Open Citizen Comment Procedure

1) Public Hearings – Any citizen is allowed to ask questions and/or make comments during any public hearing scheduled for a particular issue.

2) “Citizen Communication” – Public comment can be provided on any item on the agenda or on issues affecting the City not on the agenda. Public comments should generally be limited to 3-5 minutes. Citizens are encouraged (but not required) to contact City Administration one week prior to the meeting, preferably in writing, to be placed on the agenda. Doing so provides Council an opportunity to give consideration to the issue/comment.

Rolla City Council Meeting
Monday, July 15, 2019
901 North Elm Street
City Hall Council Chambers
6:30 P.M.

COUNCIL PRAYER
Ministerial Alliance

PLEDGE OF ALLEGIANCE
Councilwoman Marie Allen

I. PUBLIC HEARINGS
A) Ordinance Rezoning Lot #2, Municipal Acres No. 2, from C-1 (Neighborhood Business District) to R-2 (Two-Family District) Zoning (Rolla Municipal Utilities) – (City Planner, Tom Coots) – First Reading

II. SPECIAL PRESENTATIONS
A) Rolla Regional Economic Commission (RREC) Report - (RREC Executive Director Cyndra Lorey)

III. OLD BUSINESS
A) Ordinance Authorizing the Mayor to Enter into a Contract with Donald Maggi, Inc., for Project 463 – 10th Street Concrete - (Public Works Director Steve Hargis) – Final Reading

IV. NEW BUSINESS
A) Ordinance Amending Sec. 27-67 of the Code Relating to Speed in School Zones – (Public Works Director Steve Hargis) – First Reading
B) Ordinance Authorizing the Mayor to Execute a Contract with the Burlington Northern Santa Fe Railway Company for 18th Street Sidewalk Improvements – (Public Works Director Steve Hargis) – First Reading
C) Ordinance Approving the Final Plat of Martin Subdivision (SED Investments, Inc.) – (City Planner Tom Coots) – First Reading
D) Ordinance Amending Sec. 4-16 of the Rolla City Code Pertaining to Liquor Licenses – (Mayor Louis J. Magdits, IV) – First Reading (final reading requested)
E) Resolution Authorizing the Mayor to Execute a Memorandum of Understanding with Compass Health, Inc. – (Fire Chief Ron Smith) – Motion
F) Resolution Authorizing the Mayor to Execute a Memorandum of Understanding with the South Central Regional Veterans Group – (Parks and Recreation Director Floyd Jernigan) – Motion
V. **CLAIMS and/or FISCAL TRANSACTIONS**  
A) Motion Awarding Bid for Bayless Field Fencing (Project 495); and, an Ordinance Authorizing the Mayor to Enter into an Agreement for Same – (Parks and Recreation Director Floyd Jernigan) – Motion/First Reading

VI. **MAYOR/CITY COUNCIL COMMENTS**

VII. **CITIZEN COMMUNICATION**  
A) Open Citizen Communication

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

IX. **CLOSED SESSION**  
Pursuant to RSMo. 610.021, the Rolla City Council will discuss the following in Closed Session:  
   Real Estate

X. **ADJOURNMENT**
CITY OF ROLLA
CITY COUNCIL AGENDA

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

SUBJECT: A request to rezone, Lot #2, Municipal Acres No. 2, the parcel identified with the Phelps County Assessor Account Number of 10259.01 at the southwest corner of Lions Club Drive and State Hwy O, from the Neighborhood Business (Zoning) District (C-I) to the Two Family (Zoning) District (R-2).

(Rolla Municipal Utilities)

MEETING DATE: 07-15-2019

GENERAL INFORMATION:
CASE NUMBER: ZON19-05 SUBMISSION DATE: 06-13-2019
LEGAL AD DATE: 06-22-2019 300 FOOT NOTICE: 06-19-2019

APPLICANT/AGENT: Rolla Municipal Utilities (RMU)

LOCATION: The subject parcel is located at the southwest corner of the intersection of Lions Club Drive and State Hwy O.

CURRENT USE/PARCEL/ZONING/FLUM DETAILS: The subject property is currently owned by the Rolla Municipal Utility (RMU). The property was originally acquired to facilitate the construction of Lions Club Drive. The excess land was platted with the intent of being sold. RMU has received bids from prospective buyers to purchase the property. The property is currently zoned C-1, Neighborhood Business, however, the buyer asked that the property be rezoned to allow for a residential duplex development.

The subject property is almost two acres in size. The property is undeveloped. A portion of the property is within the designated 100 year floodplain. Lions Club Drive has restricted access rights that would prohibit driveways. Access to the property for any development must be from State Hwy O.

The proposed R-2, Two Family zoning would allow for the planned duplex development, as well as such uses as single-family houses and churches. The property could be subdivided to create up to five lots for duplex structures, due to the shape of the property.

The Comprehensive Plan designates the subject property as being appropriate for public or institutional uses due to the property being owned by the city. However, the subject property has been declared to be surplus and not needed for any public uses. The Comprehensive Plan does designate the areas to the south and east of the subject property as being appropriate for low density residential uses up to seven units per acre. A duplex development would be consistent with low density residential development.

PROJECT DESCRIPTION: The applicant requests approval of a rezoning to amend the Official Zoning Map for the subject property from the C-1 Neighborhood Commercial district to the R-2, Two Family district.
PUBLIC COMMENT/ISSUES: As of the date of this staff report, neither the general public nor the formally notified owners of the properties located within 185 feet of the subject property have formally issued any comments or petitions to the community development department. In addition, the Development Review Committee concluded that there are no issues specific to the rezoning request. The development of the subject property may require additional land use requests.

ACTION REQUIRED: The Planning and Zoning Commission voted 7-0 to recommend approval of the request. The City Council is requested to conduct a public hearing and have the first reading of the ordinance to approve the rezoning.

