

**NOTICE OF OPEN MEETING & VOTE TO  
CLOSE PART OF THE MEETING  
A G E N D A  
COUNCIL MEETING  
City of Moberly  
City Council Room – Moberly City Hall  
101 West Reed Street  
December 06, 2021  
6:00 PM**

**Posted:**

**Pledge of Allegiance**

**Roll Call**

**Approval of Agenda**

**Approval of Minutes**

[1.](#) Approval Of Minutes.

**Recognition of Visitors**

**Communications, Requests, Informational Items**

**Public Hearing and Receipt of Bids**

**Consent Agenda**

**Ordinances & Resolutions**

- [2.](#) An Ordinance Approving A Cooperative Agreement With Moberly Special Road District For Paving Operations.
- [3.](#) An Ordinance Approving A Third Amendment To Purchase Option; And Providing Further Authority.
- [4.](#) An Ordinance Approving A Cooperative Purchase And Development Agreement Between The City Of Moberly, The Downtown Moberly Community Improvement District And Lawrence Family Real Estate Holdings, LLC.
- [5.](#) An Ordinance Approving A Cooperative Development Agreement Between The City Of Moberly, The Moberly Area Economic Development Authority And GRC Real Estate, LLC.
- [6.](#) A Resolution Authorizing A Letter Agreement With Trekk Design Group, LLC., For Assessment Of Road And Sidewalk Conditions.
- [7.](#) A Resolution Authorizing The City Manager Of Moberly, Missouri To Execute An Agreement With Safety Fire Products, LLC To Provide Annual Fire Extinguisher Inspection Services.
- [8.](#) A Resolution Accepting A Quit Claim Deed From Janet N. Smith and Dorothy Smith.
- [9.](#) A Resolution Authorizing And Accepting A Change Order To The Energy Performance Contract With Energy Solutions Professionals, LLC., For Pavilion Construction And Solar Arrays.
- [10.](#) A Resolution Authorizing The City Manager To Execute An Operation And Maintenance Agreement With Mc Power Companies, Inc.
- [11.](#) A Resolution Authorizing The City Manager To Register The City Of Moberly As A Participant In The Nationwide Opioid Class Action Settlement And Further Authority.
- [12.](#) A Resolution Authorizing The City Manager To Execute A Scope Of Services Agreement With Barr Engineering Company For Stormwater Analysis Of Southeast Moberly.
- [13.](#) A Resolution Authorizing Execution Of Agreements Required By Enterprise Fleet Management For Fuel, Telematics, Consignment, And Lease Approval.

- [14.](#) A Resolution Approving A Contract For The Purchase Of Real Estate And Ratifying The Execution Of Contracts On Behalf Of The City.
- [15.](#) A Resolution Authorizing The City Manager To Enter Into A Letter Agreement With Lauber Municipal Law, LLC., For Professional Legal Services Related To Eminent Domain Matters.
- [16.](#) A Resolution Appropriating Money Out Of The Treasury Of The City Of Moberly, Missouri.

**Official Reports**

**Anything Else to Come Before the Council**

17. Consideration Of A Motion To Adjourn To A Work Session Followed By A Closed Session To Discuss The Status Of Pending Legal Issues and Real Estate. (Closed Statute 610.21) (1, 2).

**Adjournment**

**We invite you to attend virtually by viewing it live on the City of Moberly, Facebook page. A link to the City's Channel can be found on our website's main page at [www.cityofmoberly.com](http://www.cityofmoberly.com). The public is invited to attend the Council meeting. Representatives of the news media may obtain copies of this notice by contacting the City Clerk. If a special accommodation is needed as addressed by the Americans with Disabilities Act, please contact the City Clerk twenty-four (24) hours in advance of the meeting.**



November 15, 2021  
City of Moberly, Missouri Council Minutes

Council met in regular session at 6:00 p.m. in the City Hall Council Chambers with Mayor Jeffrey presiding.

All stood and recited the pledge of allegiance led by Mayor Jeffrey.

Council Members answering the roll call were: Jerry Jeffrey, Tim Brubaker, John Kimmons, Cole Davis, and Austin Kyser.

A motion was made by Kyser and seconded by Brubaker to approve the agenda. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

A motion was made by Kimmons and seconded by Kyser to approve the minutes of the November 1, 2021, Council meeting as presented. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

A request was received from the Moberly Chamber of Commerce to hold the 2021 Christmas Parade on December 4, 2021, beginning at 3:00 p.m. The Chamber of Commerce requests permission to use the City Hall parking lot and Depot Park parking lot to stage parade entries. The parade will start at West Reed Street and Sturgeon Street and travel west on Reed Street to Johnson Street where it will disband. The Chamber of Commerce Director Megan Schmitt expects thirty-three entries in the parade and will have six volunteers to help with the parade. Moberly Police are requested to lead the parade and provide traffic control along the parade route. In addition to the parade, vendor pop ups are scheduled to begin at 9:00 a.m., horse drawn carriage rides will be available, and mobile food trucks/boutique trailers will be parked in parking spaces along Reed Street. The Moberly Chamber of Commerce further requests the lifting of Section 6-5, public consumption of alcoholic beverages from 9:00 a.m. to 7:00 p.m. for the 100-500 blocks of Reed Street, 200-500 blocks of Coates Street, and the 200 block of Clark Street, Williams Street, 4th Street, 5th Street and Johnson Street. The lifting of Section 6-5 is to allow downtown restaurants and licensed alcohol vendors sell alcoholic drinks to attendees to carry with them. All alcoholic beverages will be served in event cups and each person served will receive a wristband to confirm they are of legal age to consume alcohol. A motion was made by Brubaker and seconded by Davis to approve the request to hold the 2021 Christmas Parade on December 4, 2021. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

The following bid was received for the Tannehill Park Splash Pad: Police Department Parking Pad Replacement: **Irvinbilt Constructors, Inc.**, Base Bid - \$599,700; Alternate 1 (Asphalt Shingles) - deduct \$7,000; Alternate 2 (UV Treatment) - add \$15,500. A motion was made by Brubaker and seconded by Kimmons to accept the bid. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Kyser introduced a bill for an ordinance entitled: **"AN ORDINANCE AUTHORIZING FIVE COOPERATIVE AGREEMENTS FOR INFILL DEVELOPMENT WITH 3 BROTHERS CONSTRUCTION, LLC."** and moved that the bill be read two times by title for passage. Kimmons

seconded the motion, and upon said motion the vote was as follows: Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The bill having previously been made available for public inspection was read by title two times. Kimmons moved that the bill be enacted into an ordinance. Davis seconded the motion. The presiding officer having called for a vote on the motion, the vote was as follows: Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Brubaker introduced **"A RESOLUTION ACCEPTING THE BID AND AUTHORIZING CONTRACTING WITH IRVINBILT CONSTRUCTORS, INC FOR THE TANNEHILL PARK SPLASH PAD"** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Davis and seconded by Kimmons to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Kimmons introduced **"A RESOLUTION APPROVING A CONTRACT FOR THE PURCHASE OF REAL ESTATE AND RATIFYING THE EXECUTION OF CONTRACTS ON BEHALF OF THE CITY"** and made a motion for it to be read. Davis seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Davis and seconded by Kyser to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Davis introduced **"A RESOLUTION AUTHORIZING AND ACCEPTING A CHANGE ORDER TO THE ENERGY PERFORMANCE CONTRACT WITH ENERGY SOLUTIONS PROFESSIONALS, LLC., FOR PAVILION CONSTRUCTION AND SOLAR ARRAYS"** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Jeffrey and seconded by Kyser to table the Resolution until the December 6, 2021, City Council meeting. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Kyser introduced **"A RESOLUTION AUTHORIZING THE 2021 CHRISTMAS PARADE ROUTE AND PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES"** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Kimmons and seconded by Davis to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Brubaker introduced **"A RESOLUTION OF THE CITY OF MOBERLY, MISSOURI, RATIFYING EXECUTION AN AIRPORT CORONAVIRUS RELIEF GRANT PROGRAM AGREEMENT"** and made a motion for it to be read. Davis seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Davis and seconded by Kimmons to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Kimmons introduced **"A RESOLUTION AUTHORIZING CONTRACTING WITH COX MCLAIN ENVIRONMENTAL CONSULTING, INC. FOR PREPARATION OF A HISTORIC PRESERVATION PLAN**

**UPDATE"** and made a motion for it to be read. Brubaker seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Brubaker and seconded by Kyser to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Davis introduced **"A RESOLUTION ADOPTING HEALTH INSURANCE STOP LOSS POLICY AND HEALTH INSURANCE PLAN OPTIONS FOR THE CITY OF MOBERLY, MISSOURI EMPLOYEES FOR THE YEAR 2022"** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Kyser and seconded by Kimmons to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Kyser introduced **"A RESOLUTION OF THE CITY OF MOBERLY, MISSOURI, ACCEPTING THREE MISSOURI DEPARTMENT OF PUBLIC SAFETY GRANT AWARDS AND ONE FEMA GRANT AWARD AND RATIFYING THE MAYOR'S SIGNATURE ON ALL SUBAWARD AGREEMENTS"** and made a motion for it to be read. Brubaker seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Brubaker and seconded by Kimmons to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Brubaker introduced **"A RESOLUTION OF THE CITY OF MOBERLY, MISSOURI, ACCEPTING A MISSOURI DEPARTMENT OF PUBLIC SAFETY AWARD AND AUTHORIZING THE MAYOR TO EXECUTE AN AWARD AGREEMENT"** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Kimmons and seconded by Davis to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Kimmons introduced **"A RESOLUTION APPROVING AN EXTENSION OF A LETTER AGREEMENT WITH JACOBS ENGINEERING TO PROVIDE CONSTRUCTION INSPECTION SERVICES FOR THE DAM GROUTING PROJECT"** and made a motion for it to be read. Davis seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Brubaker and seconded by Kyser to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Davis introduced **"A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LETTER AGREEMENT WITH JACOBS ENGINEERING GROUP, INC., FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO THE TANNEHILL APARTMENT PROJECT"** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Kyser and seconded by Brubaker to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Kyser introduced **"A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LETTER AGREEMENT WITH JACOBS ENGINEERING GROUP, INC., FOR PROFESSIONAL ENGINEERING SERVICES RELATED TO A TRACER STUDY AT THE WATER TREATMENT PLANT"** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Kimmons and seconded by Davis to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Brubaker introduced **"A RESOLUTION APPROPRIATING MONEY OUT OF THE TREASURY OF THE CITY OF MOBERLY, MISSOURI IN THE AMOUNT OF \$390,945.67."** and made a motion for it to be read. Kimmons seconded the motion. Ayes: Jeffrey, Brubaker, Kimmons, Davis, and Kyser. Nays: None. The Resolution bill having previously been made available for public inspection was read by title one time. A motion was made by Kimmons and seconded by Davis to adopt the Resolution. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Monthly reports were received from various departments.

Members from the news media present were: Erik Duick , KWIX/KRES Radio Station.

A motion was made by Kyser and seconded by Brubaker to adjourn to a work session followed by a closed session to discuss the status of pending legal and negotiated contracts. (Closed Statute 610.021) (1,12). Roll call vote: Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

Mayor Jeffrey reopened the meeting.

A motion was made by Kyser and seconded by Brubaker to adjourn. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.

### **Work Session**

The following was discussed at the Work Session:

Kenneth And Judy Penton Have Contacted The City Wishing To Quit Claim Deed 1300 Myra Street To The City.

Discussion Of A Moberly Engagement Letter With Lauber Municipal Law Firm.

Janet N. Smith and Dorothy Smith Have Contacted The City Wishing To Quit Claim Deed 707 South 5th Street To The City.

Discussion Of MC Power Maintenance Agreement - Solar Pavilion.

A Discussion Regarding A Scope Of Services Agreement With BARR Engineering Company For Professional Services.

Discussion Of Moberly Pavement And Sidewalk Study Presented By Trekk.

# City of Moberly

## City Council Agenda Summary

Agenda Number: #2.  
 Department: Public Works  
 Date: December 6, 2021

**Agenda Item:** An Ordinance Approving A Cooperative Agreement With Moberly Special Road District For Paving Operations.

**Summary:** Please find attached the summary of the three (3) projects that the City and Moberly Special Road District have agreed upon, along with the agreement and the ordinance approving this.

**Recommended**

**Action:** Approve this ordinance.

**Fund Name:** N/A

**Account Number:** N/A

**Available Budget \$:** N/A

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	<b>Mayor</b>		
<input type="checkbox"/> Staff Report	<input checked="" type="checkbox"/> Proposed Ordinance	M___ S___ <b>Jeffrey</b>	___	___
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	<b>Council Member</b>		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Brubaker</b>	___	___
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Davis</b>	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ <b>Kyser</b>	___	___
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _		Passed	Failed

**BILL NO.** \_\_\_\_\_

**ORDINANCE NO.** \_\_\_\_\_

**AN ORDINANCE APPROVING A COOPERATIVE AGREEMENT WITH MOBERLY SPECIAL ROAD DISTRICT FOR PAVING OPERATIONS.**

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBERLY, MISSOURI, TO-WIT:**

**SECTION ONE:** The Moberly Special Road District (the “District”) is in need of road repairs and box culvert repairs and is also in need of a F-350 Truck.

