

AN ORDINANCE APPROVING AN AGREEMENT FOR ENGINEERING SERVICES AND OTHER PREPARATORY WORK WITH THE EMPIRE DISTRICT ELECTRIC COMPANY, D/B/A LIBERTY RELOCATION COSTS OF TELECOMMUNICATION FACILITIES RELATING TO THE W. 76 COUNTRY BLVD. SEGMENTS 1 & 2 CONSTRUCTION PROJECT, REPLACING THE UTILITY AGREEMENT WITH LIBERTY APPROVED BY ORDINANCE NO. 2025-0021 AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT.

WHEREAS, the City of Branson desires to contract with the Empire District Electric Company, d/b/a Liberty for relocation costs of Telecommunication Facilities relating to the W. 76 Country Blvd. Improvements Segments 1 & 2 construction project; and

WHEREAS, during the April 22, 2025 Board of Aldermen meeting, Ordinance No. 2025-0021 was approved and executed by the Mayor approving 5 contracts for relocation costs of utilities related to the West 76 Country Boulevard Improvements Segment 1 and 2 Project;

WHEREAS, after this meeting, it was discovered additional changes were needed regarding the contract with Liberty; and

WHEREAS, the Agreement attached as Exhibit "1" with the Empire District Electric Company, d/b/a Liberty reflects all changes agreed upon by the City and Liberty and will replace "Exhibit 1 – The Empire District Electric Company, d/b/a Liberty in the amount not to exceed \$1,365,771.08" in Ordinance No. 2025-0021; and

WHEREAS, the Board of Aldermen desires to approve the Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The Board of Aldermen hereby approves the Agreement for Engineering Services and other Preparatory Work with The Empire District Electric Company, d/b/a Liberty for the relocation costs of Telecommunication Facilities relating to W. 76 Country Blvd. Improvements Segments 1 & 2 Project as specified in the related specifications and substantial conformity with the terms shown on Exhibit "1" attached in the amount not to exceed \$1,365,771.08 and replaces the contract approved as Exhibit "1" in Ordinance No. 2025-0021. All incorporated by this reference as set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The Mayor, City Administrator, and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

Section 2: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this 27th day of May, 2025.

Read, this second time, passed, and truly agreed to by the Board of Aldermen of City of Branson, Missouri this 10th day of June, 2025.



Larry D. Milton
Mayor

ATTEST:

APPROVED AS TO FORM:



Hillary Briand
City Clerk



Sally McGee
City Attorney



Liberty

Office Use Only
MASTER CONTRACT NUMBER:
C2025-0139

Project Identifier(s): RD MV West 76 Country Blvd

**AGREEMENT FOR ENGINEERING SERVICES
AND OTHER PREPARATORY WORK**

This Agreement for Engineering Services and Other Preparatory Work (this "Agreement") is by and between The Empire District Electric Company d/b/a Liberty, a corporation organized under the laws of the state of Kansas, licensed to and transacting business in the states of Missouri, Kansas, Oklahoma, and Arkansas, with its principal place of business in Joplin, Missouri ("Liberty" or the "Utility") and City of Branson ("Customer"). The parties to this Agreement may be collectively referred to as the "Parties" or individually referred to as a "Party."

In consideration of the premises and the mutual covenants set forth herein, the Utility and Customer agree as follows:

Recitals

1.1 Liberty is an investor-owned, vertically-integrated, regulated utility providing electric service in its certificated areas.

1.2 Customer owns and/or otherwise lawfully possesses certain real estate in Taney County, Missouri, with an address of West 76 Country Boulevard RD MV

1.3 Liberty provides electric service to the Property, and Customer intends to make changes or improvements to the Property that may require changes to the current electric facilities installed near and/or around the Property. **Attachment A** further describes the Customer's planned changes or improvements to the Property and the potential changes to the Utility's electric facilities that may be necessary or requested.

1.4 Liberty will need to engage in engineering, permitting, land/easement acquisition and/or other investigation regarding its electric facilities and the Customer's intended changes or improvements to the Property ("Preparatory Work").

1.5 Upon completion of the Preparatory Work, if Customer elects to proceed with changes or improvements to the Property that will require changes to the current electric facilities installed near and/or around the Property, Utility and Customer will enter into a separate agreement for further services.

Term and Termination

2.1 This Agreement shall become effective upon execution by both Parties and shall be in effect until completion of the Preparatory Work, unless terminated earlier pursuant to the terms hereof.

2.2 This Agreement may be terminated early by Customer upon thirty days advance written notice to Utility, subject to payment of early termination costs.

2.3 If Customer elects to terminate this Agreement pursuant to Article 2.2 above, or if the Agreement is terminated pursuant to Article 2.4 below, Customer shall pay all Preparatory Work costs incurred (including any cancellation costs relating to orders or contracts for facilities and equipment) or charges assessed by any other entity, as of the date of receipt of notice of termination, that are the responsibility of Customer under this Agreement.