ATTACHMENTS: Area Map, Zoning Map, Future Land Use Map, Ordinance
Area Map

Zoning Map
AN ORDINANCE TO APPROVE THE RE-ZONING OF LOT #2, MUNICIPAL ACRES NO. 2, THE PARCEL IDENTIFIED WITH THE PHELPS COUNTY ASSESSOR ACCOUNT NUMBER OF 10259.01 AT THE SOUTHWEST CORNER OF LIONS CLUB DRIVE AND STATE HWY O, FROM THE NEIGHBORHOOD BUSINESS (ZONING) DISTRICT (C-1) TO THE TWO FAMILY (ZONING) DISTRICT (R-2), CITY OF ROLLA, PHELPS COUNTY, MISSOURI. (ROLLA MUNICIPAL UTILITIES)

WHEREAS, an application for a rezoning was duly filed with the Community Development Department on June 13, 2019, 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 on June 22, 2019, in the Rolla Daily News 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 July, 9, 2019 at 5:30 p.m. The Planning and Zoning Commission recommended the City Council approve the rezoning of the subject property as proposed by the applicant; and

WHEREAS, the Rolla City Council, during its July 15, 2019 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 C-1 (Neighborhood Business) Zoning to R-2 (Two Family) Zoning described as follows:

LOT # 2, MUNICIPAL ACRES NO. 2

SECTION 2: 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 rezoning process has been completed by the City Council.
PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED
BY THE MAYOR THIS 5TH DAY OF AUGUST 2019.

APPROVED:

ATTEST:

Mayor

City Clerk

APPROVED AS TO FORM:

City Counselor
Regional Economic Commission

ROLLA
Developed for Growth

ECONOMIC DEVELOPMENT

"The times...they are a-changing"
Bob Dylan

MAJOR CHANGES TO CONSIDER; LOCALLY

Driven by:
- Low unemployment — xx%
- Available buildings & sites

Available building — One 47,000 sq ft building
Building sites —
- Hy Point West
- Rolla National Airport Industrial Park
- City Industrial Park
- St. James Industrial Park
- St. James—Watchtower property
- Crane Property — across from Hy Point

As a Result:
Ability to respond to requests dropping dramatically:

2018 — 23 requests / 5 suitable to respond
2019 — 7 requests / 2 suitable to respond
MAJOR CHANGES TO CONSIDER; NATIONALLY

Driven by:
- Low national unemployment—xx%
- Lack of Skilled and Trainable Workforce

"Availability of workforce is becoming a prominent factor in site location decisions"
"Talent attraction and placemaking have become focal points for communities and for businesses looking at communities"
"The drivers of economic development are changing from directly growing jobs and investment...to those that are designed to improve quality of place in order to promote the retention and attraction of talent, which in turn drives growth in jobs and investment."

Quotes from respected site selectors and economic development professionals.

THE 3 LEGGED STOOL HAS CHANGED!

The traditional "three legs of the stool" (business retention/expansion, recruitment and start-up) now has become one leg of the stool, along with talent development and placemaking.

Janet Ady, Ady Advantage, May 2018
RREC NEEDS TO REDESIGN APPROACH

- Mission remains the same: To foster the development of long-term, diversified business and employment opportunities that will lead to increased wealth and well-being for the citizens, businesses and institutions of Rolla, Phelps County and the Rolla/Phelps County Labor Market Area.

- Methodology is being updated.

  - "Because the better equipped your community is to attract skilled talent, the better you'll fare in attracting businesses."
  
  Joshua Wright, economicmodeling.com/2016

THE RREC FOCUS IS CHANGING

- "Working Projects" still primary responsibility. Always takes priority!
- Greater attention to the needs of existing companies.
- Stronger and expanded role in community marketing to existing and potential employees.

- The MESSAGE is the difference between tourism marketing and economic development marketing
- Greater need for collaboration between the Chamber as well as other partners.
RREC RELATIONSHIP WITH AREA TOURISM AND "LOCATION" MARKETING

The convergence of people, place, and politics has created the need for a new approach...that works to include more stakeholders, develop a community's culture and respond to a more socially aware landscape.

In this case, to strengthen and grow working opportunities with both Rolla and St. James organizations.

Econ. Dev. Organizations and Tourism Marketing organizations are in the same business of place marketing—they have very different messages.

It is important to work together to find the best marketing opportunities to share the type of messaging that is best for both.

EXAMPLE OF A GOOD PLACE TO START!!

And same relationship with City of St. James and SJ Chamber
WHO WILL WE BE LOOKING FOR?

Our ideal Candidate

In addition to a basic understanding of economic development practices, our ideal candidate will be proficient in all forms of communication and marketing and understand the community assets needed to attract and retain workforce talent of all types. The candidate will have the experience to coordinate a branding initiative and incorporate that brand into an expansive marketing program. The ideal candidate will help put Rolla/Phelps County "on the map" as a place others want to live and work. The ideal candidate will be a self-starter capable of working effectively with a team in a semi-public setting.

Recruitment Timeline:

- Job Posted: June 6th
- Search Comm. Reviews Resumes: July 12th
- First Interviews: Last of July
- Second Interviews: First of August
- Ms. Lorey Retires: End of December
- New Director work with Ms. Lorey: First of October
- Ms. Lorey Retires: End of December
City staff asked for and received bids for Project #463 – 10th Street Concrete. Council approved the $251,367.75 bid from Donald Maggi, Inc. at the July 1, 2019 council meeting.

Staff recommends final reading of the ordinance authorizing the Mayor to enter into the contract with Donald Maggi, Inc. for $251,367.75.
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 AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND DONALD MAGGI, INC. FOR 10TH STREET CONCRETE, PROJECT #463.

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 Donald Maggi, Inc., for 10th Street Concrete, Project #463, a copy of said agreement being attached hereto and marked Exhibit A.


APPROVED:

__________________________
MAYOR

ATTEST:

__________________________
CITY CLERK

APPROVED AS TO FORM:

__________________________
CITY COUNSELOR
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 ______________________________________________________ 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 “10TH STREET CONCRETE, PROJECT 463”, 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 “10TH STREET CONCRETE, PROJECT 463”.

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:

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.

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.

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.

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

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.

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.

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 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 $251,367.75 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, and that the Contractor shall complete said work within the specified consecutive calendar days

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 to the Contractor on the project, the Contractor must complete a return the Affidavit Compliance with the Prevailing Wage Law form furnished at the end of the Special Conditions sections.

**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.
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 _________________________
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
DEPARTMENT HEAD: Steve Hargis, Public Works Director  ACTION REQUESTED: First Reading

ITEM/SUBJECT: Ordinance Amending Sec. 27-67 of the Code Relating to Speed in School Zones

BUDGET APPROPRIATION (IF APPLICABLE) N/A  DATE: July 15, 2019

COMMENTARY: The attached ordinance clarifies the language in the City Code Book regarding 20 m.p.h. speed limits in school zones. The Municipal Judge felt the language was not clear enough and we made the recommended changes. Our attorneys have reviewed and agreed to the changes. Staff recommends approval.
ORDINANCE NO. _________

AN ORDINANCE AMENDING SECTION 27-67 OF THE CODE OF THE CITY OF ROLLA, MISSOURI, KNOWN AS THE CODE OF THE CITY OF ROLLA, MISSOURI, RELATING TO MAXIMUM LIMITS ESTABLISHED ON CERTAIN STREETS DURING SCHOOL PERIODS.

