at least the following fields to TransSuite location data in the database and the source GIS data:

- Is Arterial: If the location is an arterial location
- Opposing Cross Street: Next cross street when coming the direction opposing what is considered positive for the segment
- Opposing Cross Street, for right turns: Next cross street for right turns when coming the direction opposing what is considered positive for the segment
- Opposing Cross Street, for left turns: Next cross street for left turns when coming the direction opposing what is considered positive for the segment
- Opposing Impact Plan: Dynamic response impact plan to use for opposing what is considered positive for the segment
- Opposing Location: Relative location of the Opposing Cross Street
- Opposing Location To: Relative location of the Opposing Cross Street for turns
- Center Turn Lane Count: Number of centers turn lanes
- Opposing Left Turn Lane Count: Number of left turn lanes in direction opposing what is considered positive for the segment
- Opposing Mainline Lane Count: Number of mainline lanes in direction opposing what is considered positive for the segment
- Opposing Right Turn Lane Count: Number of right turn lanes in direction opposing what is considered positive for the segment
- Opposing Right Shoulder Count: Number of right shoulder lanes in direction opposing what is considered positive for the segment

A series of scenarios are in Appendix A to show how this would function under typical use cases once deployed.

2.4 Add Additional Intersection Configurations
Additional land configurations have been reviewed but labor estimates can not be generated. Supporting these new types of intersection configurations would require extensive reprograming for the dynamic functions of the Event Management application. Continued evaluation is being done, but scope or estimate can be provided at this time.

2.5 Ongoing Support Services
Continued support will be provided by TransCore through the enhancement's deployment through the end of the contract. The support is meant to allow for tweaking the developed feature and for general maintenance and troubleshooting actives necessary to keep the system operating at a high level.

3. CORE SYSTEM MAINTENANCE

3.1 System Operational Support
TransCore will continue to offer support and maintenance of the core installation and provide troubleshooting and configuration of the production environment. This means providing review and investigation of issues or questions that arise during the ongoing use of the system, as well as correcting discovered bugs. Ongoing support for map changes, or adjustments to configurations of currently defined or new equipment to be added to the system are also supported by this effort.

4. SCHEDULE

4.1 Project Timeframe

It is anticipated that the work will conclude prior to the end of the current project completion which has a contractual end date of November 3, 2020, unless stated otherwise through agreed to amendments between parties.

5. COST SCHEDULE

5.1 Payment Terms

Current hours and cost anticipated for the work are broken down as follows:

TRANSCORE.
150 4th Avenue North, Suite 1200
Nashville, TN 37219

Consultant Contract Fee Computation - Exhibit B

Summary of Costs

Project: Springfield-ATMS Ext-1
Revised: June 10, 2019

Prepared By:
Rick Zygowicz
414-331-5821
Rick.Zygowicz@TransCore.com

Prepared For:
Customer: MoDOT/City of Springfield
Contact: Marc Lewis

Labor Costs

Person		Role	Hours	Rate	Total
David Shackelford		Software Manager	305	$ 68.10	$ 20,769.74
Keith Patton		Responsible Officer	0	$ 68.25	$ -
Rick Zygowicz		Project Manager	53	$ 60.59	$ 3,211.23
Glen Holcomb		Senior Software Engineer	198	$ 48.26	$ 9,555.88
James Lewis		Software Engineer	80	$ 40.74	$ 3,259.42
Eric Purser		Software Support	112	$ 37.10	$ 4,155.72
Kevin Jones		Software Support	188	$ 21.59	$ 4,058.45
Leticia Tomusiak		Quality Control Engineer	120	$ 34.60	$ 4,151.98
Michael Bayer		Senior Systems Engineer	54	$ 49.18	$ 2,655.56
Tiffany Bronk		Support Coordinator	166	$ 35.67	$ 5,921.97
Total Direct Labor			*1,276*		$ *57,739.94*
Overhead	148.02%				$ 85,465.51
Subtotal					$ *143,205.45*
Fee	12.00%				$ 17,184.65
Subtotal Labor Costs					**$ 160,390.10**

Direct Expenses		**Total**
Airfare	$	-
Hotel	$	-
Car Rental & Fuel	$	-
Mileage	$	-
PerDiem	$	-
Parking	$	-
Hardware & COTS	$	-
License	$	-
Subtotal Direct Expenses	$	-

Subconsultants		**Total**
GBAsi	$	-
Vireo	$	-
Subtotal Subconsultants	$	-

Project Total	$	**160,390.10**

TRANSCORE

Estimate of Hours

Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS Ext-1
Customer: MoDOT/City of Springfield
Revised: June 10, 2019

Task Description	Employee Name:	David Shackelford	Keith Patton	Rick Zygowicz	Glen Holcomb	James Lewis	Eric Purser	Kevin Jones	Leticia Tomusiak	Michael Bayer	Tiffany Bronk	Total
	Role:	Software Manager	Responsible Officer	Project Manager	Senior Software Engineer	Software Engineer	Software Support	Software Support	Quality Control Engineer	Senior Systems Engineer	Support Coordinator	
1 Project Management												
1.1 Project Manager				4								4
Task Subtotal				4								4
2.1 Enh-DMS Usage Reports												
Interface/Output		10			6		4	4		4		28
Report: Total Time in Use		10			8		8	8		4	3	41
Report: DMS Comm History		10			8		8	8		4	3	41
Task Subtotal		30			22		20	20		12	6	110
2.2 Enh-DP / EV Corridor Reports												
Interface/Output		10			6		4	4		4		28
Report: System Wide Data		20			20		18	16		8	5	87
Report: Corridor by Corr Data		25			20		20	20		10	10	105
Task Subtotal		55			46		42	40		22	15	220
2.3 Center Lane Support Map/EM												
Interface Enhacments		100		4	50		50	48	40	20	25	337
Task Subtotal		100		4	50		50	48	40	20	25	337
2.4 Add Intersection Config.												
(Currently Undefined)												
Task Subtotal												
2.5 Ongoing Support Services												
Continued maintenance												
Task Subtotal												
3 Core System Maintenance												
3.1 System Operational Support		120		45	80	80		80	80		120	605
Task Subtotal		*120*		*45*	*80*	*80*		*80*	*80*		*120*	*605*
Project Total		305		53	198	80	112	188	120	54	166	1,276

TRANSCORE

Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS Ext-1
Customer: MoDOT/City of Springfield
Revised: June 10, 2019

Direct Expenses

Task	Description	Airfare	Hotel	Car Rental & Fuel	Mileage	PerDiem	Parking	Hardware & COTS	License	Total
	Direct Cost:									
	Unit Rate:	$600.00	$89.00	$80.00	$0.56	$51.00	$25.00	$1.00	$0.00	
1	**Project Management**									
1.1	Project Manager									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
2.1	**Enh-DMS Usage Reports**									
	Interface/Output									$ -
	Report: Total Time in Use									$ -
	Report: DMS Comm History									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
2.2	**Enh-DP / EV Corridor Reports**									
	Interface/Output									$ -
	Report: System Wide Data									$ -
	Report: Corridor by Corr Data									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
2.3	**Center Lane Support Map/EM**									
	Interface Enhacments									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
2.4	**Add Intersection Config.**									
	(Currently Undefined)									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
2.5	**Ongoing Support Services**									
	Continue Maintenance									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
3	**Core System Maintenance**									
3.1	System Operational Support									$ -
	Task Subtotal	0	0	0	0	0	0	0	0	$ -
	Project Total Quantity	0	0	0	0	0	0	0	0	
	Project Total Cost	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

TRANSCORE.

Summary of Costs by Task

Consultant Contract Fee Computation - Exhibit B

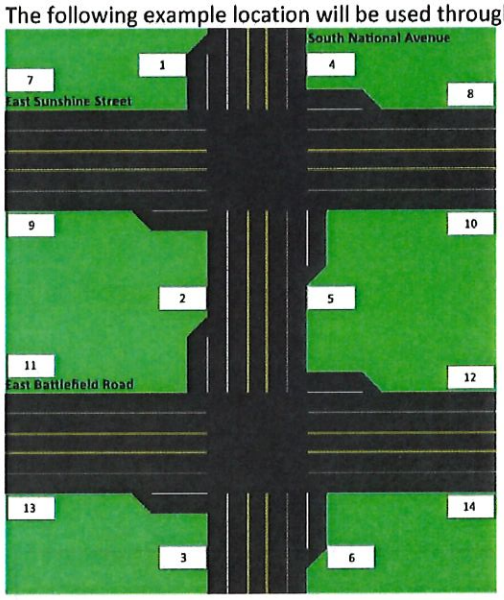
Project: Springfield-ATMS Ext-1
Customer: MoDOT/City of Springfield
Revised: June 10, 2019