2.4 In the event of a billing dispute between the Parties or of Customer's otherwise



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failure to make payments when due, Utility shall continue to provide services under this Agreement as long as Customer: (i) continues to make all payments not in dispute; and (ii) pays to Utility or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Customer fails to meet these two requirements for continuation of service, then Utility may provide notice to Customer of a default and this Agreement shall terminate upon the date of said notice, subject to Customer’s obligation to pay early termination costs.

2.5 The terms of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this Agreement, and to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

Payment

3.1 Customer shall make an initial payment (“Initial Payment”) equal to 30% of the total estimated Preparatory Work costs outlined below. The Initial Payment shall be provided to Utility within 30 days of the effective date of this Agreement and prior to Utility commencing any work. If this Agreement is terminated early, then the Initial Payment shall be refunded less any costs retained by Utility as described above (early termination costs).

CATEGORY	ESTIMATED PRICE	REIMBURSABLE	NON-REIMBURSABLE
Materials	\$445,548.87	\$445,548.87	
Const.	\$692,593.70	\$692,593.70	
ENG	\$227,628.51	\$227,628.51	
TOTAL	\$1,365,771.08	SUM: \$1,365,771.08	SUM:

Total estimated reimbursable cost for Preparatory Work: \$ 409,731.32

3.2 Customer agrees with the precursory findings above and authorizes the reimbursement of fees in accordance with this Agreement. Additional design iterations required by Customer will be billed as actual costs once the agreed upon 30% design deliverable is accepted and approved in writing by Customer and Utility.

3.3 Utility shall submit to Customer, on not more than a monthly basis, invoices of amounts due for the work performed.

3.4 Following completion of the Preparatory Work, Utility shall provide Customer with an invoice of the final cost due under this Agreement.

3.5 Invoices shall be paid in full within 60 days.

Performance Standards

4.1 Each Party shall perform all of its obligations under this Agreement in accordance with applicable laws and regulations and standard practices.

4.2 If the Preparatory Work involves facilities located on property owned by persons other than Customer and/or if future work will be necessary on property owned by persons other than Customer, Utility shall, at Customer’s expense, use best efforts to procure from such persons



Project Identifier(s): RD MV West 76 Country Blvd

any rights of use, licenses, rights of way, and/or easements that are necessary to effectuate the request of Customer.

4.3 Utility and Customer shall cooperate with each other in good faith in obtaining all permits, licenses, and authorizations that may be necessary and in otherwise performing their obligations under this Agreement.

4.4 Utility and Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as requested and in accordance with good utility practice.

4.5 Each Party shall make freely available to the other all directly pertinent books, documents, papers and records involving transactions related to or work to be performed under this Agreement.

4.6 Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party.

4.7 To the fullest extent permitted by law, Customer and its successors, assigns, and guarantors shall defend, indemnify and hold harmless Utility and its agents, employees, representatives, officers, directors, parents, subsidiaries, affiliates, consultants, insurers and/or sureties, from and against any and all liabilities, claims, direct damages, direct losses, costs, expenses (including but not limited to, attorney's fees, court costs and appellate proceedings), injuries, causes of action, or judgments related to Utility's performance under this Agreement, unless the sole cause of such liability and/or claim is the result of an intentional wrongful act by Utility or someone acting under it. Customer shall defend Utility at Customer's expense with legal counsel reasonably acceptable to Utility. This indemnity clause shall apply to any claim arising out of, related to or in any way incident to the performance of the Preparatory Work by Utility.

4.8 Nothing in this Agreement shall prevent Utility from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement.

4.9 Should Utility engage contractors, subcontractors, and/or consultants to perform any of the Preparatory Work or otherwise perform under this Agreement, all such work so performed shall be in compliance with the terms, provisions and conditions of this Agreement.

4.10 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to any work to be performed hereunder if reasonably expected to affect the other Party.

Miscellaneous Provisions

5.1 The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the laws of the state of Missouri, without regard to its conflicts of law principles.

5.2 No Party shall be liable to the other Party for any delay or failure in the performance of any of its obligations hereunder if and to the extent such delay or failure is a result of Force Majeure, meaning any act or event that (i) delays the affected Party's performance of its obligations, (ii) is beyond the reasonable control of the affected Party and is not due to its fault or negligence, (iii) is not reasonably foreseeable, and (iv) could not have been prevented or avoided by the affected Party through the exercise of due diligence, including (to the extent consistent with the foregoing) any act of God, pandemics, any act or omission of any government authority,

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explosions, fire, riot, and war. Force Majeure shall not include: (a) economic hardship; (b) changes in market conditions; (c) failure to timely apply for permits or approvals; (d) any act or event to the extent resulting from the fault or negligence of any person claiming Force Majeure; or (e) the financial inability of any person to perform its obligations under the Agreement. No Force Majeure shall relieve, suspend or otherwise excuse any Party from performing any obligation to make any payment owed to another Party or to indemnify, defend, or hold harmless another Party. Upon the occurrence of a Force Majeure (or as soon as reasonably practicable thereafter), the Party declaring the Force Majeure shall act to resume normal performance within the shortest time practicable, taking into account the consequences resulting from such event of Force Majeure.

