

**CITY OF JOPLIN  
COUNCIL AGENDA ITEM**

**ITEM**

Council Bill 2021-150 Utility Relocation Agreement between City of Joplin and Southern Star Central Gas Pipeline, Inc., for the 32<sup>nd</sup> St. Widening Project from Schifferdecker Avenue to Central City Road

**MEETING DATE**

October 4, 2021

**ORIGINATING DEPT**

Public Works-Engineering

**ATTACHMENTS**

Council Bill 2021-150; Agreement; Location Map

**REVIEWED BY**

Director of Public Works: David Hertzberg; Finance Director: Leslie Haase; City Attorney: Peter Edwards; City Manager: Nicholas Edwards

**SUMMARY**

This Council Bill authorizes the City Manager or his designee to enter into an agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars (\$431,976.00) for facility relocations required for the 32<sup>nd</sup> St. Widening project from Schifferdecker Ave. to Central City Rd.

**BACKGROUND**

In August 2014, the voters passed the Renewal of the Capital Improvement Sales Tax Program for an additional 10 years. One of the projects was the widening of 32<sup>nd</sup> Street from Schifferdecker Ave. to Central City Road. In July 2021, City Council approved a construction agreement with Emery Sapp & Sons, Inc. (ESS) for the widening of 32<sup>nd</sup> Street. Completion of this project requires the relocation of a 20” mainline gate setting located at the northwest corner of 32<sup>nd</sup> Street and Country Club Drive. Southern Star will perform this relocation in the spring of 2022.

**FUNDING SOURCE**

Capital Improvement Sales Tax

**RECOMMENDATION**

Staff recommends approval of Council Bill 2021-150, Agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars (\$431,976.00) for facility relocations required for the 32<sup>nd</sup> St. Widening project from Schifferdecker Ave. to Central City Rd. on first reading.

STATE OF MISSOURI

TRACT 32948

COUNTY OF JASPER

LINE FP

RELOCATION AND REIMBURSEMENT AGREEMENT  
City of Joplin Project Number 015-2768  
32<sup>nd</sup> Street Widening, Central City Road to Schifferdecker Avenue

**THIS AGREEMENT**, entered into by and between SOUTHERN STAR CENTRAL GAS PIPELINE, INC. (formerly Cities Service Gas Company), a Delaware Corporation with its principal place of business being 4700 State Route 56, Owensboro, Kentucky 42304 respectively, hereinafter referred to as "COMPANY" and THE CITY OF JOPLIN, Missouri, a Missouri Municipality having an address of 602 S. Main, Joplin, MO 64801, hereinafter referred to as "CITY". COMPANY and CITY may be individually referred to as "PARTY" or collectively as "PARTIES";

**WITNESSETH:**

WHEREAS, COMPANY is the owner of COMPANY'S FACILITIES and easements, therefore across the following land to wit:

WHEREAS, by virtue of a certain Right of Way Contract, Granting of Condemnation from the Circuit Court of Jasper County, Missouri to Cities Service Gas Company on the 27<sup>th</sup> day of September, 1977. Said Tract being described as: E/2 Sec. 19, T27N, R33W, except N/2 NW/4 NE/4 of said Section, Newton County, Missouri and all of the SE/4 and all of the E 1000' of the NE/4 lying S of the Railroad tracks in Sec. 18, T27N, R33W, except Railroad right-of-way and except the South 35 feet for roadway, Jasper County, Missouri. Recorded in Recorder of Deeds Office, Jasper County, Missouri in Book 1204, Pages 1703- 1720).