Task	Description	Total Labor Costs	Direct Expenses	Total
1	**Project Management**			
1.1	Project Manager	$ 673.22	$ -	$ 673.22
	Task Subtotal	*$ 673.22*	*$ -*	*$ 673.22*
2.1	**Enh-DMS Usage Reports**			
	Interface/Output	$ 3,894.54	$ -	$ 3,894.54
	Report: Total Time in Use	$ 5,112.10	$ -	$ 5,112.10
	Report: DMS Comm History	$ 5,112.10	$ -	$ 5,112.10
	Task Subtotal	*$ 14,118.74*	*$ -*	*$ 14,118.74*
2.2	**Enh-DP / EV Corridor Reports**			
	Interface/Output	$ 3,894.54	$ -	$ 3,894.54
	Report: System Wide Data	$ 10,867.49	$ -	$ 10,867.49
	Report: Corridor by Corr Data	$ 13,027.99	$ -	$ 13,027.99
	Task Subtotal	*$ 27,790.02*	*$ -*	*$ 27,790.02*
2.3	**Center Lane Support Map/EM**			
	Interface Enhacments	$ 43,378.24	$ -	$ 43,378.24
	Task Subtotal	*$ 43,378.24*	*$ -*	*$ 43,378.24*
2.4	**Add Intersection Config.**			
	(Currently Undefined)	$ -	$ -	$ -
	Task Subtotal	*$ -*	*$ -*	*$ -*
3	**Core System Maintenance**			
3.1	System Operational Support	$ 74,429.88	$ -	$ 74,429.88
	Task Subtotal	*$ 74,429.88*	*$ -*	*$ 74,429.88*
Project Total		$ 85,960.22	$ -	$ 160,390.10

6. APPENDIX A: CENTER LANE SUPPORT SCENARIOS

6.1 Example Location

The following example location will be used throughout the discussion:



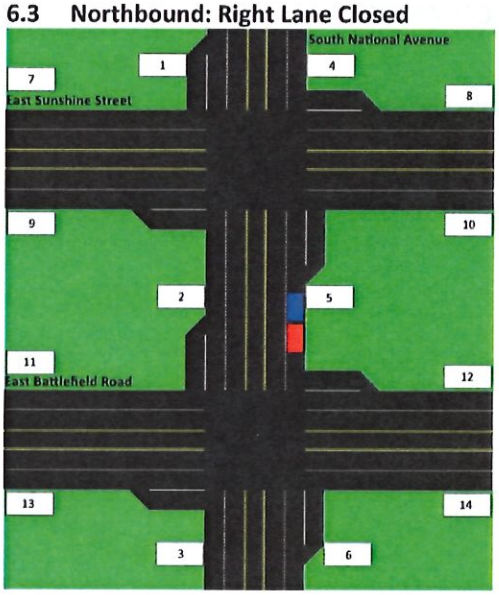
The location is based on an actual section of South National Avenue between two major arterials with several minor arterial cross streets in between. The locations positive direction, the direction shown on the righthand side in lane closures, is northbound.

6.2 Signs

The following list describes the signs that will be referenced for message in the example scenarios:

1. Southbound sign before any example events
2. Southbound sign at or near any example events
3. Southbound sign past any example events
4. Northbound sign after any example events
5. Northbound sign at or near any example events
6. Northbound sign before any example events
7. Westbound sign on East Sunshine Road after South National Avenue
8. Westbound sign on East Sunshine Road before South National Avenue
9. Eastbound sign on East Sunshine Road before South National Avenue
10. Eastbound sign on East Sunshine Road after South National Avenue
11. Westbound sign on East Battlefield Road after South National Avenue
12. Westbound sign on East Battlefield Road before South National Avenue
13. Eastbound sign on East Battlefield Road before South National Avenue
14. Eastbound sign on East Battlefield Road after South National Avenue

6.3 Northbound: Right Lane Closed



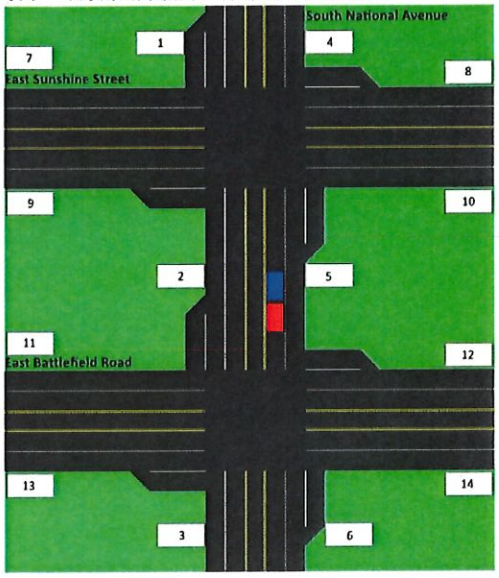
6.3.1 Web Description

ACCIDENT
S NATIONAL ST NB PAST E BATTLEFIELD RD
RIGHT LANE CLOSED
EST. CLEARANCE TIME: <time>

6.3.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT NATIONAL NB PAST SUNSHINE	EXPECT SLOW TRAFFIC
2	N		
3	N		
4	N		
5	N		
6	Y	ACCIDENT PAST BATTLEFIELD	RIGHT LANE CLOSED
7	N		
8	N		
9	N		
10	N		
11	N		
12	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	RIGHT LANE CLOSED
13	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	RIGHT LANE CLOSED
14	N		

6.4 Northbound: Left Lane Closed



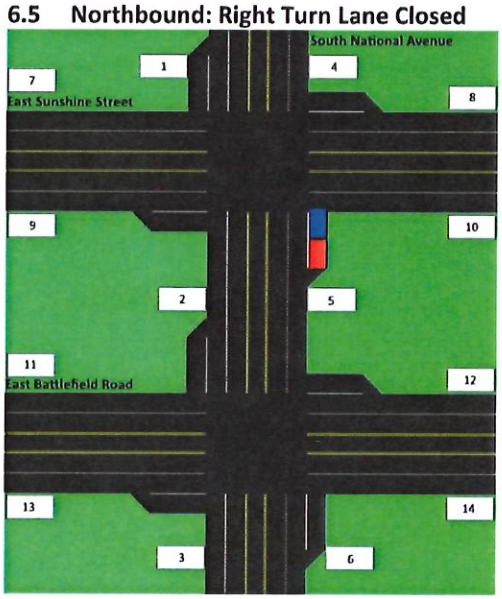
6.4.1 Web Description

ACCIDENT
S NATIONAL ST NB PAST E BATTLEFIELD RD
LEFT LANE CLOSED
EST. CLEARANCE TIME: <time>

6.4.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT NATIONAL NB PAST SUNSHINE	EXPECT SLOW TRAFFIC
2	N		
3	N		
4	N		
5	N		
6	Y	ACCIDENT PAST BATTLEFIELD	LEFT LANE CLOSED
7	N		
8	N		
9	N		
10	N		
11	N		
12	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	LEFT LANE CLOSED
13	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	LEFT LANE CLOSED
14	N		

6.5 Northbound: Right Turn Lane Closed



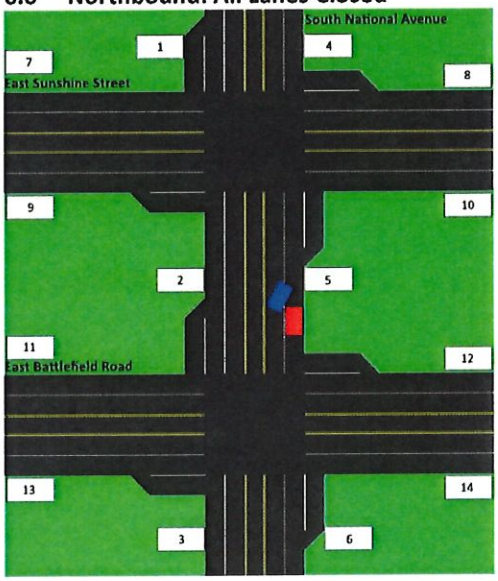
6.5.1 Web Description

ACCIDENT
S NATIONAL ST NB PAST E BATTLEFIELD RD
RIGHT TURN LANE CLOSED
EST. CLEARANCE TIME: <time>

6.5.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT NATIONAL NB PAST SUNSHINE	EXPECT SLOW TRAFFIC
2	N		
3	N		
4	N		
5	Y	ACCIDENT NATIONAL NB AT SUNSHINE	
6	Y	ACCIDENT NATIONAL NB AT SUNSHINE	RIGHT TURN LANE CLOSED
7	N		
8	N		
9	N		
10	N		
11	N		
12	Y	ACCIDENT NATIONAL NB AT SUNSHINE	
13	Y	ACCIDENT NATIONAL NB AT SUNSHINE	RIGHT TURN LANE CLOSED
14	N		

6.6 Northbound: All Lanes Closed



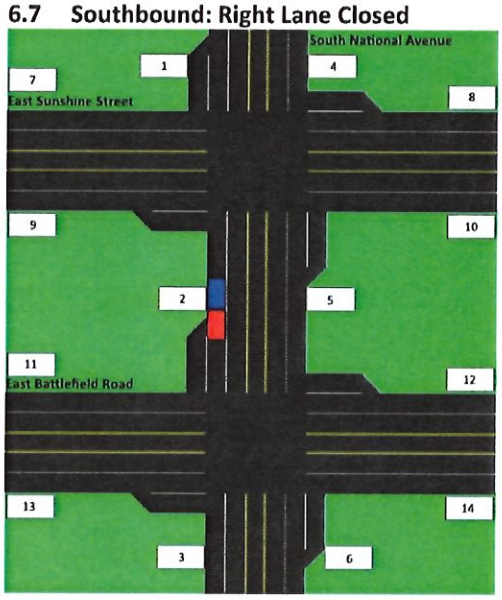
6.6.1 Web Description

ACCIDENT
S NATIONAL ST NB PAST E BATTLEFIELD RD
ALL LANES CLOSED
EST. CLEARANCE TIME: <time>

6.6.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT NATIONAL NB PAST SUNSHINE	EXPECT SLOW TRAFFIC
2	N		
3	N		
4	N		
5	N		
6	Y	ACCIDENT PAST BATTLEFIELD	ALL LANES CLOSED
7	N		
8	N		
9	N		
10	N		
11	N		
12	N	ACCIDENT NATIONAL NB PAST BATTLEFIELD	ALL LANES CLOSED
13	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	ALL LANES CLOSED
14	N		

