

**Please Note:** The Council Meeting will be conducted at Rolla City Hall but physical participation will be limited per CDC guidelines. Citizens are encouraged to watch the proceedings live on Fidelity Cable Channel 16 or through the Fidelity YouTube link at <https://www.youtube.com/channel/UCffrfbYSQqtuhOAVkCCyieA>

**COUNCIL PRAYER**  
Ministerial Alliance

**AGENDA OF THE ROLLA CITY COUNCIL**  
**Monday, December 20th, 2021; 6:30 P.M.**  
**City Hall Council Chambers**  
**901 North Elm Street**

**PRESIDING: MAYOR LOUIS J. MAGDITS, IV**

**COUNCIL ROLL: MORIAH RENAUD, TERRY HIGGINS, MEGAN JOHNSON, ANN MURPHEY, LISTER B. FLORENCE, JR., MATTHEW FRIDLEY, JODY EBERLY, ROBERT KESSINGER, CAROLYN BOLIN, STANLEY MAYBERRY, VICTORIA STEEN, AND DEANNE LYONS**

\*\*\*\*\*

**PLEDGE OF ALLEGIANCE**  
Councilperson Carolyn Bolin

**I. PUBLIC HEARINGS**

- A. **Public Hearing and Ordinance:** Request to rezone 4120 and 4122 State Hwy V from the R-2, Two-family district to the M-2, Heavy Manufacturing district. (ZON21-13) (City Planner Tom Coots) **Public Hearing/First Reading**
- B. **Public Hearing and Ordinance:** Request to rezone 602 N. Cedar; 407 E. 6<sup>th</sup>; and 603 N Walnut from the R-3, Multifamily district and the C-2, General Retail district to the C-1, Neighborhood Commercial district (ZON21-12) (City Planner Tom Coots) **Public Hearing/First Reading**

**II. ACKNOWLEDGMENTS and SPECIAL PRESENTATIONS –**

**III. OLD BUSINESS**

- A. **Ordinance/Resolution** for the approval or denial of a Conditional Use Permit (CUP) for wireless communications facility. (City Planner Tom Coots) **First Reading or Motion**
- B. **Ordinance** repealing Sec. 7-26 of the Rolla City Code and enacting a new 7-26 relating to Cemetery Burial Permit Fees. (Parks Director Floyd Jernigan) **Final Reading**
- C. **Ordinance** allowing the Mayor to enter into an agreement with B&B Building Systems for a salt storage building purchase. (Public Works Director Steve Hargis) **Final Reading**
- D. **Ordinance** to vacate a sanitary sewer easement on lots 168, 177, and 178 of the College Hills Subdivision. (City Engineer Darin Pryor) **Final Reading**

**IV. NEW BUSINESS**

- A. **Ordinance** to approve the minor subdivision final plat of Subway Subdivision No. 2. (SUB21-08) (City Planner Tom Coots) **First Reading**
- B. **Resolution** to participate in the Global Opioid Settlement. (City Administrator John Butz) **Motion**

- C. **Ordinance** to authorize an agreement with the Missouri Highway and Transportation Commission for a State Block Grant to replace the beacon at the Rolla National Airport. (City Engineer Darin Pryor) **First Reading**
- D. **Motion** to accept sanitary sewer easement from Premier Apartments, LLC for an existing sanitary sewer main at 1206 Bardsley Road. (City Engineer Darin Pryor) **Motion**

V. **CLAIMS and/or FISCAL TRANSACTIONS**

- A. **Award** of bid to Gerstner Electric, Inc. for University Drive Lighting and **Ordinance** authorizing the Mayor to enter into the contract with same. (Darin Pryor City Engineer) **Motion to Award and First and Final Reading Requested**
- B. **Ordinance** to approve Change Orders 4 and 5 for Project 359 – University Drive Realignment. (Darin Pryor City Engineer) **First Reading**

VI. **CITIZEN COMMUNICATION**

VII. **MAYOR/CITY COUNCIL COMMENTS**

VIII. **COMMENTS FOR THE GOOD OF THE ORDER**

- A. Local Municipal Election Filing Deadline is Tuesday, December 28<sup>th</sup>, 5:00pm.
- B. Merry Christmas and a Happy New Year!

IX. **CLOSED SESSION** - Closed Session Pursuant to RSMO 610.021 (2) for the discussion of real estate.

X. **ADJOURNMENT**



**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT:** Community Development      **ACTION REQUESTED:** Public Hearing/First Reading

**SUBJECT:** Map Amendment (rezoning): 4120 and 4122 State Hwy V from the R-2, Two-family district to the M-2, Heavy Manufacturing district.

(ZON21-13)

**MEETING DATE: December 20, 2021**

---

**Application and Notice:**

Applicant/Owner - Matt Williams of Rolla Community Development Corporation, RCDC  
Public Notice - Letters mailed to property owners within 300 feet; Legal ad in the Phelps County Focus; signage posted on the property; <https://www.rollacity.org/agenda.shtml>

**Background:** The applicant, RCDC – Rolla Community Development Corporation, intends to purchase the subject property. RCDC acquires and markets properties for industrial development as a part of the economic development efforts for the city. RCDC intends to purchase the property and then market the property for industrial development.

**Property Details:**

Current zoning - R-2, Two-family to M-2, Heavy Manufacturing  
Current use - Residential  
Proposed use - Industrial  
Land area - 5.3 acres

**Public Facilities/Improvements:**

Streets - The subject property has frontage on State Hwy V, a Collector street.  
Sidewalks - No sidewalks are located adjacent to the property. Sidewalks would not be required if the property is developed.  
Utilities - The subject property should have access to all needed public utilities, however, some utilities may need to be extended or improved.

**Comprehensive Plan:** The Comprehensive Plan designates the property as being appropriate for Industrial uses.

I.A.1

**Discussion:** The property is adjacent to industrial uses. The Comprehensive Plan indicates the property is appropriate for industrial uses. The industrial park has a limited remaining supply of flat, developable land for industrial uses.

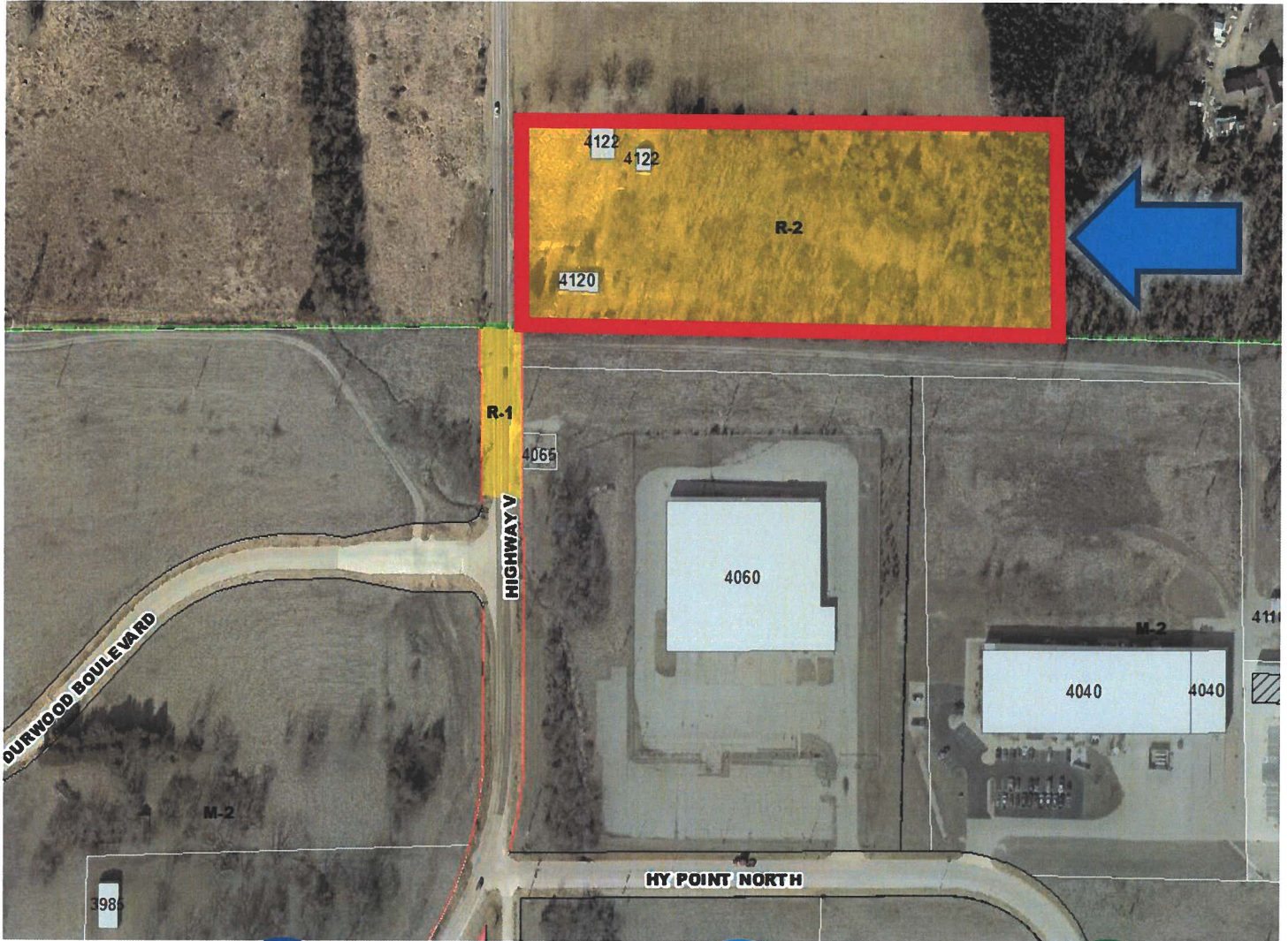
**Planning and Zoning Commission Recommendation:**

The Rolla Planning and Zoning Commission conducted a public hearing on December 14, 2021 and voted 7-0 to recommend the City Council approve the request.

**Prepared by:** Tom Coots, City Planner

**Attachments:** Public Notice Letter; Letter of Request; Ordinance





**Project Information:**

Case No: ZON21-13  
 Location: 4120 and 4122 Hwy V  
 Applicant: RCDC  
 Request:  
 Rezoning from the R-2, Two-family district to the M-2, Heavy Manufacturing district.



**Public Hearings:**

Planning and Zoning Commission  
**December 14, 2021**  
**5:30 PM**  
 City Hall: 1<sup>st</sup> Floor  
  
 City Council  
**December 20, 2021**  
**6:30 PM**  
 City Hall: 1<sup>st</sup> Floor



**For More Information Contact:**

Tom Coots, City Planner  
 tcoots@rollacity.org  
  
 (573) 426-6974  
 901 North Elm Street  
 City Hall: 2<sup>nd</sup> Floor  
 8:00 – 5:00 P.M.  
 Monday - Friday

I.A.3





**Who and What is the Planning and Zoning Commission?**

The Planning and Zoning Commission is an appointed group of citizens from Rolla who are charged with hearing and deciding land use applications, such as zoning and subdivisions. The Commission takes testimony and makes a recommendation to the City Council.

**What is a Rezoning (Map Amendment)?**

A Rezoning is a request to change the zoning of a property from one zoning district to another. Usually a rezoning would allow for a property to be used differently than in the past, or may allow for development or redevelopment.

**What is Zoning?**

The City of Rolla has adopted zoning regulations that divide the city into separate areas that allow for specified uses of property. For example, generally only residential uses are allowed in residential zones; commercial uses in commercial zones; etc..

**How Will This Impact My Property?**

Each case is different. Adjacent properties are more likely to be impacted. Please contact the Community Development Office at (573) 426-6974 if you have any questions.

**What If I Have Concerns About the Proposal?**

If you have any concerns or comments, please try to attend the meeting. You may learn details about the project at the meeting. You will be given an opportunity to ask questions or make comments.

You do have the right to gather signatures for a petition. If a petition is received by 30% of the land owners (by land area) within 185 feet of the subject property, such request would require approval of 2/3 of the City Councilors. Please contact the Community Development Office for a property owner list.

**What If I Cannot Attend the Meeting?**

Please try to attend the meeting if you have any questions or concerns. However, if you are unable to attend the meeting, you may provide written comments by letter or email. These comments will be presented to the Board.

**What If I Have More Questions?**

Please contact the Community Development Office if you have any additional questions.

**LEGAL DESCRIPTION**

All that part of the NW ¼ of the NW ¼ of Sec. 29, Twp. 38 N. Rng. 7 W in Phelps County, Missouri, described as follows:

Commencing at the SW corner of the NW ¼ of the NW ¼ of said Sec. 29; thence S. 88 degrees 28 minutes E., 32.26 ft. along the S. line of said quarter quarter to the true point of beginning of the tract hereinafter described on the E. right of way of Phelps County Rt. V; thence N. 0 degrees 02 minutes E. 300.0 ft along said E. right of way to the S. line of a 50 foot road; thence S. 88 degrees 28 minutes E., 726.0 ft along said S. road line; thence S. 0 degrees 02 minutes W., 300.0 ft to the S. line of said quarter quarter; thence N. 88 degrees 28 minutes W., 726.01 ft along said S. line to the true point of beginning.

Above tract contains 5.0 acres +/- . As per survey by R.L. Elgin, dated Jan. 19, 1977, recorded

In Phelps County Surveyor's Records Book "G", page S-3445.



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO APPROVE THE RE-ZONING OF 4120 AND 4122 STATE HWY V FROM THE R-2, TWO-FAMILY DISTRICT TO THE M-2, HEAVY MANUFACTURING DISTRICT**

( ZON21-13 )

**WHEREAS**, an application for a rezoning was duly filed with the Community Development Department requesting the property described above be rezoned according to the Basic Zoning Ordinance of the City of Rolla, Missouri, so as to change the class of the real property hereinafter described; and

**WHEREAS**, a public notice was duly published in the Phelps County Focus for this according to law which notice provided that a public hearing would be held at Rolla City Hall, 901 N. Elm, Rolla, Missouri; and

**WHEREAS**, the City of Rolla Planning and Zoning Commission met on December 14, 2021 and recommended the City Council approve the rezoning of the subject property; and

**WHEREAS**, the Rolla City Council, during its December 20, 2021 meeting, conducted a public hearing concerning the proposed rezoning to hear the first reading of the attached ordinance;

**WHEREAS**, after consideration of all the facts, opinions, and evidence offered to the City Council at the hearing by those citizens favoring the said change of zoning and by those citizens opposing said change, the City Council found the proposed rezoning would promote public health, safety, morals and the general welfare of the City of Rolla, Missouri, and would be for the best interest of said City;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AS FOLLOWS:**

**SECTION 1:** That the Basic Zoning Ordinance No. 3414, Chapter 42 of the Code of the City of Rolla, Missouri which zoning ordinances adopts zoning regulations, use districts, and a zoning map in accordance with the Comprehensive Plan is hereby amended by changing the zoning classification of the following property situated within the City of Rolla, Missouri, from R-2 (Two-Family) to M-2 (Heavy Manufacturing) Zoning described as follows:

All that part of the NW ¼ of the NW ¼ of Sec. 29, Twp. 38 N. Rng. 7 W in Phelps County, Missouri, described as follows:

Commencing at the SW corner of the NW ¼ of the NW ¼ of said Sec. 29; thence S. 88 degrees 28 minutes E., 32.26 ft. along the S. line of said quarter quarter to the true point of beginning of the tract hereinafter described on the E. right of way of Phelps County Rt. V; thence N. 0 degrees 02 minutes E. 300.0 ft along said E. right of way to the S. line of a 50 foot road; thence S. 88 degrees 28 minutes E., 726.0 ft along said S. road line; thence S. 0

I.A.5

degrees 02 minutes W., 300.0 ft to the S. line of said quarter quarter; thence N. 88 degrees 28 minutes W., 726.01 ft along said S. line to the true point of beginning.

Above tract contains 5.0 acres +/- . As per survey by R.L. Elgin, dated Jan. 19, 1977, recorded in Phelps County Surveyor's Records Book "G", page S-3445.

**SECTION 2:** This Ordinance shall be in full force and effect from and after the date of its passage and approval.

**PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 3RD DAY OF JANUARY, 2022.**

APPROVED:

ATTEST:

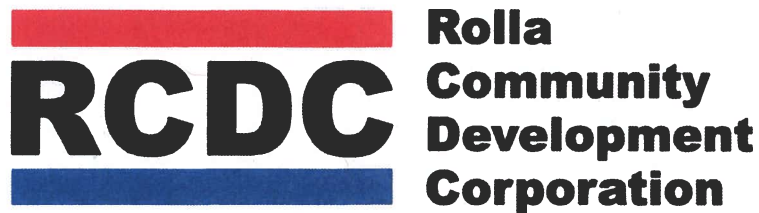
\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

I.A.6



November 22, 2021

City of Rolla  
Planning & Zoning Board  
901 N. Elm Street  
Rolla, MO 65401

Greetings:

Rolla Community Development Corporation (RCDC), a private non-profit which develops HyPoint and HyPoint West Industrial Parks, has contracted to purchase the Anna Mattingly Trust tract, approximately five acres located at 4120/4122 Highway V. This five acre tract borders HyPoint Industrial Park along its north boundary, due north of the old Fed-Ex facility.

The tract currently contains two abandoned structures and is vacant. It is relatively flat ground and would make a useful addition to HyPoint to be made available for industrial development. The property is currently zoned R-2. RCDC's contract to purchase the property is contingent on the property being rezoned to M-2 for industrial use. RCDC is requesting the Rolla Planning and Zoning Board and the Rolla City Council consider approval of our request for rezoning so that we may close the purchase of the Mattingly tract and add it to HyPoint as available for industrial development.

Thank you for your consideration in the matter.

Yours truly,

Matthew Z. Williams  
RCDC President

I.A.7







**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT:** Community Development      **ACTION REQUESTED:** Public Hearing/First Reading

**SUBJECT:** Map Amendment (rezoning): 602 N Cedar; 407 E 6<sup>th</sup>; and 603 N Walnut from the R-3, Multi-family district and the C-2, General Retail district to the C-1, Neighborhood Commercial district. (ZON21-12)

**MEETING DATE: December 20, 2021**

---

**Application and Notice:**

Applicant/Owner - William Moorkamp of WGM Rentals, LLC  
Public Notice - Letters mailed to property owners within 300 feet; Legal ad in the Phelps County Focus; signage posted on the property; <https://www.rollacity.org/agenda.shtml>

**Background:**

The applicant has acquired three properties which together are the south half of the block. Four residential buildings are located on the property. Part of the property is zoned C-2, General Retail. Part of the property is zoned R-3, Multi-family. Zoning to C-1, Neighborhood Commercial would allow for the intended use and bring the entire property under one zoning district. The applicant intends to redevelop the property for a professional office space use.

The property is also within the Rolla Arts and Entertainment Overlay District. The overlay district applies restrictions and allowances on top of the underlying zoning. The uses allowed in the proposed C-1 district are allowed in addition to the arts and entertainment oriented uses allowed by the overlay. The overlay district also imposes more restrictive signage standards.

**Property Details:**

Current zoning - R-3, Multi-family and C-2, General Retail to C-1, Neighborhood Commercial  
Current use - Residential  
Proposed use - Commercial  
Land area - 29,500 sq. ft.

**Public Facilities/Improvements:**

Streets - The subject property has frontage on 6<sup>th</sup> Street, a Collector street; and on Cedar Street and Walnut Street, both local streets.  
Sidewalks - Sidewalks are located adjacent to the property on all sides.  
Utilities - The subject property should have access to all needed public utilities.

**Comprehensive Plan:** The Comprehensive Plan designates the property as being appropriate for Medium and High Density Residential uses.

I.B.1

**Discussion:** The property has frontage on a collector street and is located directly across the street from Benton Square, a redeveloped multi-tenant commercial building. The property is within the Arts and Entertainment Overlay, which allows many types of commercial uses. A well-designed professional office building should be compatible with the area.

**Planning and Zoning Commission Recommendation:**

The Rolla Planning and Zoning Commission conducted a public hearing on December 14, 2021 and voted 7-0 to recommend the City Council approve the request.

**Prepared by:** Tom Coots, City Planner

**Attachments:** Public Notice Letter; Letter of Request; Ordinance





### Project Information:

Case No: ZON21-12  
 Location: 602 N Cedar St; 407 E 6<sup>th</sup> St; and 603 N Walnut St  
 Applicant: WGM Rentals, LLC  
 Request:  
 Rezoning from the C-2, General Retail and the R-3, Multi-family districts to the C-1, Neighborhood Commercial district.



### Public Hearings:

Planning and Zoning Commission  
**December 14, 2021**  
**5:30 PM**  
 City Hall: 1<sup>st</sup> Floor  
  
 City Council  
**December 20, 2021**  
**6:30 PM**  
 City Hall: 1<sup>st</sup> Floor



### For More Information Contact:

Tom Coots, City Planner  
 tcoots@rollacity.org  
  
 (573) 426-6974  
 901 North Elm Street  
 City Hall: 2<sup>nd</sup> Floor  
 8:00 – 5:00 P.M.  
 Monday - Friday

I.B. 3





**Who and What is the Planning and Zoning Commission?**

The Planning and Zoning Commission is an appointed group of citizens from Rolla who are charged with hearing and deciding land use applications, such as zoning and subdivisions. The Commission takes testimony and makes a recommendation to the City Council.

**What is a Rezoning (Map Amendment)?**

A Rezoning is a request to change the zoning of a property from one zoning district to another. Usually a rezoning would allow for a property to be used differently than in the past, or may allow for development or redevelopment.

**What is Zoning?**

The City of Rolla has adopted zoning regulations that divide the city into separate areas that allow for specified uses of property. For example, generally only residential uses are allowed in residential zones; commercial uses in commercial zones; etc..

