BILL NO. 4469 ORDINANCE NO. _____

AN ORDINANCE TO AUTHORIZE THE MAYOR TO EXECUTE AN AGREEMENT WITH TOTH AND ASSOCIATES, INC. FOR PROFESSIONAL SERVICES FOR THE WEST PLAINS FLOODWAY DELINEATION.

NOW THEREFORE, be it resolved by the City of West Plains as follows:

Section 1: That the Mayor is hereby authorized to execute the contract between the City of West Plains, Missouri and Toth & Associates, Inc. (EXHIBIT A).

Section 2: That this Ordinance shall be in full force and effect from and after its day of passage and approval.

PASSED AND APPROVED THIS 21st DAY OF NOVEMBER 2016.

CITY OF WEST PLAINS, MISSOURI

BY:_____
MAYOR JACK PAHLMANN

ATTEST:

_____
CITY CLERK MALLORY HAWKINS

Exhibit A

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement dated_____, is made By and Between TOTH AND ASSOCIATES, INC., hereafter referred to as ENGINEER, and CITY OF WEST PLAINS, MISSOURI, hereafter referred to as CLIENT.

ENGINEER	Toth and Associates, Inc. 830 East Primrose, Suite 200 Springfield, Missouri 65807	**CLIENT**	City of West Plains, Missouri 1910 Holiday Lane West Plains, Missouri 65775

PROJECT NAME West Plains Floodway Delineation

SCOPE OF BASIC SERVICES
The Basic Services to be provided by the ENGINEER are described in Exhibit A – Summary of Services and Exhibit B – Terms and Conditions.

ENGINEERING COMPENSATION
CLIENT shall pay ENGINEER for Basic Services set forth above as follows:

1. *Hourly Not to Exceed Method of Payment:*

   The CLIENT shall pay ENGINEER for Task 1 of the Summary of Services on an hourly not to exceed basis as follows:

   An amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employee's time the Standard Hourly Rates for each applicable billing class but not to exceed the total fee for all services performed on the Project outlined below.

   A total hourly not to exceed amount of $ 20,000.00 for Task 1.

   ENGINEER may alter the distribution of compensation between individual tasks of the work noted herein to be consistent with services actually rendered, but shall not exceed the total not to exceed amount unless approved in writing by CLIENT.

STANDARD HOURLY RATE SCHEDULE
Standard hourly rates as of the effected date of the Agreement are as follows:

Principal	$145.00	Certified Floodplain Manager	$125.00
Engineer PE-3	$125.00	Professional Land Surveyor	$105.00
Engineer PE-2	$115.00	Two-Man Survey Crew	$135.00
Engineer PE-1	$105.00	One-Man Survey Crew	$120.00
Engineering Intern	$100.00	Survey Technician	$90.00
CAD Technician-3	$90.00	GIS Technician-2	$90.00
CAD Technician-2	$80.00	GIS Technician-1	$85.00
CAD Technician-1	$70.00	Clerical	$50.00

Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

ADDITIONAL SERVICES
CLIENT shall pay ENGINEER for Additional Services as follows:

1. ENGINEER will be compensated for Additional Services as outlined in Exhibit B of this Agreement.

ADDITIONAL PROVISIONS
If Basic Services covered by this Agreement have not been completed within thirty (30) months of the date hereof, through no fault of the ENGINEER, the amounts of compensation set forth in this Agreement shall be equitably adjusted. This Agreement, and Exhibits A and B hereto, constitute the entire Agreement between the parties.

ACKNOWLEDGEMENT OF DOCUMENT REVIEW
The CLIENT and ENGINEER certify that this agreement has been read in its entirety, including Exhibits A and B, and that conditions, provisions, and requirements of the Agreement are hereby accepted.

SIGNATURE
Agreed to and Accepted by:

Toth and Associates, Inc.	City of West Plains, Missouri
10/28/2016	
Date	Date
Louis Toth, Principal	
Printed Name/Title	Printed Name/Title

EXHIBIT A – SUMMARY OF SERVICES

This Exhibit A is attached to and made part of the Agreement dated _____, between the CLIENT and ENGINEER.

The services of the ENGINEER for this agreement include those summarized below. See Exhibit B – Terms and Conditions, for further details.

RESPONSIBILITIES OF CLIENT

CLIENT is responsible for providing the following:

1. Payment of all fees for applications, plus payment for review of plans and actual permits issued by jurisdictional bodies.
2. CLIENT will provide a designated project representative with whom ENGINEER is to work.

RESPONSIBILITIES OF ENGINEER

Upon authorization to proceed by CLIENT as well as execution of this agreement, the ENGINEER will provide the following Basic Services:

TASK 1 FLOODWAY DELINEATION

1. Existing Documentation Review
   The ENGINEER will review the existing documentation pertaining to the revised floodway delineation boundaries that the City has submitted to the Federal Emergency Management Agency (FEMA). The ENGINEER will review calculations, reports, mapping, and correspondence pertaining to the floodway delineation. The ENGINEER's review will determine whether it is feasible to adjust the floodway boundary in certain areas requested by the City. It is assumed that the City will provide all data associated with the floodway delineation previously performed.