**SECTION TWO:** The City has the capacity to provide the road and box culvert repairs and owns a 2012 F-350 truck which it is willing to sell.

**SECTION THREE:** Attached hereto and incorporated herein is a Cooperative Agreement for the purposes described herein.

**SECTION FOUR:** The City Council hereby approves the Cooperative Agreement and hereby authorizes the City Manager of Moberly to execute said Agreement on behalf of the City.

**SECTION FIVE:** This Ordinance shall be in full force and effect from and after its passage and adoption by the Council of the City of Moberly, Missouri, and its signature by the officer presiding at the meeting at which it was passed and adopted and further the Council authorizes the City Manager to take such other and further action as may be required to accomplish the purposes of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Moberly, Missouri, this 6th day of December, 2021.

.

**ATTEST:**

\_\_\_\_\_  
**Presiding Officer at Meeting**

\_\_\_\_\_  
**City Clerk**

**COOPERATIVE AGREEMENT FOR PAVING OPERATIONS**

THIS COOPERATIVE AGREEMENT FOR PAVING OPERATIONS (this “Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 ( 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 **MOBERLY SPECIAL ROAD DISTRICT**, 1391 County Road 2310,, Moberly, Missouri, 65270 (the “**District**”). (“**City**” together with “**District**”, the “**Parties**”)

**RECITALS**

- A. The District is in need of road repairs, box culvert repair and a F-350 truck.
- B. The City has the capacity to assist with the needed repairs and owns a F-350 truck.

**AGREEMENT**

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

**ARTICLE I.  
PROJECT**

**Section 1.1. Road Repair.** The section of road near the Aquatic Facility that runs from 24 to JJ is in bad shape. The City will patch and overlay this section for which the District agrees to reimburse the City.

**Section 1.2. Box Culvert Repair.** Terrill Road, where the District installed three box culverts has fill around them settling and causing dips in the pavement. The city will have Capitol repair them and be reimbursed 50% of its costs.

**Section 1.2 F-350 Truck.** The City owns a 2012 F-350 Gas dually with flat bed, with spreader and plow which the District is willing to purchase.

**ARTICLE II.  
PAYMENTS**

**Section 2.1. Road Repair.** The District shall pay to the City the sum of Twenty-Two Thousand Dollars (\$22,000.00) for road repairs and overlay. Payment shall be made within thirty (30) days of invoicing by the City upon completion of the project.

**Section 2.2. Box Culver Repair.** The District shall pay Five Thousand Seven Hundred and Fifty Dollars (\$5,750.00) to the City for box culvert repairs. Payment shall be made within thirty (30) days of invoicing by the City upon completion of the project.

**Section 2.3. F-350 Truck.** District agrees to pay Thirty Thousand Dollars (\$30,000.00) to the City for the 2012 F-350 Truck and accessories. Payment shall be made upon delivery of a clear title to the truck at a mutually convenient time and location.

ARTICLE III  
DEFAULT

**Section 3.1. Remedies in Default.** Nonpayment of any amounts due hereunder shall constitute a default and breach of this Agreement by District. City agrees to provide District written Notice of Default. District shall remedy any default within ten (10) days of the date of Notice. In the event District fails to remedy a default, City may at any time thereafter avail itself of the following remedies which are cumulative and not exclusive:

a. City shall be entitled to recover from District all damages incurred by City by reason of District’s default, including, but not limited to, all payments due hereunder, interest in the maximum amount allowed by law for damages, and reasonable attorneys’ fees.

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. 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  
101 West Reed Street  
Moberly, Missouri 65270

District:

**Section 4.3. 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 4.4. 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 4.5.     No Waiver of Sovereign Immunity; Public Liability Strictly Limited.** Nothing in this Agreement shall be construed or deemed to constitute a waiver of the either parties’ 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 District or any assign of the District in respect of any suit, claim, or cause of action arising out of this Agreement.

**Section 4.6.     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: \_\_\_\_\_  
Jerry Jeffrey, Mayor

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk

**DISTRICT**

By: \_\_\_\_\_

**Memorandum**

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**To:** City Council, City Clerk & City Manager  
**From:** Tom Sanders, Director of Public Works  
**Date:** November 30, 2021  
**Re:** Projects with Special Road District

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As we discussed, there are multiple projects that we are looking to participate with the special road district, and they are also needing an F-350 truck like we will be selling. I am proposing a package deal for them where they pay a lump sum for the following:

1. The section of road near the Aquatic Facility that runs from 24 to JJ is in bad shape, do some patching on that and overlay it, Road District reimburses us 100%. We are estimating \$22K.
2. 2012 F-350 Gas dually with flat bet, with spreader and plow, Tim booked it for approximately \$30K. We would likely get close to that on purple wave, but there is a 10% buyers fee that keeps them from bringing the top dollar. I believe we will be as good or better letting it go for this price.
3. Terrill Road, where road district installed three box culverts, the fill around them is settling and causing some dips in the pavement. Capital can repair them for approximately \$11,500 ( $\$11,500 \div 2 = \$5,750$ ). We are proposing a 50/50 split as we have taken the road over for our maintenance, I believe this is very fair of them to participate in the cost with us.

Total lump sum payment of \$57,750 to the City from the special road district.

Let me know if this is acceptable.

Thanks,  
Tom

# City of Moberly

## City Council Agenda Summary

Agenda Number: #3.

Department: Administration

Date: December 6, 2021

**Agenda Item:** An Ordinance Approving A Third Amendment To Purchase Option; And Providing Further Authority.

**Summary:** In March of 2020 the City of Moberly as “Purchaser” and MGB Investments, L.L.C. as “Seller” entered into a certain Purchase Option Agreement (the “Original Option”) by which the City obtained the option to purchase a portion of real property known and numbered as 208 West Reed Street (the “Optioned Property”) for use as part of a proposed downtown hotel/hospitality venue. The Original Option was scheduled to expire on November 2020, but has been renewed once more, and we are requesting another extension. The council is considering a hotel development for the original site with a new development company and has completed a feasibility study for the downtown development which will set the terms for the newly proposed hotel development. The Optioned Property remains integral to the newly proposed development. However, to allow time for completion of the development agreement and acquiring local investment, the term of the Original Option must be further extended. MBG Investments, L.L.C. has agreed to extend the term of the Original Option for a period expiring May 31, 2022. This arrangement has been memorialized in a Third Amendment to Purchase Option Agreement in the form attached as Exhibit A to the above referenced Ordinance (the “Third Amendment”). The Ordinance approves the Third Amendment and authorizes the execution and delivery of the Third Amendment on behalf of the City and additionally authorizes such further actions as may be necessary or convenient to carry out and satisfy the City’s obligations under the Third Amendment.

**Recommended**

**Action:** Approve this ordinance

**Fund Name:**

**Account Number:**

**Available Budget \$:**

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	<b>Mayor</b>		
<input type="checkbox"/> Staff Report	<input checked="" type="checkbox"/> Proposed Ordinance	M___ S___ <b>Jeffrey</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	<b>Council Member</b>		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Brubaker</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Davis</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ <b>Kyser</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed

BILL NO. \_\_\_\_\_

ORDINANCE NO: \_\_\_\_\_

**AN ORDINANCE APPROVING A THIRD AMENDMENT TO PURCHASE OPTION; AND PROVIDING FURTHER AUTHORITY.**

WHEREAS, the City of Moberly (the “**City**”) as “Purchaser” and MLB Investments, L.L.C. (“**MLB**”) as “Seller” have entered into a certain Purchase Option Agreement dated as of March 2<sup>nd</sup>, 2020 (the “**Original Option**”) as amended by that certain First Amendment to Purchase Option Agreement dated as of November 16, 2020 (the “**First Amendment**”) and that certain Second Amendment to Purchase Option dated as of \_\_\_\_\_, 2021 (the “**Second Amendment**”) and, together with the First Amendment and the Original Option, the “**Amended Option**”) which grant to the City an option to purchase certain real property depicted and generally described on Exhibit A to the Original Option and known and numbered as a portion of 208 West Reed Street, Moberly, Missouri (the “**Optioned Property**”); and

WHEREAS, the Amended Option provided an extended term for the exercise of the Original Option and the City now wishes to further extend the period for exercise of the Original Option and MLB is willing to extend the period for exercise of the Original Option as requested extension upon the terms and conditions set forth in a Third Amendment to Purchase Option Agreement in the form of Exhibit A, attached to and incorporated by reference in this Ordinance (the “**Third Amendment**”);

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

SECTION 1. The Third Amendment in the form of Exhibit A is hereby approved and the Mayor is hereby authorized to execute and deliver the Third Amendment on behalf of the City.

SECTION 2. The Mayor, City Manager, City Clerk, and applicable City staff are each hereby authorized to take such further actions as may be necessary or convenient to carry out and

satisfy the City’s obligations under the Amended Option as amended by the Third Amendment.

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 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 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 \_\_\_\_\_ 2021.

\_\_\_\_\_  
Presiding Officer at Meeting

ATTEST:

\_\_\_\_\_  
Shannon Hance, City Clerk

EXHIBIT A

THIRD AMENDMENT TO PURCHASE OPTION AGREEMENT

**THIS THIRD AMENDMENT TO PURCHASE OPTION AGREEMENT** (this “*Third Amendment*”), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 to that certain Purchase Option Agreement dated as of March 2<sup>nd</sup>, 2020 (the “*Original Option*”) as amended by that certain First Amendment to Purchase Option Agreement dated as of November 16, 2020 (the “*First Amendment*”) and that certain Second Amendment to Purchase Option Agreement dated as of \_\_\_\_\_, 2021 (the “*Second Amendment*” and, together with the First Amendment and the Original Option, the “*Amended Option*”) by and between the CITY OF MOBERLY, a city of the third classification and Missouri municipal corporation having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (“*Purchaser*”); and MGB INVESTMENTS, L.L.C., a Missouri limited liability company, having a principal office at 1415 Riley Industrial Drive, Moberly, Missouri 65270 (“*Seller*” and together with Purchaser, the “*Parties*”). *Capitalized terms used and not defined in this Third Amendment shall have the meanings respectively ascribed to them in the Original Option.*

RECITALS

- A. Seller is the owner in fee of approximately 8,700 square feet of improved property located in the downtown area of the City of Moberly, Missouri, consisting of the real property depicted and legally described on Exhibit A to the Original Option and known and numbered as a portion of 208 West Reed Street, Moberly, Missouri (the “*Optioned Property*”).
- B. The Parties have previously entered into the Original Option by which Seller granted and Purchaser accepted an option to purchase the Optioned Property for the purpose of revitalizing the Optioned Property as part of a hotel/hospitality venue and the First Amendment and Second Amendment which, among other things, extended the term of the Original Option.
- C. Purchaser now wishes to further extend the term of the Amended Option and the period for exercise of the Original Option and Seller is willing to extend the period for exercise of the Original Option as requested and, accordingly, the Parties wish to enter into this Third Amendment to provide the requested extension on the following terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby covenant and agree as follows:

1. The Amended Option is hereby further amended by deleting from **Section 1** thereof the following phrase: “terminating at 12:00 midnight on September 30, 2021 (the “*Termination Date*,” the period from the Commencement Date to the Termination Date, inclusive, is hereinafter referred to as the “*Term of the Option*”)” and by substituting therefor in that place the following

phrase: “terminating at 12:00 midnight on May 31, 2021 (the “*Termination Date*,” the period from the Commencement Date to the Termination Date, inclusive, is hereinafter referred to as the “*Term of the Option*”)”.

2. The Parties further acknowledge and agree that those portions of the Amended Option not specifically amended by this Third Amendment shall remain unchanged and in full force and effect, and the same are hereby ratified and confirmed.

3. Following full execution of this Third Amendment, Purchaser shall provide to Seller the sum of Ten Dollars and no cents (\$10.00) as payment in full for the extension of the Term of the Option as provided in paragraph 1 of this Third Amendment.

4. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The transmission of a facsimile or electronic copy of a signed counterpart of this Third Amendment shall have the same binding effect as the delivery of an ink-signed original counterpart.

**IN WITNESS WHEREOF**, Purchaser and Seller have each caused this Third Amendment to be executed in their respective names as of the date first above written.

**CITY OF MOBERLY**  
(“*Purchaser*”)

By: \_\_\_\_\_  
Jerry Jeffrey, Mayor

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk

**MGB INVESTMENTS, L.L.C.**  
(“*Seller*”)

By: \_\_\_\_\_  
Matthew G. Brownfield  
Its: Sole Member

**ATTEST:**

\_\_\_\_\_  
Printed name: \_\_\_\_\_

ACKNOWLEDGEMENTS

STATE OF MISSOURI                    )  
  ) SS.  
COUNTY OF RANDOLPH                )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me appeared Jerry Jeffrey, to me personally known, who being by me duly sworn, did say that he is the duly elected Mayor of the City of Moberly, a political subdivision of the State of Missouri and that the seal affixed to the foregoing instrument is the official seal of said City, and that the foregoing instrument was signed and sealed in behalf of said City by authority of its City Council and said officer acknowledged said instrument to be the free act and deed of said City.