5.3 Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Customer and Utility, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.4 **Conflicts.** No salaried officer or employee of the City and no member of the Board of Alderman shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders the Agreement void. Any federal regulations and applicable provisions in Section 105.450 *et seq.* RSMo. shall not be violated. Utility covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this Agreement. The Utility further covenants that in the performance of this Agreement no person having such interest shall be employed.

5.5 **Discrimination.** The Utility agrees in the performance of this Agreement not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Utility or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

5.6 **General Independent Contractor Clause.** This Agreement does not create an employee/employer relationship between the Parties. It is the Parties' intention that the Utility will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, Missouri Prevailing Wage requirements, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Utility will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Utility's activities and responsibilities hereunder. The Utility agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Utility and the City, and the City will not be liable for any obligation incurred by the Utility, including but not limited to unpaid minimum wages and/or overtime premiums.

5.7 **No Third-Party Benefits.** This Agreement shall not be deemed to create any third-party benefit hereunder for any member of the public or to authorize anything or anyone, not a party hereto, to maintain suit pursuant to the terms of this Agreement.



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5.8 **City Benefits.** The Utility shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

5.9 **Non-Agency.** The parties agree that nothing contained in this Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties.

5.10 **Insurance.** Utility agrees to maintain insurance as set forth below and provide to City certificates of coverage evidencing said coverage at the time of signing this Agreement, if requested, and on each anniversary of such insurance coverage during the term of this Agreement and any renewals, if requested, which certificates shall contain a provision that the policy will not be cancelled unless and until thirty (30) days' notice of said cancellation has been given to the City, but, in any event, the Utility, any time after the Agreement has been signed, shall notify the City of any impending cancellation, actual cancellation, termination or nonrenewal of the policy by faxing or delivering to the City a copy of the insurer's cancellation, termination or nonrenewal notice to Utility within ten (10) business days of Utility's receipt of said notice. Utility shall also advise the City in writing within ten (10) business days of any oral or other advisement by the insurer of any impending cancellation, actual cancellation, termination or nonrenewal of the policy. (If the City gives written permission for some of the work under this Agreement to be subcontracted or it is subcontracted, Utility shall assure that the subcontractor has the insurance set forth below and that the City and Utility are listed as an additional insured on all of subcontractor's policies):

Comprehensive General Liability. Minimum limit of \$1,000,000 combined single limit, \$2,000,000 annual aggregate for bodily injury and property damage per occurrence with City named as an additional insured on the policy.

Comprehensive Automobile Liability. \$1,000,000 combined single limit with City named as an additional insured on the policy.

Workers' Compensation. Statutory requirements.

The provision of insurance shall not be construed, nor is it intended to be a waiver of sovereign immunity or any other defense available to City, its officers, agents or employees except to the extent insurance coverage is actually provided.

5.11 **Missouri Immigration Law Affidavit.** After January 1, 2009, Utility takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The Utility's execution of this Agreement constitutes certification of compliance with this provision.

5.12 **Anti-Discrimination Against Israel Act.** If this agreement has a total potential value of \$100,000 or more and Utility has 10 or more employees, the following applies: Pursuant to Section 34.600, RSMo, Utility agrees to comply with Missouri law regarding the Anti-Discrimination Against Israel Act, and execution of this Agreement constitutes Utility's certification of compliance with the Anti-Discrimination Against Israel Act, including that it is not currently engaged in, and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in, or with, Israel companies authorized by, licensed by, or organized under, the laws of the State of Israel; or persons or entities doing business in the State of Israel.



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5.13 **Equal Employment Opportunity.** During the performance of this Agreement, Utility agrees that Utility will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, national origin, or any other legally protected category.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

UTILITY: THE EMPIRE DISTRICT ELECTRIC COMPANY d/b/a LIBERTY

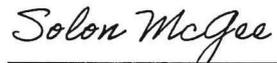
CUSTOMER: CITY OF BRANSON, MISSOURI

By: 
Name: Tim Wilson
Title: President - Electric
Date: 5-20-25

Larry Milton, Mayor
Date: _____
ATTEST:

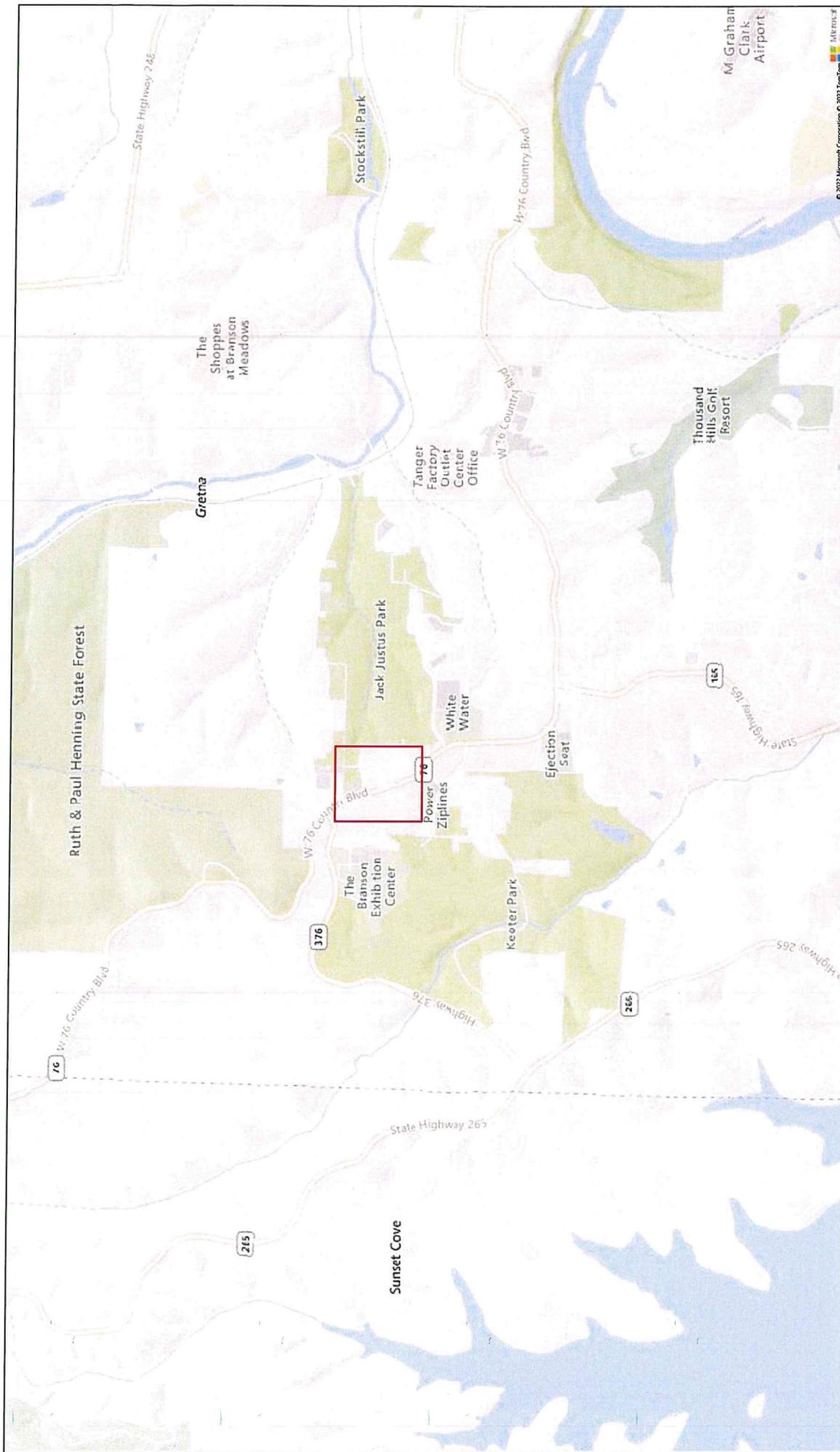
Hillary Briand
City Clerk

APPROVED AS TO FORM:

 05/23/2025
City Attorney Date

ATTACHMENT A – LOCATION AND INITIAL REQUEST

[PROVIDE MAP AND THE WRITTEN REQUEST FROM CUSTOMER]



