

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 8-15

Department Source: Water & Light

To: City Council

From: City Manager & Staff

Council Meeting Date: 1/5/2015

Re: Agreement with Summit Eateries, L.L.C. for the removal of a sign and the installation of a new sign at 206 West Business Loop 70.

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibit to Resolution/Ordinance

Supporting documentation includes: None

Executive Summary

Staff has prepared for Council consideration an ordinance authorizing the City Manager to enter into an agreement with Summit Eateries, L.L.C. for the removal of a sign and the installation of a new sign for Long John Silver's located at 206 West Business Loop 70. The replacement of this sign is in exchange for an electric easement necessary to complete the ongoing electric undergrounding project along Business Loop.

Discussion

Summit Eateries L.L.C. owns and operates a Long John Silver's restaurant located at 206 West Business Loop 70. For several years Water and Light has been progressing on undergrounding its electric distribution system along Business Loop 70 west from Highway 70 to Providence Road. As part of this project it is necessary to obtain an easement from Summit Eateries L.L.C. for this section of the new underground lines.

The current Long John Silver's sign rests in an area that aligns with other contiguous easements already acquired to facilitate this project. In exchange for removing the current sign and constructing a new sign in an alternate location, Summit Eateries L.L.C. has agreed to grant the City an electric easement to continue its undergrounding project.

The cost of relocating this sign is not to exceed \$23,000 and has already been appropriated to this undergrounding project.

Fiscal Impact

Short-Term Impact: None

Long-Term Impact: None

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

City of Columbia

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Strategic Plan Impact: Infrastructure

Comprehensive Plan Impact: Infrastructure

Suggested Council Action

Staff recommends Council approval of an ordinance allowing the City Manager to enter into an agreement with Summit Eateries, L.L.C.

Legislative History

None



Department Approved



City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 8-15

AN ORDINANCE

authorizing an agreement with Summit Eateries, L.L.C. for the removal of a sign and the installation of a new sign on property located at 206 West Business Loop 70; and fixing the time when this ordinance shall become effective.

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

SECTION 1. The City Manager is hereby authorized to execute an agreement with Summit Eateries, L.L.C. for the removal of a sign and the installation of a new sign on property located at 206 West Business Loop 70. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2015.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

**AGREEMENT
BETWEEN THE CITY OF COLUMBIA, MISSOURI,
AND SUMMIT EATERIES, L.L.C.
FOR THE REMOVAL OF A SIGN AND THE INSTALLATION OF A NEW SIGN
AT 206 WEST BUSINESS LOOP 70, COLUMBIA, MISSOURI**

THIS AGREEMENT is entered into on the date of the last signatory noted below (the "Effective Date"), between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and Summit Eateries, L.L.C., a limited liability corporation organized in the State of Missouri, with address of 600 NorthWest Mock Avenue, Blue Springs, MO 64014 (hereinafter "Summit"). Summit and City are each individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Summit owns and operates a Long John Silver's restaurant located at 206 West Business Loop 70, Columbia, Missouri; and

WHEREAS, City desires to underground utilities along Business Loop 70 in Columbia, Missouri, and has recently obtained the necessary easement from the property owner of 206 West Business Loop 70, Columbia, Missouri, for the undergrounding of utilities and for the construction of a sidewalk; and

WHEREAS, Summit has an existing sign (hereinafter "Existing Sign") located within the easement which must be removed for the City to complete its work.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. Scope of Work for the Project.
 - a. Summit's Responsibilities. Summit shall install a new monument sign (hereinafter "New Sign") at new location that is not within the City's easement. The new installed sign shall substantially comply with the design illustrated and described in "Attachment A." The installed sign shall comply with the City's sign ordinance. The installed sign shall be located as designated in "Attachment B."
 - b. City to reimburse Summit for its Costs. City shall reimburse Summit for Summit's costs for the purchase and installation of the New Sign according to the terms of this Agreement.
 - c. City's Responsibilities. City shall remove the Existing Sign from the current location inside the easement. City shall be responsible for the demolition and removal of the Existing Sign using City crews and City's equipment. City shall provide for the electrical work, either through its own forces or through City's contractor, to disconnect the Existing Sign and to reconnect the electricity for the New Sign. City shall also temporarily remove and reinstall the parking entrance and exit signs.