2. Floodway Hydraulic Modeling
   Revisions to the delineated floodway boundary may or may not be feasible. If revisions to the floodway boundary are determined to be feasible based on the review of existing documentation and calculations, then the ENGINEER will revise the hydraulic model calculations as required to adjust the floodway boundaries in the areas requested by the City. A reduction in floodway boundaries by revisions to the hydraulic model calculations is not guaranteed. Adjustments to the floodway boundary in one area may have a positive or negative impact in other areas.

3. Floodway Mapping/Delineation
   The ENGINEER will revise the delineated floodway boundaries in ArcGIS to reflect the revisions to the hydraulic model in the areas requested by the City.

4. FEMA Coordination and Submittal
   The ENGINEER will coordinate with FEMA and submit the revised documentation required to adjust the mapped floodway boundaries.

5. Meetings with City and Regulatory Agencies
   The ENGINEER will attend meetings with the City and appropriate regulatory agencies as required for the purpose of this project.

ADDITIONAL SERVICES

If authorized by the CLIENT, the ENGINEER shall furnish Additional Services as required. Additional Services shall be considered any item that is not specifically included in the Basic Scope of Services. Additional Services are described in further detail in Exhibit B – Terms and Conditions.

SCHEDULE

ENGINEER shall begin rendering services upon the full execution of this Agreement by CLIENT and ENGINEER. ENGINEER will provide monthly progress reports via email to the CLIENT throughout the entire project. ENGINEER shall complete its obligations with due diligence and in a reasonably timely manner.

DELIVERABLES

ENGINEER will provide CLIENT with electronic files containing the hydraulic model and the floodway delineation. Documents (including electronic files) prepared by ENGINEER are instruments of service for use solely with respect to the project. ENGINEER shall retain all common law, statutory and other reserved rights, including the copyright. CLIENT shall not reuse or permit the reuse of ENGINEER'S documents except by mutual agreement in writing. ENGINEER shall not be responsible for payment of any regulatory fees required with application, review of plans, or permits.

FEES FOR BASIC SERVICES

Total cost of the services for the ENGINEER as outlined in the scope shall be as stated in the Agreement. Direct costs including mileage, printing, telephone, etc. have been included in the proposed fee. CLIENT will be invoiced monthly for services completed during the previous month, based upon the Engineering Compensation section of this Agreement. Billings shall be consistent with progress actually made by ENGINEER in completing the services hereunder. Each invoice will be payable within a period not to exceed 30 days following the date of such invoice.

SERVICES NOT INCLUDED IN ENGINEER's SCOPE OF WORK

The following services are not included under the fees for basic services:

A. Modifications to the floodplain fringe boundaries.
B. Topographic and boundary surveys
C. Sinkhole analysis and geotechnical investigations.

MODIFICATION OF AGREEMENT FOR ADDITIONAL SERVICES

This agreement may be modified by a supplemental agreement which authorizes the additional services as well as the additional fees for said services. If said work or services are required, both parties shall agree in writing to the services as well as added fees, prior to commencement of the additional work.

EXHIBIT B – TERMS AND CONDITIONS

This Exhibit B is attached to and made part of the Agreement dated _____, between the CLIENT and ENGINEER.

SECTION 1 - GENERAL

1.1 THIS AGREEMENT

1.1.1 These Terms and Conditions, along with the signed Agreement, Exhibit A - Summary of Services form the Agreement as if they were part of one and the same document.

1.2 GENERAL OBLIGATIONS OF THE ENGINEER AND THE CLIENT

1.2.1 The ENGINEER shall perform those professional services as specified in Exhibit A and detailed in these Terms and Conditions. In rendering these services, the ENGINEER shall apply the skill and care ordinarily exercised by Engineering Professionals at the time and place the services are rendered.

1.2.2 The CLIENT shall provide all criteria and full information with regard to his or her requirements for the Project.

1.3 DEFINITIONS

1.3.1 Reimbursable Expenses are expenses incurred directly or indirectly in connection with the project such as, but not limited to, transportation, meals or lodging for travel, long distance telephone calls and facsimile transmissions, overnight deliveries, courier services, professional service sales taxes, the cost of reproductions beyond those normally required for coordination and information purposes, and the cost of outside professional services if authorized by the CLIENT.

1.3.2 Civil Engineer of Record (ENGINEER) is the consulting engineering firm retained to provide services described herein.