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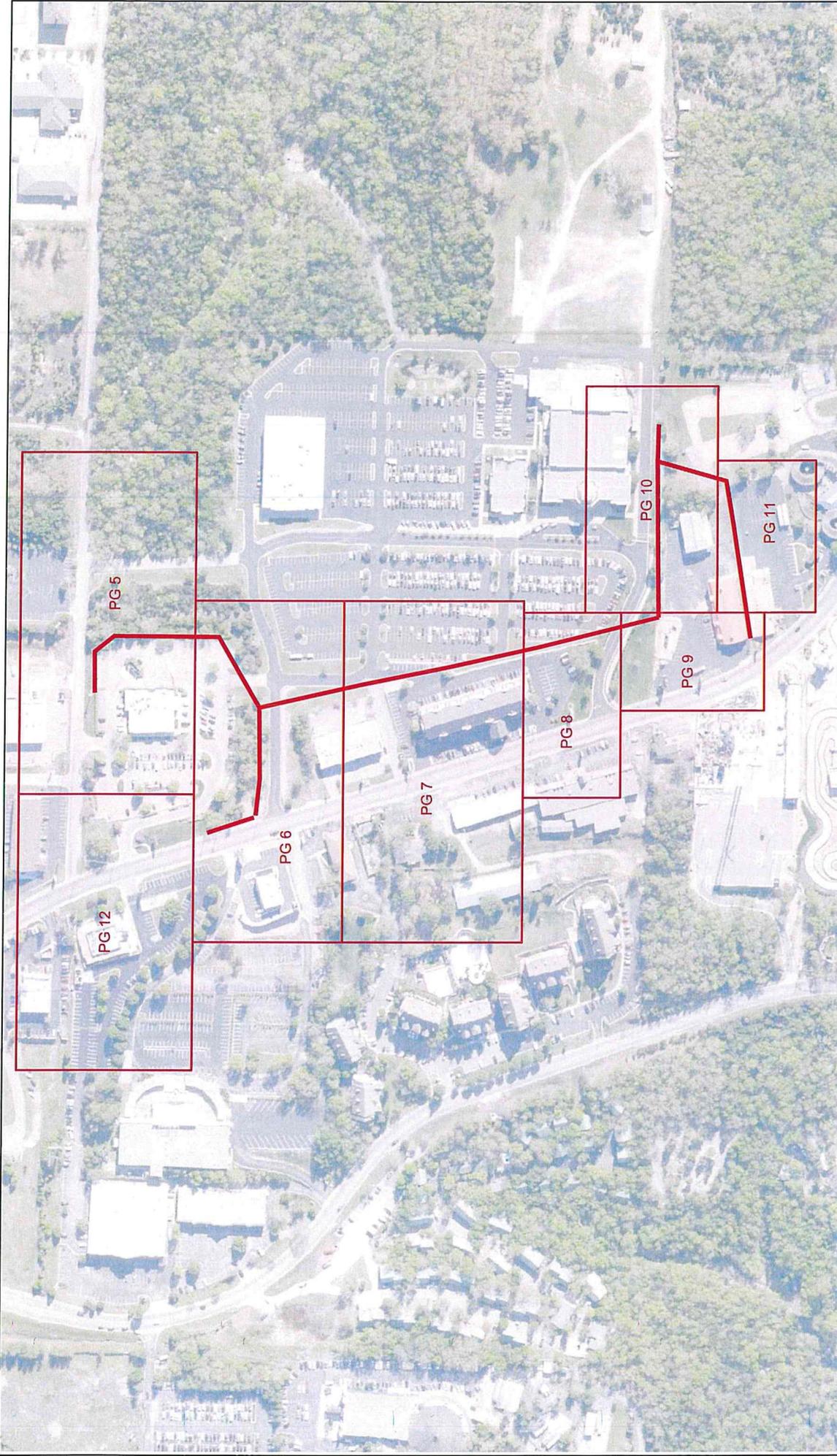
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DRAWING	V001	PAGE: 3	OF #
		DATE: 12/23/2022	REV: 0

