

A G E N D A
WORK SESSION MEETING
City of Moberly
June 20, 2022
6:00 PM
AMENDED AGENDA

Requests, Ordinances, and Miscellaneous

1. Appointment for two members to the Airport Advisory Board.
2. Infill Redevelopment Request From Janelle Jacobson For 1042 West End Place From The City.
3. Receipt Of Bids For Red 1 Field Renovation And Irrigation.
4. A Resolution Approving A Governmental Consulting Services Agreement Between The City Of Moberly, Missouri And Zamkus And Associates, LLC And Authorizing The City Manager To Execute The Agreement On Behalf Of The City.
5. An Ordinance Approving a Settlement Agreement and Providing Further Authority.
6. An Ordinance Approving An Equipment Storage And Stand-By Installment Purchase Agreement; And Providing Further Authority.
7. **A Discussion Regarding A Change Order For Wastewater Treatment Plant Biosolids Disposal Site Opportunity To Maximize Site Benefit.**

City of Moberly

City Council Agenda Summary

Agenda Number: _____

WS #1.

Department: Comm. Dev.

Date: June 20, 2022

Agenda Item: Appointment for two members to the Airport Advisory Board.

Summary: Two (2) terms for the Airport Advisory board expire in July. We advertised for applicants and received two (2) applications that are attached.

Recommended Action: Bring forward to the July 5, 2022 regular City Council meeting for final approval and appointment.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract
<input checked="" type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____

Roll Call

Aye

Nay

Mayor

M___ S___ Jeffrey

Council Member

M___ S___ Brubaker

M___ S___ Kimmons

M___ S___ Kyser

M___ S___ Lucas

Passed Failed

City of

Moberly!

Board/Commission Application Form

Individuals serving on boards or commissions play an important role in advising the City Council on matters of interest to our community and its future. For the most part, Board and Commission members must be residents of City of Moberly. When a vacancy occurs, an announcement of that vacancy will be posted. The City Council will review all applications. The appointment will be made at a formal City Council meeting. Appointees serve as unpaid volunteers.

This application is a public document and as such it or the information it contains may be reproduced and distributed. This application will remain active for two years and you will automatically be considered for any vacancy occurring during that time.

Name of Board or Commission: Airport Advisory Board Date: 6-1-2022

Your Name: Lori Miller Street Address: #4 Fair Oaks

Phone number(s): (evening) 660-998-1386 (day) 660-998-1386

Email: lori@theprecisionline.com

Do you live within the corporate limits of City of Moberly? Yes / No

How long have you been a resident of City of Moberly? Yes, resident since 1983 approx. (prior 1959-1977)

Occupation: Printing Sales / Business Owner Employer: Precision Printing

Optional Questions (use back of application if necessary)

What experience and/or skills do you have that might especially qualify you to serve on this board or commission?

Seeking a second term. (See prior application for detailed specifics) Married to Roy Miller (pilot, airplane builder / restorer) and his partner in Miller Wings with leased hangar space (2) at the Omar N Bradley airport. Experience of visiting many FBO's across the country and their operation.

Have a second home at Spruce Creek Fly-In, the largest live-in airpark and observe and abide by their POA and airport operations. Skills are in management, clerical and have marketing / communication degrees from Truman State University.

What particular contributions do you feel you can make to this board or commission?

Experienced business owner who understand budgets, operations and policies. Knowledgeable and nvolved in the Moberly (Randolph County) community for over 60 years. Have vocations understanding of airplanes and airport operations.

I will attend meetings in accordance with the adopted policies of City of Moberly, Missouri. If at any time my business or professional interests conflict with the interests of the Commission, I will not participate in such deliberations. References may be secured from the following individuals:

1. Dennis Snodgrass (current board member) Phone:
2. Bill Stuart Phone: 573-442-5300
3. Shirley Olney / Tom Sanders Phone: 660-269-8705


Signature of Applicant

*Additional Information may be attached to this form.

Return to: City of Moberly, 101 West Reed Street, Moberly, MO 65270

City of

Moberly!

WS #1.

Board/Commission Application Form

Individuals serving on boards or commissions play an important role in advising the City Council on matters of interest to our community and its future. For the most part, Board and Commission members must be residents of City of Moberly. When a vacancy occurs, an announcement of that vacancy will be posted. The City Council will review all applications. The appointment will be made at a formal City Council meeting. Appointees serve as unpaid volunteers.

This application is a public document and as such it or the information it contains may be reproduced and distributed. This application will remain active for two years and you will automatically be considered for any vacancy occurring during that time.

Name of Board or Commission: Airport

Date: 6/14/22

Your Name: Wren Schenker

Street Address: 615 E Elm St Huntsville

Phone number(s): (evening) 573-473-6369

(day) same

MO 65259

Email: edcaviation11c@gmail.com

Do you live within the corporate limits of City of Moberly? Yes ☒ No ☐

How long have you been a resident of City of Moberly? Don't

Occupation: AMT

Employer: SELF

Optional Questions (use back of application if necessary)

What experience and/or skills do you have that might especially qualify you to serve on this board or commission?

I'm a pilot / Mechanic

What particular contributions do you feel you can make to this board or commission?

My knowledge of Aircraft and Airport operations

I will attend meetings in accordance with the adopted policies of City of Moberly, Missouri. If at any time my business or professional interests conflict with the interests of the Commission, I will not participate in such deliberations. References may be secured from the following individuals:

1. Roy Miller

Phone: 660 651 5329

2. Tom Sanders

Phone: 660 353 1505

3. Debbie Snodgrass

Phone: 660 651 0541

Wren Schenker

Signature of Applicant

*Additional Information may be attached to this form.

Return to: City of Moberly, 101 West Reed Street, Mo 4 y, MO 65270

City of Moberly

City Council Agenda Summary

Agenda Number: _____

WS #2.

Department: Public Works

Date: June 20, 2022

Agenda Item: Janelle Jacobson has requested 1042 West End Place from the city for infill re-development.

Summary: Miss Jacobson contacted Tom Sanders about 1042 West End Place. She requested the property to build a home on. This is a City owned lot that is on the list for infill re-development. Attached is a photo of the type of home she would like to have built, and the coo agreement.

Recommended Action: Direct staff to bring forward to July 5, 2022 regular City Council meeting for final approval.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:

___ Memo	___ Council Minutes
___ Staff Report	___ Proposed Ordinance
___ Correspondence	___ Proposed Resolution
___ Bid Tabulation	___ Attorney's Report
___ P/C Recommendation	___ Petition
___ P/C Minutes	___ Contract
___ Application	___ Budget Amendment
___ Citizen	___ Legal Notice
___ Consultant Report	___ Other <u>Agreements</u>

Roll Call

Aye Nay

Mayor

M___ S___ **Jeffrey** ___ ___

Council Member

M___ S___ **Brubaker** ___ ___

M___ S___ **Kimmons** ___ ___

M___ S___ **Kyser** ___ ___

M___ S___ **Lucas** ___ ___

Passed

Failed



COOPERATIVE AGREEMENT FOR INFILL DEVELOPMENT

THIS COOPERATIVE AGREEMENT FOR INFILL DEVELOPMENT (this "Agreement") is made and entered into as of this _____ day of _____, 2022 (the "Effective Date") by and between THE CITY OF MOBERLY, a city of the third class and a Missouri municipality having a principal office at 101 West Reed Street, Moberly, Missouri, 65270 (the "City") and Janelle Jacobson, an individual residing in Moberly, Missouri (the "Developer").

RECITALS

A. The Developer wishes to acquire and redevelop Property which is currently underutilized and which activities by the Developer the City recognizes will facilitate the City's economic development goals and improve property values in the area where the Property is located.

B. The City is willing to convey the Property to the Developer pursuant to the terms of this Agreement in exchange for the Developer's promise to construct a residence on the Property, all in accordance with the terms of this Agreement and building plans submitted to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and the mutual promises and covenants set forth in this Agreement, the City and Developer each hereby agrees as follows:

ARTICLE I.

THE PROPERTY AND CONSTRUCTION

Section 1.1. Conveyance of the Property. Subject to the terms and conditions of this Agreement, the City agrees to convey infill property zoned for residential use in exchange for Developer's agreement to construct a residence in conformance with building plans submitted and approved by the City.

Section 1.2. The Property. The Property shall mean the property at 1042 West End Place, Moberly, Missouri and further legally described as Lot 11 in Block 3 of Tannehills Third Addition to the City of Moberly, Randolph County, Missouri.

Section 1.3. New Construction. The Developer shall deposit \$1,000.00 (the "deposit") within thirty (30) days of the Effective Date for payment of all permitting charges, tap fees or any other City charges for new construction. The Developer shall pay for all permitting fees and other standard construction costs which costs will be deducted from the deposit. Developer shall submit building plans and make application for a building permit within six (6) months of the Effective Date. Developer agrees to initiate construction within thirty (30) days of receipt of the building permit. Developer agrees to complete construction of the residence within one (1) year of the Effective Date. Developer agrees to abide by all construction standards required under city Building Regulations and Inspections.

Section 1.4. Local Sales Tax Abatement. Upon issuance of an occupancy permit Developer shall submit to the City all receipts for all construction materials purchased locally for the project. City agrees

to reimburse Developer for all local sales taxes as reflected in the receipts as an economic incentive for the project.