6.7 Southbound: Right Lane Closed



6.7.1 Web Description

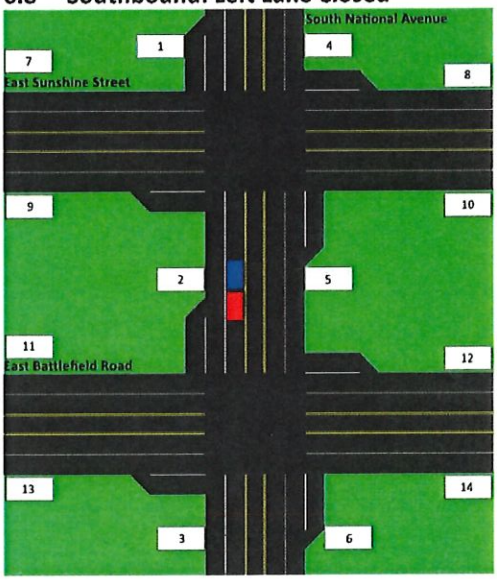
ACCIDENT
S NATIONAL ST SB PAST E SUNSHINE ST
RIGHT LANE CLOSED
EST. CLEARANCE TIME: <time>

6.7.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT PAST SUNSHINE	RIGHT LANE CLOSED
2	N		
3	N		
4	N		
5	N		
6	Y	ACCIDENT NATIONAL SB PAST BATTLEFIELD	EXPECT SLOW TRAFFIC
7	N		
8	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	RIGHT LANE CLOSED
9	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	RIGHT LANE CLOSED
10	N		
11	N		
12	N		
13	N		
14	N		

TRANSCORE.

6.8 Southbound: Left Lane Closed



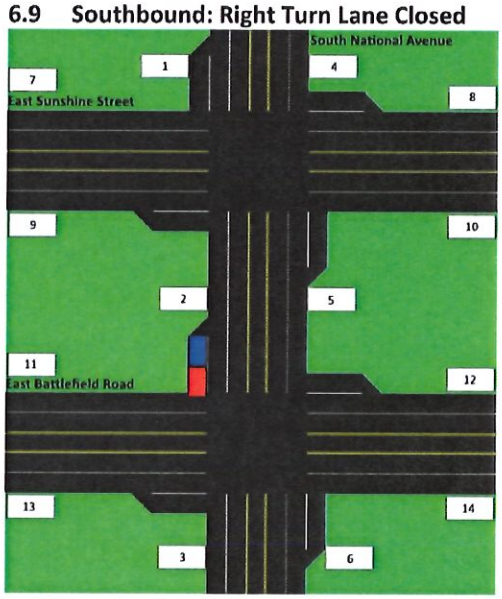
6.8.1 Web Description

ACCIDENT
S NATIONAL ST SB PAST E SUNSHINE ST
LEFT LANE CLOSED
EST. CLEARANCE TIME: <time>

6.8.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT PAST SUNSHINE	LEFT LANE CLOSED
2	N		
3	N		
4	N		
5	N		
6	Y	ACCIDENT NATIONAL SB PAST BATTLEFIELD	EXPECT SLOW TRAFFIC
7	N		
8	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	LEFT LANE CLOSED
9	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	LEFT LANE CLOSED
10	N		
11	N		
12	N		
13	N		
14	N		

6.9 Southbound: Right Turn Lane Closed



6.9.1 Web Description

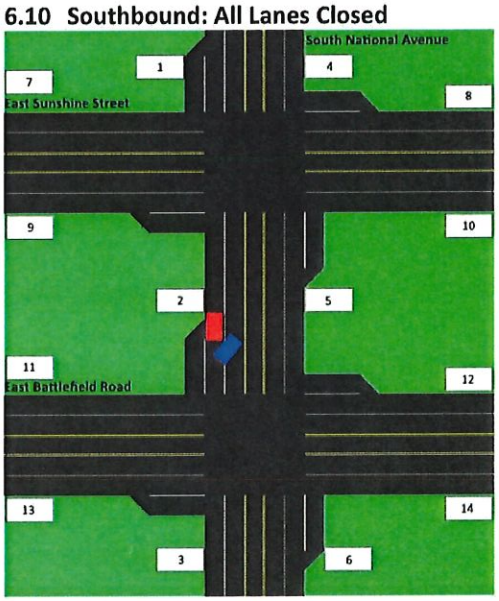
ACCIDENT
S NATIONAL ST SB PAST E SUNSHINE ST
RIGHT TURN LANE CLOSED
EST. CLEARANCE TIME: <time>

6.9.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT NATIONAL SB AT BATTLEFIELD	RIGHT TURN LANE CLOSED
2	Y	ACCIDENT NATIONAL SB AT BATTLEFIELD	
3	N		
4	N		
5	N		
6	Y	ACCIDENT NATIONAL SB PAST BATTLEFIELD	EXPECT SLOW TRAFFIC
7	N		
8	Y	ACCIDENT NATIONAL SB AT BATTLEFIELD	RIGHT TURN LANE CLOSED
9	Y	ACCIDENT NATIONAL SB AT SUNSHINE	RIGHT TURN LANE CLOSED
10	N		
11	N		
12	N		
13	N		
14	N		

TRANSCORE

6.10 Southbound: All Lanes Closed



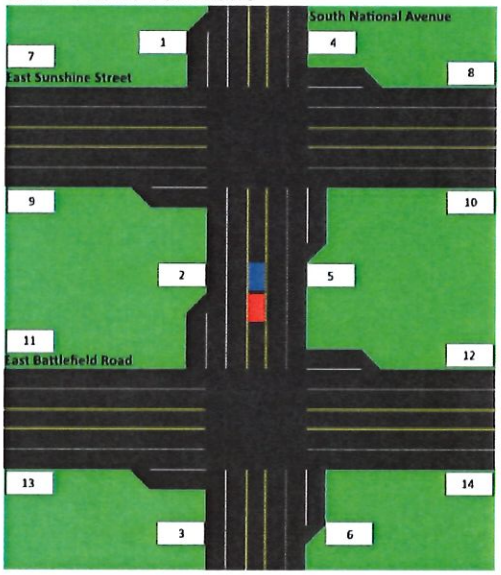
6.10.1 Web Description

ACCIDENT
S NATIONAL ST SB PAST E SUNSHINE ST
ALL LANES CLOSED
EST. CLEARANCE TIME: <time>

6.10.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT PAST SUNSHINE	ALL LANES CLOSED
2	N		
3	N		
4	N		
5	N		
6	Y	ACCIDENT NATIONAL SB PAST BATTLEFIELD	EXPECT SLOW TRAFFIC
7	N		
8	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	ALL LANES CLOSED
9	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	ALL LANES CLOSED
10	N		
11	N		
12	N		
13	N		
14	N		

6.11 Center Turn Lane



6.11.1 Web Description

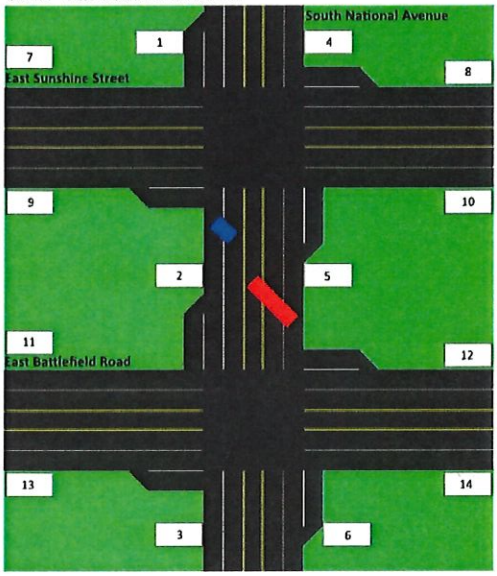
ACCIDENT
S NATIONAL ST BETWEEN E BATTLEFIELD RD AND E SUNSHINE ST
LEFT TURN LANE CLOSED
EST. CLEARANCE TIME: <time>

6.11.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT PAST SUNSHINE	CENTER TURN LANE CLOSED
2, 3, 4, 5	N		
6	Y	ACCIDENT PAST BATTLEFIELD	CENTER TURN LANE CLOSED
7	N		
8	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	LEFT TURN LANE CLOSED
9	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	LEFT TURN LANE CLOSED
10	N		
11	N		
12	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	LEFT TURN LANE CLOSED
13	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	LEFT TURN LANE CLOSED
14	N		

TRANSCORE

6.12 All Lanes Closed



6.12.1 Web Description

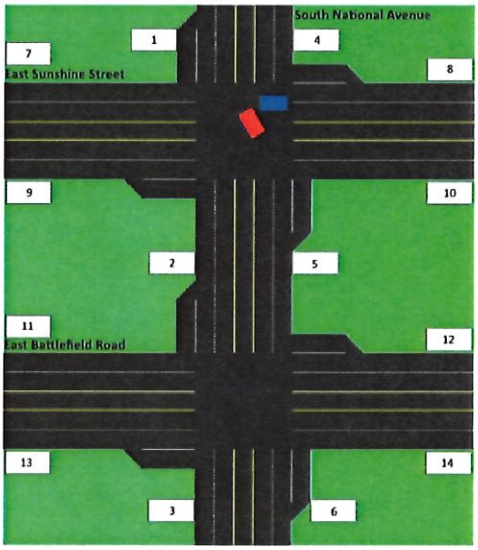
ACCIDENT
S NATIONAL ST BETWEEN E BATTLEFIELD RD AND E SUNSHINE ST
ALL LANES CLOSED
EST. CLEARANCE TIME: <time>