**How Will This Impact My Property?**

Each case is different. Adjacent properties are more likely to be impacted. Please contact the Community Development Office at (573) 426-6974 if you have any questions.

**What If I Have Concerns About the Proposal?**

If you have any concerns or comments, please try to attend the meeting. You may learn details about the project at the meeting. You will be given an opportunity to ask questions or make comments.

You do have the right to gather signatures for a petition. If a petition is received by 30% of the land owners (by land area) within 185 feet of the subject property, such request would require approval of 2/3 of the City Councilors. Please contact the Community Development Office for a property owner list.

**What If I Cannot Attend the Meeting?**

Please try to attend the meeting if you have any questions or concerns. However, if you are unable to attend the meeting, you may provide written comments by letter or email. These comments will be presented to the Board.

**What If I Have More Questions?**

Please contact the Community Development Office if you have any additional questions.

**LEGAL DESCRIPTION**

Lots 5-8, Block 63, Country Addition to Rolla, City of Rolla, Phelps County, Missouri.

I.B.4



ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO APPROVE THE RE-ZONING OF 602 N CEDAR; 407 E 6<sup>th</sup>; AND 603 N WALNUT FROM THE R-3, MULTI-FAMILY AND C-2, GENERAL RETAIL DISTRICTS TO THE C-1, NEIGHBORHOOD COMMERCIAL DISTRICT**

**( ZON21-12 )**

**WHEREAS**, an application for a rezoning was duly filed with the Community Development Department requesting the property described above be rezoned according to the Basic Zoning Ordinance of the City of Rolla, Missouri, so as to change the class of the real property hereinafter described; and

**WHEREAS**, a public notice was duly published in the Phelps County Focus for this according to law which notice provided that a public hearing would be held at Rolla City Hall, 901 N. Elm, Rolla, Missouri; and

**WHEREAS**, the City of Rolla Planning and Zoning Commission met on December 14, 2021 and recommended the City Council approve the rezoning of the subject property; and

**WHEREAS**, the Rolla City Council, during its December 20, 2021 meeting, conducted a public hearing concerning the proposed rezoning to hear the first reading of the attached ordinance;

**WHEREAS**, after consideration of all the facts, opinions, and evidence offered to the City Council at the hearing by those citizens favoring the said change of zoning and by those citizens opposing said change, the City Council found the proposed rezoning would promote public health, safety, morals and the general welfare of the City of Rolla, Missouri, and would be for the best interest of said City;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AS FOLLOWS:**

**SECTION 1:** That the Basic Zoning Ordinance No. 3414, Chapter 42 of the Code of the City of Rolla, Missouri which zoning ordinances adopts zoning regulations, use districts, and a zoning map in accordance with the Comprehensive Plan is hereby amended by changing the zoning classification of the following property situated within the City of Rolla, Missouri, from R-3 (Multi-Family) and C-2 (General Retail) to C-1 (Neighborhood Commercial) Zoning described as follows:

Lots 5-8, Block 63, Country Addition to Rolla, City of Rolla, Phelps County, Missouri.

**SECTION 2:** This Ordinance shall be in full force and effect from and after the date of its passage and approval.

I. B. 5

**PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND  
APPROVED BY THE MAYOR THIS 3RD DAY OF JANUARY, 2022.**

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

I.B.6

**November 8<sup>th</sup>, 2021**

**To Whom it May Concern,**

**We are requesting re-zoning of the properties located at 602 N Cedar St, 407 E 6<sup>th</sup> St, and 603 N Walnut St. 602 N Cedar is currently zoned as C2, 407 E 6<sup>th</sup> St is zoned R3, 603 N Walnut is zoned R3. We are requesting that 602 N Cedar to be changed from C2 to C1. We are also requesting that 407 E 6<sup>th</sup> St and 603 N Walnut St be changed from R3 to C1. Zoning of C1 is in line with the current businesses in the area.**

**The proposed use of the property will be professional office space and would fit in with the neighborhood's existing businesses which include Mi Serenity, Benton Square businesses, Archer-Elgin Engineering, and Orval Reeves Gallery. We feel that this zoning change would provide for an economically viable use of the property and would enhance the esthetics of the proposed properties.**

**Thank you for your consideration.**

**Sincerely,**

I.B.7





**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT:** Community Development

**ACTION REQUESTED:** First Reading/or Resolution

**SUBJECT:** Conditional Use Permit (CUP) to allow a Wireless Communications Facility (95' monopole type tower)

**MEETING DATE: December 20, 2021**

---

**Application and Notice:**

Applicant - Russel Been or Collective Solutions, LLC  
Owner - Barry Dunnigan of B Dunnigan Tours, LLC  
Public Notice - Letters mailed to property owners within 300 feet; Legal ad in the Phelps County Focus; signage posted on the property; <https://www.rollacity.org/agenda.shtml>

**Background:**

The applicant seeks to construct a wireless communications tower. The tower is proposed to be 95 feet tall, plus 5 foot lightning rod, monopole design, and have a fenced area for ground equipment. The Wireless Communications Facilities Code was adopted in 2019. The new code provides allowances for “small-cell” technology and disguised facilities. Any other type of wireless communications not exempted requires a Conditional Use Permit, including the more traditional towers such as is proposed.

The City Council voted to continue the public hearing for this request at their September 20 meeting to allow for the Planning and Zoning Commission to conclude their review. The City Council opened the public hearing at the October 18, 2021 meeting and concluded the public hearing at the November 1, 2021 meeting. The City Council was asked to consider the criteria for approval and testimony and evidence received to provide guidance to staff on preparation of the findings of fact to support the approval or denial. The findings of fact have were presented for consideration at the November 15, 2021 meeting. A draft of an ordinance to approve the request and a draft of a resolution to deny the request were presented at the December 6, 2021 meeting.

**Property Details:**

Current zoning - C-3, Highway Commercial  
Proposed use - Wireless Communications Tower  
Land area - Lease area: About 9,800 sq. ft. of 1.7 acre lot

III.A.1

**Public Facilities/Improvements:**

- Streets - The subject property has frontage on Old St. James Rd, a major arterial road.
- Sidewalks - A sidewalk is located adjacent to the property along Old St. James Rd.
- Utilities - The property is already served by all needed utilities.

**Comprehensive Plan:** The Comprehensive Plan indicates that the subject property is appropriate for Industrial uses.

**Planning and Zoning Commission Recommendation:**

The Rolla Planning and Zoning Commission conducted a public hearing on September 14, 2021 and voted to continue the deliberations to their October 12, 2021 meeting. At the October 12 meeting the Planning and Zoning Commission voted 4-0 to recommend approval of the request with the following conditions:

1. The Conditional Use Permit is granted only to allow the proposed tower and fenced area.
2. The gravel access area is permitted, however, the driveway must be paved within the right-of-way to prevent gravel from leaving the property. (NOTE: The applicant stated that they are now willing to pave the driveway. This condition is recommended to be removed)
3. The reduction in the tower setbacks are permitted, however, the tower must be designed and constructed to meet the minimum building codes.
4. A copy of all required FAA and FCC permits be submitted for the file.
5. Security fencing and systems must be maintained for the duration of the use.

**Alternatives:**

1. Find that the request meets the standards for approval with certain conditions and conduct the first reading of the attached ordinance to approve the request.
2. Find that the proposed request does not meet the minimum standards for approval and conduct a vote to approve the attached resolution to deny the request.

**Prepared by:** Tom Coots, City Planner

**Attachments:** Public Notice Letter; Statement of Facts; Proposed Ordinance for approval; Proposed Resolution for denial



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION TO APPROVE FINDINGS OF FACT AND CONCLUSIONS OF LAW TO DENY AN APPLICATION FOR A CONDITIONAL USE PERMIT FOR A 95' MONOLITHIC CELL TOWER LOCATED AT 1900 N. OLD SAINT JAMES ROAD AS REQUESTED BY COLLECTIVE SOLUTIONS LLC IN ACCORDANCE WITH ROLLA CITY CODE CHAPTER 42, DIVISION 22, SUBDIVISION IIA WIRELESS COMMUNICATIONS FACILITIES CODE.

WHEREAS, the City of Rolla, Missouri received a request from Collective Solutions LLC on August 10, 2021 for a Conditional Use Permit for a wireless telecommunications tower ("CUP") located at 1900 N. Old St. James Road; and;

WHEREAS, the appropriate city staff sent the request for the CUP to the Planning Commission for a public hearing which occurred on September 14, 2021 and October 12, 2021; and

WHEREAS, the Planning and Zoning Commission recommended approval to the City Council for the CUP as submitted by Collective Solutions LLC based on the findings required to be made by the Planning and Zoning Commission pursuant to Section 42-402; and

WHEREAS, in accordance with Section 42-402(3) specifically states "Evidence shall be under oath and may be submitted with the application or thereafter or presented during the public hearing by the applicant or others," the City Council held a hearing on October 18, 2021 and continued on to November 1, 2021 where sworn witnesses provided testimony. The City also received some communications from citizens. This information was not considered as evidence.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AS FOLLOWS:

**Section 1:** The Findings of Fact and Conclusions of Law on an application for a conditional use permit as requested by Collective Solutions LLC to be located at 1900 N. Old St. James Road, attached hereto as "Attachment A", be, and hereby is approved and adopted.

**Section 2:** Following the public hearing and consideration of the evidence and sworn testimony presented the City Council finds that the Findings as established by Section 42-402(4) are not satisfied and therefore the CUP is denied.

**Section 3:** That the City Clerk is hereby directed to certify a copy of this Resolution and "Attachment A" and send regular US Mail to Collective Solutions LLC.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND APPROVED BY THE MAYOR THIS \_\_ DAY OF DECEMBER, 2021.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

III.A.3

---

City Clerk

APPROVED AS TO FORM:

---

City Counselor

H.A.Y

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO APPROVE FINDINGS OF FACT AND CONCLUSIONS OF LAW ON AN APPLICATION FOR A CONDITIONAL USE PERMIT FOR A 95' MONOLITHIC CELL TOWER LOCATED AT 1900 N. OLD SAINT JAMES ROAD AS REQUESTED BY COLLECTIVE SOLUTIONS LLC IN ACCORDANCE WITH CITY CODE SECTION 42-402 AND APPROVE APPLICATION FOR CONDITIONAL USE PERMIT WITH CONDITIONS.

**WHEREAS**, the City of Rolla, Missouri received a request from Collective Solutions LLC on August 10, 2021 for a Conditional Use Permit for a wireless telecommunications tower ("CUP") located at 1900 N. Old St. James Road; and;

**WHEREAS**, the appropriate city staff sent the request for the CUP to the Planning Commission for a public hearing which occurred on September 14, 2021 and October 12, 2021; and

**WHEREAS**, the Planning and Zoning Commission recommended approval to the City Council for the CUP as submitted by Collective Solutions LLC based on the findings required to be made by the Planning and Zoning Commission pursuant to Section 42-402; and

**WHEREAS**, in accordance with Section 42-402(3) specifically states "Evidence shall be under oath and may be submitted with the application or thereafter or presented during the public hearing by the applicant or others," the City Council held a hearing on October 18, 2021 and continued on to November 1, 2021 where sworn witnesses provided testimony. The City also received some communications from citizens. This information was not considered as evidence.

**WHEREAS**, a public hearing was held at the time and place provided by said notice; and

**WHEREAS**, after consideration of all the facts, opinions, and evidence offered to the City Council at said hearing by those citizens favoring said conditional use permit and by those citizens opposing said permit the Council found that the proposed Conditional Use Permit would promote public health, safety, morals, and the general welfare of the City of Rolla, Missouri, and would be for the best interest of said City; now

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AS FOLLOWS:

**Section 1:** The Findings of Fact and Conclusions of Law on an application for a conditional use permit as requested by Collective Solutions LLC to be located at 1900 N. Old St. James Road, attached hereto as Attachment A, be, and hereby are approved and adopted.

**Section 2:** Following the public hearing and consideration of the evidence and sworn testimony the City Council finds that the Findings as established by Section 42-402(4) are met and therefore the CUP is approved with the following conditions.

- a. The applicant receives a variance from the Board of Adjustment allowing the deviation from the setbacks and support structure disguise. The crow's nest appurtenance is granted.
- b. The applicant must apply for and be granted a change in zoning for the property to the M1 zoning classification to comply with tower height restrictions.
- c. The access driveway including one parking spot shall be paved.
- d. A six-foot-high fence slatted screening must be erected around the structure with landscape plan developed (and installed) that must be approved by the Community Development Department.
- e. A copy of all required FAA and FCC permits must be submitted for the file.

**Section 4:** This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND APPROVED BY THE MAYOR THIS \_\_\_<sup>h</sup> DAY OF DECEMBER, 2021.

APPROVED:

ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

## City Council of City of Rolla, Missouri

Request: Conditional Use Permit for new 95' Monopole Towers Installation with antenna

Applicant: Russel Been/Collective Solutions, LLC

Owners: Barry Dunnigan of B Dunnigan Tours, LLC

Location: 1900 Old Saint James Road

### Findings of Fact with Conclusions of Law

The City of Rolla has heard testimony, under oath, as prescribed by City Code, and provided a full opportunity for Collective Solutions, LLC c/o AT&T (The "Applicant") and the public to present facts and argument, and has fully considered the issues of fact and law presented to it, and based thereon adopts the following Findings of Fact and Conclusions of Law herein:

1. The Applicant filed an application on August 10, 2021, with the application fee received on November 2, 2021, requesting a Conditional Use Permit ("CUP") to construct a telecommunications tower and associated ground facilities located at 1900 Old Saint James Road and is zoned as C-3 Highway (Heavy) Commercial District, generally surrounded by industrial zoning (M-2 Heavy Manufacturing) within the City of Rolla to provide wireless communication services. The City's Comprehensive Plan considers the future use of that area as "industrial." The Application specifically sought approval for a 95' monopole structure with exposed crow's nest antennas and a 5 foot lightning rod, with attendant equipment (hereafter referred to as "Tower"). August 10, 2021 Application File.

2. Pursuant to Section 42-400 to 42-401 of the Code of Ordinances of the City of Rolla, Missouri (the "Code"), on September 14, 2021 the Rolla Planning and Zoning Commission conducted a public hearing and voted to continue deliberations to October 12, 2021. On October 12, 2021, the Planning and Zoning Commission voted 4-0 to recommend approval of the Application to the City Council with the following conditions:

- a) The Conditional Use Permit is granted only to allow the proposed tower and fenced area.
- b) The gravel access area is permitted, however, the driveway must be paved within the right-of-way to prevent gravel from leaving the property.
- c) The reduction in the tower setbacks are permitted, however, the tower must be designed and constructed to meet the minimum building codes.
- d) A copy of all required FAA and FCC permits must be submitted for the file
- e) Security fencing and systems must be maintained for the duration of the use.

3. The City provided notice of a public hearing before the City Council on this matter more than satisfying all requirements of the City Code and applicable law, including notice by publication at least 15 days prior to the meeting, notice by posting at City Hall and other direct notice to the Applicant and other potentially interested parties.

4. Per the City Code, regarding CUPs for telecommunications installations, Section 42-402.1(2) provides that: "Evidence shall be under oath and may be submitted with the application or thereafter or presented during the public hearing by the applicant or others." Therefore, the City Council has only relied on sworn testimony or otherwise sworn documentation in making these Findings of Fact and Conclusions of Law.

5. As the public comment offered before Planning and Zoning Commission was not sworn, the City Council cannot, and is not, relying on the information presented before the Planning and Zoning Commission in making these Findings of Fact and Conclusions of Law, including as to whether Applicant has met the requirements for approval of a CUP under Division 16 of Chapter 42 of the City Code, entitled "Wireless Communications Facilities Code."

6. At the public hearing on October 18, and continued on November 1, 2021, the Applicant provided sworn testimony regarding the requested Tower, process for choosing the proposed location, appearance of the tower, being a 95 foot monopole with Antenna steel structure with exposed antennas, description of the premises to be leased and proposed access to the Tower, and a description of anticipated safety expectations.

7. The public offered comments under oath as to the appropriateness of the Tower in the proposed location, whether the request to make exceptions for the setback was a safety issue, whether there would be a lapse in service if not approved and in favor of approval in presumption that service in area would be faster and improved.

8. Certain federal and state laws limit the ability of the City to evaluate certain evidence if presented in reviewing an Application. Specifically, Section 67.5094 RSMo., which provides that a City shall not "evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities", or "require an applicant to submit information about, or evaluate an applicant's business decisions with respect to its designed service, customer demand for service, or quality of its service to or from a particular area or site; or "establish or enforce regulations or procedures for RF signal strength or the adequacy of service quality", among other prohibitions.

9. Therefore, City Council did not "evaluate" the Applicant based on any testimony or evidence in the record regarding the business decisions of the Applicant, the availability of other locations for this Tower, the public's comments regarding radio frequency emissions, or other prohibited considerations of Section 67.5094 RSMo., in making these Findings of Fact and Conclusions of Law.

10. However, the City's lack of comment or evaluation of the above items listed in 8 and 9 including, specifically, the need for the Tower, service to be provided by the Tower, or other alternate locations for the Tower to be presented by the public and the Applicant, is not and shall not be deemed an admission of the City on any of these considerations, but rather only compliance with applicable law.

11. The City Council, after (1) considering all the evidence and sworn testimony presented upon which the City Council can appropriately evaluate, (2) evaluating the credibility of each person presenting such evidence or sworn testimony, (3) determining the relative weight to be given to the evidence or sworn testimony, and (4) drawing reasonable inferences from such evidence and sworn testimony, concludes as follows:

12. As a minimum requirement, the City Code only authorizes approval of a CUP if the Applicant is unable to proceed under the use allowed by Administrative Approval or Permitted Use pursuant to City Code Section 42-400 and 42-401. City Code Section 42-402.1(3) states that no Conditional Use Permit shall be issued unless the applicant has clearly demonstrated by substantial evidence that placement of Wireless Communication Facilities pursuant to Sections 42-400 or 42-401 is not technologically or economically feasible, and the City may consider current or emerging industry standards and practices, among other information, in determining feasibility.

13. The Applicant is not proposing a Tower that meets the definitions and requirements for a permitted use under City Code Sections 42-400 because the Tower is not utilizing an existing building or support structure but is a wholly new, free-standing monopole with exposed antennas.

14. The City Code authorized administrative approval for a disguised support structure and fast track small wireless facilities in Section 42-401.

15. City Code Section 42-397.8 defines a Fast-track' small wireless facility" as:

Fast-Track Small Wireless Facility or Fast-Track: A Small Wireless Facility that meets the following requirements for an Antenna and associated equipment:

- a. No more than seven cubic feet in volume (comprised of no more than 27 square feet of exterior surface area, excluding the surface width equal to the width of the Existing Structure or Utility Pole to which it is mounted, on an imaginary enclosure around the perimeter thereof, excluding cable or cable conduit of four inches or less). Volume shall be the measure of the exterior displacement of the Antenna and associated equipment;
- b. Located with the consent of the owner on an Existing Structure or Utility Pole, or concealed within or on a replacement Utility Pole if appearance is not materially altered and the replacement Existing Structure or Utility Pole is no more than five feet taller;

- c. Not exceeding six feet above the top of an Existing Structure or Utility Pole for a total height not exceeding 50 feet nor taller than more than six feet above the average of similar poles within 300 feet.

16. The Applicant is not proposing, and the Application does not meet the definition and requirements of a “Fast-track’ small wireless facility” as defined under City Code Section 42-397.8. The build plans present by the Applicant in the Application indicated that the equipment sizes are much larger than the definitional requirements, and the structure of the Tower is much higher than the limited height permitted under at “Fast-track’ small wireless facility.”

17. City Code Section 42-397. 7 defines a “disguised support structure” as:

Disguised Support Structure: Any freestanding, artificial structure designed for the support of Antenna, the presence of which is camouflaged or concealed as an appropriately placed and designed architectural or natural feature. Depending on the location and type of disguise used, such concealment may require placement underground of the utilities leading to the structure. Such structures may include but are not limited to clock towers, campaniles, observation towers, light standards, flagpoles, and artificial trees. For purposes of this definition, a structure “camouflaged or concealed as an appropriately-placed and designed architectural or natural feature” shall mean:

- (a) It is consistent with and contributes to and does not detract from the character and property values and use of the area and neighborhood in which it is located;
- (b) It does not contain distorted proportions, size, or other features not typically found on the type of structure or feature to which it is designed to replicate;
- (c) It cannot be identified as a Support Structure by persons with reasonable sensibilities and knowledge;
- (d) Its equipment, accessory buildings, or other aspects or attachments relating to the Disguised Support Structure are wholly concealed using a manner consistent with and typically associated with the architectural or natural structure or feature being replicated; and
- (e) It is of a height, design, and type that would ordinarily occur at the location and neighborhood selected.

18. The Tower does not meet the definition and requirements of a “disguised support structure” under City Code Section 42-397.7 because it is not “camouflaged or concealed as an appropriately placed and designed architectural or natural feature,” as the sworn testimony of the Applicant demonstrated that the Tower itself was not designed in any attempt to camouflage the Tower as anything other than a monopole tower. Further sworn testimony from the Applicant indicated there was no consideration for a disguised design for this site and the Tower would not be understood to be anything other than a Tower to a person with reasonable sensibilities.