ARTICLE II. CONVEYANCE AGREEMENT

Section 2.1. Transfer of the Property. Subject to the terms and conditions of this Agreement and within thirty (30) days of the acceptance by the City of the site and building plan(s) and issuance of the building permit, the City agrees to convey the Property at closing. The purchase price for the Property shall be One Dollar (\$1.00) and other good and valuable consideration as stated herein.

Section 2.2. Deed. The conveyance of title shall be by Quit-Claim deed in which the City shall convey to Developer all the right, title and interest held by the City in the Property and not by Warranty Deed. City makes no warranties as to the merchantability of title. Developer agrees to record the Quit-Claim deed contemporaneously with delivery of the deed.

Section 2.3. Events of Closing.

(a) Each Party shall execute, acknowledge, and deliver, after the closing, such further assurances, instruments and documents as the other may reasonable request in order to fulfill the intent of the Purchase Agreement and the transactions contemplated hereby.

(b) If Developer desires a Title Commitment be issued prior to closing, Developer shall pay the costs of any title commitment and for premiums on any owner's policy of title insurance, and any title endorsements to any such policy, issued by the Title Company that the Developer elects to obtain on the Property. All outstanding real estate taxes, and all other public or governmental charges and public or private assessments against the Property which are or may be payable on an annual basis (including liens or encumbrances for sewer, water, drainage or other public improvements whether completed or commences on or prior to the Effective Date or subsequent thereto), shall be paid by Developer. All other costs of closing shall be borne by the Developer including, without limitation, any applicable state, county and municipal transfer taxes, closing costs and recording fees charged by the Title Company.

(c) **BY CLOSING ON THE PROPERTY, THE DEVELOPER ACKNOWLEDGES THAT THE DEVELOPER HAS HAD ADEQUATE OPPORTUNITY TO INSPECT, REVIEW AND CONSIDER ALL MATTERS AFFECTING THE USE, OWNERSHIP AND DEVELOPMENT OF THE PROPERTY AND THAT THE CONVEYANCE OF SAME BY THE CITY IS TO BE MADE ON AN "AS IS/WHERE IS" BASIS AND WITHOUT RECOURSE TO THE CITY. THE CONVEYANCE OF THE PROPERTY SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY IMPLIED WARRANTY OR MERCHANTABILITY, FITNESS OR HABITABILITY, GOOD OR FAIR CONDITION OR REPAIR OR GOOD AND WORKMANLIKE CONSTRUCTION AND (ii) ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO SITE CONDITIONS AS OF THE EFFECTIVE DATE AND OF THE CLOSING AND CONVEYANCE OF THE PROPERTY OR POTENTIAL LIABILITIES UNDER OR WITH RESPECT TO ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAW OR REGULATION, ALL OF**

WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED BY THE CITY AND EACH OF WHICH DISCLAIMERS IS HEREBY AGREED TO AND ACCEPTED BY THE DEVELOPER.

Section 2.4. Real Estate Brokers. The City and Developer hereby state and warrant to each other that neither has dealt with any real estate broker, agent or salespersons in connection with this transaction and the sale of the Property. To the full extent permitted by law, the City and Developer each agree to indemnify and hold the other harmless against any claims for real estate commissions or consultant fees claiming representation of such party in this transaction. Such obligations to indemnify and hold harmless shall include, without limitation, all costs and attorneys' fees relating to litigation and other proceedings.

ARTICLE III BREACH

Section 3.1. Breach and Compliance; Right to Cure; Remedies Not Exclusive. In the event of substantial non-compliance with any of the terms of this Agreement, written notice of same may be delivered to the Developer by the City, and, if the Developer shall not have corrected such substantial non-compliance within Forty-five (45) days after receipt of such notice the City may institute such proceedings as may be necessary or desirable in the City's sole opinion to cure and remedy such default including, without limitation, the remedy of specific performance. If Developer fails to correct any such substantial non-compliance as herein provided it shall forfeit the deposit. None of the foregoing remedies shall be exclusive or any other remedy otherwise available to the City at law or in equity and any and all such remedies may be exercised by the City individually, sequentially, collectively, or in the alternative, all at the City's sole discretion.

ARTICLE IV MISCELLANEOUS PROVISIONS

Section 4.1. No Assignment. Neither Party shall be permitted to sell, assign or otherwise transfer its interest in the Agreement in whole or in part to any other individual or entity.

Section 4.2. Term of Agreement. This Agreement shall continue in force until the date of the issuance of the last Certificate of Occupancy for any Building(s) on the Property. The rights and privileges granted to and the duties and obligations imposed on the Developer by this Agreement shall apply only to the Property.

Section 4.3. Notices. Whenever notice or other communication is called for in this Agreement to be given or is otherwise given, such notice shall be in writing addressed to the addressees at the address set forth below, and transmitted by first class mail:

City:	City of Moberly	
	Attention: Tom Sanders	Moberly, Missouri 65270
Developer:	Janelle Jacobson	Moberly, Missouri 65270

Section 4.4. Choice of Law; Venue; Waiver of Objections. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. The Parties agree that any action at law,

suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri and waive any objection based upon venue or forum non conveniens or otherwise.

Section 4.5. Entire Agreement; Amendments; No Waiver by Prior Actions. The Parties agree that this Agreement constitutes the entire agreement between them and no other agreements or representations have been made by the Parties. This Agreement shall only be amended in writing and effective when signed by the duly authorized agents of the Parties. The failure of any Party to insist in any one or more cases upon the strict performance of any term, covenant or condition shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

Section 4.6. No Waiver of Sovereign Immunity; Public Liability Strictly Limited. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's Sovereign Immunity. The Parties agree that in no event shall the City, or any of its officials, officers, agents, attorneys, employees, or representatives have any liability in damages or any other monetary liability to the Developer or any lessee, sublessee, assign, heir or personal representative of the Developer in respect of any suit, claim, or cause of action arising out of this Agreement.

Section 4.7. Deposit Refund. Upon issuance of an Occupancy Permit for the completed residence the City agrees to account for and refund any portion of the deposits not expended during the project.

Section 4.8. Execution in Counterparts. Each person executing this Agreement warrants and represents that he or she has authority to do so on behalf of the entity he or she represents. This Agreement may be executed in two or more counterparts, and all counterparts so executed shall for all purposes constitute one and same instrument, binding on the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF MOBERLY

By: _____
Brian Crane, City Manager

ATTEST:

Shannon Hance, City Clerk

DEVELOPER, JANELLE JACOBSON

By: _____
Janelle Jacobson

ACKNOWLEDGEMENTS

STATE OF MISSOURI)
)SS
 COUNTY OF RANDOLPH)

On this ____ day of _____, 2022, before me appeared Brian Crane, to me personally known, who being by me first duly sworn, did say that he is the City Manager of the City of Moberly, Missouri, and that said instrument was signed on behalf of said City by authority of its City Council and said City Manager acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

 Notary Public

My commission expires:

Seal:

STATE OF MISSOURI)
)SS
 COUNTY OF RANDOLPH)

On this ____ day of _____, 2022, before me appeared Janelle Jacobson, to me personally known, who being by me first sworn, did say that she is a single person and she acknowledged said instrument to be her free act and deed.

IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

 Notary Public

My commission expires:

Seal:

City of Moberly

City Council Agenda Summary

Agenda Number: WS #3.
 Department: Parks
 Date: June 20, 2022

Agenda Item: Red 1 Field Renovation and Irrigation

Summary: Advertisement was made and only one bid was received for field renovations including new DuraEdge dirt, laser grading, and irrigation installation on Red 1 infield. The bid came in double what was anticipated a year ago, though this bidder is typically the low bid by far. This will hit the next budget year.

DuraEdge dirt plays better and endures better than cheaper field dirt. It is what both the Department and MACC prefer. This contractor is who the Department has worked with for years and who MACC is also familiar with and prefers.

The irrigation will cover the grass and dirt in the infield (see attached diagram).

Recommended

Action: Move forward to the July 5th meeting.

Fund Name: Parks – Capital Improvement

Account Number: 115.048.5502

Available Budget \$: \$95,000

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice
<input type="checkbox"/> Consultant Report	<input checked="" type="checkbox"/> Other _____

Roll Call

Aye

Nay

Mayor

M___ S___ **Jeffrey** ___ ___

Council Member

M___ S___ **Brubaker** ___ ___

M___ S___ **Kimmons** ___ ___

M___ S___ **Kyser** ___ ___

M___ S___ **Lucas** ___ ___

Passed Failed

Baseball Infield Renovation

WS #3.

CITY OF MOBERLY

"BID OPENING"

Sign-In Sheet

Date: 12/2/2022, 2 pm

Name

Shannon Hance

Troy Bock

Jacob Bunter

Company

city of Moberly

"

"

Baseball Infield Renovation

WS #3.