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

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

My commission expires:

STATE OF MISSOURI                    )  
  ) SS.  
COUNTY OF RANDOLPH                )

On this \_\_\_\_ day of \_\_\_\_\_, 2021 before me appeared Matthew G. Brownfield, to me personally known, who being by me duly sworn, did say that he is the sole Member of MGB Investments, L.L.C., a Missouri limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company and said person acknowledged said instrument to be the free act and deed of said limited liability company.

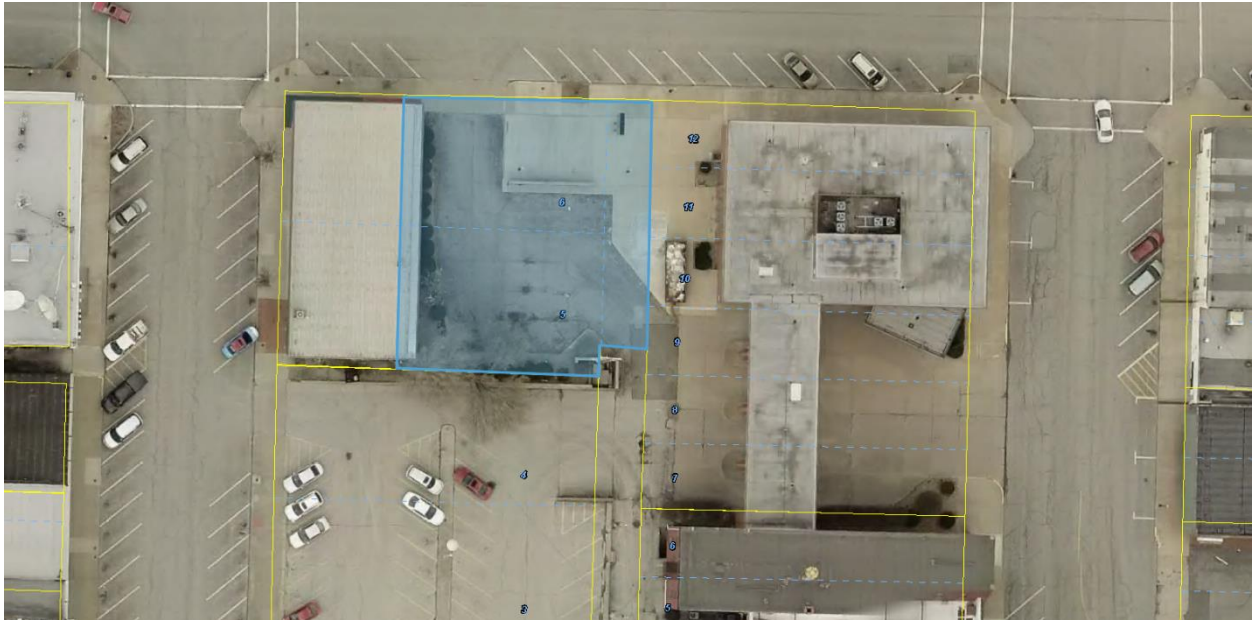
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

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

My commission expires:



### Initial Legal Description of Optioned Property



Part of Lots 5 and 6, Block 1, Williams First Addition to Moberly, Randolph County, Missouri, described as follows: Commence at the Northeast corner of Lot 6, run West along the North line of Lot 6 for a distance of 55 feet; thence South 90 feet, more or less, to an alley; then East along the North side of such alley for a distance of 55 feet, more or less, to an alley running North and South; and then North along the East end of Lots 5 and 6 of a distance of 90 feet, more or less, to the point of beginning.

Beginning 44 feet East of the Northwest corner of Block One (1) of Williams First Addition to Moberly, Missouri, and run East along the line of Lot 6 in said Block, 22 feet, thence South 90 feet, thence West 22 feet, thence North 90 feet to the place of beginning, being 22 feet on West Reed Street, and being a part of Lot 5 and 6 in Block 1 of Williams First Addition to Moberly, Randolph County, Missouri.

Also, a 10 foot x 90 foot strip of land being a vacated alley described as: Begin at the Northeast corner of Lot 6, Block 1 of Williams First Addition to the City of Moberly, Missouri, thence East 10 feet, thence South 90 feet, thence West 10 feet, thence North 90 feet to the beginning.

Also, the South 10 feet of the East 77 feet of Lot 5 of Block 1 of Williams First Addition to the City of Moberly, Missouri being a vacated alley.

***provided that, the area comprising the Optioned Property shall be subject to adjustment and confirmation by the Survey, which shall be dispositive all as provided in Section 1 of the Original Option.***

# City of Moberly

## City Council Agenda Summary

Agenda Number: #4.

Department: Administration

Date: December 6, 2021

**Agenda Item:** An Ordinance Approving A Cooperative Purchase And Development Agreement Between The City Of Moberly, The Downtown Moberly Community Improvement District And Lawrence Family Real Estate Holdings, LLC.

**Summary:** An agreement with Lawrence Family Real Estate Holdings (LFREH) to redevelop 215-217 N. Fourth Street commonly known as the Montgomery Ward Building. The City with funding from the Downtown Moberly CID will acquire the property and lease it to the LFREH for a period of 18 months. LFREH has 18 months to invest an identical amount of the acquisition costs into the building. At that time, the City will convey the property to LFREH. Furthermore, LFREH has at its disposal a supplemental PPI award if they invest 50,000 in addition to the acquisition costs, the CID will reimburse up to 25,000. The building is being leased and eventually conveyed to LFREH on an "as is, where is" basis. LFREH will be responsible for insurance and all expenses during the rental period.

**Recommended Action:** Approve this Ordinance

**Fund Name:**

**Account Number:**

**Available Budget \$:**

### 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\_\_\_ **Davis**    \_\_\_    \_\_\_

M\_\_\_ S\_\_\_ **Kyser**    \_\_\_    \_\_\_

Passed    Failed

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A COOPERATIVE PURCHASE AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOBERLY, THE DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT AND LAWRENCE FAMILY REAL ESTATE HOLDNGS, LLC.**

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBERLY, MISSOURI, TO-WIT:**

**SECTION ONE:** The City of Moberly (the “City”), the Downtown Moberly Community Improvement District (the “District”) and Lawrence Family Real Estate Holdings, LLC (“Lawrence” together with the City and the District, the “Parties”) desire to cooperatively acquire and develop certain real estate in the City of Moberly, Missouri.

**SECTION TWO:** Attached hereto and incorporated herein is a certain cooperative agreement entitled, Purchase and Development Agreement, whereby the City is agreeing to acquire and lease real estate to Lawrence and the District is agreeing to offer certain development incentives.

**SECTION THREE:** The City Council hereby approves the Purchase and Development Agreement and hereby authorizes the Mayor of Moberly to execute said Agreement on behalf of the City.

**SECTION FOUR:** This Ordinance shall be in full force and effect from and after its passage and adoption by the Council of the City of Moberly, Missouri, and its signature by the officer presiding at the meeting at which it was passed and adopted and further the Council authorizes the City Manager and Mayor to take such other and further action as may be required to accomplish the purposes of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Moberly, Missouri, this 6th day  
of December, 2021.

.

**ATTEST:**

\_\_\_\_\_  
**Presiding Officer at Meeting**

\_\_\_\_\_  
**City Clerk**

**PURCHASE AND DEVELOPMENT AGREEMENT**

THIS PURCHASE AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (the “**Effective Date**”) by and among the CITY OF MOBERLY, a city of the third class and Missouri municipal corporation located in Randolph County, Missouri and having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**City**”); the DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT, a community improvement district and Missouri political subdivision situated in Moberly, Missouri, having a principal office at 101 West Reed Street, Moberly, Missouri (the “**District**”) and LAWRENCE FAMILY REAL ESTATE HOLDINGS, LLC, a Missouri limited liability company having a principal office at 817 Fox Run, Moberly, Missouri 65270 and permitted assigns (the “**Developer**” and, together with the City and the District, the “**Parties**”). *Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in Article I of this Agreement.*

**RECITALS**

- A.** The Developer wishes to obtain long term rights permitting rehabilitation and reuse for commercial purposes to the Property and has requested the assistance of the City and the District in acquiring the Property and in providing certain incentives available under Missouri law, all of which will assist in alleviating blighted conditions extant within the corporate limits of the District.
- B.** To facilitate the foregoing, the Developer, the City, and the District each wish to enter into this Agreement by which the City assisted by the District shall acquire fee title to the Property and initially lease the Building to the Developer for the Project which, along with the making available of certain other public incentives as set forth herein, will facilitate the redevelopment and reuse of the Property .

**AGREEMENT**

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

**ARTICLE I.  
MEANINGS OF TERMS**

**Section 1.1. Definitions.** Except as otherwise defined, as used in this Agreement, the following words and terms shall have the following meanings:

“**Acquisition Cost**” shall mean the actual costs paid by or on behalf of the City to acquire fee simple title to the Building and the Property as provided in Section 2.1 of this Agreement.

“**Affiliate**” shall mean an individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization, or any other such

person or entity which, directly or indirectly, is Controlled by or is in common Control by the Developer.

**“Applicable Regulations”** shall mean, collectively, all federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes applicable to or affecting the Property, the Building, or the Project including, without limitation, the Building Regulations and all applicable federal and state environmental laws and regulations.

**“Approving Ordinance”** shall mean Ordinance No. \_\_\_\_ of the City adopted and approved by the City Council on \_\_\_\_\_, 202\_\_ approving this Agreement.

**“Approving Resolution”** shall mean Resolution No. 202\_\_ - \_\_\_\_ of the District adopted and approved by the Board of Directors of the District on \_\_\_\_\_, 202\_\_ approving this Agreement.

**“Board of Directors”** shall mean the duly appointed and serving Board of Directors as governing body of the District.

**“Building”** shall mean the vacant commercial structure situated on real property known and numbered as 215-217 North Fourth Street, Moberly, Missouri 65270 formerly the location of the Montgomery Ward retail facilities.

**“Building Regulations”** shall mean, collectively, those codes, ordinances, regulations and policies of the City including, without limitation, Chapter 6 of the Moberly City Code or subsequent successor enactments, now or at any subsequent time applicable to or governing the construction and maintenance of buildings and structures within the City.

**“City”** shall mean the City of Moberly, a Missouri municipal corporation and city of the third class located in Randolph County, Missouri and having a principal office at 101 West Reed Street, Moberly, Missouri 65270.

**“City Council”** shall mean the duly elected and serving governing body of the City.

**“Control”** shall mean, as applied to any Affiliate, with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the governing or directing body of such corporation; (b) a not for profit corporation not having stock, having the power to elect or appoint, directly or indirectly, at least a majority of the members of the governing or directing body of such corporation; or (c) any other entity, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its governing or directing body, by contract or otherwise.

**“Developer”** shall mean Lawrence Family Real Estate Holdings, LLC, a Missouri limited liability company having a principal office at 817 Fox Run, Moberly, Missouri 65270

and a mailing address of P.O. Box 715 acquire from the City fee simple title to the Building and the Property or any Affiliate.

**“District”** shall mean the Downtown Moberly Community Improvement District, a community improvement district and Missouri political subdivision situated in Moberly, Missouri, having a principal office at 101 West Reed Street, Moberly, Missouri.

**“Effective Date”** shall mean the date first above written which shall reflect the date on which this Agreement is fully executed by the Parties.

**“Force Majeure”** shall mean actions or inactions not within the reasonable control of the City, the District, or the Developer, as applicable, including, without limitation, construction delays due to sustained inclement weather conditions, delays caused by competent legal authority, strikes, lockouts, labor disputes, riots, fire or other casualties, tornadoes, acts of God, acts of the public enemy, accidents, governmental restrictions, unanticipated or unusual site conditions, priorities regarding acquisition of or use of materials, litigation challenging any of the rights of the Developer under this Agreement, or delays caused by local, state or federal governments.

**“Property”** shall mean the improved parcel of real property known and numbered as 215-217 North Fourth Street located within a designated redevelopment area determined by the City Council to be a “blighted area” (as that term is used and defined in Chapter 353 of the Revised Statutes of Missouri, as amended) and containing the Building, all as further legally described in Exhibit A, attached to and incorporated by reference in this Agreement

**“Purchase Price”** shall mean the sum of One Dollar (\$1.00) paid in hand by the Developer at or prior to closing on the transfer of the Property as set forth in Section 2.2 of this Agreement which amount shall constitute the entire purchase price for the Building and Property.