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

Section 1: That Section 27-67 of the Code of the City of Rolla, Missouri, pertaining to maximum limits established on certain streets during school periods is hereby amended to read as follows:

Sec. 27-67. Maximum limits established on certain streets during school periods.

No vehicle shall be moved or propelled along, over or upon the following streets at a greater rate of speed than twenty miles per hour during posted school hours or when signal is flashing:

Tenth Street, from a point 180 feet west of the intersection of Tenth Street and Cedar Street easterly to the intersection of Tenth Street and Iowa Street.

Eleventh Street, from the intersection of Poole Avenue to the intersection of Spring Avenue, twenty miles per hour 7:30 a.m. – 8:30 a.m. and 2:30 p.m. – 3:30 p.m., school days only. (Ord. 4312)

Eighteenth Street, from a point 400 feet west of the intersection of Eighteenth Street and Spencer Street to a point 805 feet east of the intersection of Eighteenth Street and Spencer Street.

Forum Drive, from a point 500 feet north of the intersection of Forum Drive and Soest Road south to the intersection of Forum Drive and Soest Road.

Lanning Lane, from a point 500 feet east of the intersection of US Highway 63 and Lanning Lane to a point 1500 feet east of the intersection of US Highway 63 and Lanning Lane.

Pine Tree Road, from a point 990 feet south of the intersection of Pine Tree Road and Soest Road to the intersection of Pine Tree Road and Soest Road.

Salem Avenue, from a point 400 feet west of Holmes Lane southeasterly to Elliott Drive.

St. Patrick’s Lane, from Vichy Road to Bishop Avenue, during school hours. (Ord. 3903, §4)
ORDINANCE NO. __________

Section 2: That this ordinance shall be in full force and effect from and after the date of its passage and approval.


APPROVED:

____________________________________
MAYOR

ATTEST:

____________________________________
CITY CLERK

APPROVED AS TO FORM:

____________________________________
CITY COUNSELOR
The City of Rolla will be installing curb and gutter, sidewalk and storm sewer improvements around and across the 18th Street railroad grade crossing. In conjunction with this, Burlington Northern Santa Fe (BNSF) Railroad will be replacing the grade crossing. The city will complete the improvements with asphalt overlay. BNSF and Missouri Department of Transportation require a contract agreement between BNSF and the City before improvements may be constructed.

Staff requests a first reading of the ordinance allowing the Mayor to enter into a contract with BNSF.
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 AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND BURLINGTON NORTHERN SANTA FE (BNSF) FOR 18TH STREET SIDEWALK IMPROVEMENTS.

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 BNSF, for 18th Street Sidewalk Improvements, a copy of said agreement being attached hereto and marked Exhibit A.


APPROVED:

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY COUNSELOR
This Crossing Surface Installation Agreement (hereinafter called, this “Agreement”) is entered into effective as of 08/05/2019, by and between the City of Rolla, MO (hereinafter called, “AGENCY”) and BNSF Railway Company (hereinafter called, “BNSF”).

WHEREAS, BNSF operates a freight transportation system by rail with operations throughout the United States and Canada; and

WHEREAS, AGENCY desires to construct a new sidewalk along the North side of 18th Street and construct a new sidewalk along the South side of 18th Street;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **BNSF Work.** BNSF will perform all necessary track upgrades to accommodate the new crossing surface. The Company contact person to coordinate and schedule the work is Roadmaster Chad Lee at Chad.Lee@BNSF.com and Mobile # 417-362-0995.

2. **AGENCY Work.** AGENCY must construct the Project as shown on the attached Exhibit A and do all work (“AGENCY’s Work”) provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. AGENCY must furnish all labor, materials, tools and equipment for the performance of AGENCY’s Work. The principal elements of AGENCY’s Work are as follows:

   a. Design and Construct a 7’-0” wide sidewalk on approaches to the track;
   b. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF’s right-of-way;
   c. Provide suitable drainage, both temporary and permanent;
   d. Provide all barricades, lights, flagmen or traffic control devices as necessary, during the installation of the concrete pedestrian crossing surfaces;
   e. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.

3. **Contractor Requirements:** AGENCY must require its contractor to comply with the obligations set forth in this Agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor, the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.
No work shall be commenced within BNSF's right of way until the AGENCY's contractor shall have (i) executed and delivered to BNSF an agreement in the form of said Exhibit C-1 and (ii) delivered to and secured BNSF's approval of the required insurance.

4. **Vehicular Traffic during Installation.** The AGENCY shall provide, at its own cost and expense, all necessary barricades, lights or traffic control devices for detouring vehicular/pedestrian traffic at the 18th Street crossing during installation of the new crossing surface.

5. **Drainage.** The AGENCY agrees to allow BNSF to drain water from the 18th Street crossing area into existing AGENCY storm sewers, if such storm sewers are available.

8. **Sidewalk Surfacing Work.** The AGENCY to construct and maintain the 7-foot wide sidewalk pavement approaches along the North and South sides of 18th Street crossing. The closest edge of sidewalks must be located 5'-3" minimum horizontal distance from the centerline of any railroad crossing signals poles/foundations. Sidewalks must terminate no closer than 6'-0" from centerline of each track. Agency to install a 1'-0" minimum width asphalt expansion joint between the end of sidewalk pavement and the edge of railroad concrete crossing panel. Sidewalks must intersect the track as close to perpendicular as practical. Sidewalk approaches must be constructed level with top-of-rail for a minimum distance of 14'-0", as measured from the outside rail in the track. Detectable Warnings are to be installed on each sidewalk approach to the crossing must extend across the full width of the sidewalk, provide a 2'-0" minimum depth, and be located 12'-0" minimum from the outside rail in the track.

9. **Term.** This Agreement begins on the effective date set forth above and remains in effect until completion of all work contemplated in this Agreement and AGENCY’s payment of the amounts set forth in Section 3 above.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first written above.

BNSF Railway Company:

By: ________________________________

Printed Name: John Caufield

Title: Manager Public Projects

AGENCY:
City of Rolla, MO

By: ________________________________

Printed Name: Steve Hargis, P.E.

Title: Director of Public Works
EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of 18th Street Sidewalk.

- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.

- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.

- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

  Darin Pryor  
  Engineer  
  901 North Elm Street  
  Rolla, MO 65401

- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
1.01.06 The Contractor must notify Missouri Department of Transportation at (573) 526-4239 and Railway's Manager Public Projects, telephone number (817) 789-0879 at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file BF10015453.

1.01.07 For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current “BNSF-UPRR Guidelines for Temporary Shoring” must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current “BNSF-UPRR Guidelines for Temporary Shoring”. All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Cooper's E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.

1.01.08 Subject to the movement of Railway’s trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

1.02.01 No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFCcontractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

1.03.01 The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
1.03.02 The Contractor must notify the Railway's Division Engineer Dennis Mendoza at (417) 829-2115 and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on the Railway's Property.

1.03.03 The Contractor must abide by the following temporary clearances during construction:
- 15'-0" Horizontally from centerline of nearest track
- 21'-6" Vertically above top of rail
- 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
- 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
- 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts

1.03.04 Upon completion of construction, the following clearances shall be maintained:
- 25' Horizontally from centerline of nearest track
- 23' 6" Vertically above top of rail

1.03.05 Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the Missouri Department of Transportation and must not be undertaken until approved in writing by the Railway, and until the Missouri Department of Transportation has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.

1.03.06 In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.

1.03.07 The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by Missouri Department of Transportation for approval before work is undertaken and this work must not be undertaken until approved by the Railway.

1.03.08 At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railway's tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.

1.03.09 Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.

1.03.10 The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.
1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site [www.BNSFC contractor.com](http://www.BNSFCcontractor.com), which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion a) to be on Railroad's property, or b) that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at [www.eVerifile.com](http://www.eVerifile.com), in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway’s Roadmaster Chad Lee 417-829-2185 a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days
advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
  
  - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
  
  - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
  
  - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
  
  - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
  
  - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
  
  - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
  
  - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
  
  - **1.05.03c** The cost of flagger services provided by the Railway will be borne by (Agency). The estimated cost for one (1) flagger is approximately between $800.00-$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

### 1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains
and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.

- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).

- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.

- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.

- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.

- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.

- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(Note - Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- **1.06.09** THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.
1.06.10 Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)

1.06.11 Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.

1.06.12 All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

1.07.01 Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact BNSF's Field Engineering Representative John Caldwell (913) 522-0311. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.

1.07.02 The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.

1.07.03 All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.

1.07.04 Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

1.08.01 If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's
Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

• 1.09.01 The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor’s invitees while on the Railway’s Property must be reported immediately (by phone mail if unable to contact in person) to the Railway’s representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway’s Project Representative no later than the close of shift on the date of the injury.
NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- [ ] Passenger on train (C)
- [ ] Non-employee (N)
  (i.e., emp of another railroad, or non-BNSF emp involved in vehicle accident, including company vehicles)
- [ ] Contractor/safety sensitive (F)
- [ ] Contractor/non-safety sensitive (G)
- [ ] Volunteer/safety sensitive (H)
- [ ] Volunteer/other non-safety sensitive (I)
- [ ] Non-trespasser (O) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- [ ] Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- [ ] Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:
Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name) (Employee No.) (Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

IV. B. 14.
Exhibit "A"

**NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION**

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

<table>
<thead>
<tr>
<th>I. Accident City/St:</th>
<th>2. Date:</th>
<th>Time:</th>
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3. Temperature: 4. Weather: 

(if non BNSF location)

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<tr>
<th>Mile Post / Line Segment:</th>
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5. Driver's License No (and state) or other ID: SSN (required): 

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<th>6. Name (last, first, ini):</th>
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7. Address: City: St: Zip: 

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<th>8. Date of Birth: and/or Age: Gender:</th>
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(if available)

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<tr>
<th>Phone Number:</th>
<th>Employer:</th>
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9. Injury: (i.e., Laceration, etc.) 10. Body Part: (i.e., Hand, etc.)

II. Description of Accident (To include location, action, result, etc.):

<table>
<thead>
<tr>
<th>11. Description of Accident (To include location, action, result, etc.):</th>
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12. Treatment: 

- [ ] First Aid Only
- [ ] Required Medical Treatment
- [ ] Other Medical Treatment

<table>
<thead>
<tr>
<th>13. Dr. Name:</th>
<th>Date:</th>
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14. Dr. Address: Street: City: St: Zip: 

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<tr>
<th>15. Hospital Name:</th>
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<tr>
<th>16. Hospital Address: Street: City: St: Zip:</th>
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<th>17. Diagnosis:</th>
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REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490
Agreement Between

BNSF RAILWAY COMPANY

and the

CONTRACTOR

Railway File: BF10015453
Agency Project: 18th Street Sidewalk

Engineer (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated August 15, 2019, with Missouri Department of Transportation for the performance of certain work in connection with the following project: 18th Street Sidewalk. Performance of such work will necessarily require Contractor to enter BNSF RAILWAY COMPANY (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for Missouri Department of Transportation (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 hereinafter. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) **RELEASE OF LIABILITY AND INDEMNITY**

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend
any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) **TERM**

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) **INSURANCE**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of [Manager] each occurrence and an aggregate limit of at least [Keywords] but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railway employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.
- Additional insured endorsement in favor of and acceptable to Railway.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railway.

D. Railroad Protective Liability insurance naming only the Railway as the Insured with coverage of at least [Manager] per occurrence and [Keywords] in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- No other endorsements restricting coverage may be added.
The original policy must be provided to the Railway prior to performing any work or services under this Agreement.

Definition of “Physical Damage to Property” shall be endorsed to read: means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway’s Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against Railway for all claims and suits against Railway. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railway for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railway for loss of its owned or leased property or property under Contractor’s care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of Railway. If granted by Railway, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all Railway liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor’s insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to Railway an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify Railway in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to Railway or with a current Best’s Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, Railway may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming Railway as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Railway to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Railway herein.

Failure to provide evidence as required by this section shall entitle, but not require, Railway to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railway shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving Railway arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, Railway shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; provided, however, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor
Exhibit "A"

shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; provided, however, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (http://www.bnsf.com/communities/faqs/permits-real-estate/), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use o' equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative Chad Lee 417-829-2185 four (4) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.
IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Engineer

By: _______________________________
Printed Name: Steve Hargis, P.E.
Title: Director of Public Works

BNSF Railway Company

By: _______________________________
Name: _____________________________
Manager Public Projects

Accepted and effective this ______ day of 2019.