CITY OF MOBERLY

"BID OPENING"

Date: 6/2/2022 2pm

Turf Mark

\$ 75,025

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

Date: 5/24/2022

Customer: Moberly Parks and Recreation
Address:

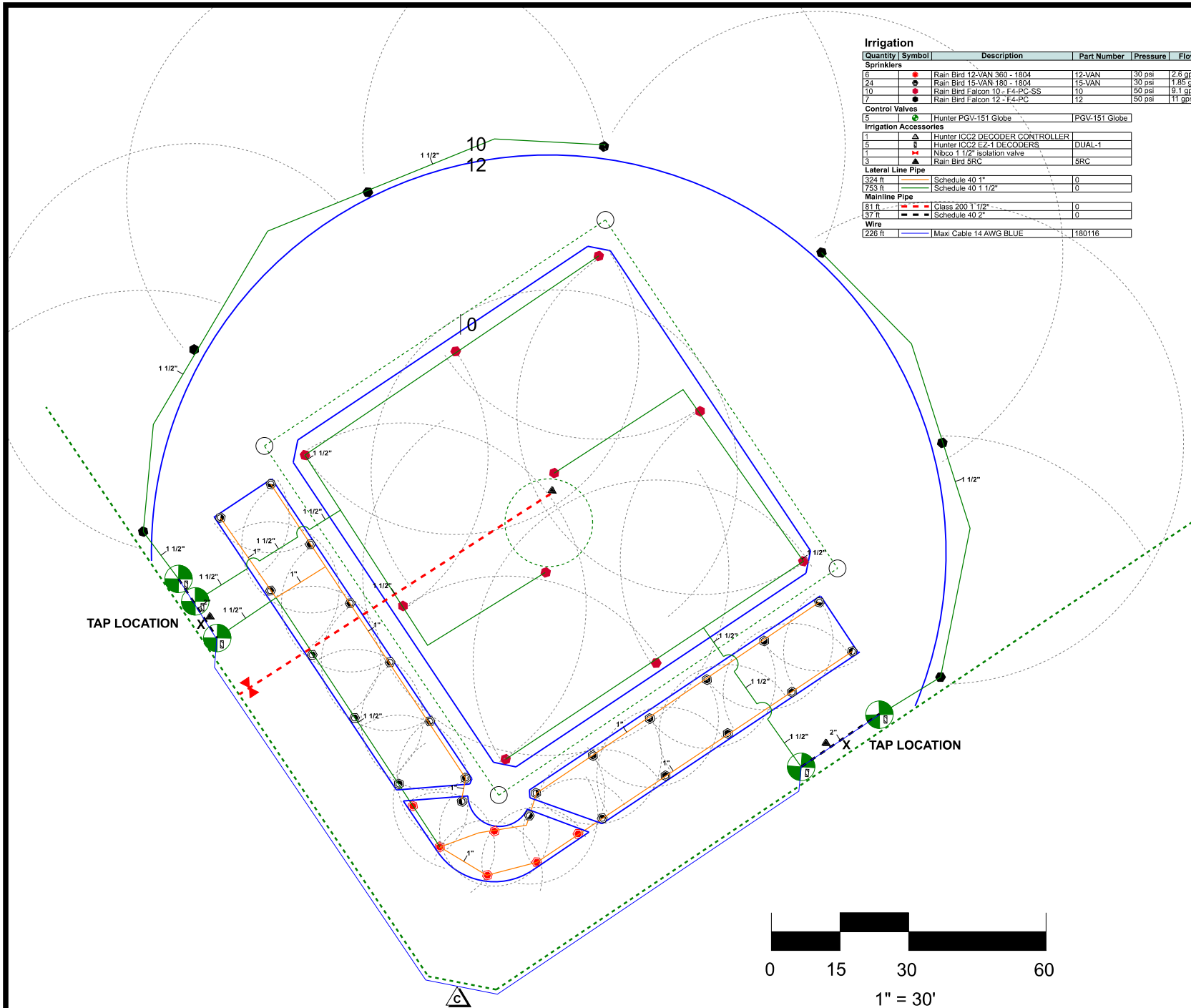
Phone: 660-998-2140

Email: jbunten@cityofmoberly.com

[illegible]

This proposal, if accepted, serves as contract between TurfMark Services, LLC and customer signed.
Additional terms of agreement: It is agreed and understood that the undersigned is an authorized agent of the purchaser and is duly empowered to enter into and make binding agreements on their behalf. Payments dues 30 days from date of invoice. Service charge of 1.5% will be applied to past due balances. In the event of default of payment, all cost of collection including attorney's fees and court costs, shall be paid by the purchaser.

Accepted:



Irrigation

Quantity	Symbol	Description	Part Number	Pressure	Flow	Radius
Sprinklers						
6	●	Rain Bird 12-VAN 360 - 1804	12-VAN	30 psi	2.6 gpm	12 ft.
24	●	Rain Bird 15-VAN 180 - 1804	15-VAN	30 psi	1.85 gpm	15 ft.
10	●	Rain Bird Falcon 10 - F4-PC-SS	10	50 psi	9.1 gpm	53 ft.
7	●	Rain Bird Falcon 12 - F4-PC	12	50 psi	11 gpm	55 ft.
Control Valves						
5	●	Hunter PGV-151 Globe	PGV-151 Globe			
Irrigation Accessories						
1	▲	Hunter ICC2 DECODER CONTROLLER				
5	▲	Hunter ICC2 EZ-1 DECODERS	DUAL-1			
1	▲	Nibco 1 1/2" isolation valve				
3	▲	Rain Bird SRC				
Lateral Line Pipe						
324 ft.	—	Schedule 40 1"				
753 ft.	—	Schedule 40 1 1/2"				
Mainline Pipe						
81 ft.	—	Class 200 1 1/2"				
37 ft.	—	Schedule 40 2"				
Wire						
226 ft.	—	Maxi Cable 14 AWG BLUE	180116			

CENTRAL
TURF & IRRIGATION SUPPLY

1000 W. Kathryn
Nixa, MO 65714
(417) 880-8955

CID
Certified Irrigation Designer

SHEET DESCRIPTION:
* Irrigation

PROJECT:
* MOBERLY BALL FIELD
MOBERLY MO

REVISIONS:
2022-04-22
2022-04-28

DATE:
4/8/2022

JOB NUMBER:
12345

DRAWN BY:
Kent Brobst

CHECKED BY:
KDB

SCALE:
1" = 30'

SHEET:
1 of 1

City Accepting Bids

The City of Moberly, Missouri ("City"), is inviting bids from qualified vendors for the following project:

Baseball Infield Renovation

Statement of Intent

The City intends to receive bids for one baseball infield renovation. Renovation specs to be as followed.

Scope of Work

1. Remove lip from existing radius.
2. Laser grade the current infield to eliminate low areas and cut high areas.
3. Install underground irrigation (see field design for layout and materials specifications).
4. Install new HGT Kentucky Bluegrass sod (see field design for layout).
5. Evenly top dress 100 ton of DuraEdge Professional infield material over existing skinned profile and laser grade.
6. Till new material into existing profile in three different directions, making sure materials are thoroughly mixed in to the top 3".
7. Laser grade the field at a slop of ½% - 1% to facilitate positive surface drainage.
8. Roll infield.
9. Build mound with Dura-Pitch clay bricks (or comparable mound clay) and new infield dirt materials.
10. Set home plate and 90' base receptacles.
11. Ensure the irrigation system is functioning and working properly once the field is completed.

The bidder must also be an STMA Member. Project must be completed (weather/materials permitting) by Friday, August 5th, 2022.

Submittal of Bids

Bidders shall submit bids to:

**Shannon Hance, City Clerk
Moberly City Hall
101 West Reed Street
Moberly, Missouri, 65270**

Bids will be accepted until 2 pm on Thursday, June 2nd, 2022.

Bids shall be submitted in a sealed envelope clearly marked with "Baseball Infield Renovation," the bidders company name, and the date and time for bid opening clearly and legibly marked on the outside.

Bids may not be withdrawn for a period of Sixty (60) days after the date of bid opening without the express written consent of the City.

Bid Opening

All bids will be publicly opened and read aloud at 2 p.m. on Thursday, June 2nd, 2022.

City Business License Requirement

Bidders are informed that the successful bidder will be required to obtain or prove possession of a valid business license issued by the City of Moberly pursuant to Chapter 14 of the City Code.

Insurance Requirements

Bidders are informed that the successful bidder will be required to obtain insurance coverage, which shall contain an endorsement, addendum, or rider amending the general liability policy to include the city as an additional insured, for the following types of insurance and in the following minimum amounts:

- Workmen's Compensation Insurance \$1 million minimum w/statutory limits
- Comprehensive General Liability
 - Bodily injury, including death \$1 million/occurrence \$2 million aggregate
 - Property Damage \$1 million/occurrence \$2 million aggregate
- Comprehensive Automobile Liability
 - Bodily injury, including death \$1 million/occurrence \$2 million aggregate
 - Property Damage \$1 million/occurrence \$2 million aggregate

Reservation of Rights: The City reserves the right to accept or reject any or all bids, to waive any technicalities in the Proposal process, to award any Proposal or portion of a Proposal which is deemed to be the best and/or most advantageous to the City of Moberly, and to make any investigations as are deemed necessary to determine the ability of a bidder to perform the Work. The City reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship, manufacturing, or shipping damages.

Questions

Any and all questions shall be directed to **Jacob Bunten** at jbunten@cityofmoberly.com or 660-263-4966.

City of Moberly

City Council Agenda Summary

Agenda Number: _____

WS #4.