19. In presenting any application for a Conditional Use Permit as required by City Code Section 42-234.2, the burden of proof shall rest with the applicant to clearly establish that the proposed conditional use shall meet the following standards:

- (a) The proposed conditional use complies with all applicable provisions of the applicable District regulations.
- (b) The applicant has demonstrated through the provision of a traffic impact study or other acceptable method that the proposed conditional use at the specified location will not adversely affect the safety of the motoring public and pedestrians using the facility and surrounding area from traffic congestion or other hazards.
- (c) The location and size of the conditional use, the nature and intensity of operation involved in or conducted in connection with it, and the location of the site with respect to streets giving access to it are such that the conditional use will not dominate the immediate neighborhood so as to prevent development and use of neighboring property in accordance with the applicable zoning District regulations or the policies of the Rolla Comprehensive Plan. In determining whether the conditional use will so dominate the immediate neighborhood, consideration shall be given to:
  - 1. The location, nature and height of buildings, structures, walls, and fences on the site,
  - 2. The nature and extent of proposed landscaping and screening on the site,
  - 3. The noise characteristics of the use compared to the typical use in the District and any reduction solutions;
  - 4. The potential glare of vehicles and stationary lights on site and any measures employed to mitigate their impact;
  - 5. Sign location, type, size, and lighting, and
  - 6. The impact on or potential interference with any easements, roadways, driveways, rail lines, utilities and storm water management systems. Off-street parking and loading areas will be provided in accordance with the standards set forth in this Article.
- (d) Adequate utility, drainage, and other such necessary facilities have been or will be provided.
- (e) The proposed uses where such developments and uses are deemed consistent with good planning practice; can be operated in a manner that is not detrimental to the permitted developments and uses in the district; can be developed and operated in a manner that is visually compatible with the permitted uses in the surrounding area; and are deemed essential,

convenient, or desirable to preserve and promote the public health, safety, and general welfare of the City of Rolla.

20. The Applicant gave no sworn testimony regarding the CUP requirements as required by City Code Section 42-234.2, although Exhibit A, submitted by Applicant addresses the points required with summation that (a) the proposed conditional use does comply (b) due to limited visits required to the site, the Tower will not affect traffic or pedestrian traffic, (c) the Tower will not dominate the area versus the industrial uses already in the area; the site will have proof slats added to the fencing; the Tower will create almost no noise and less than existing surrounding uses; the site is unmanned and unlit unless emergency; and site will have no impact on easements, roadways, etc.; (d) utilities, drainage and other facilities is accounted for in design; (e) that the addition of coverage and capacity to existing wireless service is good like adding infrastructure, which is good planning, allows for enhance 911 capacity and other safety measures, enhances response time, and triangulation location, which promotes the health and safety of Rolla citizens.

21. Additionally for CUP approval of a telecommunications tower, no Conditional Use Permit shall be approved by the City Council unless an Applicant also presents evidence for the City Council to make findings in the affirmative that the following conditions exist find pursuant to Section 42-402.4 (a – d).

- (a) That the design of the Wireless Communications Facilities, including ground layout, maximally reduces visual degradation and otherwise complies with provisions and intent of this Division;
- (b) That the design is visually compatible with the area, will not distract from the view of the surrounding area, is maximally concealed or blended in with the environment, and will not adversely affect property values;
- (c) That such conditional use shall not be inconsistent or adversely affect the regular permitted uses in the district in which the same is located; and
- (d) That the proposal fully complies with applicable law including the General Requirements herein; provided that an exception to the General Requirements, other than building or safety code compliance, may be approved upon evidence that compliance is not feasible or is shown to be unreasonable under the specific circumstances shown.

22. The City Council finds as to each specific condition set forth in City Code Section 42-402.1(4) as follows:

- (a) That the design of the Wireless Communications Facilities, including ground layout, maximally reduces visual degradation and otherwise complies with provisions and intent of this Division.** The evidence offered regarding whether the Application design or ground layout reduces visual degradation was in Applicant's Exhibit A, stating "the proposed site is adjoined on three sides by Heavy Industrial and on the 4<sup>th</sup> by a service garage for Missouri S&T. This use is very much compatible with the commercial and industrial area in which it is proposed." (Exhibit A, Page 5). Further, in sworn testimony, the Applicant discussed the recommendations and conditions of the Planning and Zoning

Commission and offered that the Applicant was further prepared to pave the driveway, not only the right-of-way with the driveway of gravel as was previously recommended by the Planning and Zoning Commission.

- (b) ***That the design is visually compatible with the area, will not distract from the view of the surrounding area, is maximally concealed or blended in with the environment, and will not adversely affect property values.*** The Applicant submitted Exhibit A, which states “The design is very consistent with the surrounding uses. Efforts were made to conceal the ground equipment from view by slatting the fence.” (Exhibit A, page 5). Exhibit A further states that in a commercial/industrial area such as being proposed, increased coverage, and capacity of a wireless facility is considered necessary infrastructure. Exhibit A continues that by allowing the Tower, coverage and capacity are increased, making the property more desirable and therefore, not only not adversely affecting property values, but increasing the values of those surrounding properties. (Exhibit A, page 5). Applicant did not testify as to visual compatibility with the area, but emphasized that the area was industrial, therefore making it an appropriate spot for a monopole cell tower. There was no testimony indicating any attempt to conceal or otherwise build a tower that blended in with the environment, nor any mention of effect on property values. The plans submitted that the Tower itself would have a crow’s nest design, in violation of the City’s Code Section 42-399(8)(3) and Exhibit A, page 11. No evidence was offered as to why there should be any exception to the crow’s nest prohibition.
- (c) ***That such conditional use shall not be inconsistent or adversely affect the regular permitted uses in the district in which the same is located.*** The Applicant did not testify as to visual compatibility with the area, but emphasized that the area was industrial, therefore making it an appropriate spot for a monopole cell tower. Applicant stated the location was a dream location because it is not something sitting on top of a subdivision. Applicant stated that it is an industrial area across the street from a concrete plant, to the north is equipment storage, to the south Missouri S&T has a garage, there is another part of the concrete plant and the there is the monument manufacturer.
- (d) ***That the proposal fully complies with applicable law including the General Requirements herein; provided that an exception to the General Requirements, other than building or safety code compliance, may be approved upon evidence that compliance is not feasible or is shown to be unreasonable under the specific circumstances shown.***
- (1) At the onset, the Tower violates the City Code Section 42-399.8(3), which prohibits exposed antennas on crow’s nest designs and requires the antennas to be “disguised and maximally concealed on or within” the Tower. The Applicant’s proposed design places the burden on the Applicant to demonstrate that the City’s General Requirements are not feasible or unreasonable under the specific circumstances. Review of the sworn testimony and the record before the City Council indicates that not only did the Applicant not demonstrate that the General Requirements were not feasible or unreasonable, the Applicant’s sworn testimony and Exhibit A materials indicated it did not consider disguising the structure based on the location proposed

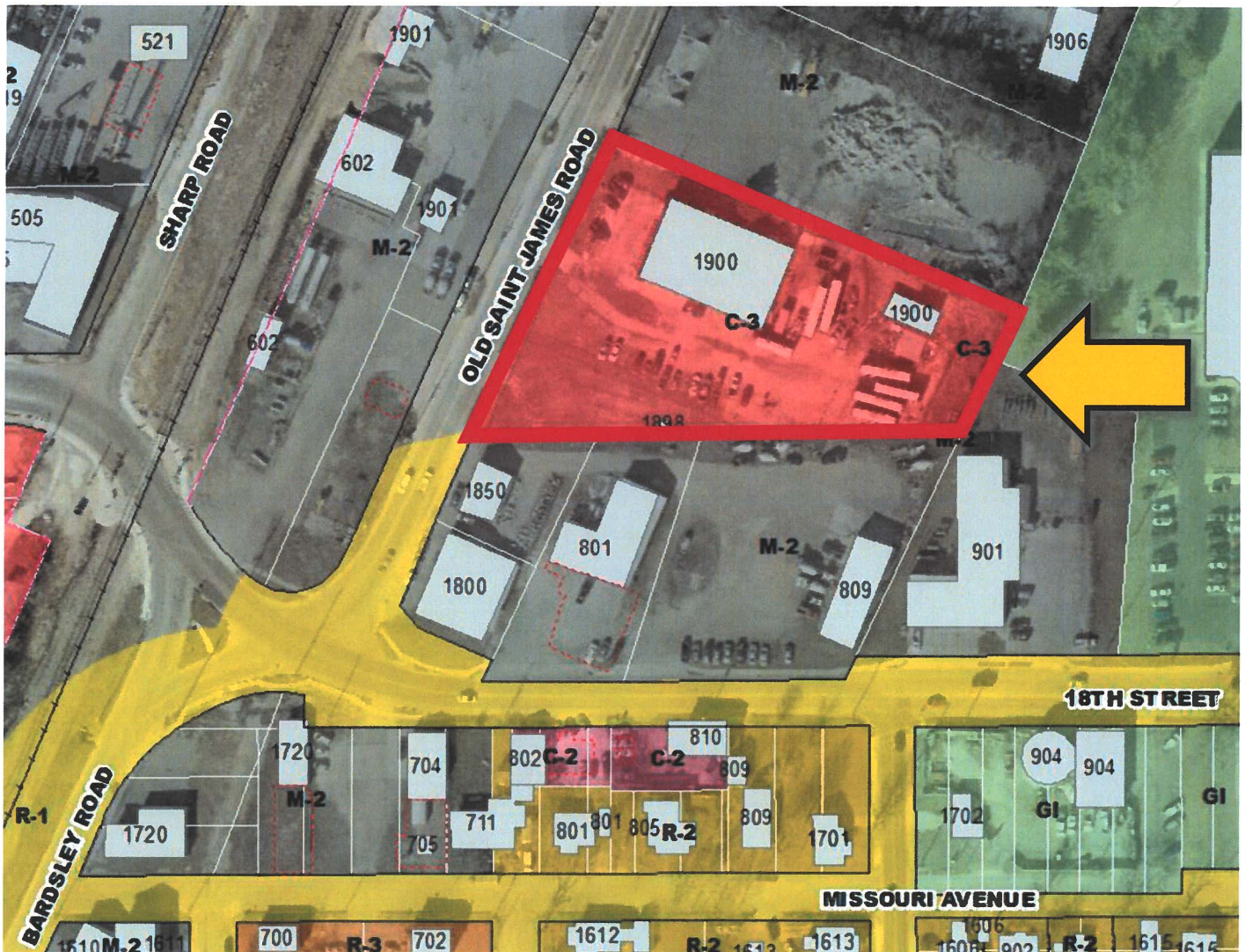
being in an industrial area. There was no evidence offered why the exposed crow's nest could not be otherwise disguised or replaced with different technology.

- (2) The General Requirements in the City Code Section 42-399.8(4) states that Support Structures and Antenna shall not exceed the height limitation of any airport overlay zone as may be adopted by the City or other regulatory agency. Support Structures and Utility Poles may exceed the underlying zoning district height restrictions for buildings and structures only where shown to be necessary, provided that no reasonable and feasible alternative exists. The underlying zoning district height restriction for building and structures is determined to be 64 feet by City Code Section 42-192.3 for C-3 Zoned locations. The sworn testimony and accompanying packet in Exhibit A (which is not sworn testimony) only state why they request the height of 95 feet as it what is in existence at the present at another location and that current technology requires the antennas at the top of the pole instead of the ground for best cell coverage. Applicant offered evidence that the average height of the other existing towers in Rolla is 179 feet. Applicant did acknowledge that said Towers had been installed prior to enactment of present City Code. On November 1, 2021, the sworn testimony of Applicant expounded that the search for a location was a targeted 400 foot area that had to be in the north each part of town due to existing services or towers elsewhere and to avoid interference with existing towers. There was no evidence offered whether any alternative options exist or do not exist and whether feasible or not.
- (3) The General Requirements in the City Code Section 42-399.8(7) state that all Support Structures, including any portions of any Wireless Communications Facilities thereon and associated structures, fences and walls (except for parking associated with the Wireless Communications Facility) shall be separated from any rights-of-way, sidewalk or street, alley, parking area, playground, or other building, and from the property line of any adjacent property at least a horizontal distance equal to the height of the Support Structure, including any portions of the any Wireless Communications Facilities thereon. The sworn testimony of Applicant was that the setback requirements could not be met at the proposed location, but that it was a perfect location and that to require a setback equal to the size of the Support Structure and Antenna (95 feet) was unreasonable. Applicant stated that to meet the required setback would put the Tower in the center of the landowners parking lot either blocking flow of traffic or impeding business. Applicant offered that if required to meet the setback on the proposed location, that the monopole no longer becomes an accessory structure, but becomes the primary structure that would decrease the value of the property and decrease the usability of the property. It was presented by Tom Coats, City Planner with little contrary evidence offered, that if placed where proposed, the Tower would be approximately 64 feet from the nearest building, about 25 feet from the closest property line and about 87 feet from the Old St. James Road right-of-way. As proposed, the location of the Tower would not meet the required setback for at least three of the seven points of contact identified in the City Code requiring such setback. Unlike City Code Section 42-399.8(4) that indicates when the height restriction could be exceeded when no reasonable or feasible alternative



exists, the setback requirement has no exception other than the CUP requirement and burden identified in the City Code Section 42-402.1(3) that states no Conditional Use Permit shall be issued unless the applicant has clearly demonstrated by substantial evidence that placement of Wireless Communication Facilities pursuant to Sections 42-400 or 42-401 is not technologically or economically feasible, and the City may consider current or emerging industry standards and practices, among other information, in determining feasibility. Applicant further testified that the fall zone (as would be determined at 95-100 feet, with the required setback per City Code) was unreasonable because "we're not at risk for a tower collapse." On November 1, 2021, Applicant stated the tower would be located 93.4 feet from the right of way, which is less than 2 feet as required, but the Applicant offered they could adjust placement to meet the setback required for the right-of-way. Applicant offered that when the Joplin tornado went through their City, the old towers that were built in the 80s and 90s crumbled on top of each other. However, every monopole that was there were the only things standing and that is what the emergency responders were using to communicate with others to handle the situation. Applicant also offered Exhibit C, which was a series of pictures he testified were an example of a tower built in 2011 in Bridgeton, Missouri, that withstood an E4 tornado and suggested the building codes and towers built now would be more advanced technology and expected to be able to withhold stronger winds. On November 1, 2021, Applicant went further to state that there is no property within their search (which he indicated was expanded in attempt to comply with General Requirements as much as possible and keep it in industrial zoning) that could meet the coverage objective and the set-back requirement, which could be considered a prohibition of wireless services. Further he stated that he believes that denying the Application for failing to meet the setbacks, with the number of towers inside Rolla that also fail to meet the setbacks, even though put up prior to the ordinance now in place, could be seen as discrimination against the Applicant.

End of Findings of Fact and Conclusions of Law



**Project Information:**

Case No: CUP 21-02  
 Location: 1900 Old Saint James Rd  
 Applicant: Russell Been of Collective Solutions, LLC

Request:  
 CUP to allow a telecommunications tower in the C-3, Highway Commercial district

**Public Hearings:**

Planning and Zoning Commission  
**September 14, 2021**  
**5:30 PM**  
 City Hall: 1<sup>st</sup> Floor

City Council  
**September 20, 2021**  
**6:30 PM**  
 City Hall: 1<sup>st</sup> Floor

**For More Information Contact:**

**Tom Coots, City Planner**  
[tcoots@rollacity.org](mailto:tcoots@rollacity.org)  
 (573) 426-6974  
 901 North Elm Street  
 City Hall: 2<sup>nd</sup> Floor  
 8:00 – 5:00 P.M.  
 Monday - Friday

*III. A. 16*





**Who and What is the Planning and Zoning Commission?**

The Planning and Zoning Commission is an appointed group of citizens from Rolla who are charged with hearing and deciding land use applications, such as zoning and subdivisions. The Commission takes testimony and makes a recommendation to the City Council.

**What is a Conditional Use Permit (CUP)?**

A Conditional Use Permit is a request for a special use in a zoning district which requires additional review. The Planning and Zoning Commission may recommend conditions which the applicant must continue to meet for as long they own the property.

**What is Zoning?**

The City of Rolla has adopted zoning regulations that divide the city into separate areas that allow for specified uses of property. For example, generally only residential uses are allowed in residential zones; commercial uses in commercial zones; etc..

**How Will This Impact My Property?**

Each case is different. Adjacent properties are more likely to be impacted. Please contact the Community Development Office at (573) 426-6974 if you have any questions.

**What If I Have Concerns About the Proposal?**

If you have any concerns or comments, please try to attend the meeting. You may learn details about the project at the meeting. You will be given an opportunity to ask questions or make comments.

You do have the right to gather signatures for a petition. If a petition is received by 30% of the land owners (by land area) within 185 feet of the subject property, such request would require approval of 2/3 of the City Councilors. Please contact the Community Development Office for a property owner list.

**What If I Cannot Attend the Meeting?**

Please try to attend the meeting if you have any questions or concerns. However, if you are unable to attend the meeting, you may provide written comments by letter or email. These comments will be presented to the Board.

**What If I Have More Questions?**

Please contact the Community Development Office if you have any additional questions.

**LEGAL DESCRIPTION**

SITUATED IN THE COUNTY OF PHELPS, STATE OF MISSOURI:

COMMENCING AT THE INTERSECTION OF THE CENTER LINE OF THE MAIN TRACK OF THE ST. LOUIS & SAN FRANCISCO RAILROAD WITH THE EAST AND WEST CENTERLINE OF SECTION ONE (1), IN TOWNSHIP THIRTY-SEVEN (37) NORTH, OF RANGE EIGHT (8) WEST, THENCE SOUTHWESTERLY ALONG THE CENTER LINE OF TRACK, A DISTANCE OF 332 FEET, THENCE SOUTHEASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE A DISTANCE OF 162 FEET, THENCE DUE EAST A DISTANCE OF 33 FEET AND 4 INCHES FOR A POINT OF BEGINNING, THENCE NORTHEASTERLY PARALLEL TO CENTER LINE OF MAIN TRACK, A DISTANCE OF 466 FEET AND 8 INCHES; THENCE SOUTHWESTERLY PARALLEL TO AFORESAID CENTER LINE MAIN TRACK A DISTANCE OF 700 FEET, THENCE DUE WEST A DISTANCE OF 466 FEET AND 8 INCHES TO THE POINT OF BEGINNING, EXCEPT A STRIP 35 FEET WIDE OFF SOUTH SIDE OF SAID TRACK. EXCEPTING ALL THAT PART CONVEYED TO THE CITY OF ROLLA, MISSOURI VIA WARRANTY DEED DATED DECEMBER 15, 1955, FILED JANUARY 6TH, 1956 IN BOOK 144 AT PAGE 26 OF THE PHELPS COUNTY DEED RECORDS. ALSO EXCEPTING ALL THAT PART CONVEYED TO CHARLES A. BLINNE AND MARY BLINNE, HIS WIFE, VIA WARRANTY DEED DATED SEPTEMBER 14TH, 1955, FILED JULY 24, 1956 IN BOOK 144 AT PAGE 485 OF THE PHELPS COUNTY DEED RECORDS, ALSO EXCEPTING ALL THAT PART CONVEYED TO C, A, BLINNE AND MARY BLINNE, HIS WIFE, VIA WARRANTY DEED DATED DECEMBER 20TH, 1960, FILED MAY 4TH, 1961 IN BOOK 158 AT PAGES 440.441 OF THE PHELPS COUNTY DEED RECORDS.

ALSO EXCEPTING ALL THAT PART CONVEYED TO MARY L. BLINNE, VIA QUIT CLAIM DEED DATED DECEMBER 15, 1980, FILED JUNE 30, 1981, IN BOOK 311, PAGE 41, OF THE PHELPS COUNTY RECORDS.

ALSO EXCEPTING THAT PROPERTY CONVEYED IN THE DEEDS RECORDED IN BOOK 207, PAGE 273, AND BOOK 182, PAGE 428, OF THE PHELPS COUNTY RECORDS.

TAX ID: 71-09-1.0-01-002-001-015.000

BEING THE SAME PROPERTY CONVEYED TO B DUNNIGAN TOURS LLC, GRANTEE, FROM MARY H. OGLE, A SINGLE PERSON, GRANTOR, BY DEED RECORDED 12/31/2018, AS DOCUMENT NO. 2018-5993, OF THE PHELPS COUNTY RECORDS.

III, A.17









PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND APPROVED BY THE MAYOR THIS 20th DAY OF DECEMBER 2021.

APPROVED:

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR



**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT HEAD: Steve Hargis**

**ACTION REQUESTED: Ordinance**

**FINAL READING**

**ITEM/SUBJECT: Salt Storage Building Purchase**

**BUDGET APPROPRIATION \$60,000**

**DATE: 12/20/2021**

\*\*\*\*\*

**COMMENTARY:**

Attached is an ordinance authorizing the Mayor to enter into an agreement for a new salt storage structure with B&B Building Systems. The bid was awarded at a previous meeting.

This structure will be placed on a concrete floor and wall structure which will be built with our street personnel. This is a planned purchase and will be placed adjacent to our new facility on McCutchen Road.

The contract with B&B Building Systems is for \$52,514.56 utilizing Sourcewell Contract # 091319-BRT.