**“Third Party Action”** shall mean any claim, action, proceeding or demand initiated at any time by any party other than a named party to this Agreement and directed to the City or any of its respective officials, officers, agents, attorneys, employees or representatives as a party and arising out of this Agreement, the Approving Ordinance, the Approving Resolution Proposal, any amounts rebated to the Developer pursuant to Article III of this Agreement, or any portion(s) of any of the foregoing or any actions taken pursuant to any of the foregoing.

**“Transferred Equipment”** shall mean the equipment and personalty currently located at the Property and identified by the Developer on a written listed provided to the City by Developer on or before the Effective Date.

**Section 1.2. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.



**Section 1.3. Computation of Time.** Wherever this Agreement calls for the performance of any act by reference to a day or number of days, to a month or number of months or to a year or number of years, each such computation shall be made based upon calendar days, calendar months, and calendar years, as applicable, unless otherwise expressly provided.

## ARTICLE II. ACQUISITION AND TRANSFER OF PROPERTY

**Section 2.1. Acquisition and Leasing of Property, Transferred Equipment; Lease Terms.** Using monies provided by the District from legally available sources as set forth in this Section 2.1, the City shall use best efforts to acquire fee simple title to the Property and the Transferred Equipment for a total purchase price of not to exceed \$85,000 with closing on the sale of the Property and the Transferred Equipment to occur not later than December 31, 2021; *provided that*, in the event the City is unable to conclude the purchase of the Property and the Transferred Equipment as aforesaid within the time provided or in the event the City or the District earlier reasonably determines that pursuit of the purchase and acquisition of the Property and the Transferred Equipment in accordance with the foregoing terms cannot be concluded whether due to seller's non-cooperation, defect of title, discover of latent environmental hazard, loss or inoperability of any of the Transferred Equipment, or otherwise, upon written notice of same to the Developer, this Agreement shall be deemed cancelled and of no further force and effect and no party shall have any further obligation to any other party hereunder. The purchase of the Property and the Transferred Equipment shall be governed by a separate purchase and sale agreement between the City and the seller which shall provide among other things that: (i) within Forty-Eight (48) hours prior to the closing on the sale of the Property and the Transferred Equipment to the City the Developer shall have the right to come upon the Property to inspect and verify the condition of the Transferred Equipment; and (ii) the Developer's satisfaction with the location and the condition of the Transferred Equipment shall be memorialized in a writing and shall constitute a condition precedent to the City's obligation to close on the sale of the Property and the Transferred Equipment. At closing on the City's purchase of the Property and the Transferred Equipment the District shall provide in legally available same day funds the amount of the final purchase price, less any credits or prorations due to the City at such closing. Upon and subject to successful closing on the sale of the Property and the Transferred Equipment to the City, the City shall lease the Property, the Building, and the Transferred Equipment to the Developer for an Eighteen (18) month term for a rental of \$1.00 per year or fraction thereof payable in arrears; The lease document shall be in a form prepared by the City and shall contain terms commercially reasonably acceptable to the Developer and shall additionally incorporate the following provisions:

(i) The lease shall be triple-net and at all times during the lease term the Developer shall have the sole obligation for all costs, fees, taxes, special assessments, levies and impositions including, without limitation, property taxes, utility fees and charges, insurance premiums, and sewer and water charges;

(ii) Upon the Developer's delivery of Developer's written satisfaction with the Transferred Equipment as aforesaid, the Developer shall assume all risks, including, without limitation, breakage, inoperability, damage, repair or replacement, associated



with the Transferred Equipment and the City shall have no responsibility therefor and the Developer shall accept all portions of the Transferred Equipment “as is and where is.”

(iii) As lessee, the Developer shall obtain and maintain at all times during the lease term “all risk” fire and extended coverage insurance, commercial general liability insurance, earthquake insurance, flood or surface water coverage, and other insurance for the Building and the Property which is commercially reasonable and in amounts and terms customary for similar commercial properties elsewhere in the City; all such insurance coverages shall name the City as owner and lessor as additional insured;

(iv) As lessee, the Developer shall, at the Developer’s sole cost and expense, keep and maintain the interior and exterior portions of Building and the Property including, without limitation, roof, wall and structural elements, and all appurtenances thereto in good and sanitary condition and in a continuous good state of repair at all times during the lease term;

(v) As lessee, the Developer shall not keep or permit or suffer to be kept in the Building or on the Property any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion or that might be considered hazardous or extra hazardous by any responsible insurance company or any governmental authority; and

(vi) As lessor, City shall not be personally liable for any theft of or for any damage or injury of or to lessee, lessee’s invitees, agents or employees or to any person entering the Building or the Property; and the Developer as lessee shall indemnify, defend at the Developer’s sole cost and expense, and hold City and the District each harmless from and against any claim, action, proceeding or demand initiated at any time by any party arising out of the condition of the Building or the Property.

**Section 2.2. Improvements.** The Developer shall have the right, with the approval of the City and the District which approvals shall not be unreasonably withheld or delayed, to make any type of alteration to or improvement of the Building and the Property or to repair or replace the Transferred Equipment or any portion thereof; at the sole cost and expense of the Developer *provided that* nothing in this Lease shall be construed to authorize the Developer or any other person acting for the Developer to encumber the Building or the Property or any interest therein with a mechanic’s lien or any other type of encumbrance; and *provided further that* in the event the Developer fails to make expenditures for alterations to or improvements of the Building and the Property in amounts at least equal to the Acquisition Cost, upon the end of the lease term, all such alterations and improvements including any repairs to or replacements of the Transferred Equipment shall become the property of the City.

**Section 2.2.1. Developer to Adhere to All Applicable Regulations.** To the full extent that any Applicable Regulation applies to any aspect of alteration or improvements to the Building or the Property or any portion thereof, the Developer for itself and any contractor or sub-contractor as agent of the Developer covenants and agrees to take or

cause to be taken all such actions as are necessary to fully comply with such Applicable Regulation, and the Property and the Building and any portions thereof shall be subject all lawful regulatory inspections and to periodic inspections by the City at reasonable times with no less than Five (5) Business Days prior notice to the Developer to determine compliance with the terms and conditions of this Agreement and the Developer shall promptly perform or cause to be performed all such necessary acts as may be required by Applicable Regulations.

**Section 2.2.2. Warranty of Building and Site Maintenance.** During construction of any aspect of alteration or improvements to the Building or the Property or any portion thereof the Developer shall maintain the Building and the Property in an orderly and workmanlike manner and shall promptly haul away and lawfully dispose of any trash, debris and accumulated materials not to be used within a reasonable time. The Developer, for the Developer and its successors and assigns, agents, heirs and personal representatives, hereby covenants and warrants to the City and the District that the Developer at the Developer's sole expense shall maintain or cause to be maintained the Building and exterior areas of the Property at all times in a good state of repair, excepting out times at which the Property is under construction or in the midst of repairs.

**Section 2.2.3. Maintenance of Public Parking; North Fourth Street Modification.** At all times during the term of the lease provided for in Section 2.1 of this Agreement and, in the event the Developer elects to acquire from the City fee simple title to the Building and the Property as provided in Section 2.3 of this Agreement, for a minimum period of Five (5) years after conveyance of the Property to the Developer, the City shall maintain the property located on the 300 Block of North Fourth Street designated as parcel number 10-1.0-01.0-2.0-002-019.000 in the records of the Randolph County Assessor as and for public parking; *provided that* nothing in this Section 2.2.3 or this Agreement shall impose at any time upon the City or the District any duty or obligation to maintain, repair, or improve the aforesaid public parking area, any such activity being subject to the City's sole discretion, which may be exercised from time to time. The Developer may propose and the City, through the City Council, shall give reasonable consideration to the designation of that portion of North Fourth Street between Reed and Coates Streets for one way (*north only*) only traffic; *provided that* any decision regarding the aforesaid designation of North Fourth Street shall remain within the discretion of the City Council in accordance with and subject to the City's police power.

**Section 2.3. Developer's Acquisition and Transfer of Title.** At any time during the lease term set forth in Section 2.1 of this Agreement the Developer shall have the right but not the obligation to acquire from the City fee simple title to the Building, the Transferred Equipment, and the Property for the Purchase Price upon demonstration to the City and the District that the Developer has expended an aggregate total amount for alterations to or improvements of the Building and the Property in excess of the Acquisition Cost. Such demonstration of expenditures shall be made by delivering copies of paid invoices and proof of payment contemporaneously to the City and to the District; *provided that* the parties agree that the District shall be the sole judge of the adequacy of such demonstration. Upon successful demonstration of the requisite expenditures as provided in this Section 2.3, and the delivery of the Purchase Price, the City

within Ten (10) days (or such other date and time as the parties may mutually agree) shall transfer and convey all of the City's right, title and interest in the Building, the Transferred Equipment, and the Property to the Developer *provided that* in connection with the leasing of the Building and the Property as provided in Section 2.1 of this Agreement or the acquisition of fee simple title to the Building and the Property as provided in this Section 2.3:

**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, THE BUILDING, AND THE TRANSFERRED EQUIPMENT AND THAT THE CONVEYANCE OF SAME WHETHER BY LEASE OR BY DEED BY OR ON BEHALF OF THE CITY IS MADE ON AN "AS IS/WHERE IS" BASIS AND WITHOUT RECOURSE TO THE CITY OR THE DISTRICT. THE CONVEYANCE OF THE PROPERTY, THE BUILDING, AND THE TRANSFERRED EQUIPMENT WHETHER BY LEASE OR BY DEED SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY IMPLIED WARRANTY OF 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 DATE HEREOF AND OF THE CONVEYANCE OF THE PROPERTY, THE BUILDING, AND THE TRANSFERRED EQUIPMENT 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 THE DISTRICT.**

Each of the foregoing disclaimers is hereby agreed to and accepted by the Developer. The Developer further agrees and covenants and warrants to the City and the District that the Property, the Transferred Equipment, and the Building shall at all times only be used for lawful purposes consistent with City zoning codes and the Building Regulations.

**Section 2.4. Conveyancing.** Closing on the transfer of title to the Property to the Developer shall be held at a title company selected by the City and having an office in Randolph County, Missouri or such other place as the parties may mutually agree in writing. At any time prior to such closing the Developer shall have the right, but not the obligation obtain at the Developer's sole cost and expense a commitment for the issuance of title insurance for the Property. The City shall transfer and convey all of the City's right, fee title and interest in the Property by Special Warranty Deed, and to the Transferred Equipment by bill of sale, free and clear of all tenancies, liens and encumbrances that are set forth in any title commitment obtained by the Developer. Other than the cost of any title insurance policy elected by the Developer, each Party shall be responsible for costs of closing customarily allocated to sellers and purchasers of real property.



**ARTICLE III.**  
**SPECIAL REBATE PROGRAM**

**Section 3.1. Undertakings by District; Conditions.** In further consideration of the foregoing undertakings and covenants of the Developer and the City, in the event the Developer expends at any time during the full Eighteen (18) month lease term provided in Section 2.1 of this Agreement (notwithstanding any earlier delivery of the Purchase Price and transfer of title to the Property as provided in Section 2.3 of this Agreement) an aggregate amount of \$50,000 in excess of the Acquisition Cost in approved and paid and verified “hard cost” alterations and improvements to the Building, the District shall rebate to the Developer an amount equal to Fifty Percent (50%) of such amounts up to a maximum \$25,000. For purposes of the foregoing, the term “hard cost” shall be deemed to exclude furnishings and equipment not permanently affixed to the Property (including, without limitation, the Transferred Equipment) as well as any professional service or similar costs. Procedures for documenting and verifying such costs and expenditures shall generally follow the guidelines and policies of the District’s Private Property Improvements (“PPI”) Program.

**Section 3.2. Frequency of Payment; Application and Verification Required.** Payments as set forth in Section 3.1 of this Agreement shall be made, as applicable, subject to annual appropriation, by the Board of Directors in no event more frequently than quarterly and upon written application by the Developer, together with submittal by the Developer, of accompanying receipts and documentation as or similar to that required by sections 144.635 and 144.640 of the Revised Statutes of Missouri, as amended, and reasonably sufficient in content and detail (in the sole judgment of the District) *provided that* notwithstanding anything in this Agreement to the contrary, the parties hereto acknowledge that provision for amounts constituting any portion of the payments made or to be made pursuant to Section 3.1 of this Agreement which extend for any reason beyond any calendar year in which such cost is incurred shall be subject to annual appropriation by the Board of Directors.

**Section 3.3. Current Year Expenses; Cooperation.** Payments as set forth in Section 3.1 of this Agreement shall be deemed to be current expenses in the applicable year to which such payments apply. The Developer shall cooperate with the District and shall promptly provide to the District upon request copies of such payment records, invoices and similar documentation prepared or maintained by or on behalf of the Developer which the District may reasonably require to assure compliance with the terms this Article III.