Department: City Manager

Date: June 20, 2022

Agenda Item: A Resolution Approving A Governmental Consulting Services Agreement Between The City Of Moberly, Missouri And Zamkus And Associates, LLC And Authorizing The City Manager To Execute The Agreement On Behalf Of The City.

Summary: The annual renewal for our government relations specialist is set to renew for one year. This position helps with conveying the city's message with our federal and state legislature, executive departments of the state, and various state and federal agencies. This contract is for \$15,000 annually and will continue our efforts at improving or stopping actions which are important to the city. Major items worked on this year were, the Low-Income Tax Credit Program, economic development issues, prevailing wage, DNR items, transportation, historic tax credits, and internet sales tax. While this was a relatively "quiet" legislative session, we will need to continue our efforts in the future relating to current and future legislative action.

Recommended

Action: Direct staff to bring to the July 5th Council meeting for final approval.

Fund Name:

Account Number:

Available Budget \$:

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____

Roll Call

Aye

Nay

Mayor

M___ S___ Jeffrey

Council Member

M___ S___ Brubaker

M___ S___ Kimmons

M___ S___ Kyser

M___ S___ Lucas

Passed Failed

GOVERNMENTAL CONSULTING SERVICES AGREEMENT

This Governmental Consulting Services Agreement is entered into on this ____ day of August 2021, by and between **Zamkus and Associates, L.L.C** with their principal office located at 1320 Elmerine Avenue Jefferson City, MO 65101 (Consultant/Lobbyist) **and The City of Moberly** with a principal office located at 101 W Reed Street, Moberly, MO 65270 (Client):

WHEREAS, Consultant/Lobbyist is engaged in the business of providing governmental consulting services; and

WHEREAS, Client is a city located in Randolph County, Missouri that is interested in providing quality affordable housing and maintaining the safety and wellbeing of its nearly fourteen thousand citizens; and

WHEREAS, Client has significant interest in the Missouri Low Income Housing Tax Credit program as well as other job creation and redevelopment tax credits currently authorized under the provisions of Missouri State law; and

WHEREAS, Consultant/Lobbyist has been retained by Client to provide governmental consulting services for Client as described in Appendix A, which is attached and incorporated by reference as a part of this Agreement and which can generally be described as the Client's desire to monitor and lobby legislation which would have an impact on specific economic development interests of the Client; and

Now therefore, in mutual consideration of the terms and conditions of this Agreement, the parties agree as follows:

1. **Independent Contractor.** Client agrees to use Consultant/Lobbyist as an independent contractor as described in Appendix A, which is attached and incorporated by reference as a part of this Agreement.
2. **Term.** The term of this Agreement shall be for a period from July 17, 2022 through July 16th, 2023. With mutual consent of both parties, this Agreement may be extended to a date mutually beneficial to both parties.
3. **Effort and Cooperation.** Consultant/Lobbyist and Client shall devote its best efforts in the performance and discharge of its duties and obligations under this Agreement. Client shall be available to consult with Consultant/Lobbyist, its officers, agents, and employees at reasonable times concerning matters pertaining to the provision of services by Consultant/Lobbyist.

4. **Compensation.** In consideration of the professional services to be provided by the Consultant/Lobbyist as outlined in Appendix A of this document, for the time period of July 17, 2022 through July 16, 2023, the Client shall pay the Consultant/Lobbyist one thousand dollars (\$1,000) per month payable at the end of each month for the term of the contract with an additional fifteen hundred dollars (\$1,500) due on the first and last payment for a total contract price of fifteen thousand dollars (\$15,000).
5. **Nondisclosure.** Consultant/Lobbyist and Client acknowledge that in the performance of this Agreement, certain trade secrets, names of past, present or future customers, business plans, strategies, operating information or any other confidential or proprietary information, including contents of proposals, bids, or work plans may become known to each other. Except as provided in the Disclosure section of this Agreement, both parties agree that they shall not, directly or indirectly, acting alone or with other persons or entities, without the prior written consent of each other, disclose, furnish, or make available to any third party, or to use for itself or for the benefit of any other person or entity any trade secrets, names of past, present or future customers, business plans, strategies, operating information or any other confidential or proprietary information, including contents of proposals, bids, or work plans, except as specifically agreed to in writing. Consultant/Lobbyist and Client agree that any breach of this Nondisclosure section will cause immediate and irreparable harm and may be enforced through the seeking of an injunction in a court of competent jurisdiction, and that injunctive relief to restrain any such breach is in addition to any other remedies or claims for damages. The parties expressly agree that the provisions of this Nondisclosure section shall survive any termination or expiration of this Agreement.
6. **Disclosure.** Consultant/Lobbyist and Client understand and agree that in the course of performance of this Agreement, that the existence, but not the specific terms, of this Agreement may be disclosed and acknowledged, particularly to individuals and entities contacted by Consultant/ Lobbyist on behalf of Client. Consultant/Lobbyist shall immediately notify Client if Consultant/Lobbyist deems it necessary to register as a lobbyist for Client and shall take whatever action Consultant/Lobbyist deems necessary or appropriate to ensure compliance with such laws.
7. **Compliance.** The parties agree to comply with all applicable federal and state laws, rules and regulations and any local laws or ordinances, rules or regulations in all their actions.
8. **Miscellaneous.** The laws of the State of Missouri shall govern this Agreement. The parties consent to the jurisdiction of the Missouri federal and state courts. This Agreement, together with Appendix A constitutes the entire agreement of the parties and may not be assigned, amended or otherwise modified except in writing by each of the parties. If any provision, in whole or in part, is invalid by the operation of any law of the State of Missouri or any other applicable law as found by a court, such provision or portion of a provision shall be severable from this Agreement and shall not invalidate the remainder of the provision or the remainder of this Agreement.

9. **Notices.** All notices, certificates, and acknowledgments of any kind related to this Agreement shall be in writing and shall be sent by a recognized carrier, overnight delivery, signature required, by certified mail, return receipt requested or by electronic mail. Said notices shall only be deemed effective upon the earlier of the following: (1) acknowledgment of receipt; or (2) as of the date of the official receipt from the U.S. Postal Service, addressed as follows:

CONSULTANT/LOBBYIST

Jason Zamkus/Principal
 ZAMKUS & ASSOCIATES, LLC
 1320 Elmerine Avenue
 Jefferson City, MO 65101
 (573) 291-6180
jzamkus@gmail.com

CLIENT

Brian Crane, City Manager
 City of Moberly, Missouri
 101 Reed Street
 Moberly, MO 65207
 (660) 998-0137
bcrane@cityofmoberly.com

10. Effectiveness; Date: This Agreement will become effective when upon the signature of all parties. The date this Agreement is signed by the last party (as indicated by the date associated with such party's signature) shall be deemed the date of this Agreement. The Term Start Date may differ from the date of the Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized agents on the dates provided below.

ZAMKUS & ASSOCIATES, L.L.C.

Signature: _____

Name: _____

Title: _____

Date: _____

THE CITY OF MOBERLY

Signature: _____

Name: _____

Title: _____

Date: _____

General Deliverables - Appendix A

- Monitor and lobby LIHTC and other tax credit reform legislation;
- Identify and track legislation that could be utilized as vehicle for LIHTC or other tax credit reform legislation by amendment;
- Attend meetings and hearings of legislative committees and administrative agencies where matters which may affect tax credit legislation will be addressed or voted upon;
- Collect all relevant material from hearings;
- Compile all relevant information gathered;
- Facilitate meetings with key decision makers and staff regarding regulatory, legislative and administrative issues as necessary; and
- Provide regular written and/or oral reports.

This Appendix is incorporated by reference to the attached Governmental Consulting Services Agreement and shall be effective as of the last date indicated below and thereupon become a part of the Agreement.

ZAMKUS & ASSOCIATES, L.L.C.

THE CITY OF MOBERLY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

City of Moberly

City Council Agenda Summary

Agenda Number: _____

WS #5.

Department: Administration

Date: June 20, 2022

Agenda Item: An Ordinance Approving a Settlement Agreement and Providing Further Authority.

Summary: Anna and Chad Haney (together, the “**Haneys**”) are the current owners and proprietors of a commercial restaurant located at 402 West Reed Street, Moberly, Missouri (the “**Premises**”) generally known as “Shady Tuesdays” or “Shadys” (the “**Business**”) which was permanently closed as of April 15, 2022. Prior to the closure of the Business, the Haneys had entered into a Comprehensive Economic Assistance Agreement with the Downtown Moberly Community Improvement District (the “**District**”) dated as of February 19, 2020 (the “**Assistance Agreement**”) which in support of Haney’s acquisition of the Business provided for, among other things, the facilitation of a certain Loan (the “**Loan**”) from the Central Bank of Moberly (the “**Bank**”) to the Haneys which was in turn collateralized by a certificate of deposit in the amount of \$15,000 purchased and held in the name of the District (the “**Collateral**”). The Haneys in the Assistance Agreement, jointly and severally, personally guaranteed “*payment of all amounts the payment when due of all amounts owed under the Loan...*” (the “**Guaranty**”).