**Example of the type of Structure.**

ITEM NO. III.C.1

Dealer Name B&B Building Systems  
 Customer Name Steve Hargis  
 Building Use Salt Storage  
 Town and State Rolla MO  
 Sales Rep Seth Leezer



Building Series	Atlas
Foundation Height	8'
Applicable Building Code	ASCE 7-16 (IBC 2018)
Ground Snow Load	20
Wind Load Vult	105 MPH
Wind Exposure (B,C,D)	B (Urban and Suburban)
Building Width	50
Building Length	96
Truss Spacing	16
Fabric Type	NON-FR
Site Condition	Ce = 1.0 Partially Exposed
Occupancy Category	CAT I (LOW)
Collateral Load .25psf STD	Standard
End Walls Included	1
Doors	0
Stamped Drawings	No



Miscellaneous Parts				
	0	0	0	\$0.00
	0	0	0	\$0.00

**Breakdown of Building Cost**

Building Materials Cost	1	\$22,416.00
0	0	\$0.00
Hot Dip Galvanizing Bolts & Secondaries	1	\$2,522.56
Endwall 1	1	\$2,335.00
Endwall 2	0	\$0.00
Headers	0	\$0.00
Doors	0	\$0.00
Mesh Vents	2	\$240.00
Vent Frames	0	\$0.00
0	0	\$0.00
0	0	\$0.00
Engineered Drawings		\$0.00
Freight		\$2,814.00

**Sourced Goods**

Labor to Install	\$16,537.00
Lumber and or Hardware	\$2,150.00
Freight for other than BBS Components	\$1,500.00
Performance Bond	\$2,000.00
0	\$0.00

<b>Total Cost</b>	<b>\$52,514.56</b>
-------------------	--------------------

III.C.2



**Contract For: City of Rolla MO (Steve Hargis)**

**50x96 Britespan Building**

- 16' truss spacing
- Set on 8' poured concrete wall (supplied by customer)
- 1 fabric end wall. Also set on concrete wall.
- Hot dipped galvanized 12-gauge steel
- 20 year pro-rated warranty
- 30-year life expectancy on fabric cover
- Freight, labor, and any applicable tax included
- All grade work is customer supplied, level site within 4" is required.  
**(Failure to do so could result in upcharge in labor)**
- Site must be clear of all obstruction extending 20' past the perimeter of the building.  
**(Failure to do so could result in upcharge in labor)**
- Gravel or Lime may be required at customers expense if deemed necessary by BBBS to roll the cover on a safe clean surface.

**25% (\$13,378.64) due upon ordering.**

**25% (\$13,378.64) due upon delivery.**

**50% (\$26,757.28) due upon completion.**

**Building and Construction Total: See Attached Sourcewell Form**

**WWW.BBBUILDINGSYSTEMS.COM**  
**217-577-2001**

III.c.3





Date:

---

Customer Signature

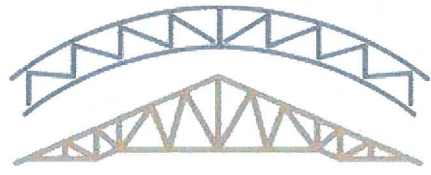
Date:

---

B&B Signature

WWW.BBBUILDINGSYSTEMS.COM  
217-577-2001

III.c.4



B&B

---

BUILDING SYSTEMS

[WWW.BBBUILDINGSYSTEMS.COM](http://WWW.BBBUILDINGSYSTEMS.COM)

217-577-2001

III.c.5

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI A CERTAIN AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND B&B BUILDING SYSTEMS TO CONSTRUCT A BRITESPAN BUILDING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri an agreement between the City of Rolla and B&B Building Systems to Construct Britespan Building System, a copy of said agreement being attached hereto and marked Exhibit "A".

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 20<sup>th</sup> DAY OF DECEMBER 2021.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR

**EXHIBIT A**  
**CONTRACT AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the City of Rolla, Missouri, Party of the First Part and hereinafter called Owner, and \_\_\_\_\_ B&B Building Systems \_\_\_\_\_ Party of the second Part and hereinafter called the Contractor.

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, specifications, plans, and other Contract Documents for the work herein described, and has approved and adopted said documents, and has caused to be published and advertisement for and in connection with the construction of **"50x96 Britespan Building"**, in complete accord with the Contract Documents and the said plans, specifications and Sourcewell Contract #091309-BRT; and

WHEREAS, the said Contractor, in response to such advertisement, has submitted to the Owner, in the manner and at the time specified, a sealed proposal in accordance with the terms of said advertisement; and

WHEREAS, the Owner, in the manner prescribed by law, has publicly opened, examined and canvassed the proposals submitted in response to the published invitation therefore, and as a result of such canvass has determined and declared the aforesaid Contractor to be the lowest and best bidder for the said work and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's proposal, a copy thereof being attached to and made a part of this contract.

NOW THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the Owner for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his, or their executors and administrators, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, supplies, superintendent, transportation, and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in, and form a permanent part of the completed work except the items specified to be furnished by the Owner; (c) provide and perform all necessary labor, and (d) in a good, substantial, and workmanlike manner, and in accordance with the provisions of the General Conditions and the Special Conditions of the Contract, which are attached hereto and made a part hereof, and in conformity with the Contract Plans and Specifications designated and identified therein, execute, construct, and complete all work included in, and covered by the Owner's official award of this Contract to the said Contractor, such award being based on the acceptance by the Owner of the Contractor's proposal, for the construction of **"50x96 Britespan Building"**.

ARTICLE II. Contractor acknowledges that Section 285.530, R.S.Mo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that it is not knowingly in violation of Subsection 1 of Section 285.530, R.S.Mo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully eligible to work in the United States.

ARTICLE III. The Contractor shall be responsible for all construction safety training for all employees who will be on-site at the project.

ARTICLE IV. That the Contractor shall construct and complete the work designated and described in the foregoing proposal and attached specifications in accordance with the Notice to Bidders, Instruction to Bidders, Proposal, Bond, General Conditions, Special Conditions, Technical Specifications, Drawings, Addenda, and other component parts of the Contract Documents hereto attached, all of which documents from the Contract and are as fully a part hereto as if repeated verbatim herein.

ARTICLE V. That the Owner shall pay to the Contractor for the performance of the work described as follows: Complete construction of the improvements in accordance with plans and specifications; and the Contractor will accept as full compensation therefore, the sum (subject to adjustment as provided by the Contract) of \$52,514.56 for all work covered by and included in the contract award and designated in the foregoing Article I. Payment therefore shall be made in the manner provided in the General Conditions attached hereto.

ARTICLE VI. That the Contractor shall begin work on the project as soon as weather permits, but the project must be completed 90 days after the materials are delivered to the site.

It is further stipulated that in the event that the Contractor fails in the performance of the work specified and required to be performed within the period of time specified, the Contractor shall pay the Owner, as and for liquidated damages, and not as a penalty, the sum of one hundred dollars (\$100.00) per calendar day that the Contractor shall be in default.

ARTICLE VII. Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions section

ARTICLE VIII. Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions section.

ARTICLE IX. This Contract will not be binding and effective until confirmed by the Owner,

**SPECIAL CONDITIONS**



**1.1 INSURANCE**

Contractor shall provide and maintain during the life of the contract and until final acceptance of the work insurance acceptable to the City which will afford protection and coverage in accordance with the requirements set forth below.

**1.2 WORKERS' COMPENSATION INSURANCE**

Workers' Compensation Insurance for all employees at the site of the project, and in case any work is sublet, Contractor shall require any Subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by Contractor. In case any class of employees engaged in hazardous work under this contract at the site of the project is not covered under the Workers' Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide Employer's Liability Insurance. Contractor shall provide coverage under the "Occupational Disease Act" of the State of Missouri, in addition to the above requirements if the operations of the Contractor of any Subcontractor are applicable thereunder, Workers' Compensation Insurance shall comply in all respects with the requirements of the statutes of the State of Missouri.

**1.3 PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE**

Public Liability and Property Damage Insurance in comprehensive general liability form as shall protect Contractor and any Subcontractor forming work covered by this contract from claims for damages for personal injury, including wrongful death, and claims for property damage which may arise from the operations under the contract, including all trucks and automobiles used, whether owned or not, and whether such operations be by the Contractor or any Subcontractor or by anyone directly or indirectly employed by either of them. The amount of insurance shall not be less than the following with the City to be named as Additional Named Insured.

- 1) Public Liability Insurance: The Contractor shall carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the City as additional named insured with endorsement coverage in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$1,000,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610 R.S.Mo.
- 2) Property Damage Insurance shall be in the combined single limit of not less than \$1,000,000.00, however, that insurance on all automobiles and trucks shall be for bodily injury in the prescribed limits of not less than

\$1,000,000.00. Such policy or policies shall by proper endorsement cover any liability of Contractor under the indemnification provision, Paragraph 4.18 of the General Conditions.

- 3) Insurance Covering Special Hazards. The Public Liability and Property Damage Insurance Policy or policies of the Contractor shall provide coverage such as operation of material hoists, blasting or other use of explosives, and damage to underground property.

1.3.1 All insurance shall be procured through agencies and be written by insurance companies which are acceptable to and approved by Owner and shall be obtained and paid for by Contractor.

1.3.2 Within 14 days after award of the contract, Contractor shall furnish the City with certificates that the City is covered by the required insurance, showing type, amount, class of operations covered, effective dates and dates of expiration of policies. All certificates shall contain substantially the statement: "The insurance covered by this certificate will not be cancelled or altered except after thirty (30) days' written notice has been received by the City of Rolla, Missouri". In addition, the original City's protective policy will be forwarded to the City.

1.3.3 Upon receipt of any notice of cancellation or alteration, Contractor shall within five days procure other policies of insurance similar in all respects to the policy or policies about to be cancelled or altered; and if Contractor fails to provide, procure and deliver acceptable policies of insurance or satisfactory certificates or other evidence thereof, Owner may obtain such insurance at the cost and expense of Contractor without notice to Contractor.

1.3.4 The contractor shall provide Builders' Risk Insurance to a minimum of the coverage of the value of the work.

1.3.5 It is understood and agreed that the insurance required by the provisions of this article is required in the public interest and that the City does not assume any liability for acts of Contractor, any Subcontractor, or their employees in the performance of the contract.

**2.1 TIME FOR COMPLETION**

The project must be completed 90 days after materials are delivered to the site.

**3.1 BLANK**

**4.1 BLANK**

**5.1 NONDISCRIMINATION IN EMPLOYMENT**

In connection with the performance of work under this contract, the Contractor agrees as follows:

- 5.1.1 Contractor will not discriminate against any employee or application for employment because of race, creed, color, national origin or sex or marital status. The Contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin or sex or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 5.1.2 Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin or sex or marital status.
- 5.1.3 In the event of the Contractor's noncompliance with nondiscrimination clause of this contract, the Owner may cancel this contract in whole or in part.

**6.1 PAYMENTS**

- 6.1.1 Payments will be made to Contractor monthly from lawful funds available therefor on the basis of a duly certified estimate of all labor and materials done or delivered on the site of the construction and accepted by the City's representative during the preceding month, calculated in proportion to the Contract price.
- 6.1.2 Not later than the first day of each calendar month Contractor shall render two copies of all statements for progress payments to Owner by mailing or delivering same to the Public Works Director. All statements shall be subject to approval of the City's representative and the governing body of the City of Rolla.
- 6.1.3 To insure proper performance of the contract Owner will retain 10 percent (10%) of the amount of each estimate until final completion and acceptance of the work covered by the contract.
- 6.1.4 Each payment made to Contractor shall be on account of the total amount payable to Contractor by or for Owner, and all material and work covered by partial payment made shall thereupon become the sole property of Owner. No such payment shall be deemed to be in accord and satisfaction as to any item or items for which such payment is made, and this provision shall not be construed as relieving Contractor from sole responsibility for care and protection of materials and work upon which payments have been made or restoration of any damaged work or as a waiver of the right of Owner to require fulfillment of all terms of the contract.

- 6.1.5 Ordinarily no allowance will be made in estimates for materials delivered on site of work and not incorporation in work; however, items considered by Owner to be major items of considerable magnitude, if suitably stored, will be allowed in estimates on the basis of 90 percent (90%) of invoices, the value calculated in proportion to the contract price.
- 6.1.6 Retained percentages herein provided are to be retained and held for the sole protection and benefit of owner, and no other person, firm or corporation shall have or assert any lien, claim or right whatsoever thereto, except as herein expressly provided.
- 6.1.7 The Contractor shall be responsible for supplying the City with weekly payroll sheets, Form No. 44-R1093.
- 6.1.8 All requests for payment shall be made to the City on forms approved by the Public Works Director.
- 6.1.9 The Contractor will be supplied with a tax exemption certificate for all materials purchased for the project.

**7.1 BLANK**

**8.1 HOLD HARMLESS AGREEMENT**

The following hold harmless agreement shall be executed and submitted within fourteen (14) days of award of bid.

**9.1 BLANK**

**10.1 CONTRACTOR'S AFFIDAVIT REGARDING SETTLEMENT OF CLAIMS**

- 10.1.1 Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions Section.

IN WITNESS-WHEREOF: The parties have executed this Contract as of the day and year first above written.

CITY OF ROLLA, MISSOURI

CONTRACTOR

BY \_\_\_\_\_  
Mayor, Owner, Party of the First Part

BY \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name/Title

STATE OF MISSOURI )  
SS )  
County of Phelps )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City of Rolla, Missouri, a municipal corporation, and the seal affixed to said instrument is the corporate seal of said municipal corporation and that said instrument is the corporate seal of said municipal corporation and that said instrument was signed under authority of the City Council of the City of Rolla, Missouri; and the said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said municipal corporation.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF MISSOURI )  
SS )  
County of Phelps )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of \_\_\_\_\_ and that the seal affixed to said instrument is the corporate seal of said corporation by authority of its board of directors; and the said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



**HOLD HARMLESS AGREEMENT**

We, \_\_\_\_\_, agree to protect, indemnify, save and keep harmless the City of Rolla against and from any and all loss, cost, damage or expense, arising out of or from any accident or other occurrence on or about said premises, causing injury to any person or property whomsoever and whatsoever and will protect, indemnify and save and keep harmless the above mentioned party from any and all claims, costs or expense arising out of any failure of the contractor in any respect to comply with and perform all the requirements and provisions agreed to and required by any law or ordinance, during the period commencing \_\_\_\_\_ at the premise of \_\_\_\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**CONTRACTOR'S AFFIDAVIT  
REGARDING  
SETTLEMENT OF CLAIMS**

\_\_\_\_\_, 20 \_\_\_\_\_

To the City of Rolla, Missouri

Gentlemen:

This is to certify that all lawful claims for material, lubricants, fuel, coal, coke, repairs on machinery, groceries and foodstuffs, equipment and tools consumed or used in connection with the construction of the above mentioned project, and all insurance premiums, both compensation and all other kinds of insurance on said work, and for all labor performed in said work, whether by subcontractor or claimant in person or by his employee, agent, servant, bailee or bailor, have been paid and discharged.

\_\_\_\_\_  
Contractor

By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

State of \_\_\_\_\_

County of \_\_\_\_\_ ss.

Subscribed and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_\_\_, at \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SEAL

My Commission expires \_\_\_\_\_, 20 \_\_\_\_\_.



**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT HEAD: Darin Pryor**

**ACTION REQUESTED: Ordinance Final Reading**

**ITEM/SUBJECT: Sanitary Sewer Easement Vacation**

**BUDGET APPROPRIATION: DATE: 12/20/21**

\*\*\*\*\*

**COMMENTARY:**

**Staff received a request to vacate a Sanitary Sewer Easement located on Lots 168, 177, and 178 of the College Hills Subdivision. Sanitary sewer is no longer located in this easement**

**Staff requests the final reading of an ordinance to vacate a sanitary sewer easement on lots 168, 177, and 178 of the College Hills Subdivision.**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE VACATING AN EXISTING SEWER EASEMENT IN THE COLLEGE HILLS SUBDIVISION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

SECTION 1: That the sanitary sewer easement more particularly described as follows:

A strip of land in fractional parts of lots 168, 177 and 178 of the re-subdivision of College Hills Subdivision, a Subdivision in Phelps County, Missouri, lying 10 feet on each side of the hereinafter described centerline of said Easement. Commencing at the Southwest Corner of Lot 2 of the Northwest Quarter of Section 6, Township 37 North, Range 7 West of the 5<sup>th</sup> P.M.; thence North 0-21'-20" West, 13.38 feet along the West line of said Lot 2 of the Northwest Quarter; thence North 89-05'40" East, 17.19 feet to the East Right of Way of Mccutchen Drive and to the point of Beginning of the hereinafter described centerline of easement; thence continuing North 89-05'-40" East, 5.96 feet; thence North 7-26'-40" East, 120.60 feet; thence North 85-30'-40" East, 127.90 feet to the ending point of the centerline of easement, as per plat of survey R-297A, dated June 8<sup>th</sup>, 1985, by Elgin Surveying and Engineering, Inc.

SECTION 2: This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND APPROVED BY THE MAYOR OF THE CITY OF ROLLA, MISSOURI, ON THIS 20<sup>TH</sup> DAY OF DECEMBER, 2021.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

III. D. 2

**Larson Construction**

11025 Emerald Ridge  
Rolla, Mo  
573-364-0865

November 22, 2021

**To : City of Rolla**

Jim Larson, Larson Construction, hereby request the relinquishment of the 20 ft utility easement located on lot 5 College Hills Est. Easement is noted on attached plat.

This lot is to be used for residential and does not have use for said easement.

Respectfully submitted

*Jim Larson*

Larson Construction



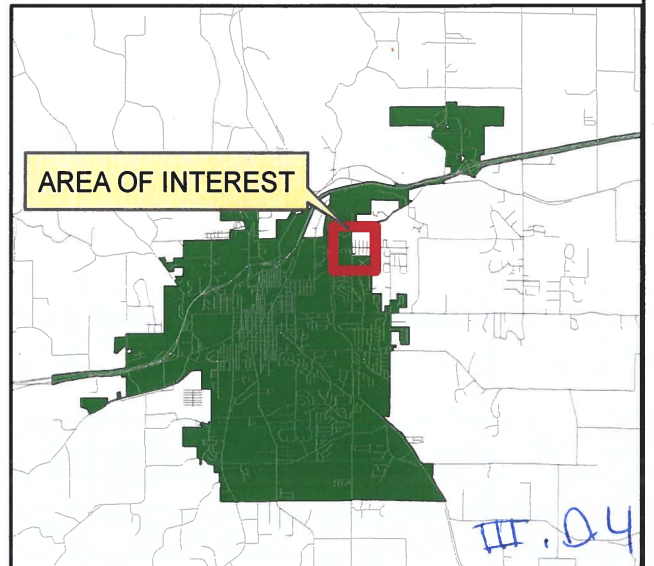
**MCCUTCHEN DR**

**PHELPS COUNTY  
CITY OF ROLLA**

**BULLMAN CT**

**20' SEWER EASEMENT BK343PG088  
TO BE VACATED**

**PHELPS COUNTY  
CITY OF ROLLA**





**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT:** Community Development

**ACTION REQUESTED:** First Reading

**SUBJECT:** Subway Subdivision No. 2: a Minor Subdivision Final Plat to relocate a property line between two commercial lots

(SUB21-08)

**MEETING DATE: December 20, 2021**

---

**Application and Notice:**

Applicant/Owner - Sue Banholzer of Banholzer Investments, Inc  
Public Notice - <https://www.rollacity.org/agenda.shtml>

**Background:** The applicant intends to develop the lot south of the Subway. To make the lot more developable, the applicant is seeking to shift the lot line between the two lots to the north. Lot 2A is greatly impacted by floodplain and drainage easements. Moving the lot line would increase the developable area.

**Property Details:**

Current zoning - C-2, General Retail  
Current use - Restaurant/Undeveloped  
Land area - 2 acres

**Public Facilities/Improvements:**

Streets - The subject property has frontage on Forum Rd and 10<sup>th</sup> Street, both Major Arterial streets.  
Sidewalks - Sidewalks are located along the frontage of the property on Forum Rd.  
Utilities - The subject property should have access to all needed utilities.

**Comprehensive Plan:** The Comprehensive Plan designates the subject property as being appropriate for Neighborhood Commercial uses.

**Discussion:** The proposed plat appears to meet all zoning and subdivision requirements. No additional easements are proposed to be dedicated with the plat.

**Planning and Zoning Commission Recommendation:**

The Rolla Planning and Zoning Commission conducted a meeting on December 14, 2021 and voted 6-0 to recommend approval of the request.

**Prepared by:** Tom Coots, City Planner

**Attachments:** Final Plat, Area Map, Ordinance

IV.A.1



**Project Information:**

Case No: SUB21-08  
 Location: 901 Forum Drive  
 Applicant: Banholzer Investments Inc  
 Request:  
 Minor Subdivision to realign two commercial lots



**For More Information Contact:**

Tom Coots, City Planner  
 tcoots@rollacity.org

(573) 426-6974  
 901 North Elm Street  
 City Hall: 2<sup>nd</sup> Floor  
 8:00 – 5:00 P.M.  
 Monday - Friday

IV.A.2



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO APPROVE THE MINOR SUBDIVISION FINAL PLAT OF  
SUBWAY SUBDIVISION NO. 2.

(SUB 21-08)

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY  
OF ROLLA, MISSOURI AS FOLLOWS:

**SECTION 1:** An ordinance approving the Minor Subdivision Final Plat of Subway Subdivision  
No. 2, a subdivision in City of Rolla, Phelps County, Missouri through the  
subdivision process.

**SECTION 2:** That this ordinance shall be in full force and effect from and after the date of its  
passage and approval. Building permits may not be issued by the Community  
Development Department until the plat has been filed with the Phelps County  
Recorder of Deeds.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND  
APPROVED BY THE MAYOR THIS 3RD DAY OF JANUARY, 2022.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

IV. A. 3



CITY OF ROLLA  
CITY COUNCIL AGENDA

DEPARTMENT HEAD: City Administrator John Butz      ACTION REQUESTED: Resolution

ITEM/SUBJECT: Resolution to Participate in the Global Opioid Settlement Agreement

BUDGET APPROPRIATION: NA

DATE: December 20<sup>th</sup>, 2021

\*\*\*\*\*

COMMENTARY:

The State of Missouri joined a class action suit against opioid manufacture and distributors. A settlement has now been tentatively reached that could provide Missouri between \$250 - \$500 Million for prevention and treatment programs over 10-17 years. It's quite possible that Phelps County and perhaps Rolla may receive a small portion of the settlement but limited to prevention and treatment programs. Nevertheless, Missouri's final allocation is determined by the number of Missouri public entities that sign on. The sign-on period for political subdivisions is January 2, 2022.

Recommendation: Motion to approve the Resolution joining the Global Opioid Settlement Agreement.