Contact Person: Darin Pryor, P.E. 
Address: 901 North Elm Street 
City: Rolla 
State: MO Zip: 65401 
Fax: 573-364-8602 
Phone: 573-364-8659 
E-mail: dpryor@rollacity.org 

IV. B.23.
CITY OF ROLLA
CITY COUNCIL AGENDA

DEPARTMENT: Community Development    ACTION REQUESTED: First Reading

SUBJECT: A request to approve the Final plat of Martin Subdivision, a minor subdivision of unplatted property.

(SED Investments, Inc)

MEETING DATE: 07-15-2019

GENERAL INFORMATION:
CASE NUMBER: SUB19-04
SUBMISSION DATE: 06-03-2019

APPLICANT/AGENT: The property is owned by SED Investments, Inc. The agent and surveyor for this project is Archer Elgin.

LOCATION: The property is located on the north side of Hwy 72 between Rolla Street and Elm Street, including properties addressed as 120 S Rolla Street and 100 W Hwy 72.

CURRENT USE/ZONING: The property is currently zoned C-2, General Retail. The property is currently vacant. The building on the west lot has been demolished.

PROJECT DESCRIPTION: The applicant seeks to reassemble the property to create two platted lots and dedicate a portion of the property with Dutro Carter Creek and associated floodplain to the city.

ANALYSIS: The property consists of two or more unplatted lots which are proposed to be reconfigured to create two platted lots and dedicate a portion of the property to the city. The development of the lots could require additional land use requests in the future. All necessary public improvements for development of the properties are in place at this time. The proposed subdivision appears to meet all city requirements.

PUBLIC COMMENTS: No comments from the public have been received.

ACTION REQUIRED: The Planning & Zoning Commission voted 7-0 to recommend approval of the request. The City Council is requested to have the first reading of the ordinance to approve the Final Plat of Martin Subdivision.

ATTACHMENTS: Area Map, Plat Exhibit, Ordinance
Area Map

Plat Exhibit
ORDINANCE NO. _______

AN ORDINANCE TO APPROVE THE FINAL PLAT OF THE PARCELS THAT ARE KNOWN AS MARTIN SUBDIVISION THROUGH THE MINOR SUBDIVISION PROCESS. (MARTIN SUBDIVISION).

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

SECTION 1: An ordinance approving the Final Plat of the parcels that are known as 120 S Rolla Street and 100 W Hwy 72 (Assessor parcel account 8260.00); 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 revised plat has been filed with the Phelps County Recorder of Deeds.


APPROVED:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Counselor
COMMENTARY:

As requested by City Council on July 1st attached is an ordinance that amends Section 4.16 of the Rolla City Code as it pertains to the measurement of spacing as used in liquor licenses and by reference Medical Marijuana (MM) Facilities.

RSMo. 311.080 prohibits the sale of liquor within 100’ of schools and churches. The law allows cities to restrict the sale of liquor up to 300’ but Rolla stayed with the original 100’ spacing. There is no clear definition of measurement or distance in liquor laws so the City has used nearest corner to nearest corner as a matter of practice.

On June 3, the City Council unanimously approved Ord. No. 4488 that established a 500’ buffer or spacing from a MM facility to a school, daycare center, or church. Specifically Sec. 42-233.01 states “Measurement shall be in a manner consistent with the City’s existing liquor license measurement standard.” The proposed ordinance firmly establishes the manner of measurement in Chapter 4 of the Rolla Code.

As the State will formally accept full applications for MM Facilities on August 3rd, Council may want to consider first and final reading.
ORDINANCE NO. ___________

AN ORDINANCE AMENDING SECTION 4-16 OF THE GENERAL ORDINANCES OF THE CITY OF ROLLA, MISSOURI, KNOWN AS THE CODE OF THE CITY OF ROLLA, MISSOURI, PERTAINING TO LIQUOR LICENSES.

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

Section 1: That Section 4-16. Compliance with State law and compliance with all City Codes, of the General Ordinances of the City of Rolla, Missouri, known as the Code of the City of Rolla, Missouri, pertaining to liquor licenses, is hereby amended to read as follows:

Sec. 4-16. Compliance with State law and compliance with all City Codes

Before any applicant shall be entitled to procure a license from the City, the applicant must first satisfy all the requirements of the State liquor laws and obtain a license from the State supervisor of liquor control to engage in such business.

No license shall be granted for the sale of intoxicating liquor within one hundred (100) feet of any school, church or other building regularly used as a place of religious worship (unless the applicant for the license shall first obtain the consent in writing of the City Council. Such consent shall not be granted until at least ten days’ written notice has been provided to all owners of property within one hundred (100) feet of the proposed licensed premises.) When a school, church or place of worship shall be established within one hundred (100) feet of any then existing place of business licensed to sell intoxicating liquor, the license shall not be denied for this reason.

In determining compliance with the measured separation, the distance shall be determined by the nearest building corner of the liquor license applicant to the nearest building corner of any school, church or regular place of worship as measured in a straight line.

Any person, having proven to satisfy the requirements of the liquor laws of the State and compliance with all City ordinances, including the correct City property zone as prescribed in Chapter 42 of the Rolla City Code, shall be eligible to make application for a license to sell intoxicating liquors within the City, at retail or wholesale, for consumption on the premises where sold in the original package, in accordance with the type of license obtained from the state supervisor of liquor control.

Section 2: That this ordinance shall be in full force and effect from and after the date of its passage and approval.


APPROVED:

ATTEST: ____________________________

Mayor

City Clerk

APPROVED AS TO FORM:

City Counselor

IV. D. A.
311.080. Sale of liquor prohibited near schools and churches, exceptions. — 1. No license shall be granted for the sale of intoxicating liquor, as defined in this chapter, within one hundred feet of any school, church or other building regularly used as a place of religious worship, unless the applicant for the license shall first obtain the consent in writing of the board of alderman, city council, or other proper authorities of any incorporated city, town, or village, except that when a school, church or place of worship shall hereafter be established within one hundred feet of any place of business licensed to sell intoxicating liquor, the license shall not be denied for this reason. Such consent shall not be granted until at least ten days' written notice has been provided to all owners of property within one hundred feet of the proposed licensed premises.

2. The board of aldermen, city council or other proper authorities of any incorporated city, town or village may by ordinance prohibit the granting of a license for the sale of intoxicating liquor within a distance as great as three hundred feet of any school, church, or other building regularly used as a place of religious worship. In such cases, and where the ordinance has been lawfully enacted, no license of any character shall be issued in conflict with the ordinance while it is in effect; except, that when a school, church or place of worship is established within the prohibited distance from any place of business licensed to sell intoxicating liquor, the license shall not be denied for this reason.