SECTION 2 – BASIC SERVICES

2.1 GENERAL – BASIC SERVICES OF THE ENGINEER SHALL INCLUDE THE FOLLOWING:

2.1.1 Basic services shall be as designated in Exhibit A – Summary of Services.

SECTION 3 – ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 Services beyond those outlined under Basic Services may be requested. These services may be provided as Additional Services by the ENGINEER under terms mutually agreed upon by the CLIENT and the ENGINEER. A partial list of services not included is included in Exhibit A.

3.1.2 Special Services are services which may or may not be foreseen at the beginning of design, and which are not normally included as Basic Services. Unless stated otherwise

in this Agreement, examples include, but are not limited to:

A. Continuous and/or detailed inspections of existing infrastructure.
B. Filing application for and obtaining permits.

3.1.3 Extra Services are services which arise as a result of unforeseen circumstances during the design or construction process. Examples include, but are not limited to:

A. Services resulting from changes in scope or magnitude of the project as described and agreed to under the Basic Services Agreement.
B. Services resulting from revisions which are inconsistent with approvals or instructions previously given by the CLIENT.
C. Service in connection with any public hearing, arbitration, or legal proceeding with respect to the project, including assisting in preparation for litigation or arbitration as witnesses or consultants.
D. Services resulting from damage as the result of fire, man-made disasters, or acts of God.

SECTION 4 – FEES AND PAYMENTS

4.1 FEES AND OTHER COMPENSATION

4.1.1 Fees for Basic Services, Additional Services and Compensation for Reimbursable Expenses are set forth in the Agreement.

4.2 PAYMENTS ON ACCOUNT

4.2.1 Invoices for the ENGINEER's services shall be submitted, at the ENGINEER's option, either upon completion of any phase of service or on a monthly basis. Invoices shall be payable when rendered and shall be considered past due if not paid within 30 days after the invoice date.

4.3 LATE PAYMENTS

4.3.1 A service charge will be charged at maximum allowable legal rate per month on the then total outstanding balance of past due accounts.

SECTION 5 – INSURANCE, INDEMNIFICATION & RISK ALLOCATION

5.1 INSURANCE

5.1.1 The ENGINEER shall secure and maintain professional liability insurance, commercial general liability insurance, and automobile liability insurance to protect the ENGINEER from claims for negligence, bodily injury, death or property damage which may arise out of the performance of the ENGINEER's services under this Agreement. The ENGINEER shall also carry Worker's Compensation Insurance. The ENGINEER shall, if requested in writing, provide certificates of insurance to the CLIENT. The ENGINEER shall maintain insurance in the amount of $1,000,000 for the above mentioned items.

5.2 INDEMNIFICATION

5.2.1 To the fullest extent permitted by law, the ENGINEER and the CLIENT mutually agree to indemnify and hold each other harmless from any damages and losses arising from their

own negligent acts, errors or omissions in their performance under this Agreement, to the extent that each party is responsible for such damages and losses on a comparative basis of fault.

5.2.2 The indemnifications as stated in 5.2.1 shall apply to the respective officers, members, directors, partners, agents, employees, and subconsultants of both the ENGINEER and CLIENT.

5.3 RISK ALLOCATION

5.3.1 In recognition of the relative risks, rewards and benefits of the Project to both the CLIENT and the ENGINEER, the risks have been allocated such that the CLIENT agrees that, to the fullest extent permitted by law, the ENGINEER's total liability to the CLIENT for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this Agreement, from any cause or causes, shall be limited to $1,000,000. Such cause or causes include, but are not limited to, the ENGINEER's negligent acts, errors, omissions, strict liability, breach of contract, or any other theory of legal liability. This limitation of liability shall apply to the ENGINEER and its officers, members, directors, partners, agents, employees, and sub-consultants.

SECTION 6 – MISCELLANEOUS PROVISIONS

6.1 REUSE OF DOCUMENTS

6.1.1 All documents including calculations, computer files, drawings, and specifications prepared by the ENGINEER pursuant to this Agreement are instruments of professional service intended for the one-time use for this Project. They are and shall remain the property of the ENGINEER. ENGINEER shall retain all common law, statutory, and other rights including the copyrights. Any reuse of documents including calculations, computer files, drawings, and specifications without written approval or adaptation by the ENGINEER is prohibited.

6.2 OPINION OF PROBABLE CONSTRUCTION COST

6.2.1 The ENGINEER's opinion of probable construction costs, if rendered as a service under this Agreement, is based on assumed labor costs and approximate quantities of material and equipment, and therefore is of a conditional character. The ENGINEER cannot guarantee the cost of work to be performed by others since market or bidding conditions can change at any time and changes in the scope or quality of the Project may affect estimates.