WHEREAS, COMPANY owns and operates a Twenty Inch (20") natural gas pipeline designated as "FP" with valves and other appurtenances thereto ("COMPANY'S FACILITIES") across property described in the above-referenced agreements belonging to the landowners of record at the time the right of way and easement agreements were granted; and

WHEREAS, the CITY desires that the COMPANY'S FACILITIES be relocated for improvements to 32<sup>nd</sup> Street, from Central City Road to Schifferdecker Avenue in which the City of Joplin shall widen the existing roadway (the "IMPROVEMENTS") located in the part of SE/4 SE/4 SE/4 of Section 18 Township 27N Range 33W, Jasper County, MO; and

WHEREAS, under the terms of this Agreement, COMPANY is willing to relocate COMPANY'S FACILITIES to accommodate the IMPROVEMENTS.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties, COMPANY and CITY agree as follows:

1. COMPANY shall relocate a 20" Mainline Gate Setting for the IMPROVEMENTS as shown on "Public Street Plans for 32<sup>nd</sup> Street Widening, Central City Rd. to Schifferdecker Ave., Sections 17, 18, 19 & 20, Township 27N, Range 33W, City of Joplin, Missouri, Jasper & Newton Counties, Missouri, dated September 21, 2020 3:46 pm designated as "Exhibit A & B" attached hereto and made a part hereof. The CITY shall be responsible for any and all costs associated with the planning, design, engineering,

development, and relocation of COMPANY's FACILITIES. Where relocation has occurred, CITY agrees to prepare, and COMPANY agrees to execute and deliver to CITY, a partial release of COMPANY's existing private easement along 32nd Street.

2. CITY agrees that upon execution of this Agreement to reimburse COMPANY \$431,976.00 (the "PAYMENT") for the CITY's costs and charges for the relocation of COMPANY's FACILITIES. This estimate, designated as "Exhibit C" attached hereto and made a part hereof, is not considered to be a minimum or a maximum.

Should the total relocation cost be less than the PAYMENT, COMPANY shall refund the difference to CITY within thirty (30) days of the COMPANY's final accounting. In the event the actual costs and charges for the relocation of COMPANY's facilities exceed the PAYMENT, the CITY shall pay the COMPANY the balance due within thirty (30) days of the date of COMPANY's invoice.

3. CITY shall be responsible for any and all costs associated with relocation of COMPANY's FACILITIES, including without limitation, acquisition of necessary land rights, permits, engineering, drafting, surveying, construction, materials, company labor, overheads and any legal costs associated therewith.
4. COMPANY reserves the right upon written demand to secure additional advances from the CITY in the event that the CITY alters its IMPROVEMENTS in any manner, including without limitation, changes in the scope of work of the IMPROVEMENTS or changes in the relocation of COMPANY's FACILITIES.
5. CITY agrees to advance the COMPANY the balance of the monies due under this Agreement. In order to ensure proper and timely credit of the payment to the COMPANY, payment must be mailed to the following address and to the attention of the person below:

SOUTHERN STAR CENTRAL GAS PIPELINE, INC.  
Attn: Property Accounting – Job C63825  
4700 State Route 56  
Owensboro, KY 42301

6. In the event a PARTY requires a change in work, additional work to be done, or requires additional or different material to be used ("CHANGE[S]"), CITY agrees to pay COMPANY all additional indirect and direct costs incurred by COMPANY to accommodate any and all CHANGES made by a PARTY.
7. Subject to any natural gas commitments, COMPANY will endeavor to commence performance of work contemplated by this Agreement with reasonable diligence once all land rights and permits have been secured for the relocation provided that COMPANY shall not be obligated to commence or continue performance of the work in the event, in COMPANY's sole opinion, weather conditions or an event of force majeure prevents such work by COMPANY or its contractor. In no event shall COMPANY be liable for any consequential or incidental damages to CITY or any person or entity, including, without limitation, any third-party beneficiary to this Agreement.
8. To the fullest extent permitted by law, and subject to the limitations of the Missouri Tort Claims Act, CITY agrees to indemnify, save and hold harmless COMPANY, its parent, affiliates, and the employees, officers, directors, and agents thereof, from and against any loss, claim, cost or expense incurred by COMPANY including without limitation, losses resulting from claims for damage to property or injuries to or death of persons, and judgments, court costs and attorneys' fees which directly result from arise out of, or are claimed to have arisen out of, the construction, maintenance or other operations of CITY, its contractors and subcontractors, on any CITY property or easements. Prior to the commencement of the construction proposed hereunder, CITY shall provide COMPANY certificates of insurance evidencing coverage of \$1,000,000.00 general liability for the construction of the proposed IMPROVEMENTS and containing thirty (30) days' notice of cancelation. This paragraph shall survive termination of this Agreement.
9. All work performed on COMPANY property and easements shall be performed in a workmanlike manner and in compliance with acceptable governmental and industry standards and codes. CITY agrees that it

shall be responsible for the full cost of restoration of the area(s) disturbed.