**ARTICLE IV.**  
**FURTHER OBLIGATIONS; DEVELOPER REPRESENTATIONS**

**Section 4.1. Indemnification; Third Party Actions.** The Developer shall have the right, but not the obligation, to assume the costs of defense of any Third Party Action (including, without limitation, to settle or compromise any claim or action for which the Developer has assumed the defense) with counsel of the Developer’s choosing and reasonably acceptable to the City and the District and the City and the District agree with the Developer that so long as no conflicts of interest exist between or among them, the same attorney or attorneys may simultaneously represent the City, the District, and the Developer in any such proceeding; *provided that* in the

event the Developer elects not to assume the costs of defense or subsequently abandons the defense of any Third Party Action undertaken by the Developer, in no event shall the City or the District have any obligation to assume such defense. In each Third Party Action for which the Developer has assumed the costs of defense, the Developer shall indemnify and hold the City and the District and their respective officials, agents, employees, attorneys, and representatives acting in any capacity harmless from all such Third Party Actions. In no event shall the City or the District have any obligation to initiate or to assume the defense of any Third Party Action nor shall the City or the District nor any officer, official, agent, attorney, employee or representative of either of them have any liability to the Developer or any Affiliate or any officer, agent, employee or representative of the Developer or Affiliate for damages, costs or otherwise in the event that all or any part of this Agreement, the Approving Ordinance, the Approving Resolution, the provisions for payment or rebate of amounts set forth in Article III of this Agreement, or any of the transactions or undertakings contemplated under this Agreement shall be declared invalid or unconstitutional in whole or in part by a final (as to which all rights of appeal have been exhausted or expired) judgment of a court of competent jurisdiction, or as a result of initiation of any claim, action or proceeding, the Developer is prevented from enjoying the rights and privileges of the Developer under this Agreement.

**Section 4.2. Representations of Developer.** The Developer hereby represents and warrants to the City and the District that:

(a) The execution and delivery of this Agreement by the Developer will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Developer or any Affiliate of the Developer is a party or by which the Developer or any Affiliate of the Developer is bound or any applicable articles of organization, or operating agreement, or any of the rules or regulations of any governmental authority applicable to the Developer or any Affiliate of the Developer;

(b) The Developer has full corporate power to execute and deliver and perform the terms and obligations of this Agreement. The Developer has been authorized by all necessary action to execute and deliver this Agreement, which shall constitute the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, subject to bankruptcy and other laws affecting creditors' rights generally and to general principles of equity; and

(c) There are no actions or proceedings by or before any court, governmental commission, board, bureau, or any other administrative agency pending, threatened, or affecting the Developer or any Affiliate of the Developer that would impair its ability to perform under this Agreement; and

**Section 4.3. Survival of Covenants.** All warranties, representations, covenants, and agreements of the Developer contained in this Article IV or elsewhere in this Agreement shall survive termination of this Agreement for any reason.

ARTICLE V.  
MISCELLANEOUS PROVISIONS

**Section 5.1. Assignment Limited.** The Developer shall have the right to assign this Agreement in whole or in part at any time, but only to an Affiliate of the Developer and upon written notice of such assignment to the City and the District. Other than the foregoing, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part to any other individual or entity other than to an Affiliate without the written consent of the City and the District which consents shall not be unreasonably withheld, conditioned or delayed.

**Section 5.2. Term of Agreement.** Unless otherwise terminated as provided in Section 2.1 of this Agreement, this Agreement shall continue in force so long as any payments by the District required under Section 3.1 of this Agreement remain unsatisfied;. The rights and privileges granted to, and the duties and obligations imposed on the Developer by this Agreement shall apply only to the Building and the Property.

**Section 5.3. 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 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
- If to the District:

Downtown Moberly Community Improvement District  
101 West Reed Street  
Moberly, Missouri 65270  
Attention: Chair
- 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 the Developer:

Lawrence Family Real Estate Holdings, LLC  
Attn: Jeffrey W. and Lara J. Lawrence  
P.O. Box 715  
Moberly, Missouri 65270

With a copy to: Gump & Faiella  
110 N FIFTH ST  
MOBERLY MO 65270  
Attn: CASSE J CARPENTER BUGALSKI

or to such other persons as the parties may designate in writing from time to time in accordance with this Section 5.3 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.

**Section 5.4. Further Assistance.** The City, the District, and the Developer each agree to take such actions and execute such documents and instruments as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 5.5. 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 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 5.6. Headings; No Presumption; 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 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.

**Section 5.7. 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.



**Section 5.8. 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.

**Section 5.9. No Waiver of Sovereign Immunity; Public Liability Strictly Limited; No Personal Liability.** Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's or the District's sovereign immunity. No official, officer, agent, attorney, employee, or representative of the City or of the District shall be personally liable to the Developer, and Affiliate or the assignees, sublessees, successors, assigns, heirs or personal representatives of the Developer or Affiliate in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

**Section 5.10. Relationship of the Parties; No Third Party Beneficiaries.** Nothing contained in this Agreement, nor any act of the Developer, the District, or the City shall be deemed or construed to create a partnership or agency relationship between or among 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.

**Section 5.11. Compliance with Section 285.530 of the Revised Statutes of Missouri.** Contemporaneous with the Developer's execution of this Agreement, the Developer shall by sworn affidavit and provision of applicable documentation, affirm the Developer's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the improvements to the Building, all as required by section 285.530 of the Revised Statutes of Missouri, as amended. The Developer shall also sign and deliver to the City an affidavit in substantially the form of Exhibit B, attached to and incorporated by reference in this Agreement, affirming that the Developer does not and will not knowingly employ in connection with the leasing of or improvements to the Building any person who is an unauthorized alien and, if and as required by section 285.530 of the Revised Statutes of Missouri, as amended, the Developer shall obtain from each contractor and subcontractor employed by or on behalf of the Developer in connection with improvements to the Building or any portion thereof affidavits affirming that such contractors and subcontractors do not and will not knowingly employ in connection with such improvements any person who is an unauthorized alien.

**Section 5.12. 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 Developer, the City, the District and their respective successors and permitted assigns.

**Section 5.13. 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 another 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

**DOWNTOWN MOBERLY COMMUNITY  
IMPROVEMENT DISTRICT**  
(the “District”)

By: Brian Crane  
Brian Crane, Chair

**ATTEST:**

Muhar R Baylde  
Secretary



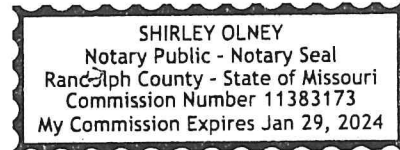
foregoing instrument was signed in behalf of said District by authority of its Board of Directors and said Chair acknowledged said instrument to be the free act and deed of said District.

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

Shirley Olney  
Notary Public

My commission expires: Jan 29, 2024

STATE OF MISSOURI       )  
  ) SS.  
COUNTY OF Randolph )



On this 1 day of December, 2021 before me appeared Jeff Lawrence, to me personally known, who being by me duly sworn, did say that he/she is Managing Member of LAWRENCE FAMILY REAL ESTATE HOLDINGS, LLC, a Missouri limited liability company, and that the foregoing instrument was signed on behalf of such limited liability company.

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

Tina M. Bealmer  
Notary Public

My commission expires: 1/26/24



TINA M. BEALMER  
My Commission Expires  
January 26, 2024  
Randolph County  
Commission #12333424

**EXHIBIT A**  
**THE PROPERTY - LEGAL DESCRIPTION**

EXHIBIT B

FORM OF AFFIDAVIT

STATE OF MISSOURI )  
 ) SS.  
COUNTY OF Randolph )

AFFIDAVIT

I, the undersigned, am the MANAGING MEMBER of LAWRENCE FAMILY REAL ESTATE HOLDINGS, LLC, a Missouri limited liability company (the "Company") and have personal knowledge of the matters stated herein.

I am the person whose name appears below and I am competent to testify and attest to the matters set forth in this Affidavit.

I hereby affirm the Company's enrollment and participation in a "federal work authorization program" as defined in section 285.525 of the Revised Statutes of Missouri, as amended, with respect to any employees working in connection with improvements made to the "Building" (as that term is defined and used in that certain Purchase and Development Agreement dated as of \_\_\_\_\_, 202\_\_ by and among the City of Moberly, the Downtown Moberly Community Improvement District, and the Company).

The Company does not and will not knowingly employ any person who is an "unauthorized alien" as defined in section 285.525 of the Revised Statutes of Missouri, as amended, in connection with the construction and installation of the Project.

Further Affiant Sayeth Not.

LAWRENCE FAMILY REAL ESTATE  
HOLDINGS, LLC

By: [Signature]  
Its MANAGING MEMBER

Subscribed and sworn to before me this 1 day of December, 2021.

Tina M. Bealmer  
Notary Public

My commission expires: 1/26/24



TINA M. BEALMER  
My Commission Expires  
January 26, 2024  
Randolph County  
Commission #12333424

# City of Moberly

## City Council Agenda Summary

Agenda Number: #5.

Department: Administration

Date: December 6, 2021

**Agenda Item:** An Ordinance Approving A Cooperative Development Agreement Between The City Of Moberly, The Moberly Area Economic Development Authority And GRC Real Estate, LLC.

**Summary:** A development agreement with GRC Real Estate for an economic development project at 1420 Becflo Dr. GRC has acquired the property with the desire to construct a licensed cannabis cultivation facility. Their license has been granted by the State of Missouri. The project involves the investment of over 4 million dollars and the creation of at least 25 permanent full-time jobs at the facility. The agreement offers a 10-year 50% tax abatement on net new real estate taxes of the facility under the Enhanced Enterprise Zone Ordinance. Further, the company is eligible for a city sales tax rebate on construction materials purchased through local vendors. The city is also offering a 50% refund of its Ameren franchisee fee from the facility for the first 60 months of operation.

**Recommended Action:** Approve this Ordinance.

**Fund Name:**

**Account Number:**

**Available Budget \$:**

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	<b>Mayor</b>		
<input type="checkbox"/> Staff Report	<input checked="" type="checkbox"/> Proposed Ordinance	M___ S___ <b>Jeffrey</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	<b>Council Member</b>		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Brubaker</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> P/C Minutes	<input checked="" type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Davis</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ <b>Kyser</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING A COOPERATIVE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOBERLY, THE MOBERLY AREA ECONOMIC DEVELOPMENT AUTHORITY AND GRC REAL ESTATE, LLC.**

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBERLY, MISSOURI, TO-WIT:**

**SECTION ONE:** The City of Moberly (the “City”), the Moberly Area Economic Development Authority (the “Authority”) and GRC Real Estate, LLC (“GRC” together with the City and the Authority, the “Parties”) desire to enter into the attached Development Agreement (the “Agreement”).

**SECTION TWO:** The attached Agreement does not grant a tax exemption pursuant to Sections 135.950 to 135.973 RSMo.

**SECTION THREE:** The City Council hereby approves the Agreement and hereby authorizes the Mayor of Moberly to execute said Agreement on behalf of the City.

**SECTION FOUR:** This Ordinance shall be in full force and effect from and after its passage and adoption by the Council of the City of Moberly, Missouri, and its signature by the officer presiding at the meeting at which it was passed and adopted and further the Council authorizes the City Manager and Mayor to take such other and further action as may be required to accomplish the purposes of this Ordinance.

**PASSED AND ADOPTED** by the Council of the City of Moberly, Missouri, this 6th day of December, 2021.

**ATTEST:**

\_\_\_\_\_  
**Presiding Officer at Meeting**

\_\_\_\_\_  
**City Clerk**



## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and among the CITY OF MOBERLY, MISSOURI, a city of the third class and Missouri municipal corporation located in the County of Randolph and having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**City**”); MOBERLY AREA ECONOMIC DEVELOPMENT CORPORATION, a Missouri not for profit corporation having a principal office at 115-A North Williams Street, Moberly, Missouri 65270, (the “**EDC**”); and GRC REAL ESTATE LLC, a Missouri limited liability company having a principal office at 5804 Lightpost Drive, Columbia, Missouri 65201 (the “**Company**”). *Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in Article I of this Agreement.*

### RECITALS

**A.** The Company is the owner in fee of the Property which is located in the EEZ and wishes to renovate and improve the Property for use as a medical marijuana cultivation and manufacturing facility containing approximately 45,000 square feet, together with the installation and provision of necessary infrastructure which activities are anticipated to result in the investment of approximately \$4,000,000 at the Property and the creation of 25 new permanent jobs.

**B.** Section 135.963.4 of the EEZ Act provides that improvements made by a qualifying business to real property located within an enhanced enterprise zone, upon approval after public hearing, by the governing authority having jurisdiction of the area in which the improvements are to be made may be exempted, in whole or in part, from assessment and payment of at least one-half of ad valorem taxes of one or more affected political subdivisions or a period of not less than ten years following the date such improvements were assessed.

**C.** The City and the EDC wish to have the Company undertake the implementation of the Project and as an inducement to the Company to do so and to create permanent full time jobs at the Property, the City is willing to provide limited exemption from assessment and levy of real property ad valorem taxes respecting the Project as specified in the Tax Exemption Terms, all in accordance with the provisions of the EEZ Act and subject to the terms of the Approving Resolution and of this Agreement.