- d. Timing and Scheduling. The Parties shall adopt a written schedule for performance of the Scope of Work. Unless otherwise agreed to by the Parties, the Parties shall complete the Scope of Work according to the written schedule adopted by the Parties.
- 2. Term. The "Term" of this Agreement shall commence on the Effective Date. Unless otherwise agreed to by the Parties in writing, the Term shall end no later than March 1, 2015.
- 3. NOT TO EXCEED. Total payment to reimburse Summit for Summit's expenses related to the Scope of Work pursuant to this Agreement and described herein shall not exceed Twenty-three Thousand Dollars (\$23,000.00).
- 4. Payment. Upon completion of the installation of the New Sign, Summit shall notify City that the New Sign has been installed. City shall have ten (10) days to verify that the work was completed and that the New Sign complies with City Code. Upon completion of City's inspection, City shall notify Summit of the results of the inspection. Summit shall then invoice City for Summit's costs for the installation of the New Sign. City shall pay Summit uncontested amounts within ten (10) days of the date of the invoice.
- 5. Termination.
 - a. By Mutual Agreement. This Agreement may be terminated at any time during its Term upon mutual agreement by both Parties.
 - b. By Convenience. With ten (10) days written notice, either Party may terminate this Agreement for convenience.
 - c. By Default. Either Party may terminate this Agreement in accordance with Section 6.
 - d. By Force Majeure. This Agreement may be terminated due to force majeure in accordance with Section 7.
- 6. Termination by Default.
 - a. A Party shall be considered in default of this Agreement upon:
 - (1) The failure to perform or observe a material term or condition of this Agreement, including but not limited to any material default of a representation, warranty or covenant made in this Agreement;
 - (2) The Party (i) becoming insolvent; (ii) filing a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consenting to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) making a general assignment for the benefit of its creditors; or (iv) consenting to the appointment of a receiver, trustee or liquidator;

(3) The purported assignment of this Agreement in a manner inconsistent with the terms of this Agreement;

(4) The failure of the Party to provide information or data to the other Party as required under this Agreement, provided that the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

b. Termination upon Default. Upon the occurrence of an event of default, the non-defaulting Party shall be entitled to immediately terminate this Agreement.

7. Force Majeure. The performance of each Party under the Agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party claiming Force Majeure, which, by exercise of due diligence and foresight, could not reasonably have been avoided, including, but not limited to, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike, and act of God or any other cause beyond the control of the Party claiming Force Majeure. However, the obligation to use due diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. A Party shall not be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to an event of Force Majeure.
8. No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.
9. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Water and Light Department
ATTN: Dan Clark
P.O. Box 6015
Columbia, MO 65205-6015
Fax: 573-815-0868
Email: dhc@gocolumbiamo.com

If to Summit:

Summit Eateries, L.L.C.
ATTN: Rick Ziegelbein and Lisa Vaughn
600 NorthWest Mock Avenue
Blue Springs, MO 64014
Fax: 816-224-2174

The designation and titles of the person to be notified, or the address of such person, may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by

hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

10. **No Third-Party Beneficiary.** No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.
11. **Amendment.** No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
12. **Governing Law and Venue.** This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
13. **General Laws.** Summit shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
14. **Employment of Unauthorized Aliens Prohibited.** Summit agrees to comply with Missouri Revised Statute Section 285.530 in that Summit shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of this contract, Summit shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Summit shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Summit shall require each subcontractor to affirmatively state in its contract with Summit that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the State of Missouri. Summit shall also require each subcontractor to provide Summit with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.
15. **Hold Harmless Agreement.** To the fullest extent not prohibited by law, Summit shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Summit, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Summit or a subcontractor for part of the services), of anyone directly or indirectly employed by Summit or by any

subcontractor, or of anyone for whose acts the Summit or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Summit to indemnify, hold harmless, or defend the City of Columbia from its own negligence.

16. No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.
17. Insurance. Summit agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 combined single limit for any one occurrence and general aggregate covering both bodily injury and property damage, including accidental death. Coverage shall not contain any endorsement(s) excluding nor limiting Contractual Liability or Cross Liability. If the contract involves any underground/digging operations, the general liability certificate shall include X, C and U (Explosion, Collapse and Underground) coverage.
18. Contract Documents. This Agreement includes the following exhibits or attachments, which are incorporated herein by reference:

Attachment and Description

Attachment A	Design Specifications for New Sign
Attachment B	Site Plan

In the event of a conflict between the terms of an exhibit/attachment and the terms of this Agreement, the terms of this Agreement controls.