10. COMPANY shall make efforts to have the relocation of COMPANY's FACILITIES completed before June 1, 2022 unless delayed for adverse weather or force majeure events.
11. CITY acknowledges that the natural gas pipeline is cathodically protected and hereby relieves COMPANY of any liability for damage to any IMPROVMENTS or any additions thereto due to said cathodic protection.
12. COMPANY will be required to obtain environmental approvals prior to the CITY performing work on COMPANY's workspace. COMPANY anticipates approvals being received prior to April 1, 2022 unless unforeseen issues arise. COMPANY will not be liable for any costs associated with CITY's work being delayed for COMPANY failing to obtain the environmental permits by April 1, 2022. Upon authorization to proceed by COMPANY, CITY will remove the habitats (trees, brush, etc.) for species protected by the Migratory Bird Treaty Act along with the habitats for the Northern Long-eared Bat on COMPANY's workspace prior to April 1, 2022. Failure to remove the habitats by April 1, 2022 will require COMPANY to perform environmental field assessments that may identify the presence of these species resulting in the construction start being delayed. CITY will be responsible for all costs associated with these delays
13. If CITY determines that relocation of COMPANY's FACILITIES is no longer necessary or shall be delayed, CITY may terminate this Agreement by providing written notice to COMPANY. CITY shall compensate COMPANY for all purchased materials and costs associated with the project, including costs associated with the return of materials purchased, engineering costs, and land acquisition costs incurred up to and including the date of cancellation. COMPANY shall apply the PAYMENT towards all costs incurred and refund the remaining PAYMENT funds within sixty (60) days of COMPANY closing its books on the project and final accounting.
14. In the event of a dispute, the PARTIES agree that they shall, in good faith, seek alternative means to resolve the dispute.
15. This Agreement does not create, and shall not be construed as creating, a partnership, joint venture, fiduciary, franchise, association or similar relationship between the parties hereto.
16. Neither this Agreement nor any provision contained herein may be amended, waived, discharged or terminated, except by an instrument in writing signed by the party against which enforcement of such amendment, waiver, discharge or termination is sought.
17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to the choice of law provisions. The parties hereto (i) agree that venue is proper in any judicial proceeding brought in connection with a dispute arising under this Agreement in any state or federal court of competent jurisdiction located within the state of Missouri. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THE AGREEMENT.
18. Entire Agreement. This Agreement and the documents delivered pursuant hereto constitute the entire agreement between COMPANY and CITY with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between COMPANY and CITY with respect to the subject matter hereof.
19. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. This Agreement can be electronically signed, and electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Electronic copies of any signed original agreement will be deemed the same as delivery of an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the Effective Date first written above.

*[signature page to follow]*

CITY OF JOPLIN, MISSOURI:

SOUTHERN STAR CENTRAL GAS  
PIPELINE, INC.

\_\_\_\_\_

\_\_\_\_\_

By: David Hertzberg

By: Shawn Patterson

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

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

Title: Director of Public Works

Title: Chief Operations Officer

STATE OF MISSOURI

COUNTY OF JASPER

ACKNOWLEDGEMENT OF CITY

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared David Hertzberg, who being duly sworn, did say that he is Director of Public Works, of the City of Joplin, Missouri, a Missouri Municipal corporation and that said instrument was signed on behalf of said City by authority of its City Council, and said Director of Public Works acknowledged said instrument to be the free act and deed of said City.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year above written.