**D.** The Approving Resolution provides for a grant of limited exemption from assessment and levy of real property ad valorem taxes on real property improvements made in connection with the Project, subject to satisfaction by the Company of certain conditions and obligations as set forth in this Agreement, and the EDC is willing to assist the City in the annual monitoring of the Company’s satisfaction of such conditions and obligations, all in accordance with and subject to the terms and conditions of this Agreement.

### AGREEMENT

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



## ARTICLE I. MEANINGS OF TERMS

**Section 1.1. Definitions.** Except as otherwise defined, as used in this Agreement, the following words and terms shall have the following meanings:

**“Affiliate”** shall mean an individual, corporation, association, partnership, limited liability company, joint venture, trust, estate, or other entity or organization, or any other such person or entity which, directly or indirectly, is Controlled by or is in common Control by the Company and/or owners of membership interests of the Company.

**“Applicable Regulations”** shall mean, collectively, all federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes including, without limitation, those of the City and of the County of Randolph applicable to or affecting the Property or the Project.

**“Approving Resolution”** shall mean Resolution No. \_\_\_\_ of the City adopted and approved by the City Council on \_\_\_\_\_, 2021 in accordance with the EEZ Act approving, among other things, a grant of limited exemption from assessment and levy of real property ad valorem taxes in respect of the Property and the Project, subject to the limitations and conditions of this Agreement.

**“Baseline Jobs Requirement”** shall mean 25, representing the number of FTE Jobs required to be created and maintained at the Property as a result of the Project.

**“Baseline Jobs Shortfall Ratio”** shall mean the Baseline Jobs Requirement minus the Weighted Average Jobs for any Testing Period (if less than the Baseline Jobs Requirement), divided by Baseline Jobs Requirement. For example, if in a Testing Period it is determined that there are 24 Weighted Average Jobs, the Baseline Jobs Shortfall Ratio shall be 0.04 as illustrated by the following formula:

$$(25-24)/25 \text{ or } 0.04.$$

**“City”** shall mean the City of Moberly, Missouri a city of the third class located in the County of Randolph.

**“City Council”** shall mean the duly elected and serving governing body of the City.

**“City Sales Tax”** shall mean the combined tax levy by the City pursuant to applicable Missouri law on all taxable “sales at retail” (as that term is defined and used in chapter 144 of the Revised Statutes of Missouri, as amended) at the current combined rate of 2.50%.

**“Company”** shall mean GRC Real Estate, LLC, a Missouri limited liability company having a principal office at 5804 Lightpost Drive, Columbia, Missouri 65201 or its assigns approved pursuant to Section 6.11 of this Agreement.

**“Construction Contractor”** shall mean one or more principal or general contractors (other than the Company or Affiliate), if any, contractually obligated to undertake the construction of any portions of the Project with each designated in a writing to the City by the Company.

**“Control”** shall mean, as applied to any Affiliate, with respect to: (a) a corporation having stock, the ownership, directly or indirectly, of more than 50% of the securities (as defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the governing or directing body of such corporation; (b) a not for profit corporation not having stock, having the power to elect or appoint, directly or indirectly, at least a majority of the members of the governing or directing body of such corporation; or (c) any other entity, the power to direct the management of such entity through the ownership of at least a majority of its voting securities or the right to designate or elect at least a majority of the members of its governing or directing body, by contract or otherwise.

**“EEZ”** shall mean the Moberly, Missouri Enhanced Enterprise Zone designated in Ordinance No. 7938, passed and approved by the City Council on April 17, 2006 in accordance with the EEZ Act.

**“EEZ Act”** shall mean sections 135.950 through 135.973 of the Revised Statutes of Missouri, as amended.

**“Enhanced Business Enterprise”** shall have the meaning ascribed to such term in section 135.950(9) of the EEZ Act or successor enactment or amendment.

**“Full Time Equivalent (FTE) Job”** shall mean either: (i) a regular full-time employee performing duties at the Property or (ii) in the case of part-time employment, two or more persons performing duties at the Property whose aggregate regular weekly hours total at least 35 hours; *provided that* the average aggregate annual wage or salary (excluding fringe benefits) for each such FTE Job shall equal or exceed \$40,000; and *provided further that* neither independent contractors nor contract personnel utilized or employed by the Company shall constitute FTE Jobs for purposes of this Agreement.

**“PILOT”** shall mean in any Testing Period the payment in lieu of taxes due from the Company to the City.

**“Project”** shall mean the renovation and improvement of the Property for use as a medical marijuana cultivation and manufacturing facility containing approximately 45,000 square feet, together with the installation and provision of necessary infrastructure which activities are anticipated to result in the investment of approximately \$4,000,000 in improvements on and to the Property

**“Property”** shall mean that certain improved real property located in the City and the EEZ known and numbered as 1420 Becflo Drive Moberly, Missouri 65270 legally described in Exhibit A, attached to and incorporated by reference in this Agreement.

**“Tax Exemption Terms”** shall mean the duration of the exemption from assessment and payment of ad valorem taxes for the Property and the Project in the amount of fifty percent (50%) of ad valorem real property taxes to be otherwise assessed and paid on said improvements to the Property for a ten (10) year period commencing on January 1, 2023, and ending on December 31, 2032, subject to the terms and conditions of this Agreement and the Approving Resolution, including, without limitation, earlier termination and PILOTs, all as provided in this Agreement.

**“Testing Period”** shall mean, as applicable, the year beginning on January 1, 2023, and ending on December 31, 2023, and each full calendar year thereafter, ending on December 31, 2032.

**“Third Party Action”** shall mean any action, proceeding or demand initiated at any time by any party other than a named party to this Agreement and directed to the City or the EDC, or naming the City, the EDC or any of their respective officials, officers, agents, attorneys, employees or representatives as a party and arising out of this Agreement, the Project; the Property; the EEZ and the EEZ Act (but only as they apply to this Agreement and the Project); the Approving Resolution; the grant of exemption from assessment and payment of ad valorem real property taxes; any of the incentives provided under Article IV of this Agreement; or any portion(s) of any of the foregoing or any actions taken pursuant to any of the foregoing.

**“Weighted Average Jobs”** shall mean the average number of FTE Jobs at the Property during each month of the applicable Testing Period, as certified to the City annually by the Company, subject to verification by the EDC, all in accordance with Article III and Article IV of this Agreement compared to the Baseline Jobs Requirement; *provided that*, for purposes of compliance with Section 3.2 of this Agreement, Weighted Average Jobs shall be deemed to be the whole number (which shall be rounded down in the event of any fraction less than a whole number), which is the weighted average of such monthly averages for any Testing Period such that, by way of illustration, if in a particular Testing Period three months thereof each average 28 FTE Jobs, four months thereof each average 25 FTE Jobs, and five months thereof each average 22 FTE Jobs, the Weighted Average Jobs for such Testing Period shall be 24 as illustrated by the following formula:

$$(28+28+28+25+25+25+25+22+22+22+22+22)/12=24.5 \text{ or } 24 \text{ Weighted Average Jobs.}$$

**Section 1.2. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

**Section 1.3. Computation of Time.** Wherever this Agreement calls for the performance of any act by reference to a day or number of days, to a month or number of months or to a year or number of years, each such computation shall be made based upon calendar days, calendar months, and calendar years, as applicable, unless otherwise expressly provided.

**Section 1.4. Recitals; Other Items Incorporated in this Agreement.** The recitals contained in this Agreement are important and material parts of this Agreement and are hereby acknowledged

and incorporated by reference and made a part of this Agreement. The provisions of the EEZ Act up to and including the date of the Approving Resolution, the provisions of the Approving Resolution, are also hereby incorporated by reference and made a part of this Agreement.

## ARTICLE II. IMPLEMENTATION OF THE PROJECT

**Section 2.1. Project Timing;** The Company shall obtain all necessary permits and approvals under Applicable Regulations and shall complete construction and place in operation the Project not later than **October 30, 2022**. Subject to provisions of Section 2.2 of this Agreement, in the event of failure of the Company to substantially complete and place in operation the Project within the time limits set forth in this Section 2.1, all rights to limited ad valorem tax exemption and to other incentives all as set forth in the Agreement shall automatically terminate.

**Section 2.2. Company's Control over the Project; Delays.** Subject to the schedule set forth in Section 2.1 of this Agreement, the Company shall have complete and exclusive control over the implementation and timing of the Project and the management and operation of the Project and the Property, all subject to the further requirements of this Agreement. Notwithstanding anything to the contrary contained in this Article II or in the Approving Resolution, the time within which the Project is to commence and be completed as set forth in Section 2.1 of this Agreement, shall be automatically extended appropriately as a result of actions or inactions not within the reasonable control of the Company, including, without limitation, construction delays, delays caused by competent legal authority, strikes, lockouts, labor disputes, riots, fire or other casualties, tornadoes, acts of God, acts of the public enemy, accidents, governmental restrictions, unanticipated or unusual site conditions, priorities regarding acquisition of or use of materials, litigation challenging any of the rights of the Company under this Agreement or the EEZ, or delays caused by local, state or federal governments; *provided that* in the event of such delays, the Company shall promptly notify the City and the EDC in writing stating the nature of the delay which, in the opinion of the Company, justifies the extension. Any delay under this Section 2.2 shall result in a day-for-day extension of any obligations, deadlines or dates set forth in this Agreement that are directly affected by such delay.

**Section 2.3. Company to Adhere to All Applicable Regulations.** To the full extent that any Applicable Regulation applies to any aspect of occupancy of the Property or the construction or implementation of the Project, the Company covenants and agrees to take all such actions as are necessary to fully comply with such Applicable Regulation, and the Company, the Property and the Project shall each be subject to all lawful inspections and the Company shall perform all such necessary acts as are required by Applicable Regulations.

**Section 2.4. Building and Site Maintenance.** Upon substantial completion of the Project, the Company at the Company's expense shall maintain all buildings and exterior areas of the Property at all times in a good state of repair and appearance.

**Section 2.5. Breach and Compliance.** In the event of non-compliance with the terms of this Article II, written notice of same may be delivered to the Company by the City or the EDC and, if the Company shall not have corrected such substantial non-compliance within forty-five (45) days after receipt of such notice (unless the time for such correction is further extended in writing by



the City or the EDC, as applicable), or upon failure of the Company to complete the Project and initiate operations at the Property within the time limits set forth in Section 2.1 of this Agreement as further subject to time extension as provided in Section 2.2 of this Agreement, the City or the EDC may jointly or individually institute such proceedings as may be necessary or desirable in their opinion to cure and remedy such default including, without limitation, the remedy of specific performance.

### ARTICLE III. EEZ TAX EXEMPTION; PILOTS

**Section 3.1. Tax Exemption.** The parties contemplate and intend that the Tax Exemption Terms applicable to improvements made to the Property in conjunction with the Project as granted in the Approving Resolution pursuant to the EEZ Act shall be enjoyed by the Company, subject to the terms of this Agreement.

**Section 3.2. Baseline Jobs Requirement to be Maintained.** The parties acknowledge and agree that the Company anticipates maintenance at the Property of not less than the Baseline Jobs Requirement and that the continued satisfaction of such Baseline Jobs Requirement during the term of this Agreement constitutes a material inducement to the City and the EDC to enter into this Agreement and to the City to provide an exemption from assessment and payment of ad valorem taxes for the Project and the Property in accordance with the Tax Exemption Terms and the EEZ Act and to provide other incentives enumerated in this Agreement. Accordingly, and to assure the foregoing, the Company hereby agrees that for the period beginning on January 1, 2023, and ending on December 31, 2023, and in each subsequent calendar year until December 31, 2032, in any calendar year the Company fails for any reason to satisfy the Baseline Jobs Requirement, not later than January 31st of the following year the Company, notwithstanding any tax exemption or abatement contemplated by this Agreement with respect to the Property, shall pay to the City such PILOTs as are required by this Section 3.2, which payments shall in each case be based upon the following procedure and schedule:

**Section 3.2.1. Certification of FTE Jobs.** Commencing on January 1, 2023, and continuing for each month during each Testing Period, the Company shall determine monthly the number of FTE Jobs then existing at the Property and shall calculate the resulting Weighted Average Jobs for such Testing Period and shall certify such number to the City and the EDC in an annual summary report submitted to the EDC with a copy to the City not later than the fifteenth day of January of the next succeeding year. The report shall additionally supply such salary or annual wage data as may be reasonably required to verify that the jobs included in the report meet all requirements for FTE Jobs. The EDC on behalf of the City may independently verify the information contained in such report in accordance with Section 3.3 of this Agreement, *provided that* the EDC shall complete verification activities, if any, and notify the City and the Company of the results of such activities on or before the 60<sup>th</sup> day following the Company's submission of the applicable report. If the EDC provides no such notice on or before such 60<sup>th</sup> day, the Company's report shall be deemed accurate as certified for purposes of this Section 3.2.1.