19. Entire Agreement. This Agreement represents the entire and integrated Agreement between Summit and City relative to the Scope of Work for the Project described herein. All previous or contemporaneous agreements, representations, promises and conditions relating to Summit's services described herein are superseded.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement in triplicate the day and the year of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

Date: _____

CERTIFICATION: I hereby certify that this contract is within the purpose of the appropriation to which it is to be charged, Account No. _____, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

By: _____
John Blattel, Director of Finance

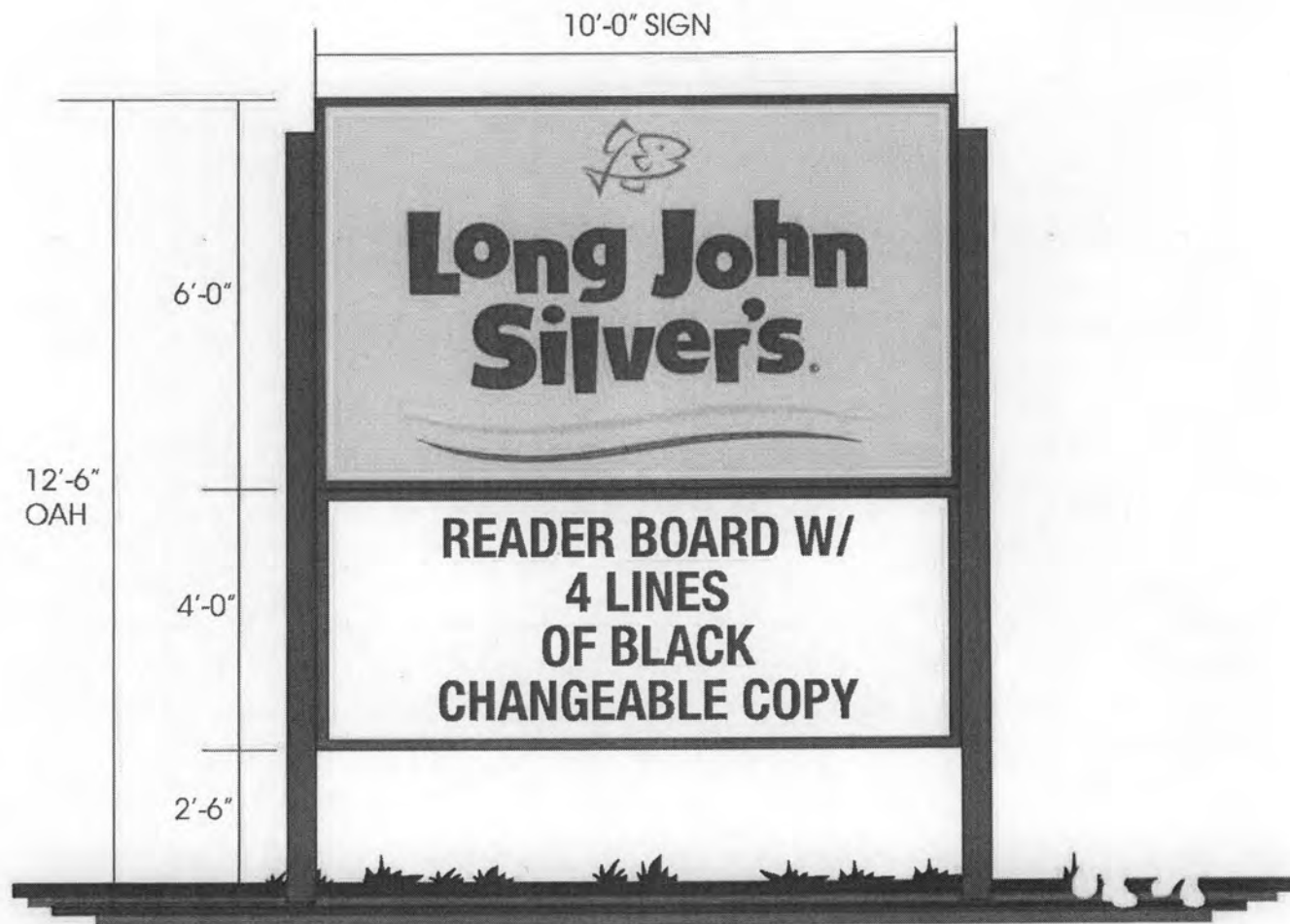
SUMMIT EATERIES, L.L.C

By: Lisa Vaughan
Title: Controller

Date: 11/26/14

ATTEST:

By: Bria Ziegelstein
Title: HR Director
Date: 11/26/14

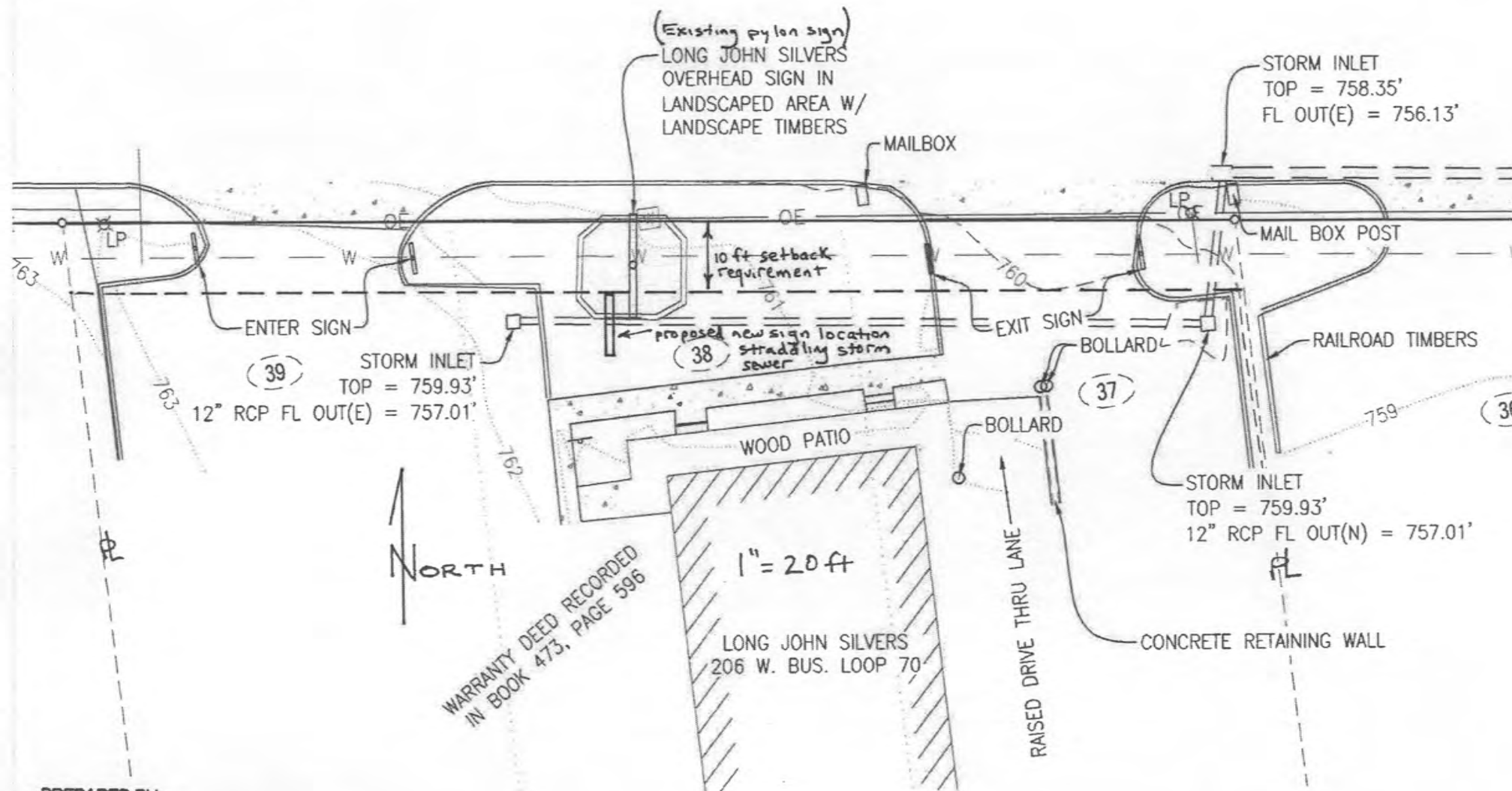


NOTE:

Cold formed polycarbonate on a piano hinge that is lockable and will cover the readerboard from vandalism.

		<small>DISCLAIMER: Renderings are for pricing purposes only, and not intended for actual construction dimensions. For detailed requirements, actual dimensions and additional detail, please refer to engineering specifications and installation drawings. These drawings and designs are the exclusive property of Everbrite LLC. Use of, or duplication in any manner without express written permission of Everbrite LLC is prohibited.</small>	
Customer: LJS		Description:	
Project No: 316582-4	Scale: 1/4"=1'-0"	16'X10' Monument Sign w/ Reader Board 12'-6" OAH	
Date: 7/22/14	Drawn By: RB	Revised: 8/27/14, 9/4/14	
Location & Site No: 206 BUSINESS LOOP I-70 COLUMBIA, MO Site: LJS206		Revised:	
		CUSTOMER SIGNATURE	DATE
		LANDLORD SIGNATURE	DATE

BUSINESS LOOP
70 WEST



PREPARED BY:

CROCKETT

ENGINEERING CONSULTANTS
2608 North Stadium Boulevard
Columbia, Missouri 65202
(573) 447-0292

www.crockettengineering.com

Crockett Engineering Consultants, LLC
Missouri Certificate of Authority
#2000151304

ATTACHMENT B