IV.B.1



RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY OF ROLLA, MISSOURI TO PARTICIPATE IN THE GLOBAL OPIOID SETTLEMENT AGREEMENT AS NEGOTIATED BETWEEN THE STATES AND THE OPIOID MANUFACTURER JANSSEN (JOHNSON & JOHNSON) AND OPIOID DISTRIBUTERS MCKESSON, CARDENAL HEALTH AND AMERISOURCE BERGERN AND POTENTIALLY OTHER MANUFACTURERS OR DISTRIBUTORS.**

WHEREAS, the Attorney General of Missouri recommends all Missouri municipalities sign on to the global opioid settlements that were negotiated between the states and the opioid manufacturer Janssen (Johnson & Johnson) and opioid distributors McKesson, Cardinal Health, and Amerisource Bergen.

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:**

**Section 1. Authorization of Agreement.** The City Administrator is hereby authorized to sign the Opioid Settlement agreement, said agreement is attached and made part of this resolution, as if wholly re-written herein.

**Section 2. Further Authority.** The City shall, and the mayor, city administrator, and city officials of the City are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution.

**Section 3. Effective Date.** This Resolution shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

**PASSED AND RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND APPROVED BY THE MAYOR THIS 20TH DAY OF DECEMBER, 2021.**

**APPROVED:** \_\_\_\_\_  
Louis J. Magdits, IV

**ATTEST:** \_\_\_\_\_  
Lorri Thurman, City Clerk

**APPROVED AS TO FORM:** \_\_\_\_\_  
City Counselor, Lance Thurman

10. B. 2



ATTORNEY GENERAL OF MISSOURI  
ERIC SCHMITT

Dear fellow Missourian:

Within the past few days, your political subdivision or those you represent should have received notice from a national administrator regarding the opportunity for political subdivisions to sign on to the global opioid settlements that were negotiated between the states and the opioid manufacturer Janssen (Johnson & Johnson) and opioid distributors McKesson, Cardinal Health, and Amerisource Bergen.

The notice contained a significant amount of information for you to digest, and my office stands ready and willing to help clarify and assist with any questions you may have. To the extent your subdivision is unrepresented, I invite you to contact my office directly using the contact information below. To the extent your subdivision is represented by counsel, please go through your counsel and have them contact my office if we can be of assistance.

Included with this letter is an executive summary regarding the settlements as well as an infographic which provides a broad overview of what signing on will mean to the state and political subdivisions around Missouri. Additional information may be sent in the coming weeks.

As you are likely aware, hundreds of millions of dollars directed to opioid abatement in Missouri's communities are on the line over the coming months. The more subdivisions that sign on means the bigger the recovery for Missouri overall. Missouri and its subdivisions could miss out on nearly a quarter of a billion dollars for opioid abatement if the State of Missouri fails to get a substantial majority of subdivisions to sign on. Through my travels across the State, I have heard from countless people affected by the opioid crisis. Missourians and our communities desperately need relief now and have certainly waited long enough. It is up to all of us who have sworn to serve our constituents to come together and sign on to these global settlements.

If you have any further questions or need clarification, please do not hesitate to reach out to my office by contacting Jeremiah Morgan, Deputy Attorney General for Civil Litigation at 573-751-1800. You may also find additional information at: [www.nationalopioidsettlement.com](http://www.nationalopioidsettlement.com) and [www.ago.mo.gov/opioidsettlement](http://www.ago.mo.gov/opioidsettlement).

Sincerely,



Eric S. Schmitt

Supreme Court Building  
207 W. High Street  
P.O. Box 899  
Jefferson City, MO 65102  
Phone: (573) 751-3321  
Fax: (573) 751-0774  
[www.ago.mo.gov](http://www.ago.mo.gov)

10.B.3

Thank you for registering your subdivision on the national settlement website and for considering participating in the proposed Settlement Agreement with McKesson Corporation, Cardinal Health, Inc., and AmerisourceBergen Corporation (collectively “Settling Distributors”). This virtual envelope contains a Participation Form including a release of claims. The Participation Form in this envelope must be executed, without alteration, and submitted in order for your subdivision to be considered potentially “participating.”

The sign-on period for subdivisions ends on January 2, 2022. On or after that date, the states (in consultation with the subdivisions) and the Settling Distributors will determine whether the subdivision participation rate is sufficient for the settlement to move forward. If the deal moves forward, your release will become effective. If it does not, it will not.

As a reminder, if you have not already started your review of the settlement documentation, detailed information about the Settlements may be found at: <https://nationalopioidsettlement.com/>. This national settlement website also includes links to information about how the Settlements are being implemented in your state and how settlement funds will be allocated within your state, including information about, and links to, any applicable allocation agreement or legislation. This website will be supplemented as additional documents are created. The Missouri Attorney General’s Office has also created a state-specific website. It may be accessed here: <https://ago.mo.gov/opioidsettlement>. If you have questions, please contact Jeremiah Morgan at [Jeremiah.Morgan@ago.mo.gov](mailto:Jeremiah.Morgan@ago.mo.gov) or (573) 751-1800

**Settlement Participation Form**

Governmental Entity: <del>Kennett</del> city	State: MO
Authorized Signatory:	
Address 1:	
Address 2:	
City, State, Zip:	
Phone:	
Email:	

The governmental entity identified above (“Governmental Entity”), in order to obtain and in consideration for the benefits provided to the Governmental Entity pursuant to the Settlement Agreement dated July 21, 2021 (“Distributor Settlement”), and acting through the undersigned authorized official, hereby elects to participate in the Distributor Settlement, release all Released Claims against all Released Entities, and agrees as follows.

1. The Governmental Entity is aware of and has reviewed the Distributor Settlement, understands that all terms in this Election and Release have the meanings defined therein, and agrees that by this Election, the Governmental Entity elects to participate in the Distributor Settlement and become a Participating Subdivision as provided therein.
2. The Governmental Entity shall, within 14 days of the Reference Date and prior to the filing of the Consent Judgment, dismiss with prejudice any Released Claims that it has filed.
3. The Governmental Entity agrees to the terms of the Distributor Settlement pertaining to Subdivisions as defined therein.
4. By agreeing to the terms of the Distributor Settlement and becoming a Releasor, the Governmental Entity is entitled to the benefits provided therein, including, if applicable, monetary payments beginning after the Effective Date.
5. The Governmental Entity agrees to use any monies it receives through the Distributor Settlement solely for the purposes provided therein.
6. The Governmental Entity submits to the jurisdiction of the court in the Governmental Entity’s state where the Consent Judgment is filed for purposes limited to that court’s role as provided in, and for resolving disputes to the extent provided in, the Distributor Settlement.
7. The Governmental Entity has the right to enforce the Distributor Settlement as provided therein.

8. The Governmental Entity, as a Participating Subdivision, hereby becomes a Releasor for all purposes in the Distributor Settlement, including but not limited to all provisions of Part XI, and along with all departments, agencies, divisions, boards, commissions, districts, instrumentalities of any kind and attorneys, and any person in their official capacity elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, and any other entity identified in the definition of Releasor, provides for a release to the fullest extent of its authority. As a Releasor, the Governmental Entity hereby absolutely, unconditionally, and irrevocably covenants not to bring, file, or claim, or to cause, assist or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Distributor Settlement are intended by the Parties to be broad and shall be interpreted so as to give the Released Entities the broadest possible bar against any liability relating in any way to Released Claims and extend to the full extent of the power of the Governmental Entity to release claims. The Distributor Settlement shall be a complete bar to any Released Claim.
9. The Governmental Entity hereby takes on all rights and obligations of a Participating Subdivision as set forth in the Distributor Settlement.
10. In connection with the releases provided for in the Distributor Settlement, each Governmental Entity expressly waives, releases, and forever discharges any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or other jurisdiction, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code, which reads:

**General Release; extent.** A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

A Releasor may hereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but each Governmental Entity hereby expressly waives and fully, finally, and forever settles, releases and discharges, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the Governmental Entities' decision to participate in the Distributor Settlement.
11. Nothing herein is intended to modify in any way the terms of the Distributor Settlement, to which Governmental Entity hereby agrees. To the extent this Election and Release is interpreted differently from the Distributor Settlement in any respect, the Distributor Settlement controls.

I swear under penalty of perjury that I have all necessary power and authorization to execute this Election and Release on behalf of the Governmental Entity.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# Opioid Settlements

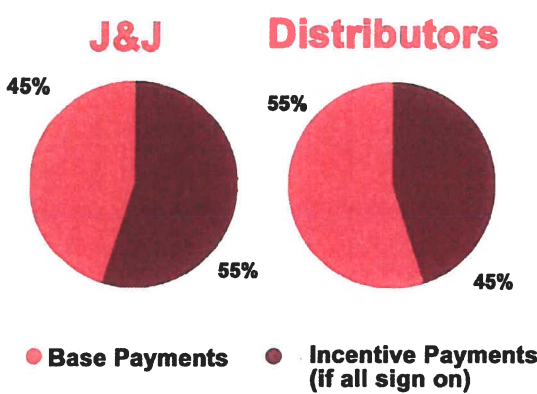
## OPIOID SETTLEMENT AGREEMENTS 2021

States and state subdivisions reached settlements with Johnson & Johnson, an opioid manufacturer, and the three major pharmaceutical distributors, AmerisourceBergen, Cardinal Health, and McKesson.

# ≈ \$500,000,000

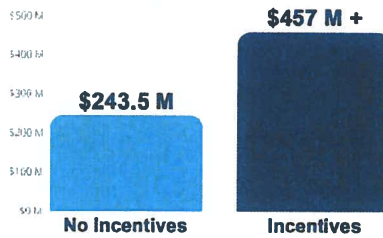
for treatment and programs to assist victims of opioid abuse. If subdivisions do not join the settlements, **RECOVERY COULD BE 1/2**

\* Figure also accounts for relief from Purdue Pharmaceutical bankruptcy.\*



## Potential Settlements

If Missouri resolves all current and potential claims (i.e., if all qualifying subdivisions sign onto the settlements) and earns all incentives, it (and its subdivisions) will receive more than \$457 million. In contrast, if it does not earn any incentives, it would receive only \$243.5 million.

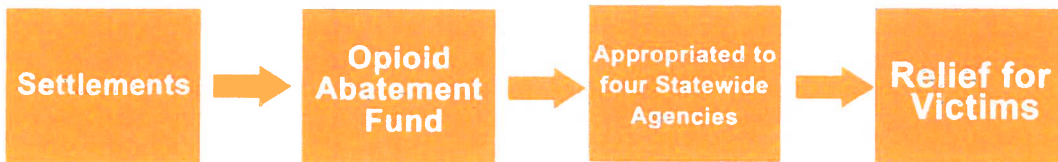
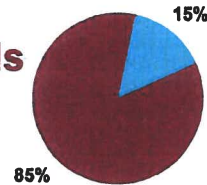


# \$0 DOLLARS

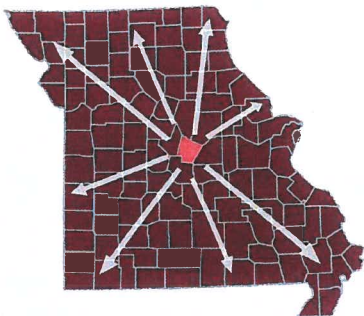
OF THE STATE PORTION WILL GO INTO GENERAL REVENUE

## Allocation of Settlement Funds

- State Share
- Local Share



Missouri Department of Mental Health, Public Safety, Social Services, & Health and Senior Services



## MISSOURI TREATMENT AND PROGRAMS

State's share will be distributed to programs throughout Missouri's counties and cities.

W.B. 8

## **1. What Are the Opioid Settlement Agreements?**

- States and state subdivisions reached settlement agreements with Johnson & Johnson, a manufacturer opioids, and the three major pharmaceutical distributors, AmerisourceBergen, Cardinal Health, and McKesson.
- The agreements resolve past, present, and future claims by states and state subdivisions against only the four settling companies.
- In return, the companies will make significant monetary payments to the settling states and state subdivisions. The companies will also make major changes in how they do business involving opioids.
- More information on the settlements can be found at:  
<https://ago.mo.gov/opioidsettlement>  
<https://nationalopioidsettlement.com>

## **2. What Claims Would Missouri and its Subdivisions Release Under the Opioid Settlement Agreements?**

- The agreements resolve past, present, and future claims by the state and participating subdivisions against the four settling companies and their affiliates. Released claims include those relating to the manufacture, sale, promotion, advertising, and distribution of certain prescription drugs, including opioids, opiates, benzodiazepines, carisoprodol, and gabapentin.
- The agreements do not resolve claims against any other companies, or claims brought by private individuals.

## **3. What Will Each Settling Company Pay?**

- Johnson & Johnson will pay up to \$4.26 billion, and the three distributors will pay up to \$18.55 billion, to settling states and subdivisions.
- The agreements require the vast majority of these funds to be used for opioid remediation and abatement purposes.
- On top of these amounts, the Defendants will make other payments to cover litigation costs.

## **4. How Are the Settlement Payments Structured?**

- The agreements have a mix of “base” payments and “incentive” payments.
- Base payments are minimum payments to each settling state and its participating subdivisions simply for signing on to the settlements.

- Incentive payments are extras, or bonuses, depending on how close a state and its qualifying subdivisions come to resolving all current and potential claims.
- The closer a state and its subdivisions come to resolving all current and potential claims, the more money flows into that state.
- Under the Johnson & Johnson agreement, 45% of settlement funds are base payments with 55% as incentive payments for the three distributors, 55% of settlement funds are base payments, with 45% as incentive payments.
- If Missouri resolves all current and potential claims (i.e., if all qualifying subdivisions sign onto the Settlements) and earns all incentives, it (and its subdivisions) will receive more than \$457 million. In contrast, if it does not earn any incentives, it would receive only \$243.5 million.

#### **5. Payment Timing**

- Johnson & Johnson will make 11 payments over 10 years, starting July 2022.
- The three distributors will make 18 payments over 17 years, estimated to begin April of 2022.

#### **6. Injunctive Relief**

- Defendants also have agreed to significant injunctive relief.
- Johnson & Johnson has agreed to stop manufacturing opioids.
- The three distributors have agreed to design, implement, and fund systems to better monitor the distribution of opioids.

#### **7. Why Should Missouri Subdivisions Join the Settlement Agreement?**

- The opioid crisis continues to rage. In 2020, 93,000 Americans died from opioid overdoses—the most ever in a single year, and more than have ever died in a single year from car crashes or gun violence. Missouri needs additional resources now to fight the epidemic of addiction and overdose.
- The settlements will provide up nearly half a billion dollars to Missouri and its communities. If subdivisions do not join, recovery could be halved.
- The settlements make sure the money will be spent as intended—i.e., to tackle the opioid crisis. Under both settlements, at least 85% of the money *must* be spent on programs, services, and expenses arising from the opioid crisis.
- Under the settlement agreements, the companies will make sweeping changes to the way they do business.



ATTORNEY GENERAL OF MISSOURI

ERIC SCHMITT

**TO LOCAL POLITICAL SUBDIVISIONS:**

**IMPORTANT INFORMATION ABOUT THE NATIONAL OPIOID SETTLEMENT.**

**SUBDIVISIONS MUST SUBMIT SIGNED DOCUMENTATION TO PARTICIPATE.**

**THE DEADLINE FOR PARTICIPATION TO MAXIMIZE SETTLEMENT BENEFITS IS JANUARY 2, 2022.**

**If your subdivision is represented by an attorney with respect to opioid claims, please immediately contact them.**

**SETTLEMENT OVERVIEW**

After years of negotiations, two proposed nationwide settlement agreements (“Settlements”) have been reached that would resolve all opioid litigation brought by states and local political subdivisions against the three largest pharmaceutical distributors, McKesson, Cardinal Health and AmerisourceBergen (“Distributors”), and one manufacturer, Janssen Pharmaceuticals, Inc., and its parent company Johnson & Johnson (collectively, “Janssen”).

The proposed Settlements require the Distributors and Janssen to pay billions of dollars to abate the opioid epidemic. Specifically, the Settlements require the Distributors to pay up to \$21 billion over 18 years and Janssen to pay up to \$5 billion over no more than 9 years, for a total of \$26 billion (the “Settlement Amount”). Of the Settlement Amount, approximately \$22.7 billion is earmarked for use by participating states and subdivisions to remediate and abate the impacts of the opioid crisis.

The Settlements also contain injunctive relief provisions governing the opioid marketing, sale and distribution practices at the heart of the states’ and subdivisions’ lawsuits and further require the Distributors to implement additional safeguards to prevent diversion of prescription opioids.

Each of the proposed Settlements has two key participation steps. First, each state decides whether to participate in the Settlements. Missouri has joined both Settlements. Second, the subdivisions within each participating state must then decide whether to participate in the Settlements. Generally, the more subdivisions that participate, the greater the amount of funds that flow to that state and its participating subdivisions. Any subdivision that does not participate cannot directly share in any of the settlement funds, even if the subdivision’s state is settling and other participating subdivisions are sharing in settlement funds.

This letter is part of the formal notice required by the Settlements.

Supreme Court Building  
207 W. High Street  
P.O. Box 899  
Jefferson City, MO 65102  
Phone: (573) 751-3321  
Fax: (573) 751-0774  
www.ago.mo.gov

10.B.11



## WHY IS YOUR SUBDIVISION RECEIVING THIS NOTICE?

You are receiving this letter because Missouri has elected to participate in both of the two national Settlements against (1) the Distributors, and (2) Janssen, and your subdivision may participate in the Settlements. This notice is being sent directly to subdivisions and also to attorneys for subdivisions that we understand are litigating against these companies. If you are represented by an attorney with respect to opioid claims, please immediately contact them. Please note that there is no need for subdivisions to be represented by an attorney or to have filed a lawsuit to participate in the Settlements.

## WHERE CAN YOU FIND MORE INFORMATION?

This letter is intended to provide a brief overview of the Settlements. Detailed information about the Settlements may be found at: <https://nationalopioidsettlement.com/>. This national settlement website also includes links to information about how the Settlements are being implemented in your state and how settlement funds will be allocated within your state. This website will be supplemented as additional documents are created. The Missouri Attorney General's office has also set up a state-specific website, which may be found at: <https://ago.mo.gov/opioidsettlement>.

## HOW DO YOU PARTICIPATE IN THE SETTLEMENTS?

**You must go to the national settlement website to register to receive in the coming weeks and months the documentation your subdivision will need to participate in the Settlements (if your subdivision is eligible). All required documentation must be executed and submitted electronically through the website and must be executed using the "DocuSign" service.** As part of the registration process, your subdivision will need to identify, and provide the email address for, the individual who will be authorized to sign formal and binding documents on behalf of your subdivision.

**Your unique Subdivision Registration Code to use to register is:**

CONFIDENTIAL  
jim , 11/16/2021, 9:00:03 AM

## HOW WILL SETTLEMENT FUNDS BE ALLOCATED IN EACH STATE?

The settlement funds are first divided among the participating states according to a formula developed by the Attorneys General that considers population and the severity of harm caused by the opioid epidemic in each participating state. Each state's share of the abatement funds is then further allocated within each state according to agreement between the state and its subdivisions, applicable state allocation legislation, or, in the absence of these, the default provisions in the agreements.

Many states have or are in the process of reaching an agreement on how to allocate abatement funds within the states. Allocation agreements/legislation and other information about Missouri's allocation agreement or legislation can be found on the national settlement website. The allocation section of the website will be supplemented as more intra-state allocation arrangements are finalized. Missouri's state-specific website will be updated as well.

In reviewing allocation information, please note that while all subdivisions may participate in the Settlements, not all subdivisions are eligible to receive direct payments. To promote efficiency in the use of abatement funds and avoid administratively burdensome disbursements that would be too small to add a meaningful abatement response, certain smaller subdivisions do not automatically receive a direct allocation. However, participation by such subdivisions will help maximize the amount of abatement funds being paid in the Settlements, including those going to counties, cities, parishes, and other larger subdivisions in their communities.

You may be contacted by the Attorney General's Office with additional information regarding the allocation of settlement funds in Missouri. Subdivisions with representation can expect information from their attorneys as well. We encourage you to review all materials and to follow up with any questions. The terms of these Settlements are complex and we want to be sure you have all the information you need to make your participation decision.

### WHY YOU SHOULD PARTICIPATE

A vast majority of states have joined the Settlements, and attorneys for many subdivisions have already announced support for them. For example, the Plaintiffs' Executive Committee, charged with leading the litigation on behalf of more than 3,000 cities, counties and others against the opioid industry, and consolidated in the national multi-district litigation ("MDL") pending before Judge Dan Aaron Polster in the Northern District of Ohio, recommends participation in these Settlements.

Subdivision participation is strongly encouraged, for the following reasons:

First, the amounts to be paid under the Settlements, while insufficient to abate the epidemic fully, will allow state and local governments to commence with meaningful change designed to curb opioid addiction, overdose and death;

Second, time is of the essence. The opioid epidemic continues to devastate communities around the country and it is critical that the funds begin to flow to allow governments to address the epidemic in their communities *as soon as possible*;

Third, if there is not sufficient subdivision participation in these proposed Settlements, the Settlements will not be finalized, the important business practice changes will not be implemented, the billions of dollars in abatement funds will not flow to communities, and more than 3,000 cases may be sent back to their home courts for trial, which will take many years;

Fourth, the extent of participation also will determine how much money each state and its local subdivisions will receive because approximately half of the abatement funds are in the form of "incentive payments," *i.e.*, the higher the participation of subdivisions in a state, the greater the amount of settlement funds that flow into that state;

Fifth, you know first-hand the effects of the opioid epidemic on your community. Funds from these Settlements will be used to commence abatement of the crisis and provide relief to your citizens while litigation and settlement discussions proceed against numerous other defendants in the opioid industry; and

Sixth, because pills do not respect boundaries, the opioid epidemic is a national crisis that needs a national solution.