**Section 3.2.2. Calculation of PILOTs.** Annually, after receipt of each FTE Jobs certification report submitted as provided in Section 3.2.1 of this Agreement, subject to

EDC verification as provided in Sections 3.2.1 and 3.3 of this Agreement, the City shall determine if the number of FTE Jobs equals or exceeds the applicable Baseline Jobs Requirement. For any Testing Period in which the Weighted Average Jobs is less than the Baseline Jobs Requirement, the Company agrees to pay with respect to such Testing Period not later than April 30th of the calendar year following such Testing Period a PILOT calculated as follows:

the “true value in money” of the land and real property improvements constituting the Project as determined from time to time by the Randolph County Assessor (i) multiplied by 0.32 (ii) divided by \$100; (iii) multiplied by the combined ad valorem levies for all affected taxing jurisdictions; (iv) multiplied by the Baseline Jobs Shortfall Ratio; and (v) multiplied by 50%.

By way of illustration, the applicable calculation formula is set forth below:

$$\begin{aligned} & \text{“true value in money”} \times 0.32 \div \$100 \times \text{combined ad valorem levy amount} \\ & \quad \times \text{Baseline Jobs Shortfall Ratio} \times 50\% \\ & \quad = \text{PILOT;} \end{aligned}$$

*provided that*, in the event that in any Testing Period the number of Weighted Average Jobs equals or exceeds the Baseline Jobs Requirement, no such determination shall be performed for such year and no PILOT shall be required for such year; and *provided further that* in the event of a sustained period of significant decline in the level of aggregate economic activity within the United States (as distinguished from (a) business or other decisions within the discretion or control of the Company, or parents, affiliates, assignees, subsidiaries, or nominees of the Company or (b) other external factors not related to decline in national economic activity) and only in such event, which results in a substantial reduction in the number of FTE Jobs at the Property during a Testing Period, the Company may request in a writing specifying and documenting the conditions which affect or result in the reduction of FTE Jobs submitted to the City Council that, notwithstanding the Company’s failure to meet the Baseline Jobs Requirement during such Testing Period, that the City waive or reduce the amount of PILOT due for such Testing Period and the City Council, upon due consideration and a finding in its sole discretion that: (i) a sustained period of significant decline in the level of aggregate national economic activity has occurred; (ii) that such decline has caused a substantial reduction in the number of FTE Jobs at the Property; and (iii) that such reduction is not due to business or other decisions within the discretion or control of the Company, or of its parents, affiliates, assignees, subsidiaries, or nominees or other external factors not related to decline in national economic activity, may waive or reduce such amount of PILOT due in respect of such Testing Period.

**Section 3.2.3. Notice of PILOTs; Distribution.** After determination that a PILOT amount is due for a Testing Period, the City shall notify the Company of the PILOT amount due with respect to any Testing Period not later than April 1 of the calendar year following such Testing Period. Any PILOT required under this Agreement shall be and shall be deemed to be a payment in lieu of taxes and, upon receipt, the City shall promptly distribute

such PILOT to affected taxing jurisdictions in the manner provided in section 100.050.3 of the Revised Statutes of Missouri, as amended.

**Section 3.2.4. Company's Covenant to Pay PILOTs; Default in Payment; Termination of Tax Exemption.** The Company hereby covenants and warrants to the City and the EDC that the Company shall make payment promptly upon notice of all PILOTs as and when due from time to time under this Agreement. The City, the Company, and the EDC each agree that, upon provision of notice to the Company, each PILOT shall constitute a lien against the Property, which shall be discharged by the Company and enforceable by the City by any means provided by law for the enforcement of liens as the City may elect in its sole discretion and shall remain a lien on the Property until paid in full through voluntary payment by the Company or payment through collection by the City as provided in this Section 3.2.4. In the event the Company fails to pay any such PILOT within one hundred eighty days (180) of notice by the City to the Company, the City, in the City's sole and absolute discretion and in addition to any other remedies that may be available to the City at law or in equity, may cancel this Agreement and adopt an ordinance or resolution terminating the grant of exemption from assessment and payment of ad valorem taxes for the Project. Upon adoption of such ordinance or resolution terminating the grant of exemption from assessment and payment in full of any PILOTs and interest thereon then due and payable under this Agreement, no party shall have any further obligation to any other party other than as expressly provided in this Agreement.

**Section 3.3. Cooperation in Verification of FTE Jobs.** The Company shall use commercially reasonable efforts to cooperate with the EDC and the City in promptly making available at the Property upon request by the EDC or the City such employment and annual wage records and similar documentation prepared or maintained by the Company, its parent, Affiliates, subsidiaries or nominees which the City may reasonably require to verify the number of FTE Jobs in any Testing Period in accordance with the terms of Section 3.2 of this Agreement; *provided that* nothing in this Agreement shall require the Company to disclose confidential or proprietary information maintained by the Company, its parent, Affiliates, subsidiaries or nominees.

#### ARTICLE IV. ADDITIONAL INCENTIVES

**Section 4.1. City Sales Tax on Construction Materials.** In further consideration of the undertakings and covenants of the Company set forth in Article II of and elsewhere in this Agreement, the City shall cause to be paid directly to the Company from lawfully available funds an amount equal to the revenue actually paid by the Company to and received by the City (as verified by the City) as provided in this Section 4.1 during the period provided in this Agreement for completion of the Project which was generated by the levy of the City Sales Tax on purchases by the Company or on behalf of the Company by a Construction Contractor, but only from vendors or suppliers having a principal place of business within the City, of tangible materials and personal property actually incorporated into or consumed in the construction of the Project; *provided that* in each case, any excess re-salable tangible personal property or materials which were purchased for the Project by the Company or on behalf of the Company by a Construction Contractor but which were not incorporated into or consumed in the construction of the Project shall either (i) be returned to the supplier for credit or the appropriate sales tax on such excess property; or (ii) be



reported on a return and paid by the Company or a Construction Contractor and in either case shall be deducted from the amounts due from the City; and *provided further that* notwithstanding anything in this Agreement to the contrary, the parties hereto acknowledge that provision for amounts constituting any portion of the payments made or to be made pursuant to this Section 4.1 which extend for any reason beyond any calendar year in which such cost is incurred shall be subject to annual appropriation by the City Council.

**Section 4.2. Franchise Fee Rebate.** In further consideration of the undertakings and covenants of the Company set forth in Article II of and elsewhere in this Agreement, for the first sixty (60) months of operations by the Company at the Project the City shall rebate to the Company fifty percent (50%) of the amounts generated at the Project from the City's 8% franchise fee levied on sales of electricity.

**Section 4.3. Frequency of Payments; Application and Verification Required; Cooperation; Current Year Expenses.** Payments as set forth in this Article IV shall be made, subject to annual appropriation by the City Council, quarterly and upon written application by the Company, together with submittal by the Company of accompanying receipts and documentation as or similar to that required by sections 144.635 and 144.640 of the Revised Statutes of Missouri, as amended, and reasonably sufficient in content and detail (in the sole judgment of the City) to permit the applicable officer of the City to reasonably verify the City Sales Tax and Franchise Fee amounts actually paid by the Company or on behalf of the Company by a Construction Contractor as provided in Sections 4.1 and 4.2 of this Agreement. Payments as set forth in this Section 4.3 shall be deemed to be current expenses in the applicable year to which such payments apply.

## ARTICLE V.

### FURTHER OBLIGATIONS OF THE COMPANY; COMPANY REPRESENTATIONS

**Section 5.1. Third Party Actions; Indemnification.** The Company hereby covenants warrants and agrees to indemnify, defend and hold the City, the EDC and their respective officials, agents, attorneys, employees and representatives acting in any capacity harmless from all claims, demands, costs, liabilities, damages or expenses, including reasonable attorneys' fees, arising from any Third Party Action. The Company shall have the right, but not the obligation to assume the costs of defense of any Third Party Action with counsel selected by the City or the EDC, as applicable, and reasonably acceptable to the Company; *provided that* the Company shall have the further right to elect to abandon any such defense which the Company has assumed under this Section 5.1 and to cancel this Agreement and forego the grant of limited exemption from assessment and levy of real property ad valorem taxes in respect of the Project as set forth in the Approving Resolution, and if the Company so elects, neither the City nor the EDC shall have any obligation to defend or to assume the costs of defense of any such action; and *provided further that* in any such instance, the Company shall indemnify, defend and hold the City, the EDC, and the officers, officials, agents, attorneys, employees and representatives of each of them, all harmless from all such Third Party Actions. The indemnification obligations of the Company under this Section 5.1 shall not be assignable or delegable by the Company without the prior written consent of the City and the EDC and shall survive termination of this Agreement for any reason. In no event shall the City, the EDC or any officer, official, agent, attorney, employee or representative of any of them have any liability to the Company or to any parent or Affiliate of the Company for damages or otherwise in the event that in the event that all or any part of the EEZ



Act, the EEZ, this Agreement, the Approving Ordinance, or any determinations in any of them, the grant of partial real property tax exemption for the Project, the incentives provided under Article IV of this Agreement, or any of them, or any of the transactions or undertakings contemplated under this Agreement, shall be declared invalid or unconstitutional in whole or in part by a final (as to which all rights of appeal have been exhausted or expired) judgment of a court of competent jurisdiction, or as a result of initiation of a Third Party Action, the Company is prevented from enjoying the rights and privileges of the Company under this Agreement or any of the foregoing.

**Section 5.2. Cooperation in Annual Report Filings.** Pursuant to the EEZ Act, the City or the EDC may be required to file annual reports with the Missouri Department of Economic Development or other entities of the State of Missouri. The Company shall use commercially reasonable efforts to cooperate with the City or the EDC, as applicable, in causing such reporting requirements to be fulfilled and, upon written request of the City or the EDC, as applicable, from time to time delivered, the Company shall promptly reimburse the City or the EDC, as applicable, for all reasonable costs and expenses advanced by the City or the EDC (except for wages paid to employees and officials of the City and the EDC and related benefits) in connection with the preparation and filing of such annual reports.

**Section 5.3. Compliance with Section 285.530 of the Revised Statutes of Missouri.** Contemporaneous with the Company's execution of this Agreement, the Company shall by sworn affidavit and provision of documentation, affirm the Company's enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Project, all as required by Section 285.530 of the Revised Statutes of Missouri, as amended. The Company shall also sign and deliver to the City an affidavit in substantially the form of Exhibit B, attached to and incorporated by reference in this Agreement affirming that the Company does not and will not knowingly employ in connection with the Project any person who is an unauthorized alien and, if and as required by Section 285.530 of the Revised Statutes of Missouri, as amended, the Company shall obtain from each contractor and subcontractor employed by or on behalf of the Company in connection with the Project affidavits affirming that such contractors and subcontractors do not and will not knowingly employ in connection with the Project any person who is an unauthorized alien.

**Section 5.4. Representations of the Company.** The Company hereby represents and warrants to the City and the EDC that:

- (a) The Company is a duly organized Missouri limited liability company existing and in good standing;
- (b) The execution and delivery of this Agreement by the Company will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Company or any parent, Affiliate or principal of the Company is a party or by which the Company or any parent, Affiliate or principal of the Company is bound or any applicable articles of organization, or operating agreement, or any of the rules or regulations of any governmental authority applicable to the Company or any parent, Affiliate or principal of the Company;

- (c) The Company has full corporate power to execute and deliver and perform the terms and obligations of this Agreement. The Company has been authorized by all necessary action to execute and deliver this Agreement, which shall constitute the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, subject to bankruptcy and other laws affecting creditors’ rights generally and to general principles of equity;
- (d) There are no actions or proceedings by or before any court, governmental commission, board, bureau, or any other administrative agency pending, threatened, or affecting the Company that would impair its ability to perform under this Agreement; and
- (e) The Company has obtained or will obtain as and when required by Applicable Regulations, and shall maintain, all government permits, certificates, and consents (including, without limitation, environmental approvals required by any Applicable Regulations) necessary to conduct the Company’s business and to construct, complete, and operate the Project on the Property.

**Section 5.5. Survival of Covenants.** All warranties, representations, covenants, and agreements of the Company contained in this Article V or elsewhere in this Agreement shall survive termination of this Agreement for any reason.

**ARTICLE VI.  
MISCELLANEOUS PROVISIONS**

**Section 6.1. Term of Agreement.** This Agreement shall continue in force so long as: (a) any PILOT due, or interest thereon, remains unpaid; or (b) the Tax Exemption Terms remain in force with regard to the Project, whichever is later. The rights and privileges granted to and the duties and obligations imposed on the Company by the Approving Resolution and this Agreement shall apply only to the Project and the Property.

**Section 6.2. 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 mail, return receipt requested:

- If to the City:                      City of Moberly  
   101 West Reed Street - City Hall  
   Moberly Missouri 65270  
   Attention: City Manager
  
- If to the EDC:                        Moberly Area Economic Development Corporation  
   115 North Williams Street  
   Moberly, Missouri 65270  
   Attention: President

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 the Company: GRC Real Estate LLC  
 5804 Lightpost Drive  
 Columbia, Missouri 65201  
 Attn: Jigneshkumar Patel

or to such other persons as the parties may designate in writing from time to time in accordance with this Section 6.2 and all said notices shall be deemed given upon the deposit in the United States mail or with an overnight courier or upon hand delivery.