As of April 2022 the Haneys were in default on the Loan, the balance of which was accelerated by the Bank which also realized on the Collateral leaving the Haneys in debt to the District under the Guaranty in the amount of approximately \$9,000. After making demand on the Haneys for payment in full of the outstanding debt, the City facilitated the Settlement Agreement with the Haneys which is the subject of the Ordinance which requires that the Haneys will convey to the City on behalf of the District all of the Haneys’ right title and interest to all personal property and equipment connected with the Business and located at the Premises (collectively, the “**Equipment**”) in consideration of the District’s forgiveness of and forbearance to pursue collections and other claims under the Guaranty and the Assistance Agreement

The proposed Ordinance provides for the approval of the Settlement Agreement and further authorizes City officials to enforce the terms of the Settlement Agreement as required, to obtain a bill of sale for the Equipment, and to work with the owner of the Premises and others to seek an ultimate user or purchaser for the Equipment.

Recommended Action Direct staff to bring to the July 5th Council meeting for final approval.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input checked="" type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney’s Report
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition
<input type="checkbox"/> P/C Minutes	<input checked="" type="checkbox"/> Contract
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____

Roll Call

Aye

Nay

Mayor

M___ S___ **Jeffrey**

Council Member

M___ S___ **Brubaker**

M___ S___ **Kimmons**

M___ S___ **Kyser**

M___ S___ **Lucas**

Passed

Failed

BILL NO. _____

ORDINANCE NO: _____

AN ORDINANCE APPROVING A SETTLEMENT AGREEMENT; AND PROVIDING FURTHER AUTHORITY.

WHEREAS, Anna and Chad Haney (together, the “**Haneys**”) are the current owners and proprietors of a commercial restaurant located at 402 West Reed Street, Moberly, Missouri (the “**Premises**”) generally known as “Shady Tuesdays” or “Shadys” (the “**Business**”) which was permanently closed as of April 15, 2022; and

WHEREAS, the Haneys have defaulted on a loan issued in connection with certain Comprehensive Economic Assistance Agreement with the Downtown Moberly Community Improvement District (the “**District**”) dated as of February 19, 2020 (the “**Assistance Agreement**”) to facilitate the acquisition of the Business and as a result the Haneys are in debt to the District in the amount of the loan balance; and

WHEREAS, the City has facilitated a settlement agreement in substantially the form attached as Exhibit A to and incorporated by reference in this Ordinance (the “**Settlement**”) which provides that in consideration of the District’s forgiveness of and forbearance to pursue collections on the outstanding debt and other claims under the Assistance Agreement, the Haneys shall convey to the City on behalf of the District all of the Haneys’ right title and interest to all personal property and equipment connected with the Business and located at the Premises (collectively, the “**Equipment**”);

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOBERLY, MISSOURI, as follows, to wit:

SECTION 1. The Settlement is hereby approved and the Mayor of the City is hereby authorized and directed to execute and deliver the Settlement on behalf of the City.

SECTION 2. The Mayor, City Manager, City Clerk, and applicable City staff are hereby authorized and directed to take such further actions as may be necessary or convenient to enforce the Settlement and to carry out the intent of this Ordinance including, without limitation, obtaining a bill of sale for the Equipment in substantially the form of Exhibit A to the Settlement and are further authorized to work with the owner of the Premises and others to seek an ultimate user or purchaser of the Equipment.

SECTION 3. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council of the City would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 4. This Ordinance shall take effect and be in force from and after its passage and adoption by the Council of the City and its signature by the officer presiding at the meeting at which it was passed and adopted.

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri on this 6th day of June, 2022.

Presiding Officer at Meeting

ATTEST:

Shannon Hance, City Clerk

EXHIBIT A SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this _____ day of May, 2022 (the “**Effective Date**”), by and among the CITY OF MOBERLY, MISSOURI, a city of the third class and Missouri municipal corporation located in the County of Randolph (the “**City**”); the DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT, a community improvement district and political subdivision of the state of Missouri, having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**District**”); and ANNA K. and R. CHAD HANEY, husband and wife, having a principal residence at 710 Flower Lane, Moberly, Missouri 65270 (together, the “**Haneys**”), together with SHADES OF TUESDAY, LLC, a Missouri limited liability having a principal office at 710 Flower Lane, Moberly, Missouri 65270 (“**Shady**” and together with the Haneys, the “**Proprietors**”).

RECITALS

A. The Haneys are the owners and proprietors of a commercial restaurant located at 402 West Reed Street, Moberly, Missouri (the “**Premises**”) generally known as “Shady Tuesdays” or “Shadys” (the “**Business**”) which was permanently closed as of April 15, 2022.

B. Prior to the closure of the Business, the Haneys had entered into a certain Comprehensive Economic Assistance Agreement with the District dated as of February 19, 2020 (the “**Assistance Agreement**”) which provided for, among other things, the facilitation in support of the Business of a certain Loan #7424 (the “**Loan**”) from the Central Bank of Moberly (the “**Bank**”) to the Haneys collateralized by a certificate of deposit in the amount of \$15,000 purchased and held in the name of the District (the “**Collateral**”).

C. In the Assistance Agreement the Haneys, jointly and severally, provided to the District a personal guaranty of “*payment of all amounts the payment when due of all amounts owed under the Loan (whether at maturity or upon the occurrence of an event of default or otherwise) and the performance of all terms of the Loan...*” (the “**Guaranty**”).

D. As of April 2022 the Haneys are in default on the Loan, the balance of which in the amount of \$9,945.48 (the “**Balance**”) has been accelerated by the Bank which has also realized on the Collateral leaving the Haneys in debt to the District under the Guaranty in the amount of the Balance, all as set forth in a certain demand letter from the District to the Haneys dated April 25, 2022.

E. In settlement of any and all potential claims and causes of action related to the Loan and the Guaranty, the Haneys have agreed to convey to the City on behalf of the District all of the Haneys’ right title and interest to all personal property and equipment connected with the Business and located at the Premises (collectively, the “**Equipment**”) in consideration of the District’s forgiveness of and forbearance to pursue collections on the Balance and other claims under the Guaranty and the Assistance Agreement and the parties now wish to enter into this Agreement to document and provide for the conveyance of title to the Equipment to the City and to settle all existing and potential controversies, disputes, and claims arising among them.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises, covenants, releases, disbursements, and obligations hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties to this Agreement hereby agree as follows:

AGREEMENT

Section 1.. Incorporation of Recitals; Acknowledgement. Each of the foregoing Recitals is hereby incorporated by reference in this Agreement as if set forth in full in this place. Each of the parties to this Agreement individually and collectively acknowledges and agrees that the Recitals set forth in this Agreement are true and correct statements and no party may subsequently deny or disavow or be permitted to deny or disavow same.

Section 2. Representations as to Ownership of the Equipment; Correctness a Material Inducement. The Proprietors and each of them individually and collectively hereby represent and warrant to the District and the City as follows:

(a) The Haney's in their own names own free and clear all right, title, and interest to the Equipment and that such Equipment remains unencumbered by any debt or security instrument of any kind and type; and

(b) Shady enjoys no right, title or interest on any portion or item of the Equipment and hereby irrevocably waives and releases as of the Effective Date any and all such claims of any kind or type; and

(c) No third party has or will obtain any right, title or interest on or to any portion or item of the Equipment and neither the Equipment nor any portion thereof constitutes security or affords a security interest whether or not registered or recorded and vested in any third party.

The Proprietors and each of them individually and collectively hereby further acknowledge and agree that the accuracy and correctness of the foregoing representations and warranties have been relied upon by the City and by the District and constitute material inducements to the District and the City to enter into this Agreement. Accordingly, in the event it is determined that any of the foregoing representations and warranties were materially false on the Effective Date or on the date of conveyance to the City of all right, title and interest to the Equipment (the “**Closing Date**”), this Agreement shall be null and void; *provided that* notwithstanding such termination, the District, in addition to any other remedies under this Agreement or otherwise available to the District or the City at law or in equity, shall be entitled to recover on the Guaranty (which Guaranty shall be reinstated) from the Haney's, jointly and severally, along with any amounts paid to or on behalf of the Haney's under any of the Assistance Programs, and damages for misrepresentation from any or all of the Proprietors, together with attorneys’ fees and costs of recovery.

Section 3. Conveyance of Equipment. As of the Closing Date (which shall be in no event later than Thirty (30) calendar days from the Effective Date) the Haney's shall by execution and delivery of a bill of sale in substantially the form of Exhibit A to this Agreement convey to the City all right, title and interest to the Equipment free and unencumbered by debt or security instrument of

any kind and type with possession to be taken by the City at the Premises.

Section 4. Cancellation of Assistance Agreement. The Assistance Agreement is hereby cancelled and terminated in its entirety, as of the Closing Date and, subject to successful conveyance of the Equipment to the City as contemplated in this Agreement, shall be of no further force and effect; *provided that* the representations set forth in Section 2 of this Agreement shall survive termination of the Assistance Agreement or of this Agreement for any reason whatsoever.

Section 5. Releases. All parties and each of them hereby releases and forever discharges the others and their past and future officers, employees, officials, board members, commissioners, directors, agents, attorneys, successors and assigns, and each of them, and all those who are or may be liable on its or their behalf, from and against any and all claims, demands, actions, losses, accounts, debts, damages, costs, interests, suits, grievances, liabilities, demands or causes of actions of any kind whatsoever now existing, whether known or unknown, whether asserted to date or not, on account of, arising out of, resulting from, or in any manner pertaining to the Assistance Agreement or the Guaranty, except that the foregoing release shall not release claims relating to enforcement of this Agreement. **Notwithstanding the foregoing, the releases contained herein are subject to the condition precedent of completion of the obligations set forth in Section 3 of this Agreement.**

Section 6. Voluntary Agreement. This Agreement is freely and voluntarily executed by the parties, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement.