6.12.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT PAST SUNSHINE	ALL LANES CLOSED
2, 3, 4, 5	N		
6	Y	ACCIDENT PAST BATTLEFIELD	ALL LANES CLOSED
7	N		
8	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	ALL LANES CLOSED
9	Y	ACCIDENT NATIONAL SB PAST SUNSHINE	ALL LANES CLOSED
10	N		
11	N		
12	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	ALL LANES CLOSED
13	Y	ACCIDENT NATIONAL NB PAST BATTLEFIELD	ALL LANES CLOSED
14	N		

TRANSCORE

6.13 In Intersection



6.13.1 Web Description

ACCIDENT
S NATIONAL ST AT E SUNSHINE ST
ALL LANES CLOSED
EST. CLEARANCE TIME: <time>

6.13.2 Sign Usage

Sign	Used	Phase 1	Phase 2
1	Y	ACCIDENT NATIONAL NB AT SUNSHINE	EXPECT SLOW TRAFFIC
2, 3, 4	N		
5	Y	ACCIDENT AT SUNSHINE	ALL LANES CLOSED
6	Y	ACCIDENT AT SUNSHINE	ALL LANES CLOSED
7	N		
8	Y	ACCIDENT AT NATIONAL	ALL LANES CLOSED
9	Y	ACCIDENT SUNSHINE WB AT NATIONAL	EXPECT SLOW TRAFFIC
10, 11	N		
12	Y	ACCIDENT NATIONAL NB AT SUNSHINE	ALL LANES CLOSED
13	Y	ACCIDENT NATIONAL NB AT SUNSHINE	ALL LANES CLOSED
14	N		

Exhibit 4 2017-0049-02

CCO Form:	DE44	Supplemental Agreement No.	2020-07-58512
Approved:	01/00 (BDG)	Route:	Various
Revised:	04/20 (BDG)	County:	Various
Modified:		Job No.:	8Q3148

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
DESIGN CONSULTANT SUPPLEMENTAL AGREEMENT #2020-07-58512
(FEDERAL ASSISTANCE)

THIS 2nd SUPPLEMENTAL AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), the City of Springfield (hereinafter, "City"), and Transcore ITS, LLC (hereinafter, "Consultant").

WITNESSETH:

WHEREAS, the Commission, City and the Consultant entered into an Agreement on February 6, 2017, to perform professional services in the preparation of Advanced Transportation Management System (ATMS) software and maintenance for Route Various, Various County, designated as Job No. 8Q3001 (hereinafter, "Original Agreement"); and

WHEREAS, the Commission and the Consultant have previously entered into 1 Supplemental Agreement(s) to the Original Agreement on October 21, 2019; and

WHEREAS, the Commission and the Consultant now desire to enter into Supplemental Agreement No. 2 to otherwise complete, extend or continue the Original Agreement and all previous Supplemental Agreements as provided herein.

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

(1) SCOPE OF SERVICES: The Services to be provided by the Consultant under Supplemental Agreement No. 2 are additional services which are beyond the scope of services provided in the Original Agreement and all previous Supplemental Agreements. These additional professional services are described and defined in Exhibit A, which is attached hereto and incorporated herein by reference.

(2) FEES AND PAYMENTS:

(A) The Consultant shall be reimbursed in accordance with Section (10) of the Original Agreement and all previous Supplemental Agreements.

(B) The costs of this Supplemental Agreement shall be integrated with the cost of the Original Agreement and all previous Supplemental Agreements.

(C) Estimated costs for the services in this Supplemental Agreement are defined in Exhibit B, which is attached hereto and incorporated herein by reference.

(D) The fixed fee and maximum amount payable included in Section (10) of the Original Agreement and all previous Supplemental Agreements are modified as follows:

	Original Amount Plus Previous Supplemental Agreements	Supplemental Agreement No. 2	TOTAL
Fixed Fee	$46,126.92	$10,280.52	$56,407.44
Max. Fee Payable	$500,377.95	$95,951.55	$596,329.50

(3) DBE PARTICIPATION: In the Original Agreement, the Consultant agreed to use DBE firms to complete an established DBE goal of at least 0% of the total services by dollar value. This DBE goal shall apply to all additional services under the Original Agreement, unless otherwise modified by the Commission by Supplemental Agreement. After evaluation of the work associated with this Supplemental Agreement, it was ultimately determined that a 0% DBE goal would apply to this supplemental work.

DBE FIRM NAME(S) FOR THIS SUPPLEMENTAL	TYPE OF SERVICE	TOTAL VALUE OF DBE WORK FOR THIS SUPPLEMENTAL	PERCENTAGE OF SUBCONTRACT VALUE APPLICABLE TO THE TOTAL GOAL
DBE Firm #1		$	%
DBE Firm #2		$	%
DBE Firm #3		$	%
DBE TOTAL VALUE FOR THIS SUPPLEMENTAL	$		

DBE TOTAL VALUE (including Original Contract and prior Supplemental DBE work)	$

ESTIMATED % DBE PARTICIPATION FOR THIS SUPPLEMENTAL: DBE total value for this supplemental divided by the maximum fee payable for this supplemental	%

ESTIMATED TOTAL % DBE PARTICIPATION: DBE total value (including Original Contract and prior Supplemental DBE work) divided by the total maximum fee payable (the total contract ceiling)	%

(4) SUBCONSULTANTS: Pursuant to Section (8) of the Original Agreement

and in addition to any other firms expressly permitted by the Commission to perform subconsultant services, the Commission consents to transfer of a portion of the Consultant's services to the following firms:

Firm Name	Complete Address	Nature of Services
gbaSI	9801 Renner Blvd, Suite 300, Lenexa, KS 66219	IT Support
Vireo	929 Walnut Street, Suite 700, Kansas City, MO 64106	Program Support

(5) PERIOD OF SERVICE: Exhibit C, Schedule, of the Original Agreement and any revisions included in previous Supplemental Agreements is hereby further revised to include time for the performance of these additional services. The projected completion date shown on Exhibit C or included in the last previous Supplemental Agreement is now revised to August 31, 2021, which includes time for performance of all remaining services in the Original Agreement and all previous Supplemental Agreements and the services in this Supplemental Agreement and submittal of all deliverables.

(6) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this Supplemental Agreement, the Original Agreement and all previous Supplemental Agreements between the parties shall remain in full force and effect and the terms of the Original Agreement and all previous Supplemental Agreements between the parties shall extend and apply to this Supplemental Agreement.

[remainder of page intentionally left blank]

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

Executed by the Consultant on 10/28/20 (DATE).

Executed by the City on 12/10/2020 (DATE).

Executed by the Commission on 2/1/2021 (DATE).

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By: _____

Title: Chief Engineer

ATTEST: (Commission seal)

_____

Secretary to the Commission

APPROVED AS TO FORM:

_____

Commission Counsel

TransCore ITS, LLC

By: _____

Title: Sr. Vice President

ATTEST: (Consultant seal, if existing)

By: _____

Allison Randall

Title: Paralegal

TransCore ITS, LLC CORPORATE SEAL Delaware January 21, 1994

APPROVED AS TO FORM:

By: _____

Title: Contracts Attorney

CITY OF SPRINGFIELD

By: _____

Title: City Manager or designee

APPROVED AS TO FORM:

By: _____

Title: City Attorney or designee

ATTEST: (City seal, if existing)

By: _____

Title: City Clerk or designee

City Ordinance Number 27427

SEAL OF THE CITY OF SPRINGFIELD MISSOURI

CERTIFICATE OF DIRECTOR OR FINANCE

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.

_____

Director of Finance or Acting Director

Springfield Region

Advance Transportation Management System (ATMS)

Extension No.2
Exhibit A: Scope of Services

Prepared for:

Transportation Management Center of the Ozarks
1107 W. Chestnut Expressway
Springfield, MO 65802

Prepared by:

TRANSCORE.

150 4th Avenue North
Suite 1200
Nashville, TN 37219

September 28, 2020
Version 1.1

TRANSCORE

Revision #	Date	Purpose
1.0	Sept-11-2020	Initial extension draft
1.1	Sept-28-2020	Incorporate requested changes

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INTRODUCTION

Through this work, TransCore shall provide technical services and enhancement work for the Commission and City of Springfield, that will facilitate improved reporting and operations support for the regional transportation management center.

The following document details the scope of work covering the tasks to be performed under the contract period.

1. PROJECT MANAGEMENT

This task includes all activities necessary to administer and provide quality control for the project, development of action items, cost and schedule control, development of regular progress reports, and contracting activities.

1.1 Project Manager

TransCore will provide a project manager who will coordinate directly with project staff and TransCore personnel. The manager will help facilitate the planning, execution, review, and client acceptance of each aspect of the project. The individual will provide monitoring and control services to ensure that the project stays on schedule and budget and meets all quality standards.

2. ENHANCEMENT TASKS

The following tasks have been identified as part of the contract extension.