6.3 HIDDEN CONDITIONS AND HAZARDOUS MATERIALS

6.3.1 A condition is hidden if it is concealed by existing ground or if it cannot be investigated by reasonable visual observation. If the ENGINEER has reason to believe that a deficient condition may exist, the ENGINEER shall notify the CLIENT in writing. CLIENT will pay for all costs associated with the investigation of such a condition and, if necessary, all costs necessary to correct said condition. If (1) the CLIENT fails to complete such investigation or correction after due notification, or (2) the ENGINEER has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and the ENGINEER shall not be responsible for the existing condition nor any resulting damages to persons or property. The ENGINEER shall have no responsibility

for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials of any form.

6.3.2 It is understood and agreed by both parties that ENGINEER, while performing professional services for CLIENT, is not responsible for making recommendations or suggestions to the CLIENT with respect to hazardous substances. If ENGINEER becomes aware of said substances, ENGINEER will notify CLIENT. The ENGINEER and CLIENT agree that ENGINEER is not responsible for determining presence of hazardous substances that might be encountered and further agree that ENGINEER does not have the responsibility or authority to accurately identify or to decide where or how disposal of hazardous materials. CLIENT agrees to be responsible for handling and the disposal and/or treatment of said substances based on the requirements of applicable Federal, State and Local regulations and rules. And, to the maximum extent permitted by law, the CLIENT will indemnify and defend ENGINEER and its officers, employees and agents from all claims, damages, losses and expenses arising out of, or relating to the presence of hazardous substances, contaminants, or asbestos on or from the project.

6.4 REVIEW OF CONTRACTOR'S WORK

6.4.1 The ENGINEER will not supervise, direct, or have control over the Contractor's work. The ENGINEER shall not be responsible for the Contractor's means, methods, procedures, techniques, or sequences of construction, nor for safety programs or procedures employed by the Contractor on the job site. The ENGINEER shall not be responsible for the Contractor's failure to carry out work in accordance with the Contract Documents.

6.5 TERMINATION, SUCCESSORS AND ASSIGNS

6.5.1 This Agreement may be terminated upon 10 days written notice by either party should the other fail to perform its obligations hereunder. In the event of termination, the CLIENT shall pay the ENGINEER for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

6.5.2 The CLIENT and the ENGINEER each binds himself or herself, partners, successors, executors, administrators, assigns and legal representatives to the other party of this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party in respect to all covenants, agreements, and obligations of this Agreement.

6.5.3 Neither the CLIENT nor the ENGINEER shall assign, sublet or transfer any rights under or interest in (including but without limitations, monies that may be due or monies that are due) this Agreement, without the written consent of the other, except as stated in the paragraph above, and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent consultants, associates and subcontractors as he or she may deem appropriate to assist in the performance of services hereunder.

6.5.4 The ENGINEER and CLIENT agree that the services performed by the ENGINEER pursuant to this Agreement are solely for the benefit of the CLIENT and are not intended by either the ENGINEER or the CLIENT to benefit any other person or entity. To the extent that any other person or entity, including but not limited to the Contractor and/or any of its Subcontractors and other Design Professionals, is benefited by the services performed by the ENGINEER pursuant to this Agreement, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to this Agreement.

6.6 DISPUTE RESOLUTION

6.6.1 The ENGINEER and CLIENT agree to negotiate any claim(s) or dispute(s) arising out of or related to the agreement between them in good faith prior to exercising any other provision of this Agreement.

6.6.2 If a claim or dispute between the ENGINEER and CLIENT cannot be settled within 30 days by good faith negotiations the ENGINEER and CLIENT agree to submit it to mediation in accordance with the Construction Rules of the American Arbitration Association.

6.6.3 If the claim or dispute cannot be settled by good faith negotiations or mediation then either party may exercise their rights under law.

6.6.4 In no event shall a claim or dispute be made or sustained if it would be barred by the applicable statute of limitations.

6.6.5 In the event of litigation, the governing law shall be that of the State of Missouri, and venue shall only be proper in Greene County, Missouri. The prevailing party in the litigation shall be awarded its costs, plus reasonable attorney's fees to be paid by the non-prevailing party or parties. Court costs shall not include the cost of mediation.

6.7 GOVERNING LAWS

6.7.1 This agreement shall be governed by and construed in accordance with the laws of the State of Missouri applicable contracts entirely made and performed therein without regard to principals of conflicts of laws thereof. The parties consent to the jurisdiction of federal and state courts of competent jurisdiction in the State of Missouri (and courts with appellate jurisdiction there from) for the purpose of adjudicating all disputes arising out of or related to this Agreement and agree that venue is proper in such courts.

6.7.2 The waiver by one party hereto of any breach by the other of any provision of this Agreement shall not operate or be construed as a waiver of any other (prior or subsequent) breach by the breaching party, and waiver of a breach of a provision in one instance shall not be deemed a waiver of a breach of such provision in any other circumstance. If any term or provision of this agreement or the application thereof to any person, property, or circumstance shall to any extent be invalid or enforceable, the remainder of this agreement, or the application of such term or provision to persons, property, or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.