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BRANSON, MO
TANEY COUNTY

05-20-2025

*****PRELIMINARY DESIGN*****

RD MV West 76 Blvd



PRELIMINARY DESIGN RD MV West 76 Blvd 05-20-2025		S35 T23N R22W BRANSON, MO TANEY COUNTY			W 76 COUNTRY BLVD RELOCATE CKT. 4332, 4333 BRANSON, MO DRAWING K001	LOCATION BRANSON, MO ENG BY: WAN DRAWN BY: LKJ APV BY: JEB SCALE: NTS T&D AREA WORK ORDER # JOB # TBD 209 TBD PAGE: 4 OF # DATE: 12/23/2022 REV 0
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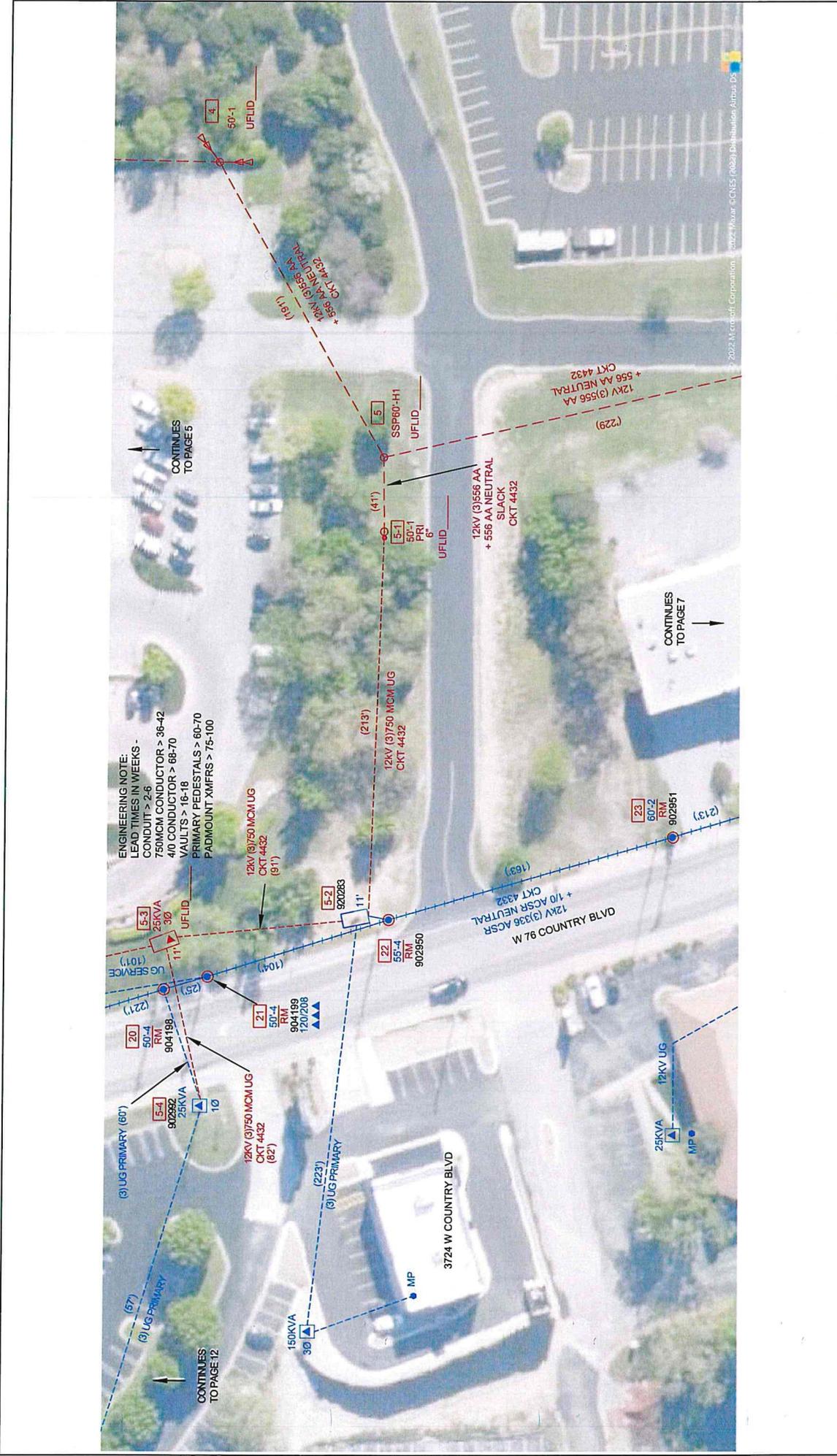
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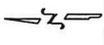
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ENGINEERING NOTE:
 LEAD TIMES IN WEEKS -
 CONDUIT > 2-6
 750MCM CONDUCTOR > 36-42
 4/0 CONDUCTOR > 68-70
 VAULTS > 16-18
 PRIMARY PEDESTALS > 60-70
 PADMOUNT XMFERS > 75-100