3. Subsection 1 of this section shall not apply to a license issued by the supervisor of alcohol and tobacco control for the sale of intoxicating liquor pursuant to section 311.218 or to a license issued to any church, school, civic, service, fraternal, veteran, political, or charitable club or organization which has obtained an exemption from the payment of federal taxes.

4. Subsection 1 of this section shall not apply to any premises holding a license issued before January 1, 2004, by the supervisor of alcohol and tobacco control for the sale of intoxicating liquor. To retain a license under this subsection, the licensed premises shall not change license type, amend the legal description, or be without a liquor license for more than ninety days.

IV. D. 3.
On April 11, 2019, the City of Rolla Fire & Rescue received the new 2019 Pierce Ascendant 107' Aerial. With the arrival of this aerial unit, it had been decided previously though all levels of City Administration to retain the 1998 pumper and build a shelter to house the existing communications vehicle. During the planning phases for the new shelter, Compass Health purchased the building and land just west of Fire Station 1 on 10th Street and constructed a new parking lot soon after the purchase.

Fire Administration reached out to Compass Health to determine their plans for the two story 30x50 foot building near the new parking lot.

Through discussions with Compass Health a no cost five year Memorandum of Understanding (MOU) was offered to the City of Rolla (attached). This MOU also provides the agreement to be extended up to three additional years at the option of both agencies.

The City of Rolla Fire & Rescue would anticipate spending approximately $10,000 to extend a garage door, install a driveway, and establish a short concrete pad in front of the bay door.

Fire Administration recommends approval of the five year MOU with Compass Health.
RESOLUTION NO. ______________


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

SECTION 1: That the Mayor of the City of Rolla, Missouri is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri, a Memorandum of Agreement between Compass Health, Inc., d/b/a/ Compass Health Network and the City of Rolla (a.k.a. Rolla Fire & Rescue Department), a copy of said agreement being attached hereto.

SECTION 2: That this resolution be in full force and effect from and after the date of its passage and approval.


APPROVED:

________________________________________
MAYOR

ATTEST:

________________________________________
CITY CLERK

APPROVED AS TO FORM:

________________________________________
CITY COUNSELOR
Memorandum of Agreement Between Compass Health Inc. d/b/a Compass Health Network and City of Rolla (a.k.a. Rolla Fire & Rescue Department)

1. **Purpose**
   1.1 This agreement is entered into between the Compass Health Inc. (Compass Health), and The City of Rolla (AKA - Rolla Fire and Rescue Department) for the purpose of setting forth the terms and conditions to identify the respective responsibilities of each party regarding utilization of the commercial space by Rolla Fire and Rescue at Compass Health Facility pictured on the attached Exhibit A located at 1402 E. 10th Street, Rolla, MO 65401.

   1.2 The facility will be a location for the storage of a hazmat vehicle owned by Rolla Fire and Rescue.

   1.3 The parties acknowledge that the present facilities on the premises consist of a two story 30x50 foot metal constructed building. The Rolla Fire & Rescue will be allowed access to the first floor of the Southern Bay for storage of vehicles. Compass Health Inc. will retain use of the North Bay and second story of the building. The City of Rolla acknowledges that all of the improvements on the above property are the property of Compass Health and will remain on the premises at the termination of this agreement. The City of Rolla will not construct any additional facilities on the premises.

2. **Term of Agreement/Modifications**

   2.1 This agreement shall be for a term of five (5) years, beginning on **August 1, 2019** and ending on **August 1, 2024**, unless terminated earlier as provided herein. The parties may extend the lease for an additional three (3) year period. The extension shall occur upon mutual agreement between the parties.

   2.2 Any changes to this agreement must be by formal amendment reviewed, approved and signed by the duly authorized representatives of the parties. No other documents, including correspondence, acts and oral communications by or from any person, shall be construed as an amendment to the agreement.

   2.3 Either party may terminate this agreement after providing a minimum of sixty (60) days written notice to the other party.

3. **Confidentiality**

   3.1 Any information pertaining to specific individuals served under this agreement, or otherwise protected from public disclosure by state and/or federal law shared by the parties as a result of the performance under this agreement, shall remain confidential and only released to the public as permitted by applicable law. No reports, documentation or material prepared as required by this agreement which pertain to individually identifiable persons shall be released to the public without the prior, written consent of each party, unless otherwise required by law.

   3.2 **HIPAA:** The parties to this agreement are subject to, and must comply with, applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) (PL-111-5) (collectively, and hereinafter, HIPAA) and all regulations promulgated pursuant to authority granted therein.

4. **Responsibilities of the Parties**

   4.1 Compass Health Network agrees to:

   a. provide commercial Premises that can be locked to secure equipment and the hazmat vehicle of the Rolla Fire and Rescue Department, free of charge to Rolla Fire and Rescue Department;
b. provide parking spaces at or near the office space;
c. provide all lawn maintenance, snow and ice removal.

4.2 All alterations and additions deemed necessary by the City of Rolla shall be made by the City of Rolla at the City of Rolla's expense and no alternations or additions shall be made without the written consent of Compass Health. All such alterations or additions made by the City of Rolla shall be and remain on the property of Compass Health and shall be surrendered with the premises thereof upon the termination of this agreement.

4.3 The City of Rolla shall maintain premises liability insurance on the premises naming Compass Health as "additional" insured with minimum limits of liability of one million dollars per occurrence and two million dollar aggregate. The City of Rolla will provide $50,000 property damage insurance. The City of Rolla shall upon request provide a certificate evidencing the existence of such policy to Compass Health. The City of Rolla will verify that any organizations it permits to use the premises shall have minimal limits of liability insurance as set forth above, and the City of Rolla shall so confirm such verification to Compass Health in writing on or before July 1 of each year after this lease is executed.

4.4 The Rolla Fire and Rescue Department agrees to:

a. pay for all utilities and services supplied to the premises including but not limited to electricity, gas, water, telephone and any services or utilities used in or assessed against the Premises, unless otherwise provided;
b. to make improvements and enlarge the Premises entry door as well as other alterations in the interior of the Premises at its own expense.
c. incur all costs associated with the installation of any necessary phone and/or data line wiring.
d. Indemnify and hold harmless, Compass Health, its officers, agents and employees, from any and all claims, demands, damages, liabilities, attorney fees and costs which directly result from, or arise in connection with, any negligent act or omission of the Rolla Fire and Rescue, which may occur during or arise out of the performance and obligations of this Memorandum of Understanding, subject to and without waiving any limitations established by the City or Rolla Fire and Rescue's sovereign immunity.
e. insure the Vehicle, at its own expense, at the value of the Vehicle by securing and maintaining motor vehicle insurance from an insurer in the State of Missouri, which insurance includes collision and comprehensive coverage, for any loss or damage occasioned by theft, fire, vandalism, acts of god, and collision. Owner shall provide Compass Health with acceptable evidence of such insurance.
f. at its discretion, obtain at its cost any additional insurance coverage deemed necessary.