### NEXT STEPS

These Settlements require that you take affirmative steps to "opt in" to the Settlements. If you do not act, you will not receive any settlement funds and you will not contribute to reaching the participation thresholds that will deliver the maximum amount of abatement funds to your state.

First, register your subdivision on the national settlement website so that information and documents required to participate can be sent to you. You will need the email address of the person who will be authorized to sign on behalf of your subdivision. This is the only action item needed at this time.



Second, have your authorizing person(s) or body begin to review the materials on the websites concerning the settlement agreement terms, allocation and other matters. Develop a list of questions for your counsel or the Attorney General's Office. In the very near future, your subdivision will need to begin the process of deciding whether to participate in the proposed Settlements, and subdivisions are encouraged to work through this process well before the January 2, 2022 deadline to be an initial participating subdivision. Again, the Attorney General's Office, your counsel, and other contacts within the state are available to discuss the specifics of the Settlements within your state, and we encourage you to discuss the terms and benefits of the Settlements with them.

Third, monitor your email for further communications, which will include a Participation Agreement, Release, (where applicable) a model Resolution, and instructions on executing and submitting electronically using DocuSign.

We urge you to view the national settlement website and Missouri's state-specific website at your earliest convenience. Information and documents regarding the national Settlements and your state allocation can be found on the settlement website at <https://nationalopioidsettlement.com>.

For further information, please contact:

Jeremiah Morgan  
Deputy Attorney General for Civil Litigation  
Missouri Attorney General's Office  
Phone: 573-751-1800

**CONFIDENTIAL**  
jim , 11/16/2021, 9:00:40 AM

196  
**NPD**  
National Opioids Settlements  
P.O. Box 43196  
Providence, RI 02940-3196

11.16.21

**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT HEAD: Darin Pryor**

**ACTION REQUESTED: Ordinance 1<sup>st</sup> Reading**

**ITEM/SUBJECT: Missouri Highways and Transportation Commission to State Block Grant Agreement**

**BUDGET APPROPRIATION \$50 (grant match)**

**DATE: 12/20/2021**

\*\*\*\*\*

**COMMENTARY:**

**Attached is an ordinance with authorizes the Mayor to enter into an agreement with the Missouri Highway and Transportation Commission for a State Block Grant to replace the beacon at the Rolla National Airport. We have received bids for the beacon and the low bid is \$6,670. The grant will reimburse \$6,620.**

**Staff Recommend approval of the Ordinance.**

**ITEM NO. IV.C.1**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI A STATE BLOCK AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri a State Block Agreement between the City of Rolla, Missouri and the Missouri Highways and Transportation Commission to replace an airport rotating beacon, a copy of said agreement being attached hereto and marked Exhibit A.

Section 2: This ordinance will be full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 3<sup>rd</sup> DAY OF JANUARY 2022.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR

10.C.2

Sponsor: City of Rolla  
Project No.: 21-056A-1  
Airport Name: Rolla National

CFDA Number: CFDA #20.106  
CFDA Title: Airport Improvement Program  
Federal Agency: Federal Aviation Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
STATE BLOCK GRANT AGREEMENT**

THIS GRANT AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Rolla (hereinafter, "Sponsor"). Reference will also be made to the Federal Aviation Administration (hereinafter, "FAA") and the Federal Airport Improvement Program (hereinafter, "AIP").

WITNESSETH:

WHEREAS, Section 116 of the federal Airport and Airway Safety and Capacity Expansion Act of 1987 amended the previous Act of 1982 by adding new section 534 entitled "State Block Grant Pilot Program", (Title 49 United States Code (hereinafter, "USC") Section 47128); and

WHEREAS, the Federal Aviation Reauthorization Act of 1996 declared the State Block Grant Program to be permanent; and

WHEREAS, the Commission has been selected by the FAA to administer state block grant federal funds under said program; and

WHEREAS, the Sponsor has applied to the Commission for a sub grant under said program; and

WHEREAS, the Commission has agreed to award funds to the Sponsor with the understanding that such funds will be used for a project pursuant to this Agreement for the purposes generally described as follows:

Replace Airport Rotating Beacon;

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

(1) PURPOSE: The purpose of this Agreement is to provide financial assistance to the Sponsor under the State Block Grant Program.

(2) PROJECT TIME PERIOD: The project period shall be from the date of execution by the Commission to December 31, 2022. The Commission's assistant chief engineer may, for good cause as shown by the Sponsor in writing, extend the project time period.

(3) TITLE EVIDENCE TO EXISTING AIRPORT PROPERTY: The Sponsor shall provide satisfactory evidence of title to all existing airport property and avigation easements and address any and all encumbrances. Satisfactory evidence will consist of the Sponsor's execution of a Certificate of Title form provided by the Commission.

(4) AMOUNT OF GRANT: The initial amount of this grant is not to exceed Six Thousand Six Hundred Twenty Dollars (\$6,620) for eligible preliminary project costs and/or land/easement acquisition. A grant amendment to cover the balance of eligible project costs will be provided after construction bids are received.

(A) The amount of this grant stated above represents Four Hundred Forty-Nine Dollars (\$449) at Ninety Percent (90%) of eligible project costs and Six Thousand One Hundred Seventy-One Dollars (\$6,171) at One Hundred Percent (100%) of eligible project costs.

(B) The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will the Commission provide the Sponsor funding for improvements or work that are not actually performed. The release of all funding under this Agreement is subject to review and approval of all project expenses to ensure that they are qualifying expenses under this program.

(5) AMOUNT OF MATCHING FUNDS: The initial amount of local matching funds to be furnished by the Sponsor is not to exceed Fifty Dollars (\$50).

(A) The amount of matching funds stated above represents ten percent (10%) local match for the funds being granted at ninety percent (90%) of eligible project costs.

(B) The Sponsor warrants to the Commission that it has sufficient cash on deposit to provide the local matching funds identified above, as well as to cover one hundred percent (100%) of any ineligible items included in the scope of work.

(6) ALLOWABLE COSTS: Block grant funds shall not be used for any costs that the Commission and/or the FAA has determined to be ineligible or unallowable in accordance with 49 USC Chapters 471 and 475.

(7) WITHDRAWAL OF GRANT OFFER: The Commission reserves the right to amend or withdraw this grant offer at any time prior to its acceptance by the Sponsor.

(8) EXPIRATION OF GRANT OFFER: This grant offer shall expire and the Commission shall not be obligated to pay any part of the costs of the project unless this grant Agreement has been executed by the Sponsor on or before February 15, 2022 or such subsequent date as may be prescribed in writing by the Commission.

(9) FEDERAL SHARE OF COSTS: The United States' share of the allowable project costs will be made in accordance with 49 USC § 47109 and the provisions of such regulations, policies and procedures as the Secretary of the United States Department of Transportation (hereinafter, "USDOT") shall practice. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs, and settlement will be made for any upward or downward adjustments to the federal share of costs.

(10) COMPLETING THE PROJECT WITHOUT DELAY AND IN CONFORMANCE WITH REQUIREMENTS: The Sponsor must assure that the project is carried out and completed without undue delays and in accordance with this Agreement, applicable laws, statutes, regulations, and policies and procedures of the USDOT Secretary. Per 2 Code of Federal Regulations (hereinafter, "CFR") § 200.308, the Sponsor agrees to report to the Commission any disengagement from funding eligible expenses under the Agreement and any subgrants thereto that exceed three months and request prior approval from the Commission. The report must include a reason for the stoppage. The Sponsor agrees to comply with the attached assurances, which are part of this Agreement. These assurances, conditions, and any addendums apply to any subgrants issued under this Agreement.

(11) RECOVERY OF FEDERAL FUNDS: The Sponsor shall take all steps, including litigation if necessary, to recover federal funds spent fraudulently, wastefully, in violation of federal antitrust statutes, or misused in any other manner for any project upon which federal funds have been expended. For the purpose of this grant Agreement, the term "federal funds" means funds however used or disbursed by the Sponsor that were originally paid pursuant to this or any other federal grant Agreement. The Sponsor must obtain the approval of the Commission as to any determination of the amount of the federal share of such funds. The Sponsor shall return the recovered federal share, including funds recovered by settlement, order or judgment, to the Commission. The Sponsor shall furnish to the Commission, upon request, all documents and records pertaining to the determination of the amount of the federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such federal share shall be approved in advance by the Commission.

(12) UNITED STATES NOT LIABLE FOR DAMAGE OR INJURY: The United States is not responsible or liable for damage to property or injury to persons that may arise from, or be incident to, compliance with this Agreement or subgrants issued under this Agreement, including, but not limited to, any action taken by a Sponsor related to or arising from, directly or indirectly, this Agreement.

(13) PAYMENT: Payments to the Sponsor are made on an advance basis. The Sponsor may request incremental payments during the course of the project or a lump sum payment upon completion of the work. However, this advance payment is subject to the limitations imposed by paragraph (13)(B) of this Agreement.



(A) The Sponsor may request payment at any time subsequent to the execution of this Agreement by both parties. Requests for reimbursement shall be supported with invoices. After the Sponsor pays incurred costs, copies of checks used to pay providers must be submitted to the Commission.

(B) It is understood and agreed by and between the parties that the Commission shall make no payment which could cause the aggregate of all payments under this Agreement to exceed ninety percent (90%) of the maximum federal (block grant) obligation stated in this Agreement or eighty-six percent (86%) of actual total eligible project cost, whichever is lower, until the Sponsor has met and/or performed all requirements of this grant Agreement to the satisfaction of the Commission. The final ten percent (10%) of the maximum federal (block grant) obligation stated in this Agreement shall not be paid to the Sponsor until the Commission has received and approved all final closeout documentation for the project.

(C) Within ninety (90) days of final inspection of the project funded under this Agreement, the Sponsor shall provide to the Commission a final payment request and all financial, performance and other reports as required by the conditions of this Agreement, with the exception of the final audit report. This report shall be provided when the Sponsor's normal annual audit is completed.

(D) When force account or donations are used, the costs for land, engineering, administration, in-kind labor, equipment and materials, etc., may be submitted in letter form with a breakdown of the number of hours and the hourly charges for labor and equipment. Quantities of materials used and unit costs must also be included. All force account activity, donations, etc., must be pre-approved by the Commission to ensure eligibility for funding.

(14) ADMINISTRATIVE/AUDIT REQUIREMENTS: This grant shall be governed by the administrative and audit requirements as prescribed in 2 CFR Part 200.

(A) If the Sponsor expends Seven Hundred Fifty Thousand Dollars (\$750,000) or more in a year in federal financial assistance, it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to the Missouri Department of Transportation (hereinafter, "MoDOT") within the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the Sponsor expends less than Seven Hundred Fifty Thousand Dollars (\$750,000) in a year, the Sponsor may be exempt from auditing requirements for that year, but records must be available for review or audit by applicable state and federal authorities.

(B) When the Sponsor's normal annual audit is completed, the Sponsor shall provide to the Commission a copy of an audit report that includes the disposition of all federal funds involved in this project.

(C) In the event a final audit has not been performed prior to the closing

of the grant, the Commission retains the right to recover any appropriate amount of funding after fully considering interest accrued or recommendations on disallowed costs identified during the final audit.

(D) The Commission reserves the right to conduct its own audit of the Sponsor's records to confirm compliance with grant requirements and to ensure that all costs and fees are appropriate and acceptable.

(15) ASSURANCES/COMPLIANCE: The Sponsor shall adhere to the FAA standard airport Sponsor assurances as outlined in attached Exhibit 1, current FAA Advisory Circulars (hereinafter, "ACs") for AIP projects and/or the Commission's specifications. These assurances, ACs and the Commission's specifications are hereby incorporated into and made part of this Agreement. The Sponsor shall review the assurances, ACs, Commission's specifications and current FAA Order 5190.6 entitled "FAA Airport Compliance Manual", and notify the Commission of any areas of non-compliance within its existing facility and/or operations. All non-compliance situations must be addressed and a plan to remedy areas of non-compliance must be established before final acceptance of this project and before final payment is made to the Sponsor.

(16) LEASES/AGREEMENTS: The Sponsor shall ensure that its lease agreements provide for fair market value income and prohibit exclusive rights.

(A) Long term commitments (longer than 5 years) must provide for renegotiation of the leases'/agreements' terms and payments at least every five (5) years.

(B) Leases/agreements shall not contain provisions that adversely affect the Sponsor's possession and control of the airport or interfere with the Sponsor's ability to comply with the obligations and covenants set forth in this grant Agreement.

(17) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the Sponsor agrees as follows:

(A) Civil Rights Statutes: The Sponsor shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 USC 2000d and 2000e, *et seq.*), as well as any applicable titles of the Americans with Disabilities Act. In addition, if the Sponsor is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.

(B) Administrative Rules: The Sponsor shall comply with the administrative rules of the USDOT relative to nondiscrimination in federally-assisted programs of the USDOT (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The Sponsor shall not discriminate on grounds

of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Sponsor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21, Section 21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the Sponsor. These apply to all solicitations either by competitive bidding or negotiation made by the Sponsor for work to be performed under a subcontract, including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the Sponsor of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The Sponsor shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Commission or the USDOT to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the Sponsor is in the exclusive possession of another who fails or refuses to furnish this information, the Sponsor shall so certify to the Commission or the USDOT as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the Sponsor fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the Sponsor complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The Sponsor shall include the provisions of Paragraph (17) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the USDOT. The Sponsor will take such action with respect to any subcontract or procurement as the Commission or the USDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Sponsor becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Sponsor may request the United States to enter into such litigation to protect the interests of the United States.

(18) CANCELLATION: The Commission may cancel this Agreement at any time the Sponsor breaches the contractual obligations by providing the Sponsor with written notice of cancellation. Should the Commission exercise its right to cancel the Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Sponsor.

(A) Upon written notice to the Sponsor, the Commission reserves the right to suspend or terminate all or part of the grant when the Sponsor is, or has been, in violation of the terms of this Agreement. Any lack of progress that significantly endangers substantial performance of the project within the specified time shall be deemed a violation of the terms of this Agreement. The determination of lack of progress shall be solely within the discretion of the Commission. Once such determination is made, the Commission shall so notify the Sponsor in writing. Termination of any part of the grant will not invalidate obligations properly incurred by the Sponsor prior to the date of termination.

(B) The Commission shall have the right to suspend funding of the project at any time and for so long as the Sponsor fails to substantially comply with all the material terms and conditions of this Agreement. If the Commission determines that substantial noncompliance cannot be cured within thirty (30) days, then the Commission may terminate the funding for the project. If the Sponsor fails to perform its obligations in substantial accordance with the Agreement (except if the project has been terminated for the convenience of the parties) and the FAA requires the Commission to repay grant funds that have already been expended by the Sponsor, then the Sponsor shall repay the Commission such federal funds.

(19) 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.

(20) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Sponsor shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(21) WORK PRODUCT: All documents, reports, exhibits, etc. produced by the Sponsor at the direction of the Commission shall remain the property of the Sponsor. However, Sponsor shall provide to the Commission a copy of magnetic discs that contain computer aided design and drafting (CADD) drawings and other documents generated under this grant. Information supplied by the Commission shall remain the property of the Commission. The Sponsor shall also supply to the Commission hard copies of any working documents such as reports, plans, specifications, etc., as requested by the Commission.

(22) CONFIDENTIALITY: The Sponsor shall not disclose to third parties confidential factual matter provided by the Commission except as may be required by

statute, ordinance, or order of court, or as authorized by the Commission. The Sponsor shall notify the Commission immediately of any request for such information.

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

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

(25) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Sponsor shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Sponsor's wrongful or negligent performance of its obligations under this Agreement.

(B) The Sponsor will require any contractor procured by the Sponsor to work under this Agreement:

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

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

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation 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.

(26) HOLD HARMLESS: The Sponsor shall hold the Commission harmless from any and all claims for liens of labor, services or materials furnished to the Sponsor in connection with the performance of its obligations under this Agreement. Certification statements from construction contractors must be provided to ensure all workers, material suppliers, etc., have been paid.

(27) NOTIFICATION OF CHANGE: The Sponsor shall immediately notify the Commission of any changes in conditions or law which may significantly affect its ability to perform the project in accordance with the provisions of this Agreement. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal, facsimile or electronic mail (email) delivery, addressed as follows:

Commission: Administrator of Aviation  
Missouri Department of Transportation  
P.O. Box 270  
Jefferson City, MO 65102  
(573) 526-7912  
(573) 526-4709 FAX  
email: amy.ludwig@modot.mo.gov

Sponsor: John Butz  
City Administrator  
City of Rolla  
P.O. Box 979  
901 N. Elm St.  
Rolla, MO 65402  
(573) 426-6948  
(573) 426-6947 FAX  
email: jbutz@rollacity.org

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

(28) DURATION OF GRANT OBLIGATIONS: Grant obligations are effective for the useful life of any facilities/equipment installed with grant funds, but in any event not to exceed twenty (20) years. There shall be no limit on the duration of the assurance against exclusive rights or terms, conditions and assurances with respect to real property acquired with federal funds. Paragraph (28) equally applies to a private sponsor. However, in the case of a private sponsor, the useful life for improvements shall not be less than ten (10) years.



(A) The financial assistance provided hereunder constitutes a grant to the Sponsor. Neither the Commission nor the FAA will have title to the improvements covered by this Agreement, as title to same shall vest in the Sponsor.

(B) For the grant duration period, the Sponsor becomes obligated, upon any sale or disposition of the airport or discontinuation of operation of the airport to immediately repay, in full, the grant proceeds or proportionate amount thereof based upon the number of years remaining in the original obligation to the Commission. The Commission and the Sponsor hereby agree that during said period, the property and improvements which constitute the subject airport are subject to sale, if necessary, for the recovery of the federal pro rata share of improvement costs should this Agreement be terminated by a breach of contract on the part of the Sponsor or should the aforementioned obligations not be met.

(C) In this Section, the term "any sale or disposition of the airport" shall mean any sale or disposition of the airport: (i) for a use inconsistent with the purpose for which the Commission's share was originally granted pursuant to this Agreement; or (ii) for a use consistent with such purposes wherein the transferee in the sale or disposition does not enter into an assignment and assumption Agreement with the Sponsor with respect to the Sponsor's obligation under the instrument so that the transferee becomes obligated thereunder as if the transferee had been the original owner thereof.

(29) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Sponsor and the Commission.

(30) PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS: Contracts for professional services are to be procured by competitive proposals per federal procurement requirements (49 CFR, Section 18.36). Requests for proposals/qualifications are to be publicly announced for services expected to cost more than One Hundred Thousand dollars (\$100,000) in the aggregate. Small purchase procedures (telephone solicitations or direct mail) may be used for services costing One Hundred Thousand Dollars (\$100,000) or less. All professional services contracts are subject to review and acceptance by the Commission prior to execution by the Sponsor to ensure funding eligibility.

(31) ASSIGNMENT: The Sponsor shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(32) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Sponsor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Sponsor responsible for damages.

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

(34) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The Sponsor shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 CFR Part 170.

(35) BAN ON TEXTING WHILE DRIVING: In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:

(A) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.

(B) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:

1. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

2. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(36) TRAFFICKING IN PERSONS:

(A) The Commission may unilaterally terminate this Agreement, without penalty, if the Sponsor or a subcontractor that is a private entity:

1. Is determined to have:

a. Engaged in severe forms of trafficking in persons during the period of time that this Agreement and any subgrants entered into pursuant to this Agreement are in effect;

b. Procured a commercial sex act during the period of time that this Agreement, including any subgrants entered into pursuant to this Agreement, are in effect; or

c. Used forced labor in the performance of this

Agreement, including any subgrants entered into pursuant to this Agreement; or

2. Has an employee who is determined by the Commission official authorized to terminate the Agreement to have violated a prohibition in paragraph (36)(A)1.a. above through conduct that is either associated with performance under this Agreement or imputed to the Sponsor or subcontractor using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," as implemented by the FAA at 2 CFR Part 1200.

(B) The Sponsor must notify the Commission immediately of any information the Sponsor receives from any source alleging a violation of a prohibition in Paragraph (36)(A)1 of this Agreement, including subgrants entered into pursuant to this Agreement.

(C) The Commission's right to terminate unilaterally that is described in Paragraph (36)(A)1 of this Agreement:

1. Implements Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 USC 7104(g)); and

2. Is in addition to all other remedies for noncompliance that are available to the Commission under this Agreement.

(D) The Sponsor shall include the requirements of Paragraph (37)(A)1 of this Agreement in any subgrant entered into pursuant to this Agreement.

(37) SUSPENSION OR DEBARMENT: Sponsors entering into "covered transactions", as defined by 2 CFR § 180.200, must:

(A) Verify the non-federal entity is eligible to participate in this Federal program by:

1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if non-federal entity is excluded or disqualified; or

2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or

3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating; and

(B) Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. subcontracts).

(38) SYSTEM FOR AWARD MANAGEMENT REGISTRATION AND UNIQUE ENTITY IDENTIFIER:

(A) Requirement for System for Award Management (hereinafter, "SAM"): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in SAM until the Commission submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Commission review and update, and will require the Sponsor to review and update, the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).

(B) Unique Entity Identifier (hereinafter, "UEI") means a twelve character alpha-numeric value used to identify a specific commercial, nonprofit or governmental entity. A UEI may be obtained from SAM.gov at <https://sam.gov/SAM/pages/public/index.jsf>.

(39) FINANCIAL REPORTING AND PAYMENT REQUIREMENTS: The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.

(40) EMPLOYEE PROTECTION FROM REPRISALS:

(A) Prohibition of Reprisals: In accordance with Title 41 USC § 4712, an employee of the Sponsor, contractor, or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in subparagraph (40)(B) information that the employee reasonably believes is evidence of:

1. Gross mismanagement of a federal grant;
2. Gross waste of federal funds;
3. An abuse of authority relating to implementation or use of federal funds;
4. A substantial and specific danger to public health or safety; or
5. A violation of law, rule, or regulation related to a federal grant.