2.1 CAD Integration

As part of this effort TransCore will develop, deploy, and configure CAD integration services for remote 911 feeds deployed by City of Joplin, Jasper County, and or Newton County.

System requirements for this enhancement include:

Requirements

- Consume an external incident feed pushed by the safety agency
- Filter critical incident information from feed to populate active events in Event Receiver, where an operator can choose to create an event based on the information provided
- Optional: If event incident information is high quality and does not require operator review; populate event directly to Event Manager

Deliverables:

CAD Feed Integration, up to three feeds

2.2 Ongoing Support Services

Continued support will be provided by TransCore through the enhancement's deployment through the end of the contract. The support is meant to allow for tweaking the developed feature and for general maintenance and troubleshooting actives necessary to keep the system operating at a high level.

3. CORE SYSTEM MAINTENANCE

3.1 System Operational Support

TransCore will continue to offer support and maintenance of the core installation and provide troubleshooting and configuration of the production environment. This means providing review and investigation of issues or questions that arise during the ongoing use of the system, as well as correcting discovered bugs. Ongoing support for map changes, or adjustments to configurations of currently defined or new equipment to be added to the system are also supported by this effort.

4. SCHEDULE

4.1 Project Timeframe

It is anticipated that the work will conclude prior to the end of the current project completion which has a contractual end date of August 31, 2021, unless stated otherwise through agreed to amendments between parties.

5. COST SCHEDULE

5.1 Payment Terms

Current hours and cost anticipated for the work are broken down as follows:

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Nashville, TN 37219

Consultant Contract Fee Computation - Exhibit B

Summary of Costs

Project: Springfield-ATMS Ext-2
Revised: September 28, 2020

Prepared By:
Rick Zygowicz
414-331-5821
Rick.Zygowicz@TransCore.com

Prepared For:
Customer: MoDOT/City of Springfield
Contact: Marc Lewis

Labor Costs

Person		Role	Hours	Rate	Total
David Shackelford		Software Manager	176	$ 68.10	$ 11,985.16
Keith Patton		Responsible Officer	1	$ 68.25	$ 68.25
Rick Zygowicz		Project Manager	66	$ 60.59	$ 3,998.89
Glen Holcomb		Senior Software Engineer	100	$ 48.26	$ 4,826.20
James Lewis		Software Engineer	80	$ 40.74	$ 3,259.42
Eric Purser		Software Support	0	$ 37.10	$ -
Kevin Jones		Software Support	80	$ 21.59	$ 1,727.00
Leticia Tomusiak		Quality Control Engineer	90	$ 34.60	$ 3,113.98
Michael Bayer		Senior Systems Engineer	126	$ 49.18	$ 6,196.31
Angie Stockton		Systems Engineer	20	$ 35.67	$ 713.49
Total Direct Labor			*739*		*$ 35,888.72*
Overhead	138.71%				$ 49,782.31
Subtotal					*$ 85,671.03*
Fee	12.00%				$ 10,280.52
Subtotal Labor Costs					**$ 96,951.55**

Direct Expenses	Total
Airfare	$ -
Hotel	$ -
Car Rental & Fuel	$ -
Mileage	$ -
PerDiem	$ -
Parking	$ -
Hardware & COTS	$ -
License	$ -
Subtotal Direct Expenses	**$ -**

Project Total	**$ 95,951.55**

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Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS Ext-2
Customer: MoDOT/City of Springfield
Revised: September 28, 2020

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Estimate of Hours

Task	Description	Role:	David Shackelford	Keith Patton	Rick Zygowicz	Glen Holcomb	James Lewis	Eric Purser	Kevin Jones	Leticia Tomusiak	Michael Bayer	Angie Stockton	Total
		Employee Name:	David Shackelford	Keith Patton	Rick Zygowicz	Glen Holcomb	James Lewis	Eric Purser	Kevin Jones	Leticia Tomusiak	Michael Bayer	Angie Stockton	
		Role:	Software Manager	Responsible Officer	Project Manager	Senior Software Engineer	Software Engineer	Software Support	Software Support	Quality Control Engineer	Senior Systems Engineer	Systems Engineer	
1	**Project Management**												
1.1	Project Manager		10	1	10								21
	Task Subtotal		10	1	10								21
2.1	**CAD Integration**												
	Interface/Output		20										20
	CAD Feed Integration		30			20				10	10		70
	Task Subtotal		50			20				10	10		90
2.2	**Ongoing Support Services**												
	Continued maintenance		16		16						16		48
	Task Subtotal		*16*		*16*						*16*		*48*
2.3	**Core System Maintenance**												
	System Operational Support		100		40	80	80		80	80	100	20	580
	Task Subtotal		*100*		*40*	*80*	*80*		*80*	*80*	*100*	*20*	*580*
	Project Total		176	1	66	100	80		80	90	126	20	739

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Direct Expenses

Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS Ext-2
Customer: MoDOT/City of Springfield
Revised: September 28, 2020

Task	Description	Direct Cost: / Unit Rate:	Airfare $600.00	Hotel $89.00	Car Rental & Fuel $80.00	Mileage $0.56	PerDiem $51.00	Parking $25.00	Hardware & COTS $1.00	License $0.00	Total
1	**Project Management**										
1.1	Project Manager										$ -
	Task Subtotal		0	0	0	0	0	0	0	0	$ -
2.1	**CAD Integration**										
	Interface/Output										$ -
	CAD Feed Integration										$ -
	Task Subtotal		0	0	0	0	0	0	0	0	$ -
2.2	**Ongoing Support Services**										
	Continue Maintenance										$ -
	Task Subtotal		0	0	0	0	0	0	0	0	$ -
2.3	**Core System Maintenance**										
	System Operational Support										$ -
	Task Subtotal		0	0	0	0	0	0	0	0	$ -
	Project Total Quantity		0	0	0	0	0	0	0	0	
	Project Total Cost		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -

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Summary of Costs by Task

Consultant Contract Fee Computation - Exhibit B

Project: Springfield-ATMS Ext-2
Customer: MoDOT/City of Springfield
Revised: September 28, 2020

Task	Description	Total Labor Costs	Direct Expenses	Total
1	**Project Management**			
1.1	Project Manager	$ 3,623.03	$ -	$ 3,623.03
	Task Subtotal	*$ 3,623.03*	*$ -*	***$ 3,623.03***
2.1	**CAD Integration**			
	Interface/Output	$ 3,641.29	$ -	$ 3,641.29
	CAD Feed Integration	$ 10,282.43	$ -	$ 10,282.43
	Task Subtotal	*$ 13,923.72*	*$ -*	***$ 13,923.72***
2.2	**Ongoing Support Services**			
	Continued maintenance	$ 7,608.55	$ -	$ 7,608.55
	Task Subtotal	*$ 7,608.55*	*$ -*	***$ 7,608.55***
2.3	**Core System Maintenance**			
	System Operational Support	$ 70,796.25	$ -	$ 70,796.25
	Task Subtotal	*$ 70,796.25*	*$ -*	***$ 70,796.25***
	Project Total	$ 25,155.30	$ -	$ 95,951.55

One-rdg. _____
P. Hrngs. _____
Pgs. 9
Filed: 09-14-21

Sponsored by: Ollis

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021- 251 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Missouri Highways and Transportation Commission to participate in the On Call Work Zone Enforcement Program to provide enhanced traffic enforcement in work zones.

WHEREAS, since 2009 the Springfield Police Department ("SPD") and the Missouri Highways and Transportation Commission ("MHTC") have partnered to provide enhanced traffic enforcement in Missouri Department of Transportation ("MODOT") work zones; and

WHEREAS, providing enhanced enforcement in MODOT work zones increases safety for MODOT workers as well as motorists traveling through work zones; and

WHEREAS, the current agreement between the City and MTHC is currently scheduled to expire at the end of 2021; and

WHEREAS, SPD and MTHC mutually desire to continue working together to provide enhanced traffic enforcement in MODOT work zones.

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

Section 1 – The City Manager, or his designee, is hereby authorized to enter into an Intergovernmental Agreement with the MHTC to participate in the On Call Work Zone Enforcement Program to provide enhanced traffic enforcement in work zones, such agreement to be in substantially the form of the agreement which is attached hereto and incorporated herein by reference as "Exhibit A."

Section 2 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021- 251

FILED: 09-14-21

ORIGINATING DEPARTMENT: Police

PURPOSE: To authorize the City Manager, or his designee, to enter into an Intergovernmental Agreement with the Missouri Highways and Transportation Commission to participate in the On Call Work Zone Enforcement Program to provide enhanced traffic enforcement in work zones.

BACKGROUND INFORMATION: Since 2009 the Springfield Police Department ("SPD") and the Missouri Highways and Transportation Commission, the governing body for the Missouri Department of Transportation ("MODOT") have cooperated to provide enhanced traffic enforcement in work zones. Through the On Call Work Zone Enforcement Program, MODOT provides funding for SPD to provide additional law enforcement presence in designated MODOT work zones. SPD officers provide enhanced enforcement of traffic violations such as speeding, careless and imprudent driving, and other hazardous moving violations while MODOT workers are present. The goal is to increase safety for the workers working within the work zones as well as the motorists traveling through work zones.

The City entered into similar agreements in 2009, 2013, and 2017. The 2017 agreement is scheduled to expire at the end of 2021. This agreement, if approved, will provide for continued participation in the On Call Work Zone Enforcement Program for an additional five-year term with the option to renew for up to two additional one-year terms.

REMARKS: Participation in this program is already reflected in the Police Department Budget so no Budget Adjustment is necessary.