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

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

COMMONWEALTH OF KENTUCKY

COUNTY OF DAVIESS

ACKNOWLEDGEMENT FOR CORPORATION

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, personally appeared Shawn Patterson who being duly sworn, did say that he is the Vice President and Chief Operations Officer of Southern Star Central Gas Pipeline, Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and Shawn Patterson acknowledged said instrument to be the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

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

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







**Exhibit "C"**

**Estimate Summary**



**Relocate Line FP 32nd Street MLG Valve for City of Joplin**

**C63825 PDF 3369**

**Rev 0**

**COST ESTIMATE**

**Based on Scope Dated 02/25/21, Rev. 0**

**Gate 1**

**SUMMARY**

**Scope:** Relocation of MLG Valve, Line FP 20" at 32nd Street in the City of Joplin.

- Assumptions:**
1. Contract labor for construction and inspection.
  2. SSCGP to perform project design/engineering, survey, drafting, project management, land, and environmental.
  3. Line can be taken out of service; CNG Trailer required.
  4. In Service: 5/4/2022; Construction Start 4/18/2022
  5. Project is 100% Reimbursable.

Category	R-Job Retirement	C-Job Estimate
Materials		\$94,899
Construction	\$3,500	\$189,600
Survey		\$0
Right-of-Way		\$1,700
Legal & Public Affairs		\$0
Environmental		\$200
Inspection		\$31,579
Engineering		\$0
Southern Star		\$46,743
A&G Overhead		\$19,711
AFUDC		\$4,774
<b>SUBTOTAL</b>	<b>\$3,500</b>	<b>\$389,205</b>

R-Job & C-Job Subtotal	\$392,705	
R-Job & C-Job Contingency	\$39,271	
R-Job & C-Job Total	<b>\$431,976</b>	Reimbursable 100%

# COUNCIL BILL 2021-150

**NEW MLG SETTING**

PROPOSED ACCESS EASEMENT TO BE DESIGNATED TO SOUTHERN START, LIBERTY UTILITIES, SW BELL TELEPHONE COMPANY AND THE CITY OF JOPLIN