5. Condition of the Premises

5.1 Rolla Fire and Rescue Department acknowledges that the premises were in good and satisfactory condition when possession was taken and the occupancy by Rolla Fire and Rescue shall be deemed to be an acceptance of the Premises "as is". Rolla Fire and Rescue accepts the Premises in its "as is" condition and subject to all restrictions, covenants, easements, rights-of-way of record, if any, and applicable zoning regulations regulating the use of the Premises, and accepts this Lease subject thereto and to all matters disclosed thereby. Compass Health makes and has made no representations or warranties with respect to the condition of the Premises or as to its suitability for the use or uses contemplated by Rolla Fire and Rescue.

6. Compliance with Laws

6.1 Compliance with Laws. Both parties agree to comply with all applicable federal, state and local laws and regulations.
7. **NOTICES:**

7.1 Any notice or demands given hereunder shall be in writing and personally delivered, overnight delivery service or by certified mail, postage prepaid, at the following addresses or at such other address as either party may from time to time designate in writing:

Compass Health, Inc.
1800 Community Drive
Clinton, MO 64735

Rolla Fire and Rescue Department
1490 East 10th Street
Rolla, MO 65401

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date and signatures below.

Compass Health Network
By: Deborah Frost
Date: __________ /2019

City of Rolla
By:
Date: ________________

N.E.S.
Exhibit A

Description of Premises

1402 E. 10th St., Rolla, MO 65401.
Compass Health
30x50 building
1402 East 10th Street
Rolla, MO 65401
DEPARTMENT HEAD: Floyd Jernigan, Parks & Recreation Director

ACTION REQUESTED: Resolution

ITEM/SUBJECT: Approval of the renewal of the Memorandum of Agreement with South Central Regional Veterans Group for stewardship of Veterans Memorial Park.

**************************************************

COMMENTARY:

The original agreement between the City of Rolla and the South Central Regional Veterans Group, establishing a partnership in the development and operation of a memorial park, was entered into July 2009 and then renewed again in July 2014 for another five-year period.

That agreement is due for renewal. Minor updates in the revised memorandum include the entirety of the park mowing being done by parks staff and the clarification of SCRVG as 501c4 entity. The Veterans Group no longer performs any of the mowing function and has eased out of the maintenance of the Memorial Park over time.

SCRVG will contain its remaining fundraising efforts until such time as the final phase of the park (see attached map) is completed. It is the South Central Regional Veterans Group’s intent that at such conclusion, all remaining funds will be turned over to the parks department and specified for use exclusively in VMP.

SCRVG will continue its involvement in the various veterans’ events at the park, including the AUSA picnic, and Veterans’ Day and Memorial Day observances, as well as the annual POW-MIA recognition.
RESOLUTION NO. __________

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF ROLLA, MISSOURI TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI A CERTAIN MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ROLLA, MISSOURI AND THE SOUTH CENTRAL REGIONAL VETERANS GROUP.

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

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 certain Memorandum of Understanding between the City of Rolla, Missouri and the South Central Regional Veterans Group, a copy of said Memorandum of Understanding being attached hereto and marked Exhibit A.

Section 2: That this resolution shall be in full force and effect from and after the date of its passage and approval.


APPROVED:

___________________________
MAYOR

ATTEST:

___________________________
CITY CLERK

APPROVED AS TO FORM:

___________________________
CITY COUNSELOR
MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN CITY OF ROLLA
AND
"SOUTHCENTRAL REGIONAL VETERANS GROUPS"

This Agreement, made and entered into this 1st day of July, 2019 is by and between the City of Rolla, a Missouri Municipal Corporation (hereinafter referred to as “City”), and “South Central Regional Veterans Group” (hereinafter referred to as the “SCRVG”).

WITNESSETH:

WHEREAS, CITY is responsible for the general wellbeing of the Rolla community including the provision of parks and recreation to enhance the quality of life for all citizens; and

WHEREAS, CITY, through Resolution No. 1672, has designated “Veterans Memorial Park” (hereafter referred to as the park located off Southview Dr. south of Hwy 72), in honor of veterans past, present, and future who have sacrificed so much for our country and who through their service represented the City of Rolla and County of Phelps with honor and dignity; and

WHEREAS, while the City Council of the City of Rolla fully endorses said project, CITY has limited funds to support the development and operation of such a memorial park; and

WHEREAS, local veterans organizations, through the coordination and membership in SCRVG, have stepped forward to support the development of Veterans Memorial Park through various fundraising efforts; and

WHEREAS, it is the desire of the local veterans groups to work together to support this effort under a single fund raising effort;

NOW, THEREFORE, in consideration of mutual undertakings and mutual benefits set forth, the CITY and SCRVG agree as follows:

I. SCOPE OF SERVICES
A. The following services anticipated by City:
   1. CITY shall retain final authority on the development and maintenance of Veterans Memorial Park, but in so doing will actively engage the SCRVG in all aspects of development.
   2. CITY shall provide technical and administrative support to the SCRVG park planning and fund raising efforts by providing professional services as needed to perform the planning, engineering, and construction support to develop Veterans Memorial Park.
      a. Parks Department - The Parks Director will be the point of contact on issues affecting the Park, be responsible for installing the required utility infrastructure subject to funding availability in accordance with the approved park plans, and be responsible for paying all related utility bills.
      b. Engineering Division - Will provide technical planning and engineering assistance on the development and implementation of the Park.
c. Public Works - In conjunction with the Parks Department will be responsible for installing the required infrastructure in accordance with the approved park plans.

3. CITY shall be responsible for the general maintenance and upkeep of the pavilion, restrooms, sidewalks and parking lot. The Parks Department will be responsible for mowing.

4. CITY shall be responsible for scheduling and reserving the pavilion, with SCRVG receiving priority use. Standard park and pavilion reservation fees, as well as Special Use Permit fees, will apply except in relation to SCRVG, military and veteran events, when said fees will be waived.

B. The following services are anticipated by SCRVG:

1. SCRVG will provide ongoing input to the Parks Director on the development of Veterans Memorial Park.

2. SCRVG will be responsible for coordinating the fund raising efforts to support the development and maintenance of Veterans Memorial Park.