Submitted by:

Paul Williams, Chief of Police

Approved by:

Jason Gage, City Manager

Exhibit A

CCO Form: HS03
Approved: 07/06 (AMN)
Revised: 08/19 (GH)
Modified:

Award year: 2021-2025
Region: SW - Southwest
eAgreements No.: 2021-06-63750

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM ON CALL WORK ZONE ENFORCEMENT PROGRAM AGREEMENT

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Springfield, a municipal corporation in the State of Missouri (hereinafter, "City");

WITNESSETH:

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

(1) PURPOSE: The Commission has authorized funds to be used to support Statewide Transportation Improvement Program (hereinafter, "STIP") On Call Work Zone Enforcement activities. The purpose of this Agreement is to grant the use of such funds to the **City.**

(2) ACTIVITY: The funds which are the subject of this Agreement are provided to support law enforcement work zone activities to further STIP On Call Work Zone Enforcement.

(3) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the **City** shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT) 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** wrongful or negligent performance of its obligations under this Agreement.

(B) The **City** 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 MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri

public entities 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. The **City** shall cause insurer to increase the insurance amounts in accordance with those 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.

(4) 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 representatives of the **City** and the Commission.

(5) COMMISSION REPRESENTATIVE: This Commission's District 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.

(6) CITY REPRESENTATIVE: The **City's**_____ is designated as the **City's** representative for the purpose of administering the provisions of this Agreement. Further, the **City** representative shall have the authority to execute Program Orders in accordance with this Agreement.

(7) NONDISCRIMINATION CLAUSE: The **City** shall also comply with all state and federal statutes applicable to the **County** 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. Sections 2000d and 2000e, *et seq*.); and with any provision of the "Americans with Disabilities Act" (42 U.S.C. Section 12101, *et seq*.).

(8) ASSIGNMENT: The **City** shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The **City** shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the **City** with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the **City**.

(11) FUNDING/REIMBURSEMENT:

(A) Eligible Costs / Documentation: With regard to work under this Agreement, the **City** agrees that funds to implement work zone law enforcement activities

shall only be available for reimbursement of eligible costs which have been incurred by the **City**. The **City** shall supply to the Commission copies of all bid information, purchase orders, invoices and, for hours worked, certified payroll (on Program Agreements that include salaries). Any costs incurred by the **City** prior to authorization and notification to proceed from the Commission are **not** reimbursable costs. The Commission shall not be responsible for any costs associated with the activity herein unless specifically identified in this Agreement or subsequent written amendments or Task Orders.

(B) Peace Officer Standards and Training: Law enforcement work performed by a duly licensed, Peace Officer Standards and Training certified law enforcement officer will be reimbursed.

(12) EQUIPMENT:

(A) Procurement: The **City** may use its own procurement regulations which reflect applicable state/local laws, rules & regulations provided they adhere to the following:

1. Equipment with a cost of $3,000 or more must be purchased on a competitive bid basis, or purchased through use of state cooperative procurement.

2. Price or rate quotations shall be solicited from at least three (3) sources.

3. All procurement transactions, regardless of whether by sealed bids or by negotiation, shall be conducted in a manner that provides maximum open and free competition.

4. The **City** shall have a clear and accurate description of the item to be purchased. Such description shall not, in competitive procurements, contain features that unduly restrict competition. A "brand name or equal" description may be used as a means to define the performance or other requirement of procurement.

5. If for some reason the low bid is not acceptable, the **City** must have written approval from the MHTC prior to bid approval and purchase.

6. The **City** will make a good faith effort to utilize minority and women owned businesses within resource capabilities when procuring goods and services.

(B) Disposition: The **City** shall make written request to the MHTC for instructions on the proper disposition of all items of equipment provided under the terms of this contract with a cost of $3,000 or more. The **City** must keep and maintain equipment with a cost of under $3,000 until it is no longer useful for its originally intended purpose.

(C) Replacement: No equipment may be funded on a replacement basis. Participation in equipment and manpower projects must be in addition to the **City** previous twelve months authorized strength.

(13) ACCOUNTING / DOCUMENTATION: The **City** shall maintain all documentation in file for audit review; failure to provide supporting documentation at the time of audit could result in questioned costs. The **City** must document the following: (1) Receipt of funds; (2) date and amount paid to officers; (3) officer's timesheet (regular hours and overtime hours). Documentation shall be kept available for inspection for representatives of the MHTC for a period of three years following date of final payments. Copies of such records shall be made available upon request.

(14) PROGRAM ORDER: On Call Work Zone Enforcement funding will be conducted under a Program Order. Each Program Order must be executed by the Commission and the City's Representative. Each Program Order shall contain, but is not limited to the following: (1) Program Order Job Number(s); (2) Funds available for the completion of the Program Order; (3) Starting and completion dates for the Program Order.

(15) LIMITS ON OVERTIME: The **City** will not be eligible for reimbursement for any individual law enforcement officer working under this grant where said officer is claiming to have worked as a law enforcement officer for more than 16 hours in any 24 hour period.

(16) USE OF FUNDS: Any employee of the **City** whose salary or wages are paid in whole or in part with federal funds is prohibited from participating in certain partisan political activities, including, but not limited to, being a candidate for elective office pursuant to Title 5 United States Code (hereinafter, "U.S.C."), Sections 1501-1508. If an employee of the **City** participates in activities prohibited by the Hatch Act, the **City** shall no longer pay that employee's salary or wages with federal funds unless the requirements of 5 U.S.C. Sections 1501-1508 are not applicable to that employee pursuant to 5 U.S.C. Section 1502(c).

(17) AUDIT OF RECORDS: The **City** must 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 designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(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) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The **City** shall refund any overpayments as determined by the final audit.

(20) 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.**

(21) EMPLOYEES ONLY: The funding granted by the Commission to the **City** under this Agreement extends only to reimbursement for work zone enforcement by employees of the **City** covered by the **City** worker's compensation plan.

(22) DURATION AND EXTENSION: Unless otherwise terminated, this Agreement shall be in effect for five years from the execution of this Agreement. Upon the approval of both parties, the terms and conditions of this Agreement are renewable for an additional two, one year extensions from the date of the expiration of the Agreement. Any extension shall be memorialized in an appropriate Supplemental Agreement and executed by the duly authorized representatives of the parties.

(23) 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.

[Remainder of Page Intentionally Left Blank]

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

Executed by City of Springfield on _____ (Date).

Executed by Commission on _____ (Date).

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION

By_____

Title_____

ATTEST:

_____
Secretary to the Commission

Approved as to Form

_____
Commission Counsel

CITY OF SPRINGFIELD, MISSOURI

By_____

Title_____

By_____

Title _____

By _____

Title_____

ATTEST:

By _____

Title_____

Approved as to Form:

_____

Title _____

Ordinance No _____

One-rdg. _____
P. Hrngs. _____
Pgs. 13
Filed: 09-14-21

Sponsored by: Lear

First Reading: _____ Second Reading: _____

COUNCIL BILL 2021-252 SPECIAL ORDINANCE _____

AN ORDINANCE

AUTHORIZING the City Manager, or his designee, to enter into a Memorandum of Understanding with the United States Postal Inspection Service to allow the Springfield Police Department to participate in the United States Postal Inspection Service Springfield Drug Task Force; and amending the budget of the Police Department in the amount of $18,649.

_____

WHEREAS, the United States Postal Inspection Service ("USPIS") currently partners with state and local governments to investigate crimes involving the trafficking of drugs and money laundering associated with the United States mail; and

WHEREAS, USPIS wishes to partner with the Springfield Police Department ("SPD") to form a USPIS Springfield Drug Task Force for the purpose of investigating and prosecuting individuals participating in illegal drug activity associated with the United States mail in and around Springfield, Missouri; and

WHEREAS, under the proposed Memorandum of Understanding, SPD would assign one officer ("Task Force Operator") to work with the USPIS Springfield Drug Task Force; and

WHEREAS, under the proposed Memorandum of Understanding, SPD would be eligible to receive reimbursement for overtime costs of the Task Force Officer when working Task Force operations.

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

Section 1 – The City Manager, or his designee, is hereby authorized to enter into Memorandum of Understanding with the United States Postal Inspection Service to allow the Police Department to participate in the United States Postal Inspection Service Springfield Drug Task Force, such Memorandum of Understanding to be in substantially the same form as the agreement which is attached hereto and incorporated herein by

reference as “Exhibit A.”

Section 2 – The budget of the Springfield Police Department for Fiscal year 2021-2022 is hereby amended in the accounts and in the amounts as shown on Budget Adjustment No. 021, a copy of which is attached hereto and incorporated herein by reference as “Exhibit B.”

Section 3 – City Council hereby finds that the budget adjustment made above has been recommended by the City Manager.

Section 4 – The City Manager is directed to cause the appropriate accounting entries to be made in the books and records of the City.

Section 5 – This Ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

_____
Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: _____, Assistant City Attorney

Approved for Council action: _____, City Manager

EXPLANATION TO COUNCIL BILL 2021-_252__

FILED: 09-14-21

ORIGINATING DEPARTMENT: Police

PURPOSE: To authorize the City Manager, or his designee, to enter into a Memorandum of Understanding with the United States Postal Inspection Service to allow the Police Department to participate in the United States Postal Inspection Service Springfield Drug Task Force.