(B) Persons and Bodies Covered: The persons and bodies to which a disclosure by an employee is covered are as follows:

1. A member of Congress or a representative of a committee of Congress;

2. An Inspector General;
3. The Government Accountability Office;
4. A federal office or employee responsible for oversight of a grant program;
5. A court or grand jury;
6. A management office of the grantee or subgrantee; or
7. A federal or state regulatory enforcement agency.

(C) Submission of Complaint: A person who believes that they have been subjected to a reprisal prohibited by Paragraph (40)(A) of this Agreement may submit a complaint regarding the reprisal to the Office of Inspector General for the USDOT.

(D) Time Limitation for Submittal of a Complaint: A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.

(E) Required Actions of the Inspector General: Actions, limitations, and exceptions of the Inspector General's office are established under 41 USC § 4712(b).

(F) Assumption of Rights to Civil Remedy: Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 USC § 4712(c).

(41) AIRPORT LAYOUT PLAN: All improvements must be consistent with a current and approved Airport Layout Plan (hereinafter, "ALP"). The Sponsor shall update and keep the ALP drawings and corresponding narrative report current with regard to FAA standards and physical or operational changes at the airport.

(A) ALP approval shall be governed by FAA Order 5100.38, entitled "Airport Improvement Program Handbook."

(B) If ALP updates are required as a result of this project, the Sponsor understands and agrees to update the ALP to reflect the construction to standards satisfactory to the Commission and submit it in final form to the Commission. It is further mutually agreed that the reasonable cost of developing said ALP Map is an allowable cost within the scope of this project. Airport Sponsor Grant Assurance 29 further addresses the Sponsor's statutory obligations to maintain an ALP in accordance with 49 USC § 47107(a)(16).

(C) The Sponsor has made available to (or will make available to) and has provided (or will provide) upon request to the metropolitan planning organization, if any, in the area in which the Airport is located, a copy of the proposed ALP or ALP amendment to depict the project and a copy of any airport master plan in which the project is described or depicted.

(42) AIRPORT PROPERTY MAP: The Sponsor shall develop (or update), as a part of the ALP, a drawing which indicates how various tracts/parcels of land within the airport's boundaries were acquired (i.e., federal funds, surplus property, local funds only, etc.). Easement interests in areas outside the fee property line shall also be included. A screened reproducible of the Airport Layout Drawing may be used as the base for the property map.

(43) ENVIRONMENTAL IMPACT EVALUATION: The Sponsor shall evaluate the potential environmental impact of this project per the current version of FAA Order 5050.4, entitled "National Environmental Policy Act Implementing Instructions for Airport Actions." Evaluation must include coordination with all resource agencies that have jurisdiction over areas of potential environmental impact and a recommended finding such as categorical exclusion, no significant impact, level of impact and proposed mitigation, etc.

(44) EXHIBIT "A" PROPERTY MAP: The Sponsor's existing Exhibit "A" Property Map dated February 4, 1997 is being updated as part of Project 19-056A-1.

(45) SOLID WASTE RECYCLING PLAN: The Sponsor certifies that it has a solid waste recycling plan as part of an existing Airport Master Plan, as prescribed by Title 49 United States Code Section 47106(a)(6).

(46) RUNWAY PROTECTION ZONE: The Sponsor agrees to take the following actions to maintain and/or acquire a property interest, satisfactory to the Commission and the FAA, in the Runway Protection Zones:

(A) Existing Fee Title Interest in the Runway Protection Zone: The Sponsor agrees to prevent the erection or creation of any structure, place of public assembly or other use in the Runway Protection Zone, as depicted on the Exhibit "A" Property Map and the approved ALP, except for NAVAIDS that are fixed by their functional purposes or any other structure permitted by the Commission and the FAA. The Sponsor further agrees that any existing structures or uses within the Runway Protection Zone will be cleared or discontinued by the Sponsor unless approved by the Commission and the FAA.

(B) Existing Easement Interest in the Runway Protection Zone: The Sponsor agrees to take any and all steps necessary to ensure that the owner of the land within the designated Runway Protection Zone will not build any structure in the Runway Protection Zone that is an airport hazard or which might create glare or misleading lights



or lead to the construction of residences, fuel handling and storage facilities, smoke generating activities, or places of public assembly, such as churches, schools, office buildings, shopping centers, and stadiums.

(47) ENGINEER'S DESIGN REPORT: Prior to development of the plans and specifications, the Sponsor shall provide an engineer's report setting forth the general analysis and explanation of reasons for design choices. Said report shall include an itemized cost estimate, design computations, reasons for selections and modifications, comparison of alternatives, life cycle cost analysis, geotechnical report and any other elements that support the engineer's final plans and specifications.

(48) GEOMETRIC DESIGN CRITERIA: The Sponsor shall use the geometric design criteria promulgated by the FAA in the AC series and in FAA Orders. The Sponsor may request and receive approval for adaptation of said criteria where the FAA and the Commission concur that such adaptation is appropriate considering safety, economy and efficiency of operation.

(49) PLANS, SPECIFICATIONS AND ESTIMATES: The plans and construction specifications for this project shall be those promulgated by the FAA in the AC series and in FAA Orders.

(A) The plans shall include a safety plan sheet to identify work areas, haul routes, staging areas, restricted areas, construction phasing, shutdown schedule etc., and to specify the requirements to ensure safety during construction.

(B) The Sponsor shall submit all plans, specifications and estimates to the Commission for review and acceptance prior to advertising for bids for construction. The Commission and the Sponsor agree that the Commission approval of the Sponsor's Plans and Specifications is based primarily upon the Sponsor's certification to carry out the project in accordance with policies, standards, and specifications approved by the FAA. The Sponsor understands that:

1. The Sponsor's certification does not relieve the Sponsor of the requirement to obtain prior Commission and FAA approval for modifications to any AIP or supplemental appropriation standards or to notify the Commission of any limitations to competition within the project;

2. The Commission's acceptance of a Sponsor's certification does not limit the Commission from reviewing appropriate project documentation for the purpose of validating the certification statements; and

3. If the Commission determines that the Sponsor has not complied with its certification statements, the Commission will review the associated project costs to determine whether such costs are allowable under AIP or supplemental appropriation.

(50) CONSTRUCTION OBSERVATION/INSPECTION REQUIREMENTS: In conjunction with submittal of the construction bid tabulation, the Sponsor shall provide a construction observation/inspection program setting forth a format for accomplishment of resident observation, construction inspection and overall quality assurance.

(51) CONSTRUCTION PROGRESS AND INSPECTION REPORTS: The Sponsor shall provide and maintain adequate, competent and qualified engineering supervision and construction inspection at the project site during all stages of the work to ensure that the completed work conforms with the project plans and specifications. Project oversight by the Commission's project manager or other personnel does not relieve the Sponsor of this responsibility.

(A) The Sponsor shall require the resident project representative to keep daily construction records and shall submit to the Commission a weekly construction progress and inspection report on the FAA Form 5370-1 ("Construction Project and Inspection Report"), completed by the resident project representative. A weekly summary of tests completed shall be included.

(B) Prior to final acceptance, the Sponsor shall provide to the Commission a testing summary report bearing the engineer's seal and including a certification from the engineer that the completed project is in compliance with the plans and specifications.

(52) WAGE LAWS: The Sponsor and its contractors and subcontractors shall pay the prevailing hourly rate of wages for each craft or type of worker required to execute this project work as determined by the Department of Labor and Industrial Relations of Missouri, and they shall further comply in every respect with the minimum wage laws of Missouri and the United States. Federal wage rates under the Davis-Bacon or other federal acts apply to and govern this Agreement also for such work which is performed at the jobsite, in accord with 29 CFR Part 5. Thus, this Agreement is subject to the "Contract Work Hours and Safety Standards Act", as amended (40 USC § 327, *et seq.*), and its implementing regulations. The Sponsor shall take the acts which may be required to fully inform itself of the terms of, and to comply with, state and federal laws.

(53) COMPETITIVE SELECTION OF CONTRACTOR: Construction that is to be accomplished by contract is to be competitively bid in accordance with federal procurement requirements, located at 49 CFR Part 18. Bid notices should be published in a qualified (local or area) newspaper or other advertisement publication located in the same county as the airport project as a minimum.

(54) REVIEW OF BIDS AND CONTRACT AWARD: The Commission shall review all contractors' bids and approve the selection of the apparent successful bidder prior to the Sponsor awarding the construction contract.

(55) NOTICE TO PROCEED: After the Commission receives copies of the executed construction contract between the Sponsor and the contractor, the performance

and payment bonds and any other documentation as required by this Agreement, the Commission will authorize the Sponsor to issue a notice to proceed with construction.

(A) Notice to proceed shall not be issued until the Sponsor has provided satisfactory evidence of acceptable title to the land on which construction is to be performed. Ownership status of existing airport property as well as any land or easements acquired under this project must be included in a Certificate of Title tied to a current Exhibit "A" property map.

(B) The Sponsor shall issue a notice to the contractor within ten (10) days of authorization by the Commission, unless otherwise approved by the Commission.

(C) Any construction work performed prior to the Sponsor's issuance of a Notice to Proceed shall not be eligible for funding participation.

(56) DISADVANTAGED BUSINESS ENTERPRISES - CONSTRUCTION: The Sponsor shall notify prospective bidders that DBEs will be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex or national origin in consideration for an award.

(A) The goal for this project to be awarded to DBE firms shall be established by the Commission based on the engineer's construction cost estimate included in the design report. The goal will be a percentage of the federal portion of the contract costs less the amount expended for land, easements, the Sponsor's in-house administration, force account work and any noncontractual costs. Failure to meet the DBE goal can render a bid proposal nonresponsive at the Commission's discretion.

(B) The Sponsor shall conduct field reviews and interviews with workers to ensure that the portion of the work identified in the construction contract to be performed by DBE firms is so performed. Results of these interviews shall be submitted to the Commission with the weekly construction progress reports.

(57) LABOR STANDARDS INTERVIEWS: The Sponsor shall conduct periodic random interviews with the workers to assure that they are receiving the established prevailing wages. Results of these interviews shall be submitted to the Commission with the weekly construction progress reports.

(58) AIR AND WATER QUALITY: The Sponsor is required to comply with all applicable air and water quality standards for the project. If the Sponsor fails to comply with this requirement, the Commission may suspend, cancel, or terminate this Agreement.

(59) FILING NOTICE OF LANDING AREA PROPOSAL: When a project involving changes to the runway will be implemented at an airport, the Sponsor must submit FAA Form 7480-1 ("Notice of Landing Area Proposal") to the FAA not less than one hundred twenty (120) days prior to commencement of any construction or alteration.

A copy of the form as filed with the FAA and the FAA airspace determination letter must be provided to the Commission. This form must be submitted for any projects that involve the widening, lengthening or reconstruction of an existing runway or construction of a new runway. When the funded project is strictly a master plan/site selection, this form will be submitted for the final three proposed sites prior to development of the ALP.

(60) FILING NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION:

When a development project that does not involve changes to the runway will be implemented at an airport, the Sponsor must submit FAA Form 7460-1 ("Notice of Proposed Construction of Alteration") to the FAA not less than one hundred twenty (120) days prior to commencement of any construction or alteration. A copy of the form as filed with the FAA and the FAA airspace determination letter must be provided to the Commission. This form must be submitted for construction of any permanent structures on the airport, temporary structures over 20 feet in height or use of construction equipment over 20 feet tall. It is not necessary for routine construction projects, unless they include above ground installations.

(61) CHANGE ORDERS/SUPPLEMENTAL AGREEMENTS: All change orders/supplemental agreements must be submitted to the Commission for approval prior to implementation to ensure funding eligibility. Requests for additional work for items not included in the original bid must be accompanied by a cost analysis to substantiate the proposed costs.

(62) RESPONSIBILITY FOR PROJECT SAFETY: During the full term of the project, the Sponsor shall be responsible for the installation of any signs, markers or other devices required for the safety of the public. All markers or devices required shall conform with all applicable FAA regulations or specifications.

(A) The Sponsor shall ensure that a safety plan is included in the contract documents and that the Contractor complies with the safety plan during construction.

(B) It is also the responsibility of the Sponsor to issue, through the applicable FAA Flight Service Station, any and all Notices to Airmen that may be required. Copies of notices shall also be sent to the Commission as soon as they are filed with the FAA.

(63) RECORD DRAWINGS: The Sponsor shall provide one (1) set of digital as-built construction plans and one (1) set of digital and one (1) paper set of the updated ALP with a narrative report to the Commission upon project completion. The Sponsor understands and agrees to update the ALP to reflect the construction to standards satisfactory to the Commission and submit it in final form to the Commission. It is further mutually agreed that the reasonable cost of developing said ALP Map is an allowable cost within the scope of this project. The Commission will forward one (1) digital set of the approved updated ALP to the FAA Central Region office.

(64) SPECIAL CONDITIONS: The following special conditions are hereby made part of this Agreement:

(A) Buy American Requirements: Unless otherwise approved in advance by the Commission and the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured goods produced outside the United States to be used for any project for which funds are provided under this Agreement. The Sponsor will include a provision implementing Buy American in every subgrant funded by this Agreement. The Sponsor agrees to abide by applicable Executive Orders in effect at the time this Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.

(B) Safety Inspection: The Sponsor shall eliminate all deficiencies identified in its most recent annual safety inspection report (FAA Airport Master Record Form 5010-1). If immediate elimination is not feasible, as determined by the Commission, the Sponsor shall provide a satisfactory plan to eliminate the deficiencies and shall include this plan with phased development as outlined in a current and approved ALP.

(C) Navigational Aids: Except for instrument landing systems acquired with the AIP (block grant) funds and later donated to and accepted by the FAA, the Sponsor must provide for the continuous operation and maintenance of any navigational aid funded under the AIP (block grant) program during the useful life of the equipment unless the equipment is transferred by agreement to the FAA in accordance with 49 USC § 44502(E). The Sponsor must check the facility, including instrument landing systems, prior to commissioning to ensure it meets the FAA's standards. The Sponsor must also remove, relocate, lower, mark, or light each obstruction to obtain a clear approach as indicated in the 14 CFR Part 77 aeronautical survey.

(D) Environmental Due Diligence Audit: The Sponsor shall conduct an Environmental Due Diligence Audit (EDDA) of all NAVAID (electronic navigational equipment) sites that will be established or relocated with federal (block grant) funds. This audit shall include existing equipment currently owned and operated by the FAA Airways Facilities Branch and new equipment for which the Sponsor will be requesting FAA maintenance.

(E) Disadvantaged Business Enterprise Required Statements:

(1) Policy: It is the policy of the USDOT that DBEs, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this Agreement.

(2) Contract Assurance: The Commission and the Sponsor will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out the applicable requirements of Title 49 Code of Federal Regulations, Part 26 in the award and administration of any United States Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.”

(This assurance shall be included in each subcontract the prime contractor signs with a subcontractor.)

(3) Federal Financial Assistance Agreement Assurance: The Commission and the Sponsor agree to and incorporate the following assurance into their day-to-day operations and into the administration of all USDOT-assisted contracts; where “recipient” means MoDOT and/or any MoDOT grantee receiving USDOT assistance:

“MoDOT and the Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation-assisted contract or in the administration of the United States Department of Transportation’s DBE Program or the requirements of Title 49 Code of Federal Regulations, Part 26. The recipient shall take all necessary and reasonable steps under Title 49 Code of Federal Regulations, Part 26 to ensure nondiscrimination in the award and administration of United States Department of Transportation-assisted contracts. The recipient’s DBE Program, as required by Title 49 Code of Federal Regulations, Part 26 and as approved by the United States Department of Transportation, is incorporated by reference into this agreement. Implementation of this program is a legal obligation and for failure to carry out its approved program, the United States Department of Transportation may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under Title 18 United States Code, Section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (Title 31 United States Code, Section 3801 *et seq.*)”

The Commission and the Sponsor shall ensure that all recipients of USDOT-assisted contracts, funds, or grants incorporate, agree to, and comply with the assurance statement.

(4) Prompt Payment: The Commission and the Sponsor shall require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with section 34.057 RSMo, Missouri’s prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Sponsor also require the prompt return of all retainage held on all subcontractors after the subcontractors’ work is satisfactorily completed, as determined by the Sponsor and the Commission.



All contractors and subcontractors must retain records of all payments made or received for three (3) years from the date of final payment, and these records must be available for inspection upon request by any authorized representative of the Commission, the Sponsor, or the USDOT. The Commission and the Sponsor will maintain records of actual payments to DBE firms for work committed to at the time of the contract award.

The Commission and the Sponsor will perform audits of contract payments to DBE firms. The audits will review payments to subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation and that payment was made in compliance with section 34.057 RSMo.

(5) MoDOT DBE Program Regulations: The Sponsor, contractor and each subcontractor are bound by MoDOT's DBE Program regulations, located at Title 7 Code of State Regulations, Division 10, Chapter 8.

(F) Disadvantaged Business Enterprises—Professional Services: DBEs that provide professional services, such as architectural, engineering, surveying, real estate appraisals, accounting, legal, etc., will be afforded full and affirmative opportunity to submit qualification statements/proposals and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for selection for this project. The DBE goals for professional services will be determined by the Commission at the time each proposed service contract is submitted for the Commission's approval.

(G) Consultant Contract and Cost Analysis: The Sponsor understands and agrees that no reimbursement will be made on the consultant contract portion of this Agreement until the Commission has received the consultant contract, the Sponsor's analysis of costs, and the independent fee estimate.

*[Remainder of Page Intentionally Left Blank]*

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

Executed by the Sponsor this \_\_\_\_\_(DATE).

Executed by the Commission this \_\_\_\_\_(DATE).

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF ROLLA

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Attest:

Attest:

\_\_\_\_\_  
Secretary to the Commission

By \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

Ordinance No. \_\_\_\_\_  
(if applicable)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, \_\_\_\_\_, acting as attorney for the Sponsor, do hereby certify that in my opinion, the Sponsor is empowered to enter into the foregoing grant Agreement under the laws of the State of Missouri. Further, I have examined the foregoing grant Agreement, and the actions taken by said Sponsor and Sponsor's official representative have been duly authorized and the execution thereof is in all respects due and proper and in accordance with the laws of the said state and the Airport and Airway Improvement Act of 1982, as amended. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said grant constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

SPONSOR: City of Rolla

\_\_\_\_\_  
Name of Sponsor's Attorney (typed)

\_\_\_\_\_  
Signature of Sponsor's Attorney

Date \_\_\_\_\_

-  
**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT HEAD: Darin Pryor**

**ACTION REQUESTED: Motion**

**ITEM/SUBJECT: Sewer Easement**

**BUDGET APPROPRIATION: \$**

**DATE: 12/20/21**

\*\*\*\*\*

**COMMENTARY:**

**City staff is requesting a motion to accept the attached sanitary sewer easement from Premier Apartments, LLC. This is for an existing sanitary sewer main at 1206 Bardsley Road that we do not have record of obtaining an easement.**

IV.D.1

**SANITARY SEWER EASEMENT**

**Date of Document:** \_\_\_\_\_

**Grantor:** Premier Apartments, LLC

**Grantee:** City of Rolla

**Mailing Address:** 1206 Bardsley Road, Rolla, MO 65401

**Legal Description:** Page 2

**Reference Book and Page(s):** \_\_\_\_\_

**SANITARY SEWER EASEMENT**

THIS INDENTURE, Made on the 16 day of November, 2021, by and between Premier Apartments, LLC, Grantor, and the City of Rolla, Missouri, Grantee:

WITNESSETH: That the said Grantor, in consideration of the sum of One Dollar (\$1.00) to them in hand paid by the Grantee, the receipt of which is hereby acknowledged, do by these presents, remise, release and forever quit claim unto the Grantee, its successors and assigns, a permanent sanitary sewer easement as follows:

**SANITARY SEWER EASEMENT**

A 10.0 feet wide sanitary sewer easement in the Southeast Quarter of the Southeast Quarter of Section 2, Township 37 North, Range 8 West of the 5th P.M. described as follows: Commencing at the Southwest corner of Lot 6 in Block 12 of Holloway Addition to the City of Rolla, Missouri; thence South 00°09'17" West, 12.05 feet; thence South 89°46'24" West, 50.00 feet; thence North 00°09'21" East, 2.50 feet to the Point of Beginning; thence continue North 00°09'21" East, 10.00 feet; thence South 89°46'24" West, 111.89 feet to the East line of Bardsley Road; thence South 29°41'22" West, 11.54 feet along said East line; thence North 89°46'24" East, 117.58 feet to the Point of Beginning.

TO HAVE AND TO HOLD the same with all rights, immunities, privileges and appurtenances thereto belonging, unto said Grantee, for the purpose of establishing, laying, constructing, maintaining, operating, repairing or removing sanitary sewer line, through and across said land herein described forever, including the rights of the Grantee, its agents, servants, employees, or representatives to reasonable ingress and egress over and across the property of the Grantor for such purposes. Any repairs to the Grantee sewer main within this easement will be at the expense of the Grantee. Any driveways that are disturbed in the course of any repairs will be returned to the same condition as it was before it was disturbed at no cost to the Grantor. This grant and easement shall at all times be deemed to be and shall be a continuing covenant running with the land and shall be binding upon the heirs, legal representatives and assigns of the Grantor(s) herein.



IN WITNESS WHEREOF, the Grantors have set their hands this 16th day of November, 2021.