Section 7. Miscellaneous.

Section 7.1 Headings; Agreement Preparation. The headings and captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement or any provision thereof and shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Agreement. Each party to this Agreement and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Agreement and any and all documents attached or referenced herein as exhibits. This Agreement shall be construed without regard to any presumption or other rule of construction whereby ambiguities within this Agreement or such other document would be construed or interpreted against the party causing the document to be drafted. The parties each further represent and warrant to each other that the terms of this Agreement and the documents referenced as exhibits herein have been completely read by them and that those terms are fully understood and voluntarily accepted by them. In any interpretation, construction or determination of the meaning of any provision of this Agreement, no presumption whatsoever shall arise from the fact that the Agreement was prepared by or on behalf of any party hereto.

Section 7.2. Choice of Law; Venue. This Agreement and its performance shall be deemed to have been fully executed, made by the parties in, and governed by and construed in

accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. The parties mutually agree that any action at law, suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri or in federal court of the Eastern District of Missouri and waive any objection based upon venue or *forum non conveniens* or otherwise.

Section 7.3. Entire Agreement; Amendments; No Waiver by Prior Actions. The parties agree that this Agreement shall constitute the entire agreement among the parties and no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the duly authorized agents of each of the parties. The failure of any party to insist in any one or more cases upon the strict performance of any term, covenant or condition of this Agreement to be performed or observed by another party shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

Section 7.4. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's or the District's sovereign immunity.

Section 7.5. Notices. Whenever notice or other communication is called for in this Agreement to be given or is otherwise given, such notice or other communication shall be in writing and shall be personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

<i>If to the City:</i>	City of Moberly 101 West Reed Street - City Hall Moberly, Missouri 65270 Attn: City Manager
<i>with a copy to:</i>	Cunningham, Vogel & Rost, P.C. 333 South Kirkwood Road, Suite 300 St. Louis, Missouri 63122 Attn: Thomas A. Cunningham, Esq.
<i>If to the District:</i>	Downtown Moberly Community Improvement District 101 West Reed Street Moberly, Missouri 65270 Attn: Chair
<i>If to the Haney's:</i>	Anna and Chad Haney 710 Flower Street Moberly, Missouri 65270 Attn: _____
<i>If to Shady:</i>	Shades of Tuesday, LLC

710 Flower Street
Moberly, Missouri 65270

Attn: _____, Its _____

or to such other persons as the parties may designate in writing from time to time in accordance with this Section 7.5 and all said notices shall be deemed given upon the deposit in the United States mail or upon hand delivery.

Section 7.6. Severability. The provisions of this Agreement shall be deemed severable. If any word, phrase, term, sentence, paragraph, or other portion of this Agreement shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected by such partial invalidity, and each remaining word, phrase, term, sentence, paragraph covenant, or other portion of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 7.7. Binding Effect. Except as otherwise expressly provided in this Agreement, the covenants, conditions and agreements contained in this this Agreement shall bind and inure to the benefit of parties, and their respective permitted successors and assigns.

Section 7.8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement. The parties agree that this Agreement may be executed by any party and transmitted to the other parties by facsimile or email in PDF format.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the day and year first written above.

CITY OF MOBERLY

By: _____
Jerry Jeffrey, Mayor

ATTEST:

Shannon Hance, City Clerk

DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT

By: _____
Brian Crane, Chair

ATTEST:

Secretary

THE HANEYS

ANNA HANEY

CHAD HANEY

ATTEST:

By: _____

Title:

SHADES OF TUESDAY, LLC

By: _____

Its _____

ATTEST:

Name: _____

Title: _____

EXHIBIT A**BILL OF SALE**

ANNA KATHRYN HANEY and **ROBERT CHAD HANEY**, husband and wife (together, the “**Haneys**”), in consideration of the covenants and conditions set forth in that certain Settlement Agreement dated as of May ____, 2022 (the “**Agreement**”) by and among the Haneys, the City of Moberly, Missouri (“**Buyer**”), the Downtown Moberly Community Improvement District, and Shades of Tuesday, LLC and for other good and valuable consideration the receipt and sufficiency are hereby acknowledged, have **BARGAINED** and **SOLD**, and by these presents do now **GRANT** and **CONVEY**, unto Buyer and its successors and assigns, all of their right, title and interest, in and to all equipment and other personal property shown on **Annex A** hereto, (collectively, the “**Equipment**”) located on the Premises *Capitalized terms used and not described in this instrument shall have the meanings ascribed to them in the Agreement.*

TO HAVE AND TO HOLD the same unto Buyer, its successors and assigns, along with the representation and warrant to Buyer that the Haneys as of the date hereof are possessed of all right, title and interest to the Equipment, free and clear of any and all encumbrances, whether or not of record.

The Equipment is being conveyed “AS IS,” “WHERE IS” and “WITH ALL FAULTS” as of the date of this Bill of Sale, without any representation or warranty whatsoever as to its condition, fitness for any particular purpose, merchantability, or any other warranty, express or implied.

IN WITNESS WHEREOF, the Haneys have each caused this Bill of Sale to be executed in their names this _____ day of _____ 2022.

ANNA KATHRYN HANEY

ROBERT CHAD HANEY

ATTEST:

By: _____
Title:

Annex A
THE EQUIPMENT (list)

City of Moberly

City Council Agenda Summary

Agenda Number: _____

WS #6.

Department: Administration

Date: June 20, 2022

Agenda Item: An Ordinance Approving An Equipment Storage And Stand-By Installment Purchase Agreement; And Providing Further Authority.

Summary: Anna and Chad Haney (together, the “**Haneys**”) are the owners and proprietors of a commercial restaurant located at 402 West Reed Street, Moberly, Missouri (the “**Premises**”) generally known as “Shady Tuesdays” or “Shadys” (the “**Business**”) which was permanently closed as of April 15, 2022. Ivan Thomas d/b/a Homewise Properties (“**Homewise**”) is the owner in fee of the Premises and has leased the Premises to the Haneys through June 2022.

Prior to the closure of the Business, the Haneys had entered into a Comprehensive Economic Assistance Agreement with the Downtown Moberly Community Improvement District (the “**District**”) dated as of February 19, 2020 (the “**Assistance Agreement**”) which provided for, among other things, the facilitation in support of the Business of a certain Loan (the “**Loan**”) from the Central Bank of Moberly (the “**Bank**”) to the Haneys which was in turn collateralized by a certificate of deposit in the amount of \$15,000 purchased and held in the name of the District (the “**Collateral**”). The Haneys in the Assistance Agreement, jointly and severally, personally guaranteed “*payment of all amounts the payment when due of all amounts owed under the Loan...*” (the “**Guaranty**”).

As of April 2022 the Haneys were in default on the Loan, the balance of which was accelerated by the Bank which also realized on the Collateral leaving the Haneys in debt to the District under the Guaranty in the amount of approximately \$9,000. In settlement of all potential claims related to the Loan and the Guaranty, the Haneys have agreed to convey to the City on behalf of the District all of the Haneys’ right title and interest to all personal property and equipment connected with the Business and located at the Premises (collectively, the “**Equipment**”) in consideration of the District’s forgiveness of and forbearance to pursue collections and other claims under the Guaranty and the Assistance Agreement

In the interim, Homewise has identified a new restaurant operator (the “**Potential Operator**”) who proposes to open and operate a new restaurant at the Premises and wishes to obtain the use of the Equipment and, to facilitate the opening of the new restaurant, the City will agree to lease and provide a purchase option for the Equipment under terms generally set forth in a certain draft equipment lease-purchase agreement prepared by the City (the “**Draft Agreement**”).

However, the Potential Operator wishes to delay at least until July 2022 the execution of the Draft Agreement and, acknowledging the expiration of the Haneys’ lease, during the pendency of the execution of the Draft Agreement the City wishes to obtain permission to continue to store the Equipment at the Premises and Homewise is willing to grant such permission as provided in a certain Equipment Storage and Standby Installment Purchase Agreement (the “**Storage Agreement**”) which is the subject of the Ordinance. Moreover, in the event that the Potential Operator fails to execute and deliver the Draft Agreement or to otherwise agree to acquire the Equipment under terms satisfactory to the City within 6 months from the effective date of the Storage Agreement, Homewise will acquire the Equipment under the terms of the Draft Agreement.

The proposed Ordinance provides for the approval of the Storage Agreement.