BACKGROUND INFORMATION: The United States Postal Inspection Service ("USPIS") partners with state and local law enforcement to investigate and prosecute crimes involving the trafficking of controlled substances and money laundering violations involving the United States mail. USPIS and the Springfield Police Department ("SPD") wish to partner to create the USPIS Springfield Drug Task Force which will have the specific focus of investigating and prosecuting individuals participating in illegal drug activity associated with the United States mail.

Under this Memorandum of Understanding, a USPIS Springfield Drug Task Force would be created, which would consist of up to seven USPIS Postal Inspectors and one SPD officer.

REMARKS: Under the agreement, SPD would be eligible to receive reimbursement for overtime expenses for the SPD Task Force Officer for overtime associated with Task Force Operations. A budget adjustment is included to reflect up to $18,649, in potential reimbursable overtime expenses.

Submitted by:

Paul Williams, Chief of Police

Approved by:

Jason Gage, City Manager

Exhibit A

MEMORANDUM OF UNDERSTANDING

This document sets forth the general understanding between the United States Postal Inspection Service (USPIS) and the Springfield MO Police Department, with respect to a joint cooperative law enforcement effort, hereinafter referred to as the USPIS Springfield DTF.

This document is not intended as a formal contract, but rather as an expression of understanding to facilitate cooperation. This document is an internal government agreement and is not intended to confer any rights or benefits to any private person or party. The goals of the USPIS Springfield DTF will be to protect the public by investigating and prosecuting criminal offenses related to the trafficking of controlled substances/other dangerous drugs and violations of money laundering statutes.

I. Purpose

The purpose of this Agreement is to develop a cooperative effort with Federal, State and local law enforcement agencies charged with the investigation and prosecution of criminal offenses involving the trafficking of controlled substances and money laundering violations, as well as to establish the terms and conditions under which participating Agencies may coordinate investigative efforts with and/or provide assistance to the USPIS in developing investigations and cases for criminal prosecution.

II. Mission

To investigate, arrest and prosecute individuals participating in illegal drug activity associated to the U.S. Mail in the jurisdictional areas in order to protect the general public from illegal drug activity and create a safer and more secure environment for businesses and the general public in Southern Missouri.

III. Objective

A. To facilitate and maintain communications with participating agencies to maximize the effective use of the Task Force intelligence and resources.
B. To share intelligence and other resources.
C. To conduct coordinated responses to mailings containing controlled substances and/or proceeds from the sales of controlled substances.
D. To identify illegal drug traffickers utilizing the mail and to cause their successful prosecution.
E. To substantially reduce the illegal drug mailings committed in Southern Missouri.

IV. Authorities

USPIS participation in this MOU is authorized under 18 U.S.C. § 3061, 39 U.S.C. § 401, 404 and 411.

V. Participants

The following Federal and local law enforcement agencies are participants in this initiative:

A. United States Postal Inspection Service
B. Springfield MO Police Department

Any State or local employees assigned to the USPIS Springfield DTF in accordance with this Agreement are not considered Federal employees, are not employed by the United States Postal Service (USPS) or the USPIS. They do not take on the status or benefits of Federal employment, USPS employment, or USPIS employment by virtue of this assignment.

VI. Personnel Commitment

Each participating agency intends to provide experienced law enforcement personnel on a full-time basis to the USPIS Springfield DTF for participation on designated investigations. The participating agency will certify the personnel assigned to the USPIS Springfield DTF are not the subject of any current or pending disciplinary actions, or completed disciplinary actions which would in any way compromise the mission of the initiative. Additions or deletions of personnel will be at the discretion of the authorizing supervisors of the respective participants. The participating agencies agree to furnish the following complement of personnel dedicated to the Task Force:

A. USPIS – up to seven (7) Postal Inspectors/Task Force Officers
B. Springfield MO Police Department – up to one (1) Detective/Task Force Officers

The Springfield MO Police Department agrees to furnish vehicles for their assigned investigators and provide them immediate access to such vehicles to travel from their residences in order to be able to respond to joint initiative-related emergency call-outs, to begin and end tours of duty in order to maximize investigative time, and to otherwise conduct investigations of common interest.

Addendum A outlines vehicle reimbursement.

The following departments assigned to USPIS Springfield DTF may request overtime as outlined in this MOU:

A. Springfield MO Police Department (One (1) Detective/Task Force Officer)

Members of the Task Force will be responsible for the investigation of the use of the mail to engage in the trafficking of controlled substances, firearms and money laundering violations. Continued assignment of specific personnel to the Task Force will be based on performance and will be at the discretion of their respective agency heads.

VII. Principles

The following principles will help guide relationships among all law enforcement participants in this initiative regarding policy, planning, training, supervision and public relations. All agencies participating in the initiative agree these principles will serve as a basis to mediate any disputes that arise during its operation.

VIII. Recognition of Authority

The Springfield MO Police Department recognizes the U.S. Postal Inspection Service is the principle Federal Law Enforcement Agency responsible for the investigation and enforcement of Federal laws regarding the U.S. Mail, use of the mails, and property in the custody of the U.S. Postal Service, as well as other Postal offenses.

The Springfield MO Police Department understands U.S. Mail under the custody or control of USPS is sealed against inspection and cannot be opened except under the authority of a Federal Search Warrant issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure, or by consent from the sender and/or addressee of the mail piece. The Springfield MO Police Department may not, in any manner, detain or otherwise interfere with U.S. Mail, or record information from mail matter unless specifically authorized to do so by a U.S. Postal Inspector.

IX. Administration

Because this Memorandum of Understanding outlines a cooperative endeavor on the part of all the participants, the policy, program involvement, and direction of this initiative should be joint responsibilities of the enforcement supervisors of the participants. Therefore, the cases will be jointly investigated and no particular participating agency will prevail over another or will act unilaterally. The participants (or designated representatives) will meet regularly as agreed upon to discuss investigations related to the above mentioned offenses**.**

X. Jurisdiction

The determination as to whether a case will be prosecuted federally or by the appropriate county or state authority will be based upon which level of prosecution will best serve the interest of justice consistent with the overall mission objectives of the initiative.

XI. Supervision

In order to affect efficient field operations, operational supervision of the personnel assigned to the USPIS Springfield DTF, while working on initiatives or investigations directly related to the USPIS Springfield DTF, will be the responsibility of a designated field supervisory officer. For the USPIS Springfield DTF the field supervisory officer is the U.S. Postal Inspector/Team Leader (TFS) in charge of the USPIS Kansas City Contraband Interdiction and Investigations (CI2) Team (0859). On matters not related to the USPIS Springfield DTF, assigned personnel will continue to be subject to the established lines of supervision of their respective agencies.

In the event of a conflict with respect to supervisory authority, no action will be taken by the involved personnel until the conflict is resolved at the agency head level. Each member of the USPIS Springfield DTF is subject to the personnel rules, regulations, laws and policies applicable to their respective agency. Each USPIS Springfield DTF member will continue to report to his or her respective agency supervisor for non-investigative matters not detailed in this MOU.

Dismissal from the Task Force will occur solely upon consultation and subsequent approval by agency management of the respective agency heads.

XII. Operation

The TFS, in consultation with a case specific Assistant United States Attorney (AUSA), or the state and/or local prosecutor, will be primarily responsible for directing and monitoring investigations related to the USPIS Springfield DTF. In cases which have been designated for federal prosecution, all investigative procedures shall conform to the current USPIS and Department of Justice regulations and guidelines on criminal investigations and undercover operations.

XIII. INFORMATION SHARING

A. No information possessed by the USPIS, to include information derived from informal communications between USPIS Springfield DTF personnel and USPIS employees not assigned to the USPIS Springfield DTF, may be disseminated by USPIS Springfield DTF personnel to non-USPIS Springfield DTF personnel without prior USPIS authorization and in accordance with the applicable laws and internal regulations, procedures or agreements between the USPIS Springfield DTF and the participating agencies that would permit the participating agencies to receive that information directly. Likewise, USPIS Springfield DTF personnel will not provide any participating agency information to the USPIS that is not otherwise available to it unless authorized by appropriate participating agency officials. This prohibition shall not be interpreted to limit or prevent discussion between the USPIS Springfield DTF member and his/her Springfield MO Police Department supervisors.

B. Each Party that discloses PII is responsible for making reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.

C. The USPIS is providing access to information from its records with the understanding that in the event the recipient becomes aware of any inaccuracies in the data, the recipient will promptly notify the USPIS so that corrective action can be taken. Similarly, if the USPIS becomes aware that information it has received pursuant to this MOU is inaccurate, it will notify the contributing Party so that corrective action can be taken.

D. Each Party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law or policy applicable to the disclosing Party, and that information is only made available to the receiving Party as may be permitted by laws, regulations, policies, or procedures applicable to the disclosing Party.

E. Each Party will immediately report to the other Party each instance in which data received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches).

XIV. Administrative Support

Routine administrative support will be provided by the USPIS.

TFOs will be provided access badges and necessary keys. USPIS will provide a cellphone and computer for the TFOs. USPIS will provide access to office space and equipment as required.

XV. Access to USPS/USPIS Facilities

At the direction of a Postal Inspector, TFOs may retrieve parcels from areas where mail is accepted or processed when the parcels are related to ongoing investigations.

TFOs must be accompanied by a Postal Inspector while conducting interdictions at USPS facilities.

XVI. Financial Responsibility

Each participating agency will be responsible for the pay and benefits of their employees participating on the Task Force.