3. SCRVG will maintain a single checking/savings account to track the donations, income, and expenses SCRVG.

4. SCRVG, established as a 501c4, will act as the fiscal agent of the collective veteran organizations contained herein.

5. SCRVG will elect a treasurer who will be responsible for the checking/savings account. All checks or withdrawals will be used solely for the development and maintenance of Veterans Memorial Park.

6. SCRVG will provide no less frequently than semi annually a reconciliation of the checking/savings account to each participating Veterans Group identified herein. The report should identify all individual donations in excess of $500 identifying the name of the donor and the corresponding veterans’ organization through which the donation was made. Said report shall include all revenues received.

7. SCRVG will provide no less frequently than annually a report to the City of Rolla of the project progress and a financial report listing donated funds, in-kind services and expenses. Such report will be submitted to the Parks Director and provided to the City Finance Dept.

C. The following services are anticipated by the participating Veteran Groups identified herein:

1. Each veterans organization identified herein will identify one representative and one alternate to serve on the SCRVG. Said appointments will serve until replaced by the commander or governing authority of the veteran organizations or until such time as the fund-raising effort is declared completed or dissolved.

2. Chairmanship shall be appointed by the majority vote of the SCRVG.

3. Each veteran organization will accept tax-deductible donations on behalf of the SCRVG. Once received the donations should be clearly recorded by the receiving veteran organizations and then forwarded to the treasurer of SCRVG for deposit.
4. SCRVG and its member groups will recognize those POW/MIA at their special veterans' events and provide a Missing Man table at such events and memorial activities, as part of the City of Rolla's designation as a POW-MIA City.

II. TERM AND TIME OF PERFORMANCE
The term of this Memorandum shall be for five (5) years from the full execution of same.

III. CANCELLED, TERMINATION OR SUSPENSION
This Memorandum may be reviewed at the request of the SCRVG or the City of Rolla to determine the need for continuation, modification or termination. The written consent of both the SCRVG and the City of Rolla is required to terminate this Memorandum. If the memorandum is dissolved in its entirety, any remaining balance in the SCRVG account will be deposited to the City of Rolla and designated solely for the future care and maintenance of Veterans Memorial Park.

IV. NOTICE
Any formal notice required by this Memorandum is deemed to be given if it is mailed by United States certified mail, postage prepaid, and addressed as hereinafter specified.

Notice shall be addressed to:
City of Rolla: Mayor, City Hall, 901 N. Elm St., Rolla, MO 65401.
Korean War Veterans Association 12705 State Rt BB, Rolla, 65401
Veterans of Foreign Wars
Disabled American Veterans
American Legion
Retired Enlisted Association

V. AMENDMENTS
In order to provide necessary flexibility for the most effective execution of this Memorandum, whenever the veterans organizations identified herein and CITY mutually agree, changes to this Memorandum may be effected by placing them in written form and incorporating them into this Memorandum as an amendment.

VI. SEVERABILITY
It is mutually agreed that in case any provision of this Memorandum is determined by a court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all the other provisions of this Memorandum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date and year first above written.

CITY OF ROLLA

SOUTH CENTRAL REGIONAL VETERANS GROUP

Mayor Louis J. Magdits IV
The estimated cost to develop the Veterans Memorial Park is $1.5 to $2 million dollars. Funding will depend primarily on grants and donations as well as contributions of time, labor, and materials. For more information about how you can get involved, visit www.scrvg.org or call the City of Rolla Parks Department at (573) 341-2386 for a list of coordinating Veterans groups.
DEPARTMENT HEAD: Floyd Jernigan, Parks & Recreation Director

ACTION REQUESTED: Bid award and first reading of ordinance authorizing mayoral signature

ITEM/SUBJECT: Outfield fence for Bayless Field

BUDGET APPROPRIATION (IF APPLICABLE) $20,000 DATE: July 15, 2019

COMMENTARY:
The following bids were received June 26, 2019, for 558 feet of 6 inch tall chain link fence with schedule 40 pipe and 9 gage chain link wire and 7 gage tension wire at the bottom. The top rail and fence will be covered by a yellow safety top cap. The existing fence around home plate and the infield remains in good shape. The existing outfield fence (foul pole to foul pole) has suffered from rust and wind and is crimped and bent at key junctures and leaning throughout. We have re-sleeved and collared several times previously, and also put new ties on as temporary fixes to extend the life as much as possible within safety tolerances. There is also no current safety cap. The Bayless Field fence is the next on the Parks master list that needs replacing (Council approved Kimmel outfield fence replacement last year.) The Bayless fence is 37 years old and, like the other ballfield fences at the complex, was placed in 1982. This is the second step in the process of replacing each of the fences, with subsequent fields to follow at the complex - Kwantes and Morgan. Six different companies in the region were mailed specs and were asked to bid. Additionally, a notice to bid advertisement was placed in The Rolla Daily News.

<table>
<thead>
<tr>
<th>Company</th>
<th>Model</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>All-Type Fence Inc.</td>
<td>558’ 6 inch tall fence meeting specs</td>
<td>$10,155.90</td>
</tr>
<tr>
<td>Steelville, MO</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collins &amp; Hermann Inc.</td>
<td>558’ 6 inch tall fence meeting specs</td>
<td>$38,627.70</td>
</tr>
<tr>
<td>St. Louis, Ill.</td>
<td></td>
<td></td>
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</tbody>
</table>

Recommendation: Staff is asking the council to approve low bid made by All-Type Fence Co. Price includes removal of old chain link fence and approve first reading of ordinance.
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 AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND ALL-TYPE FENCE, INC., FOR BER JUAN PARK FENCING, PROJECT #495.

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 All-Type Fence, Inc., for Ber Juan Park Fencing, Project #495, a copy of said agreement being attached hereto and marked Exhibit A.

Section 2: That this ordinance shall be in full force and effect from and after the date of its passage and approval.


APPROVED:

______________________________
MAYOR

ATTEST:

______________________________
CITY CLERK

APPROVED AS TO FORM:

______________________________
CITY COUNSELOR
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 All-Type Fence, 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 Ber Juan Fencing, PROJECT 495, 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 Ber Juan Fencing, PROJECT 495.
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
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 $10,155.90 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 $100.00 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.
IN WITNESS-WHEREOF: The parties have executed this Contract as of the day and year first above written.

CITY OF ROLLA, MISSOURI

BY

Mayor, Owner, Party of the First Part

CONTRACTOR

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 that the seal affixed to 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

\[V. A. \]