PROPOSED TEMPORARY CONSTRUCTION EASEMENT

**CITY OF JOPLIN ENTRANCE**

**RECLAIM MLG SETTING**

PARCEL 28  
R. S. ANDERSON, INC  
P.O. BOX 8  
BOOK 1,505, PAGE 151

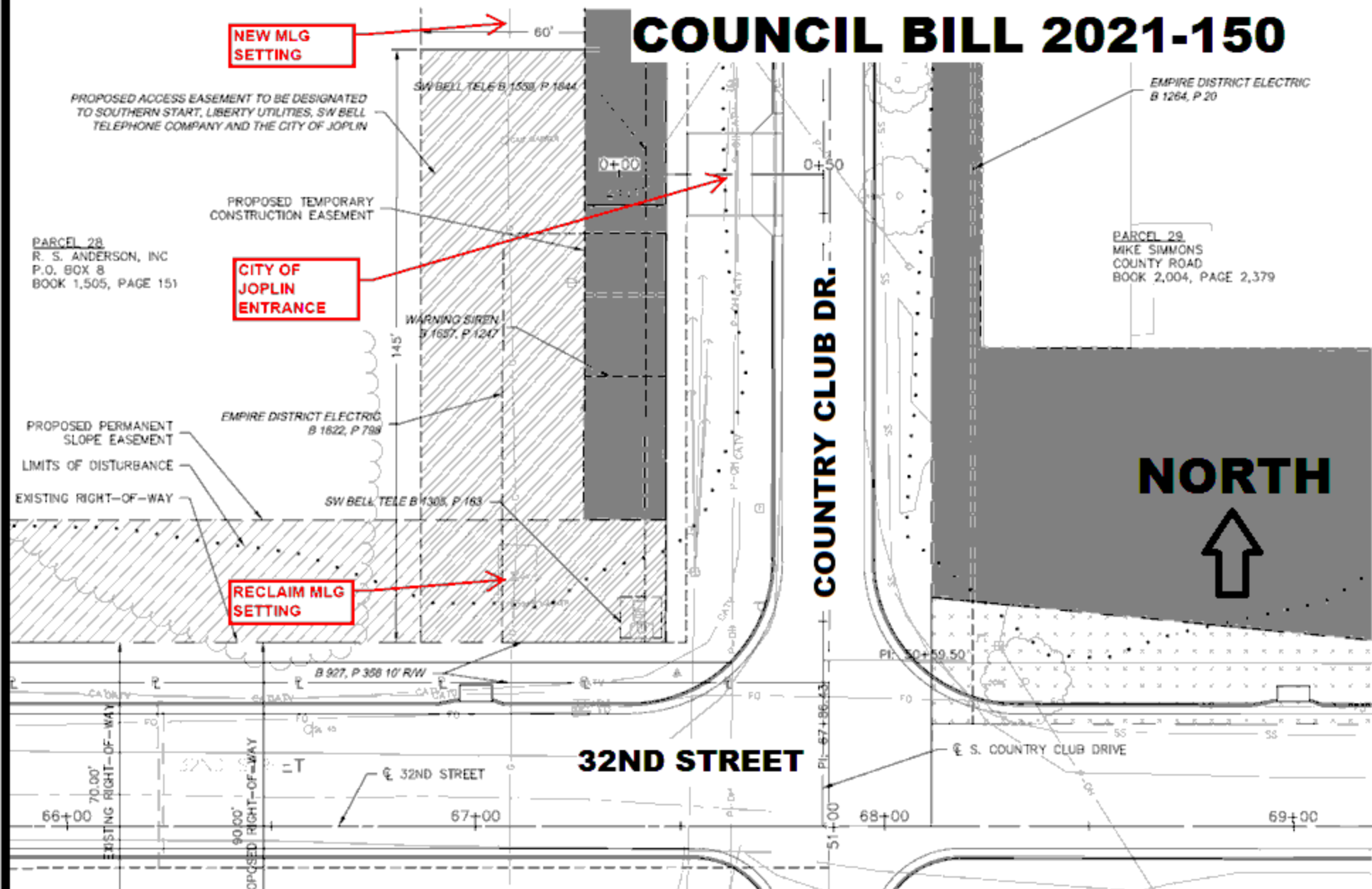
PARCEL 29  
MIKE SIMMONS  
COUNTY ROAD  
BOOK 2,004, PAGE 2,379

**NORTH**



**COUNTRY CLUB DR.**

**32ND STREET**



COUNCIL BILL NO. 2021-150

ORDINANCE NO.

AN ORDINANCE approving an Agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars (\$431,976.00) for facility relocations required for the 32<sup>nd</sup> St. Widening project from Schifferdecker Ave. to Central City Rd. and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin.

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

Section 1. That the Agreement with Southern Star Central Gas Pipeline, Inc. in the amount of Four Hundred Thirty-One Thousand Nine Hundred Seventy-Six and 00/100 dollars (\$431,976.00) for facility relocations required for the 32<sup>nd</sup> St. Widening project from Schifferdecker Ave. to Central City Rd., for the City of Joplin, a true and accurate copy of said agreement being attached hereto and incorporated herein, be, and the same, is hereby approved.

Section 2. That the City Manager of the City of Joplin, Missouri, or his designee, is hereby authorized and directed to execute said agreement, or agreement in substantially similar form, by and on behalf of the City of Joplin with Southern Star Central Gas Pipeline, Inc.

Section 3. That upon the final approval and acceptance of the contractor's work under said contract, in substantial conformance with the attached exhibits, in writing by the Director of Public Works and his certification to the effect to the Director of Finance, the contractor shall be paid from the Capital Improvement Sales Tax fund.

PASSED BY THE COUNCIL OF THE CITY OF JOPLIN, MISSOURI, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by a vote of \_\_\_\_\_.

ATTEST:

Ryan D. Stanley, Mayor

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

Peter C. Edwards, City Attorney

I hereby certify that a sufficient amount is available in the Capital Improvement Sales Tax Fund to pay the amounts called for on the basis of the negotiated fee.

\_\_\_\_\_  
Leslie Haase, Director of Finance