XVII. Overtime Payments

The Springfield MO Police Department may request reimbursement of overtime salary expenses in connection with work performed on behalf of, and in furtherance of investigations performed by their investigators assigned to this initiative. Springfield MO Police Department officers are required to provide the Task Force Supervisor documentation of approved investigative activity for certification, including the applicable case numbers.

At the sole discretion of the USPIS and as funding allocations permit, the USPIS will reimburse the participating agencies for overtime salary expenses directly related to work on the USPIS Springfield DTF performed by its officer(s) assigned to USPIS Springfield DTF. Participating agency officers shall be required to provide the TL with their overtime hours, along with referencing case numbers and documentation of investigative activity for certification by the TL prior to submitting their overtime for invoice preparation. It is requested that the participating agency provide a separate breakdown, by officer, of the date(s) and the number of hours they worked overtime along with the referencing case numbers, in addition to the overtime invoice. Overtime invoices should be submitted at least monthly to the USPIS Kansas City Domicile (Denver Division), to the attention of the TFS.

The maximum reimbursement allowable for overtime worked on behalf of the joint operation is $18,649.00 per year, per Task Force officer. **N.B. Per DOJ memo dated 10/09/19 which is in effect through FY 20 the maximum amount of reimbursement to local LEAs for OT payments is limited to $18,649, which represents 25% of a GS 12/1**

Procedures for submitting requests for reimbursement are outlined in Attachment A.

XVIII. Program Audit

A. This Agreement and its provisions are subject to audit by the USPIS, USPS OIG, and other designated government auditors. The participating agency agrees to permit such

audits and aggress to maintain all records relating to these transactions for a period of not less than three years, and in the event of an ongoing audit, until the audit is completed.

B. These audits may include reviews of any and all records, documents, reports, accounts, invoices, receipts of expenditures related to this agreement, as well as interviews of any and all personnel involved in these transactions.

XIX. Forfeitures

Forfeiture actions will be processed by the USPIS. All seizures will be equitably shared consistent with DOJ and USPIS equitable sharing guidelines. The parties agree that at the discretion of the U.S. Postal Inspector's appointed designee, assets seized during USPIS Springfield DTF investigations will be forfeited under State of Missouri or Federal law, depending on the circumstances of the case and applicable laws. It is understood however that final decisions with respect to Equitable Sharing for assets forfeited administratively, are made at Inspection Service National Headquarters. Final decisions with respect to assets forfeited through Federal civil or criminal actions are made by the U.S. Department of Justice. **N.B. for forfeitures in CA, include "….must be in compliance with State of California laws governing the receipt of Federal Equitable Sharing funds by State and local law enforcement agencies."**

XX. Evidence

Evidence collected pursuant to USPIS Springfield DTF investigations will normally be held by the agency responsible for presenting the case for prosecution unless other arrangements are made. Evidence collected in USPIS Springfield DTF investigations which require forensic analysis will be submitted to USPIS Forensic Laboratory Services unless the situation dictates otherwise.

XXI Media Relations and Press Releases

Media relations and press releases will be coordinated between the participating USPIS Springfield DTF agencies and controlled by the designated USPIS Springfield DTF supervisory officer and the office of prosecution. USPIS Springfield DTF participants agree that information will only be disseminated to the media in accordance with the terms of this MOU.

XXII. Disclosure of Grand Jury Proceedings

All personnel assigned to the USPIS Springfield DTF shall strictly adhere to the requirements of Rule 6(e) of the Federal Rules of Civil Procedure regarding grand jury secrecy.

XXIII. Compliance with Civil Rights Act of 1964

All personnel assigned to this initiative will comply with Title VI of the Civil Rights Act of 1964 and all requirements imposed by and pursuant to the regulations of the Department of Justice (28 CFR Part 42, Subparts C and D) issued pursuant to Title VI, relating to discrimination on the grounds of race, color, creed, sex, age, or national origin, and equal employment opportunities.

XXIV. Liability

The City of Springfield, Missouri, agrees to assume responsibility for all liabilities imposed by law on its employees, agents, or officers for any claims which may be asserted by third parties arising out of or resulting from any act or omission by Agency personnel pursuant to this agreement. Nothing contained in this Memorandum of Understanding shall be construed to waive any sovereign, official, governmental or qualified immunity applicable to Agency or USPIS, or their officers, agents, or employees.

This agreement and limitation on liability shall not discharge any claim for reimbursement made by USPIS to Participating Agencies for damages or expenses under the terms of this agreement.

Any third party claims, cause of action and liabilities asserted will be handled in accordance with the Federal Tort Claims Act (FTCA), 28 U.S.C. 1346(b), 2671-2680.

XXV. Duration

This USPIS Springfield DTF will be initiated on or about **INITIATION DATE**. This memorandum is in effect upon signing by authorized representatives of participating agencies and USPIS and shall continue in full force and effect until terminated or canceled by the parties.

This memorandum may be terminated or canceled by either party at any time on written notice provided thirty (30) days in advance of the effective date of termination. Any modification or amendment to this agreement shall become effective when reduced to writing and signed by the authorized officials of the respective agencies.

XXVI. Authorization

This Memorandum of Understanding is hereby accepted as setting forth the general intentions and understanding of the undersigned.

By: Date:

Name: Ruth Mendonça

Title: Inspector in Charge - Denver Division

Agency: US Postal Inspection Service

By: Date:

Name:Jason Gage

Title:City Manager

Agency: City of Springfield, Missouri,
Springfield MO Police Department

ATTACHMENT A

Cost Reimbursement Agreement

It is hereby agreed between the United States Postal Inspection Service ("USPIS") and the Springfield MO Police Department/**ADDRESS,** Federal Taxpayer Identification Number _____ that:

Subject to the availability of funds, the Inspection Service will reimburse the Springfield MO Police Department for overtime payments for the law enforcement officer(s) assigned to a joint initiative with the Postal Inspection Service – Denver Division as set forth below for expenses necessary for detection, investigation, and prosecution of crimes against the United States.

Overtime reimbursements for the Springfield MO Police Department Officers assigned to the initiative will be authorized and issued on an as needed basis, and will be calculated at the usual rate for which the individual Officer's time would be compensated. The overtime reimbursement allocation for Springfield MO Police Department officers assigned to the initiative will not exceed $18,649 for each officer per Fiscal Year (October through September).

Overtime and vehicle reimbursement will be made directly to the Springfield MO Police Department by the Inspection Service. All overtime and vehicle reimbursement payments are made by electronic fund transfer ("EFT"). An ACH vendor/miscellaneous payment enrollment form must be on file with the Inspection Service's Denver Division Headquarters to facilitate payments.

The Springfield MO Police Department agrees to the vehicle reimbursement as set forth in the Vehicle Use Addendum.

The Springfield MO Police Department agrees to provide monthly overtime invoices to include a breakdown per individual Officer of the date(s) and the number of overtime hours worked along with the associated case numbers. Overtime invoices requesting reimbursement for any given month should be submitted to the USPIS at the address below by the 10th calendar day of the following month for which reimbursement is requested:

U.S. Postal Inspection Service
ATTN Team Leader Wesley Harris - USPIS
6201 College Blvd #400
Overland Park, KS 66211

At the commencement of each USPIS fiscal year, prior to the submission of any overtime reimbursement requests, the Springfield MO Police Department will provide the salary and hourly overtime rate for each Officer assigned to the joint initiative. At the commencement of each USPIS fiscal year, the Springfield MO Police Department will re-execute the Vehicle Use Agreement.

Requests for reimbursement will include the name, rank, identification number, overtime compensation rate, number of reimbursable hours claimed and the dates of those hours for each Officer for whom reimbursement is sought. Each reimbursement request must be accompanied by a certification signed by an appropriate supervisor of the Springfield MO Police Department that the request has been personally reviewed, the information is accurate, and the personnel for whom reimbursement is claimed were assigned to the joint initiative.

Each request for reimbursement will include: an invoice number, invoice date, TIN, and correct banking information, to complete the electronic funds transfer. The necessary banking information is the

depositor's account title, bank account number, routing number, and type of account (checking, savings, or lockbox). If the banking information changes, the Springfield MO Police Department must submit a new ACH vendor/miscellaneous payment enrollment form to the USPIS.

_____ Date: _____
Ruth M. Mendonça
Inspector in Charge, Denver Division
United States Postal Inspection Service

_____ Date: _____
Jason Gage
City Manager
City of Springfield, Missouri

CITY OF SPRINGFIELD, MO
BUDGET ADJUSTMENT

Exhibit B

Budget Adjustment
021

Revenues:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
25060	18	90060	414110	000000	00000	$ 18,649	Reimbursement from US Postal Inspection Service
Net Revenue Adjustment						$ 18,649	

Expenditures:

Fund	Dept	Org	Account	P&G	Location	Amount	Description
25060	18	90060	500120	000000	00000	$ 18,649	Overtime
Net Expenditure Adjustment						$ 18,649	

Fund Balance Appropriation:

Fund		Title	Amount

Explanation: To amend the FY2021-22 budget by appropriating reimbursements up to $18,649 from the United States Postal Inspection Service for overtime related to Springfield Police Department Task Force operations investigation and prosecution of illegal drug activity associated with the United States mail.

Requested By:

Paul F. Wilkins 9/15/21

Department Head Date

Approved By:

D. L. Holt 9/15/21

Director of Finance Date

City Manager Date

Authorization:

Council Bill No. 2021-252

Ordinance No.

1st Reading

2nd Reading

Journal Imp No.