Recommended Action Direct staff to bring to the July 5th Council meeting for final approval.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input checked="" type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition
<input type="checkbox"/> P/C Minutes	<input checked="" type="checkbox"/> Contract
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other_____

Roll Call

Aye

Nay

Mayor

M___ S___ **Jeffrey**

___ ___

Council Member

M___ S___ **Brubaker**

___ ___

M___ S___ **Kimmons**

___ ___

M___ S___ **Kyser**

___ ___

M___ S___ **Lucas**

___ ___

Passed Failed

BILL NO. _____

ORDINANCE NO: _____

**AN ORDINANCE APPROVING AN EQUIPMENT STORAGE AND STAND-BY
INSTALLMENT PURCHASE AGREEMENT; AND PROVIDING FURTHER
AUTHORITY.**

WHEREAS, Sections 70.210 through 70.320 of the Revised Statutes of Missouri, as amended, authorize Missouri municipalities to contract with any private person, firm, association, or corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service, provided, that the subject and purposes of any such contract or cooperative action are within the scope of the powers of such municipality; and

WHEREAS, Ivan Thomas d/b/a Homewise Properties (“**Homewise**”) is the owner in fee of certain real property known and numbered as 402 West Reed Street, Moberly, Missouri (the “**Premises**”) and has leased the Premises until June 2022 to Anna and Chad Haney (together, the “**Haneys**”) for the operation of a commercial restaurant generally known as “Shady Tuesdays” or “Shadys” (the “**Business**”) which Business was permanently closed as of April 15, 2022; and

WHEREAS, the City of Moberly (the “**City**”) with the Downtown Moberly Community Improvement District (the “**District**”) has entered into a certain agreement dated May ____, 2022 (the “**Settlement Agreement**”) with the Haneys which provides for conveyance to the City on behalf of the District of all of the Haneys’ right title and interest to and in all personal property and equipment connected with the Business owned by the Haneys and located at the Premises (collectively, the “**Equipment**”) in consideration of the District’s forgiveness of and forbearance to pursue collections and certain other claims of the City and the District against the Haneys in connection with a default by the Haneys under a certain loan and guaranty; and

WHEREAS, Homewise has identified a new restaurant operator (the “**Potential Operator**”) who proposes to open and operate a new restaurant at the Premises and in connection

therewith wishes to obtain the use of the Equipment and, to facilitate the opening of the new restaurant, the City is willing to lease and to provide a purchase option for the Equipment under terms generally set forth in a certain draft equipment lease purchase agreement prepared by the City (the “**Draft Agreement**”); and

WHEREAS, the Potential Operator wishes to delay at least until July 2022 the execution of the Draft Agreement and, acknowledging the expiration of the Haneys’ lease, during the pendency of the execution of the Draft Agreement the City wishes to obtain permission to continue to store the Equipment at the Premises and Homewise is willing to grant such permission subject to the terms of that certain Equipment Storage and Stand-By Installment Purchase Agreement, a copy of which is attached as Exhibit A to and incorporated by reference in this Ordinance (the “**Agreement**”); and

WHEREAS, in the event that the Potential Operator fails to execute and deliver the Draft Agreement or to otherwise agree to acquire the Equipment under terms satisfactory to the City within Six (6) months from the Effective Date, the City wishes to have Homewise acquire the Equipment under the terms of the Draft Agreement and in such event Homewise is willing to so acquire the Equipment, all as set forth in and subject to the terms of the Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOBERLY, MISSOURI, as follows, to wit:

SECTION 1. The Agreement is hereby approved and the Mayor of the City is hereby authorized and directed to execute and deliver the Agreement on behalf of the City.

SECTION 2. The Mayor, City Manager, City Clerk, and applicable City staff are hereby authorized and directed to take such further actions as may be necessary or convenient to carry out and satisfy the City’s obligations under the Agreement.

SECTION 3. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council of the City would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 4. This Ordinance shall take effect and be in force from and after its passage and adoption by the Council of the City and its signature by the officer presiding at the meeting at which it was passed and adopted.

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri on this ____ day of _____, 2022.

Presiding Officer at Meeting

ATTEST:

Shannon Hance, City Clerk

EXHIBIT A

EQUIPMENT STORAGE AND STAND-BY INSTALLMENT PURCHASE AGREEMENT

THIS EQUIPMENT STORAGE AND STAND-BY INSTALLMENT PURCHASE AGREEMENT (this “**Agreement**”) is entered into as of this _____ day of _____, 2022 (the “**Effective Date**”), by and between the CITY OF MOBERLY, a city of the fourth class and Missouri political subdivision, having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**City**”) and IVAN THOMAS d/b/a HOMEWISE PROPERTIES, having a principal office at 1515 South Morley Street, Moberly, Missouri 65270 (“**Homewise**”).

RECITALS

A. Homewise is the owner in fee of certain real property known and numbered as 402 West Reed Street, Moberly, Missouri (the “**Premises**”) and has leased the Premises until June 2022 to Anna and Chad Haney (together, the “**Haneys**”) for the operation of a commercial restaurant generally known as “Shady Tuesdays” or “Shadys” (the “**Business**”) which Business was permanently closed as of April 15, 2022.

B. The City with the Downtown Moberly Community Improvement District (the “**District**”) has entered into a certain agreement dated May ____, 2022 (the “**Settlement Agreement**”) with the Haneys which provides for conveyance to the City on behalf of the District of all of the Haneys’ right title and interest to and in all personal property and equipment connected with the Business owned by the Haneys and located at the Premises (collectively, the “**Equipment**”) in consideration of the District’s forgiveness of and forbearance to pursue collections and certain other claims of the City and the District against the Haneys.

C. Homewise has identified a new restaurant operator (the “**Potential Operator**”) who proposes to open and operate a new restaurant at the Premises and in connection therewith wishes to obtain the use of the Equipment and, to facilitate the opening of the new restaurant, the City is willing to lease and to provide a purchase option for the Equipment under terms generally set forth in a certain draft equipment lease purchase agreement prepared by the City (the “**Draft Agreement**”).

D. The Potential Operator wishes to delay at least until July 2022 the execution of the Draft Agreement and, acknowledging the expiration of the Haneys’ lease, during the pendency of the execution of the Draft Agreement the City wishes to obtain permission to continue to store the Equipment at the Premises and Homewise is willing to grant such permission subject to the terms of this Agreement.

E. In the event that the Potential Operator fails to execute and deliver the Draft Agreement or to otherwise agree to acquire the Equipment under terms satisfactory to the City within Six (6) months from the Effective Date, the City wishes to have Homewise acquire the Equipment under the terms of the Draft Agreement set forth herein and in such event Homewise is willing to so acquire the Equipment, all as set forth in and subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises, covenants, and obligations hereinafter set forth, the sufficiency of which is hereby acknowledged, the City and Homewise hereby agree as follows:

AGREEMENT

Section 1. Storage of Equipment; Responsibilities Limited. In consideration of One Dollar (\$1.00) paid in hand, the receipt of which is hereby acknowledged, Homewise hereby grants to the City and its agents and assigns permission to store at the City's sole risk the Equipment at the Premises and to access the Premises at all reasonable times and from time to time for the purpose of inventorying, inspecting, and testing the Equipment; *provided that* Homewise shall have no responsibility for the maintenance, upkeep, or repair of the Equipment nor for providing specific insurance coverages for the Equipment. Other than as expressly provided in this Agreement, Homewise shall obtain no possessory, use or other rights in the Equipment but shall keep the Premises and the Equipment reasonably safe and secure consistent with the customary duties of a landlord.

Section 2. Subject to the failure of the Potential Operator (or of other similar restaurant or commercial operator reasonably acceptable to the City) to execute and deliver the Draft Agreement or to otherwise agree to acquire the Equipment under terms satisfactory to the City within the time which is Six (6) months from the Effective Date, Homewise shall acquire by installment/purchase from the City the City's right title and interest to the Equipment under the following terms:

Section 2.1. Rent. Homewise agrees to pay the City rentals for the Equipment in the total amount of Nine Thousand Nine Hundred Forty-Five Dollars and Forty-Eight Cents (\$9,945.50) (the "**Total Rent**") payable in annual installments during the period commencing Six (6) months and One(1) day from the Effective Date and ending Five (5) years thereafter (the "**Installment Term**") equal to one fifth (1/5) of the Total Rent (\$1,989.10) (each an "**Installment Payment**") with the first such Installment Payment due Ten (10) days after the commencement of the Installment Term. Subsequent Installment Payments shall be payable in arrears without notice or demand, at the office of the City on the same day of each consecutive year thereafter for the duration of the Installment Term. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, EACH INSTALLMENT PAYMENT SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS AND SHALL NOT BE SUBJECT TO ANY SETOFF, DEFENSE, COUNTERCLAIM, ABATEMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER.

Section 2.2. Exclusion of Warranties; Limitations of Liability. HOMEWISE ACKNOWLEDGES THAT ACQUISITION OF THE EQUIPMENT IS MADE ON AS "AS IS/WHERE IS" BASIS AND WITHOUT RECOURSE TO THE CITY. THE CITY HAS NOT MADE, AND DOES NOT HEREBY MAKE, ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE EQUIPMENT OR ANY

PORTION THEREOF IN ANY RESPECT WHATSOEVER, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF TITLE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED BY THE CITY AND IN NO EVENT SHALL THE CITY BE OBLIGATED OR LIABLE FOR ACTUAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF OR TO HOMEWISE OR ANY OTHER PERSON OR ENTITY ARISING OUT OF OR IN CONNECTION WITH THE EQUIPMENT.

Section 2.3. *Liens and Taxes.* During the Installment Period, Homewise shall keep the Equipment at all times free and clear of all levies, liens and encumbrances and shall pay, when due, all charges and taxes (federal, state and local) which may now or hereafter be imposed upon the ownership, leasing, rental, possession or use of the Equipment.