W 76 COUNTRY BLVD RELOCATE		LOCATION	BRANSON, MO
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 TANEY COUNTY

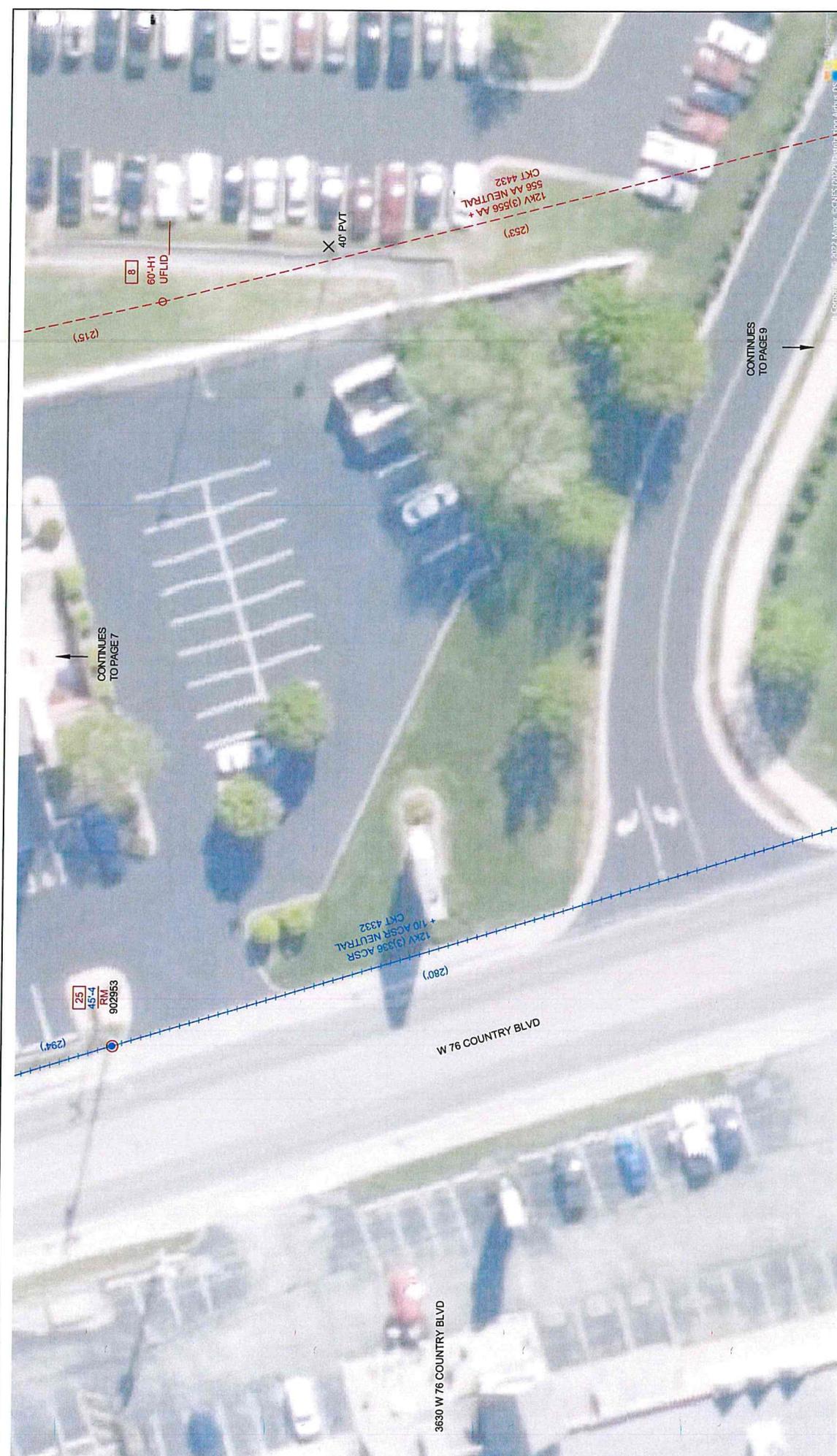


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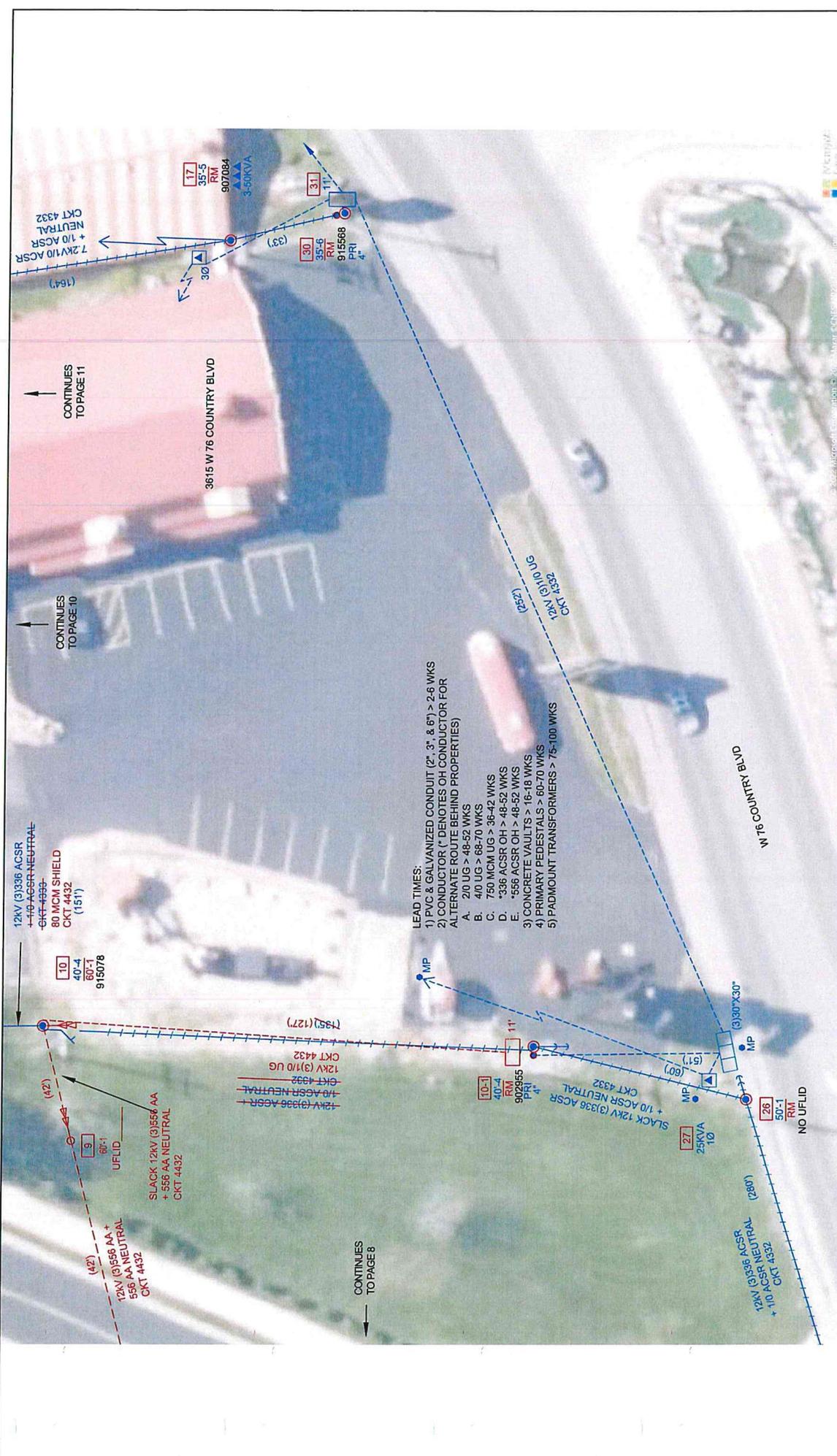
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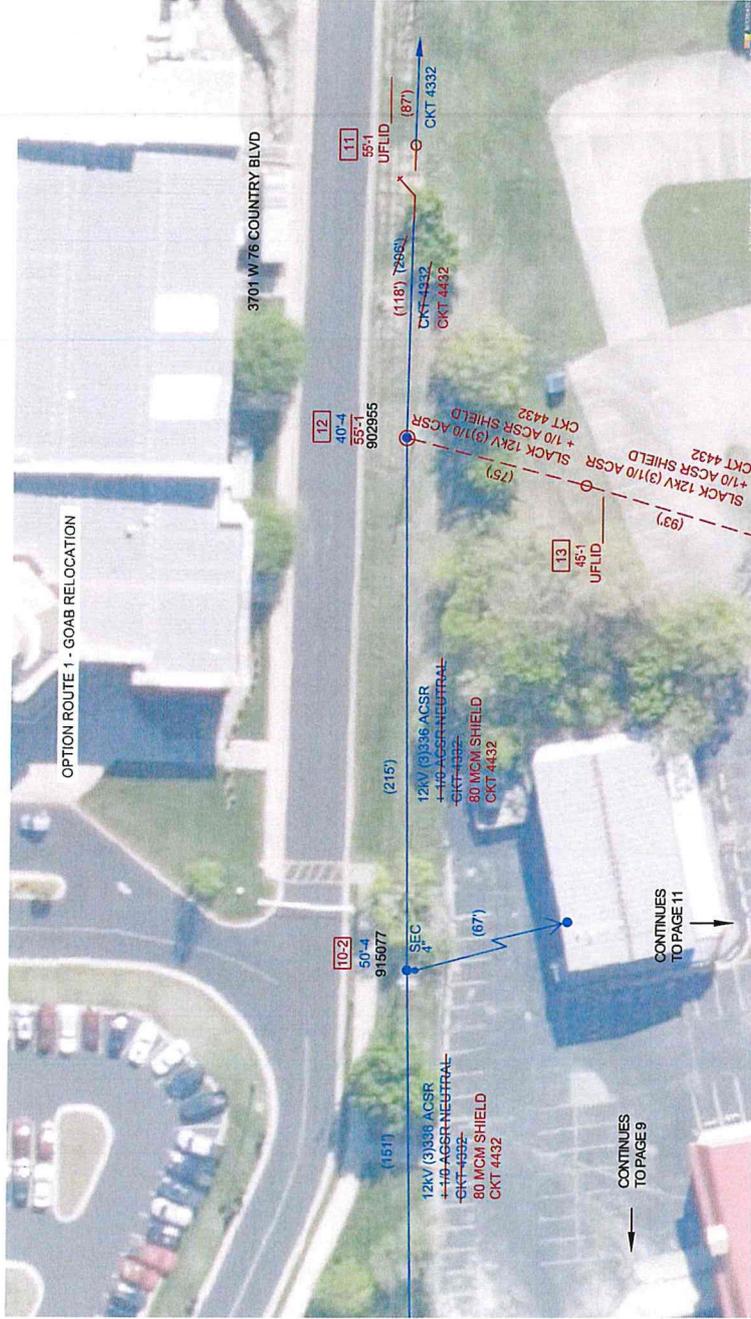


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RD MV West 76 Blvd



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W 76 COUNTRY BLVD RELOCATE
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BRANSON, MO
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BRANSON, MO
TANNEY COUNTY

05-20-2025

*****PRELIMINARY DESIGN*****

RD WY West 76 Blvd

DRAWING LEGEND

DESCRIPTION	EXISTING	NEW	REMOVE/ REPLACE
ANCHOR			
POLE			
JOINT USE POLE			
CUTOUT			
RECLOSER			
CAPACITOR			
TREES OR BRUSH			
OPGW SLACK LOOP			
LIGHTNING ARRESTER			
FLOOD LIGHT			
POL/STLT			
4' VAULT			
1Ø XFMR			
3Ø XFMR BANK			
CONDUCTOR			
SPAN LENGTH			



W 76 COUNTRY BLVD RELOCATE
CKT 4332, 4333
BRANSON, MO

DRAWING: L001

LOCATION: BRANSON, MO

ENG BY: WAN DRAWN BY: LKJ APV BY: JEB

SCALE: NTS T&D AREA WORK ORDER #

JOB #: TBD 209

PAGE: 19 OF # DATE: 12/23/2022 REV: 0

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RD MV West 76 Blvd