*Jason D. Smith*  
\_\_\_\_\_  
Jason D. Smith  
Premier Apartments, LLC

*Jennifer A. Smith*  
\_\_\_\_\_  
Jennifer A. Smith  
Premier Apartments, LLC

STATE OF MISSOURI     )  
                                  ) SS  
COUNTY OF PHELPS)

On this 16<sup>th</sup> day of November, 2021, before me personally appeared to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

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

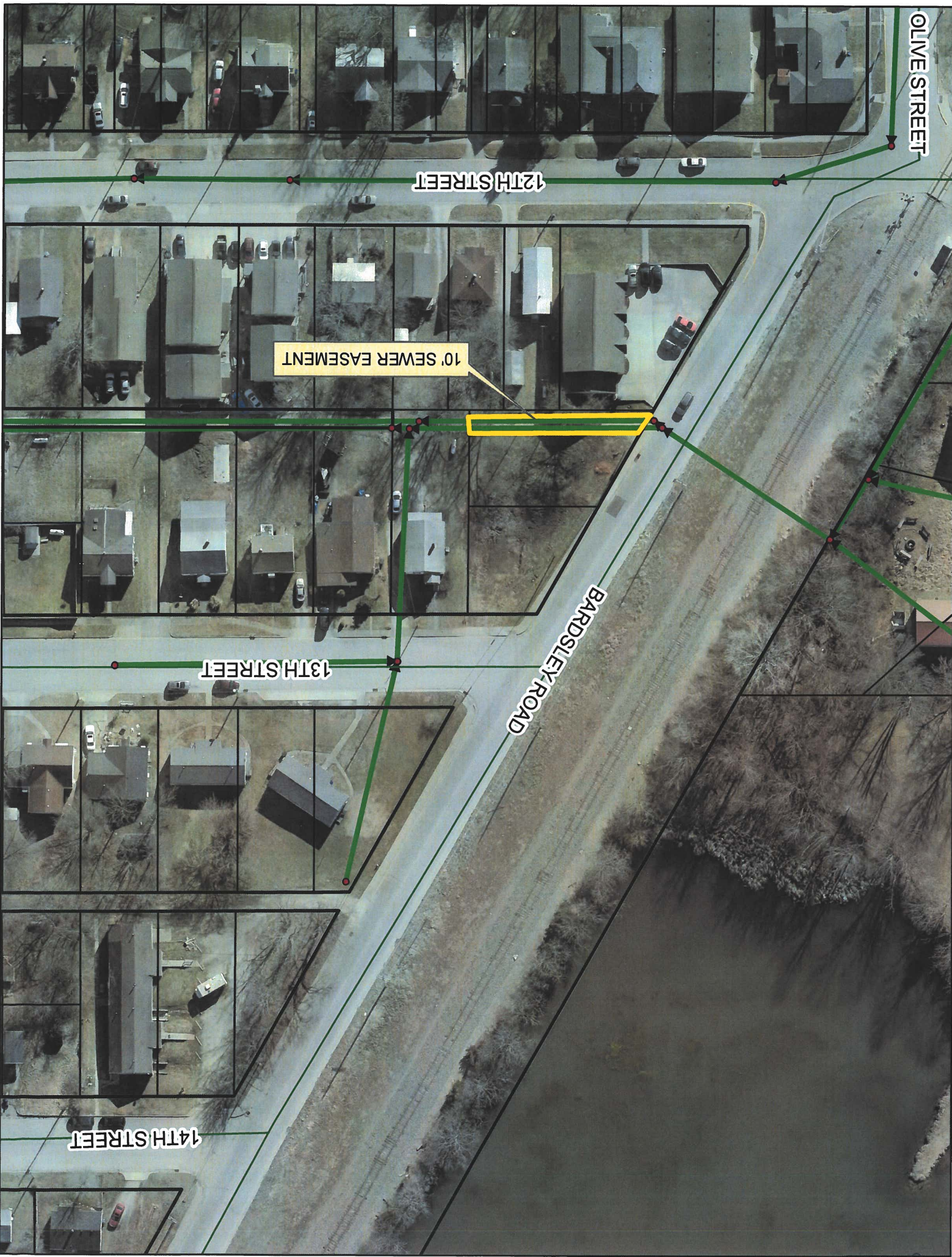
*Leslie Ann Arnold*  
\_\_\_\_\_  
Notary Public *Leslie Ann Arnold*

My Commission Expires: *June 13, 2023*



LESLIE ANN ARNOLD  
My Commission Expires  
June 13, 2023  
Phelps County  
Commission #19280381





OLIVE STREET

12TH STREET

10' SEWER EASEMENT

13TH STREET

BARDSLEY ROAD

14TH STREET





CITY OF ROLLA  
CITY COUNCIL AGENDA

DEPARTMENT HEAD: Darin Pryor

ACTION REQUESTED: Bid Award/Ordinance Motion/1st Reading/Final Reading

ITEM/SUBJECT: Project #359 – University Drive Lighting

BUDGET APPROPRIATION: TDD Funded  
(and University)

DATE: 12/20/21

\*\*\*\*\*

COMMENTARY:

City staff received bids for the University Drive Lighting project. The bids were as follows:

Gerstner Electric, Inc 2400 Cassens Drive Fenton, MO 63025	\$1,115,000.00
N.B. West Contracting 1035 N. Service Rd. Sullivan, MO 63080	\$1,176,552.50
Melrose Quarry & Asphalt, LLC PO Box 187 Rolla, MO 65402	\$1,489,703.40

This will install roadway and pedestrian lighting along the relocated University Drive and roundabout. A bid tab is attached. The conduit for this project is proposed in a change order to the current contract with Donald Maggi, Inc.

Staff is requesting a motion for bid award and the first reading / Final reading of the ordinance authorizing the Mayor to enter into the contract with Gerstner Electric, Inc. for \$1,115,000.00.

ITEM NO. V.A.1

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CERTAIN AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND GERSTNER ELECTRIC, INC. FOR UNIVERSITY DRIVE LIGHTING, PROJECT #359.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri an agreement between the City of Rolla, Missouri and Gerstner Electric, Inc. for University Drive Lighting, Project #359, a copy of said agreement being attached hereto and marked Exhibit A.

Section 2: This ordinance will be full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 20<sup>th</sup> DAY OF DECEMBER 2021.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR

V. A. 2



**DEPARTMENT OF PUBLIC WORKS**  
 901 North Elm  
 P.O. Box 979  
 Rolla, MO 65402

Phone: (573) 364-8659

FAX: (573) 364-8602

e-mail: [shargis@rollacity.org](mailto:shargis@rollacity.org)

[www.rollacity.org](http://www.rollacity.org)

**University Drive Lighting**  
**PROJECT 359**  
**November 17th, 2021**

DESCRIPTION	QTY.	CSE Enterprises LLC Nicholas Barrack 104 E. 11th Street Rolla, MO 65401 Ph: 573-341-5488 <a href="mailto:cserolla@gmail.com">cserolla@gmail.com</a>		Gerstner Electric, INC. Michelle McClelland 2400 Cassens Drive Fenton, MO 63025 Ph: 636-349-5999 <a href="mailto:cgerstner@gerstnerelectric.com">cgerstner@gerstnerelectric.com</a>		Meyer Electric Company Inc. Leon Keller 3513 North Ten Mile Drive Jefferson City, MO 65109 Ph: 573-893-2335 <a href="mailto:leon@meyerelectric.com">leon@meyerelectric.com</a>		
		UNIT PRICE	EXTENDED TOTAL	UNIT PRICE	EXTENDED TOTAL	UNIT PRICE	EXTENDED TOTAL	
<b>359 University Drive Lighting</b>								
Lighting Systems Electric & etc.	1	LS	\$33,000.00	\$ 33,000.00	\$27,815.00	\$ 27,815.00	\$68,799.00	\$ 68,799.00
Cabinet Installations	3	EA	\$17,000.00	\$ 51,000.00	\$16,140.00	\$ 48,420.00	\$16,000.00	\$ 48,000.00
MoDOT Underground Conductors	2065	LF	\$11.40	\$ 23,541.00	\$5.40	\$ 11,151.00	\$5.03	\$ 10,386.95
MS&T Ped Conductors	2500	LF	\$11.40	\$ 28,500.00	\$5.55	\$ 13,875.00	\$5.03	\$ 12,575.00
MS&T Roadway Conductos	4791	LF	\$11.40	\$ 54,617.40	\$10.40	\$ 49,826.40	\$14.05	\$ 67,313.55
MoDOT Pull Boxes	11	EA	\$3,390.00	\$ 37,290.00	\$2,072.00	\$ 22,792.00	\$1,724.00	\$ 18,964.00
MS&T Pull Boxes	12	EA	\$3,550.00	\$ 42,600.00	\$2,072.00	\$ 24,864.00	\$1,724.00	\$ 20,688.00
MoDOT Pull Boxes	3	EA	\$3,550.00	\$ 10,650.00	\$1,707.00	\$ 5,121.00	\$1,724.00	\$ 5,172.00
MS&T Pull Boxes	25	EA	\$3,960.00	\$ 99,000.00	\$1,707.00	\$ 42,675.00	\$1,361.00	\$ 34,025.00
MoDOT Type AT-30 Assembly	4	EA	\$8,400.00	\$ 33,600.00	\$6,991.00	\$ 27,964.00	\$6,608.00	\$ 26,432.00
Structura Lighting w/ Breakaway	9	EA	\$16,270.00	\$ 146,430.00	\$13,865.00	\$ 124,785.00	\$14,862.00	\$ 133,758.00

V.A.3

Structura Lighting no Breakaway	1	EA	\$16,400.00	\$ 16,400.00	\$13,920.00	\$ 13,920.00	\$14,769.00	\$ 14,769.00
Structura Lighting along Univ. Dr.	30	EA	\$16,130.00	\$ 483,900.00	\$13,520.00	\$ 405,600.00	\$14,124.00	\$ 423,720.00
Structura Pedestrian Lighting	25	EA	\$12,550.00	\$ 313,750.00	\$9,300.00	\$ 232,500.00	\$10,550.00	\$ 263,750.00
Relocated Overhead Signage	1	LS	\$40,425.00	\$ 40,425.00	\$18,000.00	\$ 18,000.00	\$7,200.00	\$ 7,200.00
Mobilization	1	LS	\$50,000.00	\$ 50,000.00	\$33,066.60	\$ 33,066.60	\$15,000.00	\$ 15,000.00
Traffic Control	1	LS	\$25,000.00	\$ 25,000.00	\$12,625.00	\$ 12,625.00	\$6,000.00	\$ 6,000.00
<b>TOTAL BID PRICE</b>			<b>\$</b>	<b>1,489,703.40</b>	<b>\$</b>	<b>1,115,000.00</b>	<b>\$</b>	<b>1,176,552.50</b>

V. A. 4



EXHIBIT A

CONTRACT AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ Day of \_\_\_\_\_ by and between the City of Rolla, Missouri, Party of the First Part and hereinafter called Owner, and \_\_\_\_\_ **Gerstner Electric, Inc.** \_\_\_\_\_ Party of the second Part and hereinafter called the Contractor.

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, specifications, plans, and other Contract Documents for the work herein described, and has approved and adopted said documents, and has caused to be published and advertised for and in connection with the construction of: **University Drive Lighting, PROJECT 359**, in complete accord with the Contract Documents and the said plans and specifications; and

WHEREAS, the said Contractor, in response to such advertisement, has submitted to the Owner, in the manner and at the time specified, a sealed proposal in accordance with the terms of said advertisement; and

WHEREAS, the Owner, in the manner prescribed by law, has publicly opened, examined and canvassed the proposals submitted in response to the published invitation therefore, and as a result of such canvass has determined and declared the aforesaid Contractor to be lowest and best bidder for the said work and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's proposal, a copy thereof being attached to and made a part of this contract.

NOW THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the Owner for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his, or their executors and administrators, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, supplies, superintendent, transportation, and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in, and form a permanent part of the completed work except the items specified to be furnished by the Owner; (c) provide and perform all necessary labor, and (d) in a good, substantial, and workmanlike manner, and in accordance with the provisions of the General Conditions and the Special Conditions of the Contract, which are attached hereto and made a part hereof, and in conformity with the Contract Plans and Specifications designated and identified therein, execute, construct, and complete all work included in, and covered by the Owner's official award of this Contract to the said Contractor, such award being based on the acceptance by the Owner of the Contractor's proposal, for the construction of **University Drive Lighting, PROJECT 359**.

V. A. 5

## EXHIBIT A

It is further stipulated that not less than the prevailing hourly rate of wages as found by the Department of Labor and Industrial Relations of the State of Missouri, or determined by the Court of Appeal shall be paid to all workers performing work under this Contract.

ARTICLE II. Contractor acknowledges that Section 285.530, R.S.Mo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that it is not knowingly in violation of Subsection 1 of Section 285.530, R.S.Mo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully eligible to work in the United States.

### ARTICLE III. Occupational Safety and Health Administration (OSHA)

#### **Safety Training:**

- a. Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by Section 292.675, R.S.Mo.
- b. Contractor shall require its on-site employees to complete a construction safety program within sixty (60) days after the date work on the project commences.
- c. Contractor acknowledges and agrees that any of Contractor's employees found on the project site without the documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days, or will be subject to removal from the project.
- d. Contractor shall require all of its subcontractors to comply with the requirements of this Section and Section 292.675, R.S.Mo.

#### **Notice of Penalties for Failure to Provide Safety Training**

- a. Pursuant to Section 292.675, R.S.Mo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by Contractor or its Subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Safety Training section of Article III above.
- b. The penalty described in above subsection A of this section shall not begin to accrue until the time periods described in Sections B and C Safety Training of Article III above have elapsed.
- c. Violations of Article III – Safety Training above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

ARTICLE IV. That the Contractor shall construct and complete the work designated and described in the foregoing proposal and attached specifications in accordance with the Notice to Bidders, Instruction to Bidders, Proposal, Bond, General Conditions, Special Conditions, Technical Specifications, Drawings, Addenda, and other component parts of the Contract

V. A. 6

## EXHIBIT A

Documents hereto attached, all of which documents from the Contract and are as fully a part hereto as if repeated verbatim herein.

ARTICLE V. That the Owner shall pay to the Contractor for the performance of the work described as follows: Complete construction of the improvements in accordance with plans and specifications; and the Contractor will accept as full compensation therefore, the sum (subject to adjustment as provided by the Contract) of \$1,115,000.00 for All work covered by and included in the contract award and designated in the foregoing Article I. Payment therefore shall be made in the manner provided in the General Conditions attached hereto.

ARTICLE VI. That the Contractor shall begin assembly of materials and equipment within ten (10) days after receipt from the Owner of executed copies of the Contract.

Liquidated Damages - Should the contractor fail to complete the work on or before the completion date specified the contractor will be charged liquidated damages in the amount of \$500.00 per calendar day for each full calendar day that the work is not fully completed. Liquidated damages will not be charged for weekends and holidays.

ARTICLE VII. Before the final payment can be made to the Contractor on the project, the Contractor must complete and return the Affidavit Compliance with the Prevailing Wage Law form furnished at the end of the Special Conditions section.

ARTICLE VIII. Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions section.

ARTICLE IX. This Contract will not be binding and effective until confirmed by the Owner.

EXHIBIT A

IN WITNESS-WHEREOF: The parties have executed this Contract as of the day and year first above written.

CITY OF ROLLA, MISSOURI

CONTRACTOR

BY \_\_\_\_\_  
Mayor, Owner, Party of the First Part

BY \_\_\_\_\_

Printed Name

Printed Name/Title

STATE OF MISSOURI )  
SS )  
County of Phelps )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_ ,  
to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City  
of Rolla, Missouri, a municipal corporation, and the seal affixed to said instrument is the  
corporate seal of said municipal corporation and that said instrument is the corporate seal of said  
municipal corporation and that said instrument was signed under authority of the City Council of  
of the City of Rolla, Missouri; and the said \_\_\_\_\_ Acknowledged  
said instrument to be the free act and deed of said municipal corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF MISSOURI )  
SS )  
County of Phelps )

On this \_\_\_\_\_ day of \_\_\_\_\_ before me appeared \_\_\_\_\_ ,  
to me personally known, who, being by me duly sworn, did say that (s)he is the \_\_\_\_\_  
of \_\_\_\_\_  
and that the seal affixed to said instrument is the corporate seal of said corporation by authority  
of its board of directors; and the said \_\_\_\_\_ acknowledged said  
instrument to be the free act and deed of said corporation.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

V.A. 8

**CITY OF ROLLA  
CITY COUNCIL AGENDA**

**DEPARTMENT HEAD: Darin Pryor**

**ACTION REQUESTED: Ordinance** 1<sup>st</sup> Reading

**ITEM/SUBJECT: Change Orders 4 and 5 for Project 359  
University Drive Realignment**

**BUDGET APPROPRIATION: TDD Funded** **DATE: 12/20/21**  
(University)

\*\*\*\*\*

**COMMENTARY:**

The City of Rolla is the fiscal agent for the Move Rolla TDD. As the fiscal agent, the city administers contracts, “pays the bills” for the Move Rolla TDD and gets reimbursed from the TDD.

Missouri S&T has requested to add sandblasting of the truck apron and median islands to the current contract with Donald Maggi Inc. Donald Maggi does not do this type of work and a specialty sub-contractor from the Kansas City area is being proposed to complete this work. The specialty sub-contractor will install the decorative concrete and sand blast for \$428,802.29. Donald Maggi’s original bid for the truck apron and medians was \$159,024.00 for a net change order of \$269,778.29 for Change Order 4.

Prior to the bid for the University Drive Realignment, Missouri S&T requested a re-design of the highway lighting on the project. No street lighting or installation was included in the original bid documents to accommodate the Universities desire to design and install “enhanced lighting” (lighting that exceeded the City’s expectations). Since the street lighting has been redesigned and bid Staff is requesting a change order for Donald Maggi to install the conduits for the electrical circuits as part of their work to keep the project on schedule. The cost for this addition is \$260,898.00.

Staff is requesting the first reading of an ordinance to approve Change Order 4 for \$269,778.29 and Change Order 5 for \$260,898.00

Missouri S&T is covering the cost of these change orders.

ITEM NO. V.B.1

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF ROLLA, MISSOURI TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI A CERTAIN CHANGE ORDER BETWEEN THE CITY OF ROLLA, MISSOURI AND DONALD MAGGI INC, FOR UNIVERSITY DRIVE REALIGNMENT, PROJECT #359.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri a Change Order between the City of Rolla, Missouri and Donald Maggi Inc., for University Drive Realignment, Project #359, a copy of said Change Order being attached hereto and marked Exhibit A.

Section 2: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri a Change Order between the City of Rolla, Missouri and Donald Maggi Inc., for University Drive Realignment, Project #359, a copy of said Change Order being attached hereto and marked Exhibit B.

Section 3: This Ordinance shall be in full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 20<sup>th</sup> DAY OF DECEMBER 2021.

APPROVED:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY COUNSELOR

V.B.2

# EXHIBIT A

<i>Department of Public Works</i>				Project Number <b>359 Univ. Dr.</b>			
Change Order				Change Order <b>4</b>			
Name and Location of Project 359 University Drive				Date <b>11-17-21</b>			
Name and Address of Contractor Donald Maggi Inc. PO Box 66 Rolla, MO 65402							
You are hereby directed to make the following changes from the contract:							
(1) Item No.		(3)	(4)	(5)	(6)	(7)	(8)
<i>Change Order</i>							
	Unit of Measure	Add Qty.	Deduct Qty.	Cost per Unit	Total Added	Total Deducted	
University Drive							
CO6	Traffic Control for Sandblasting	LS	1		\$20,000.00	\$ 20,000.00	\$ -
CO7	Decorative Sandblasting	SF	15,747.0		\$9.67	\$ 152,273.49	\$ -
CO8	Bomanite Decorative Pavement and Medians	SY	1,804		\$142.20	\$ 256,528.80	\$ -
25	Integral Colored Concrete	SF		16475	\$1.44	\$ -	\$ 23,724.00
19	Concrete Truck Apron	SY		1605	\$75.00	\$ -	\$ 120,375.00
21	Concrete Median	SY		199	\$75.00	\$ -	\$ 14,925.00
<b>TOTAL OF COST COLUMNS (Page 1)</b>						<b>\$ 428,802.29</b>	<b>\$159,024.00</b>
Contractor _____ Date _____				Contract Amount \$ <b>2,884,920.92</b>			
Public Works Director _____ Date _____				Add or Deduct this Change Order \$ <b>269,778.29</b>			
Mayor _____ Date _____				Add or Deduct Previous Change Orders \$ <b>276,243.27</b>			
				Adjusted Contracted Amount \$ <b>3,430,942.48</b>			
				Percent Change <b>18.93%</b>			

V.B. 3



## EXHIBIT B

<i>Department of Public Works</i>				Project Number     359 Univ. Dr.			
Change Order				Change Order             5			
Name and Location of Project 359 University Drive				Date             11-17-21			
Name and Address of Contractor Donald Maggi Inc. PO Box 66 Rolla, MO 65402							
You are hereby directed to make the following changes from the contract:							
(1) Item No.		(3)	(4)	(5)	(6)	(7)	(8)
<i>Change Order</i>							
	Unit of Measure	Add Qty.	Deduct Qty.	Cost per Unit	Total Added	Total Deducted	
University Drive							
CO9	Electrical Conduit Installation	LS	1		\$260,898.00	\$ 260,898.00	\$ -
<b>TOTAL OF COST COLUMNS (Page 1)</b>						<b>\$ 260,898.00</b>	<b>\$0.00</b>
Contractor _____ Date _____				Contract Amount \$ <b>2,884,920.92</b>			
Public Works Director _____ Date _____				Add or Deduct this Change Order \$ <b>260,898.00</b>			
Mayor _____ Date _____				Add or Deduct Previous Change Orders \$ <b>546,021.56</b>			
				Adjusted Contracted Amount \$ <b>3,691,840.48</b>			
				Percent Change <b>27.97%</b>			
				<b>Page 1</b>			

V.B. 4