Section 3. *Purchase Option and Obligation.* Homewise may, upon Sixty (60) days prior written notice to the City pay to the City the amount of the Total Rent then remaining unpaid whereupon title to the Equipment will become unconditionally vested in Homewise, and the City will transfer any and all of its right, title and interest in the Equipment to Homewise as is, where is, without warranty, express or implied. At the conclusion of the Installment Term and payment of all Total Rent, Homewise shall have the obligation by payment to the City of One Dollar (\$1.00) to purchase the Equipment whereupon title to the Equipment will become unconditionally vested in Homewise, and the City will transfer any and all of its right, title and interest in the Equipment to Homewise as is, where is, without warranty, express or implied.

Section 4. *Assignment.* This Agreement including, without limitation, the purchase option set forth in Section 3 of this Agreement, may be assigned or sublet by Homewise in whole, but not in part, subject to the prior written consent of the City which consent shall not be unreasonably withheld. Otherwise, Homewise shall not transfer, pledge, hypothecate or grant any security interest in this Agreement or the Equipment, or otherwise dispose of the Equipment or any interest in this Agreement or the Equipment.

Section 5. *Miscellaneous.*

5.1. *Notices.* Whenever notice or other communication is called for in this Agreement to be given or is otherwise given, such notice shall be in writing addressed to the addressees at the addresses set forth below, and transmitted by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, return receipt requested:

If to The City: City of Moberly
 101 West Reed Street - City Hall
 Moberly, Missouri 65270
 Attention: City Manager

with a copy to: Cunningham, Vogel & Rost, P.C.
 333 South Kirkwood Road, Suite 300
 St. Louis, Missouri 63122

Attention: Thomas A. Cunningham, Esq.

If to Homewise: Homewise Properties
1515 South Morley Street
Moberly, Missouri 65270
Attention: Ivan Thomas

or to such other persons as the parties may designate in writing from time to time in accordance with this Section 5.1 and all said notices shall be deemed given, as applicable, (a) upon hand delivery, (b) upon deposit with an overnight courier, or (c) upon deposit in the United States mail.

5.2. *Survival; Severability.* Any provisions of this Agreement that by their terms provide for or contemplate obligations or duties of a party that are to extend beyond the expiration or termination of this Agreement (and the corresponding rights of the other party to enforce or receive the benefit of such obligations or duties) shall survive such expiration or termination of this Agreement for any reason. The provisions of this Agreement shall be deemed severable. If any portion of this Agreement shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected by such partial invalidity, and each remaining portion of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

5.3. *Headings; No Presumption; Preparation.* The headings and captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement of any provision thereof and shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Agreement. Each party to this Agreement and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Agreement and all documents attached as exhibits. This Agreement shall be construed without regard to any presumption or other rule of construction whereby ambiguities within this Agreement or such other document would be construed or interpreted against the party causing the document to be drafted. The parties hereto each further represent that the terms of this Agreement and the documents attached as exhibits hereto have been completely read by them and that those terms are fully understood and voluntarily accepted by them. In any interpretation, construction or determination of the meaning of any provision of this Agreement, no presumption whatsoever shall arise from the fact that the Agreement was prepared by or on behalf of any party hereto.

5.4. *Choice of Law; Venue; Waiver of Objections.* This Agreement and its performance shall be deemed to have been fully executed, made by the parties in, and governed by and construed in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. The parties hereto each agree that any action at law, suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri or in federal court of the Eastern District

of Missouri and waive any objection based upon venue or *forum non conveniens* or otherwise.

5.5. *Entire Agreement; Amendments; No Waiver by Prior Actions.* The parties hereto agree that this Agreement shall constitute the entire agreement between the parties and no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the duly authorized agents of the parties. The failure of any party hereto to insist in any one or more cases upon the strict performance of any term, covenant or condition of this Agreement to be performed or observed by another party shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

5.6. *Relationship of the Parties; No Third Party Beneficiaries.* Nothing contained in this Agreement, nor any act of Homewise or the City shall be deemed or construed to create a partnership or agency relationship between the parties or their agents or representatives and this Agreement is and shall be limited to the specific purposes set out herein. Other than as expressly provided in this Agreement, no party shall be the agent of, or have any rights to create any obligations or liabilities binding on, the other party. The parties do not intend to confer any benefit under this Agreement on any person or entity other than the named parties hereto.

5.7. *Binding Effect.* Except as otherwise expressly provided in this Agreement, the covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the City and Homewise and their respective successors and permitted assigns.

5.8. *Execution; Counterparts.* Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so, and upon request by the other party, proof of such authority will be furnished to the requesting party. This Agreement may be executed at different times and in two or more counterparts, and all counterparts so executed shall for all purposes constitute one and the same instrument, binding on the parties hereto, notwithstanding that both parties may not have executed the same counterpart. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

CITY OF MOBERLY
 ("The City")

By: _____
 Jerry Jeffrey, Mayor

ATTEST:

Shannon Hance, City Clerk

IVAN THOMAS d/b/a Homewise Properties
("Homewise")

ATTEST:

Printed name: _____

City of Moberly

City Council Agenda Summary

Agenda Number: _____

WS #7.

Department: Public Utilities

Date: June 20, 2022

Agenda Item: A Discussion Regarding A Change Order For Wastewater Treatment Plant Biosolids Disposal Site Opportunity To Maximize Site Benefit.

Summary: Following a meeting at the Moberly wastewater treatment plant with Boone Consulting, Moberly staff was made aware of an opportunity to maximize the beneficial acreage, reduce runoff and soil loss and increase the usability of the site's years of use. This comes at a price of around a 10% increase in the previously approved conservation contract with 4HIM Construction. Removal of the site timber and recent rain events have revealed additional runoff flow information, allowing the project to fine tune remaining changes to the surface topography. In this manner it is expected, with confidence, that runoff can be reduced, moisture can be retained, and the amount of beneficial resulting acreage can be increased for long term site utilization. Staff expects to provide a change order and resulting exact amount of during the first council meeting in July 2022. This amount is expected to be around \$30,000 and certainly less than \$50,000, the majority of which is to be used for soil relocation and minor changes to retention zones to achieve the increased site performance listed above. Current contract with 4HIM is for \$380,087.13.

Recommended

Action: Direct staff to develop a resolution for the next scheduled meeting.

Fund Name: Utilities - Wastewater Treatment

Account Number: 301.114.5502

Available Budget \$: To be transferred from reserve fund as appropriate.

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____

Roll Call

Aye

Nay

Mayor

M___ S___ Jeffrey

Council Member

M___ S___ Brubaker

M___ S___ Kimmons

M___ S___ Lucas

M___ S___ Kyser

Passed Failed

Change Order: _____

City of Moberly Wastewater Treatment Plant

Farm Conservation Improvements

The City Farm Conservation Improvements project has had all the timber cut and logs removed and completed per the contractual agreement with Sunderland Timber. 4-HIM Construction has completed 60% of tree tops, stumps, remaining trees, and brush that they have cleared, burned and buried so work for land grading can move forward. As of the present date, 9 of the 20 contracted conservation structures consisting of terraces and dry dams have been completed with 40% of the tile inlets and drainage pipe installed to store and move stormwater with minimal soil erosion.

In conducting the above-mentioned procedure concerning the removal of the timber and conservation improvements, 4-HIM Construction found multiple locations of severe soil erosion throughout the farm site which all the topsoil has been stripped away and washed down to the lower part of the farm and deposited just north of the Wastewater Treatment Plant (WWTP) causing siltation of 3-7' of sediment. This presents several drainage problems in which the flow of stormwater at times floods the WWTP. Due to the tremendous elevation drop which causes stormwater to channelize and cause erosion, additional conservation structures will need to be constructed to store stormwater and release water at a slower rate to prevent erosion after the hay-land vegetation is established.

To solve the highly eroded soil, drainage and flooding problem at the WWTP, and minimize erosion by storing and slowing stormwater flows. The following three items needs to be added to the scope of contract services with 4-HIM Construction:

Part A: In places on the farm where there is no topsoil that will not grow any vegetation, topsoil needs to be placed back on these areas to assure vegetative growth (hay production) and at the same time minimize soil loss due to vegetative cover of these areas.

Change Order: Topsoil to be hauled and placed back on bare spots in the field over approximately 11 acres. Six acres east of the field road and five acres west of field road. The cost for Part A is \$15,000.00

Part B: Sediment deposits need to be removed and placed back up on the highly eroded clay/rocky spots in the field and new wider drainage channel needs to be constructed in a way to manage the stormwater without flooding the WWTP and at the same time vegetation can be mowed or baled for hay.

Change Order: Protect the WWTP from stormwater flooding with new wider drainage channel with larger drainage tube installation, rock, and seeding for new vegetation that will move stormwater either west or east. The cost for Part B is \$5,780.00

Part C: Furthermore, there are more steeper slopes that will require more conservation structures to store and slow stormwater flow to minimize soil erosion and maintain a good vegetative cover without channelizing water flows.

Change Order: The addition of 15 new construction structures with piping and rock that will store and slow stormwater flow to minimize soil loss throughout the farm. The cost for Part C is \$18,542.00

The change order combined total of Part A, Part B, and Part C is for \$39,322.00