**Section 6.3. Further Assistance.** The City, the EDC, and the Company each agree to take such actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent. The Company shall further cooperate with and assist the City, the EDC, and the Randolph County Assessor as necessary to describe and document from time to time those portions of the Property and the Project that may be eligible for tax exemption as provided in this Agreement.

**Section 6.4. 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 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 6.5. Headings; No Presumption; 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 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. All parties 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 each further represent that the terms of this Agreement and the documents attached as exhibits 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.



**Section 6.6. 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 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 6.7. 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 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 6.8. No Waiver of Sovereign Immunity; Remedies and Public Liability Strictly Limited; No Personal Liability.** Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity. The Parties agree that remedies for any claim arising out of this Agreement shall be limited to equitable relief including the availability of specific performance and in no event shall the City, the EDC or any of their respective officials, officers, agents, attorneys, employees, or representatives have any liability in damages or any other monetary liability to the Company or any affiliate, assignee, sublessee, successor, assign, heir or personal representative of the Company in respect of any suit, claim, or cause of action arising out of this Agreement. No official, officer, agent, attorney, employee, or representative of the City or the EDC shall be personally liable to any of the other parties, or the respective assignees, sublessees, Affiliates, successors, assigns, heirs or personal representatives of the other parties in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

**Section 6.9. Relationship of the Parties; No Third Party Beneficiaries.** Nothing contained in this Agreement nor any act of the Company, the City, or the EDC shall be deemed or construed to create a partnership or agency relationship between or among any party and this Agreement is and shall be limited to the specific purposes set out in this Agreement. 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, another party. The parties do not intend to confer any benefit under this Agreement on any other person or entity other than the parties to this Agreement.

**Section 6.10. 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 Company, the City and the EDC and respective permitted successors and assigns.

**Section 6.11. Assignment Limited.** Upon and subject to satisfactory completion of the Project in accordance with this Agreement, the exemption from assessment and payment of ad valorem taxes for the Project granted in the Approving Resolution may be transferred to an Affiliate;

*provided that* such Affiliate continues to use, operate, and maintain the Project and the Property for the purposes set forth in this Agreement; and *provided further that* such Affiliate agrees in writing in a form reasonably acceptable to the City to assume the obligations of this Agreement including, without limitation, the requirement to provide and maintain and satisfy the Baseline Jobs Requirement and to make PILOTs, all as provided in this Agreement. In the event such Affiliate fails to assume in writing the obligations of this Agreement, the exemption from assessment and payment of ad valorem taxes for the Project shall terminate as of December 31 of the calendar year in which the transfer occurred.

**Section 6.12. 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 another 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, 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**

By: \_\_\_\_\_  
Jerry Jeffrey, Mayor

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk

**MOBERLY AREA ECONOMIC  
DEVELOPMENT CORPORATION**

By: Michael R Bugalski  
Michael Bugalski, President

**ATTEST:**

Randy Ashley  
~~Secretary~~ Director

GRC REAL ESTATE LLC

By: [Signature]  
Printed Name: Jignesh Kumar Patel  
Its: President

ATTEST:

[Signature]  
Title:

ACKNOWLEDGEMENTS

STATE OF MISSOURI                    )  
  ) SS.  
COUNTY OF RANDOLPH            )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me appeared Jerry Jeffrey, to me personally known, who being by me duly sworn, did say that he is the Mayor of the CITY OF MOBERLY, a city of the third class and Missouri municipal corporation and that the seal affixed to the foregoing instrument is the official seal of said City, and that said instrument was signed and sealed in behalf of said City by authority of its Council and said Mayor acknowledged said instrument to be the free act and deed of said City.

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

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

My commission expires:

STATE OF MISSOURI                    )  
  ) SS.  
COUNTY OF RANDOLPH            )

On this 1 day of December, 2021 before me appeared Michael Bugalski, to me personally known, who being by me duly sworn, did say that he is the President of the MOBERLY AREA ECONOMIC DEVELOPMENT CORPORATION, a Missouri not for profit corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of its board of directors and said President acknowledged said instrument to be the free act and deed of said corporation.



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

Tina M Bealmer  
Notary Public

My commission expires: 1/26/2024



TINA M. BEALMER  
My Commission Expires  
January 26, 2024  
Randolph County  
Commission #12333424

STATE OF MISSOURI       )  
  ) SS.  
COUNTY OF Randolph )

On this 1 day of December, 2021 before me appeared Signesh Kumar Patel, to me personally known, who being by me duly sworn, did say that he is the President of GRC REAL ESTATE LLC , a Missouri limited liability company in good standing and that the foregoing instrument was signed in behalf of said company by authority of its governing body and said officer acknowledged said instrument to be the free act and deed of said company.

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

Tina M Bealmer  
Notary Public

My commission expires: 1/26/2024



TINA M. BEALMER  
My Commission Expires  
January 26, 2024  
Randolph County  
Commission #12333424

**EXHIBIT A**  
**PROPERTY LEGAL DESCRIPTION**

Being a tract of improved real property known and numbered as 1420 Becflo Drive Moberly, Missouri 65270.



**EXHIBIT B**

**COMPANY’S AFFIDAVIT REGARDING COMPLIANCE WITH SECTION 285.530**  
**RSMO.**

STATE OF MISSOURI       )  
  ) SS  
COUNTY OF RANDOLPH )

**AFFIDAVIT**

I, the undersigned, am over the age of 18 years and have personal knowledge of the matters stated herein.

I am a duly authorized officer of GRC REAL ESTATE LLC., a limited liability company duly organized and existing under the laws of the State of Missouri (the “Company”), and am authorized by the Company to attest to the matters set forth herein.

I hereby affirm the Company's enrollment and participation in a "federal work authorization program" as defined in Section 285.525 of the Revised Statutes of Missouri, as amended, with respect to the employees working in connection with improvements to a certain facility located at 1420 Becflo Drive Moberly, Missouri 65270 (the “Project”).

The Company does not and will knowingly employ any person who is an “unauthorized alien” as defined in Section 285.525 of the Revised Statutes of Missouri, as amended, in connection with the Project.

Further Affiant Sayeth Not.

GRC REAL ESTATE LLC

By: [Signature]  
Printed name: Tiqueshia K. [Signature]  
Title: President

Subscribed and sworn to before me this 1 day of December, 2021.

[Signature]  
Notary Public

My commission expires: 1/26/2024



TINA M. BEALMER  
My Commission Expires  
January 26, 2024  
Randolph County  
Commission #12333424

# City of Moberly

## City Council Agenda Summary

Agenda Number: #6.  
 Department: Public Works  
 Date: December 6, 2021

**Agenda Item:** A Resolution Authorizing A Letter Agreement With Trekk Design Group, LLC., For Assessment Of Road And Sidewalk Conditions.

**Summary:** The main project engineer from TREKK will give a short 10-15 overview of the proposed work and show how it can be updated every 5 years for a fraction of the initial cost and this will eliminate the guess work and human factor of determining the road needs and get the most out of our Transportation Funding. Tom has met with multiple consultants to discuss possible formats/solutions. The primary goal was to get an electronic rating/comparison of all the streets in the community, determine products we were willing to utilize for their maintenance & renovation, assess available funding sources and put together a 5-year plan that would maximize the available funding with the products available to address the highest need streets. All of the data would be put into our GIS for easy tracking as to what has been addressed and with what so an easy overview of problem areas and overall condition would be at our finger-tips.

**Recommended**

**Action:** Approve this resolution.

**Fund Name:** N/A

**Account Number:** N/A

**Available Budget \$:** N/A

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	<b>Mayor</b>		
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance	M___ S___ <b>Jeffrey</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	<b>Council Member</b>		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Brubaker</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Davis</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ <b>Kyser</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other <u>contract</u>		Passed	Failed

BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING A LETTER AGREEMENT WITH TREKK DESIGN GROUP, LLC., FOR ASSESSMENT OF ROAD AND SIDEWALK CONDITIONS.**

**WHEREAS**, city staff sought help in creating an electronic rating/comparison of all the streets in the community, to find the best products for maintenance and renovation of streets and to put together a five year plan to address the highest need streets; and

**WHEREAS**, city staff considered various design companies for this purpose and determined that Trekk Design Group, LLC., (“Trekk”) could best address the city’s needs; and

**WHEREAS**, attached hereto is a Letter Agreement (“Agreement”) with Trekk to provide a 110-mile assessment of road and sidewalk conditions in Moberly.

**NOW, THEREFORE, BE IT RESOLVED** this 6th day of December, 2021, by the City Council of the City of Moberly, Missouri, that the Agreement is approved and the City Manager is hereby authorized to execute the Agreement on behalf of the City and to take such other and further actions necessary to carry out the intent of this Resolution.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk



A D/WBE, SBA 8(A), WOSB Certified  
Civil Engineering Firm

November 30, 2021

Tom Sanders  
Director, Community Development  
City of Moberly  
101 W. Reed Street  
Moberly, Missouri 65270

**RE: 110 +/- miles of Road and Sidewalk Condition Assessment**

#### SCOPE OF SERVICE

##### **I. Services to be provided by TREKK Design Group, LLC**

###### **A. Pavement and Sidewalk Assessment Services**

We would utilize our truck mounted Roadbotics Camera and program as well as TREKK High resolution cameras to complete the information gathering. This will allow us to provide all of this in a report format as condition coded maps to show out of compliance areas and areas needing repair. We will also have GIS information for inclusion in the city GIS mapping platform as appropriate. We will be using this information to develop a plan for repairs and maintenance and budgeting purposes to be used for the next 5 years. (see Moberly Pavement and Sidewalk Assessment understanding and scope of services - attached)

###### **B. Owner Responsibilities**

- 1) Provide current available plans, drawings, specifications and other information as stated in the Scope of Services

###### **C. Additional Services-(Curb and Gutter Assessment)**

An additional service may be requested to assess the Curb and Gutter portions of the streets as well. This additional work would be billed on a lump sum basis of an additional \$9,000.

\_\_\_\_ Check if desired (Y or N)

##### **II. CONTRACT FEE AND BILLING**

The Owner shall compensate TREKK Design Group for Scope of Services described above and in accordance with Terms and Conditions of this Agreement as follows:

###### **A. For (A) Pavement and Sidewalk Assessment Services**

**B. compensation shall be on a lump sum basis of \$80,000.**

**C. For (C) ADDITIONAL services compensation shall be a lump sum basis of \$9,000.**

All work shall be performed according to our Standard Terms and Conditions of Contract, incorporated into this contract by reference herein and attached as Exhibit A.

If this Contract Proposal is acceptable and outlines our complete agreement, please signify your acceptance by signing in the space provided and return a copy to our office. Facsimile followed by hard copy is acceptable. This Document will then constitute our complete Agreement.

TREKK DESIGN GROUP, LLC

CITY OF MOBERLY

\_\_\_\_\_  
Kimberly Robinett

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date



# Moberly Pavement and Sidewalk Assessment

## Project Understanding

The Moberly Paving Assessment project will complete a professional assessment of the City of Moberly's roadway network existing pavement quality and review of existing pavement maintenance program. The consultant team will provide assessment, planning, and engineering services to establish a new Pavement Management Plan with a multi-year paving schedule.

The Moberly Sidewalk Assessment project will complete a professional assessment of the City of Moberly's pedestrian network for compliance with ADA guidance and review of existing sidewalk, curb ramp, and pedestrian signal maintenance programs. The consultant team will provide assessment, planning, and engineering services to establish an ADA Transition Plan of pedestrian facilities within the Public Right-of-Way.

## Project Scope of Services

### Task 1 – Project Management and Controls

#### 1.1. Project Kick-Off and Project Execution Plan

TREKK Design Group will prepare for and conduct a kick-off meeting with the Client and appropriate stakeholders to establish lines of communications and to review and finalize the proposed project approach. TREKK will prepare a kick-off meeting agenda and provide a PowerPoint presentation on the project approach. TREKK will review the lines of communications and arrangements for on-going staff meetings, advisory committee meetings, conference calls, and public meetings, as required.

During the kick-off meeting TREKK expects to review critical issues related to the project planning and design issues addressing the following:

- Review project scope
- Goals and objectives
- Project funding
- Risk management
- Project schedule and coordination requirements
- Review periods for each submittal and number of copies required by agencies
- Establish ownership and maintenance responsibilities or roads within city limits

All stakeholders for the project will be identified and methods of communication with each type of stakeholder will be established.

TREKK will prepare a project execution plan.

*Deliverables:*

- Agenda and PowerPoint for the kick-off meeting
- Meeting notes
- Project Execution Plan

## 1.2. Project Management

This task will consist of the following project management activities:

- Project Coordination – coordination with the City to provide updates, coordinate project reviews, public meetings, and other activities to help the City keep the project stakeholders generally informed of the progress of the project.
- Project Review Meetings – consists of scheduling, setting the agenda, and producing meeting summaries for all project meetings as defined in the tasks below.
- Project Administration – administrative and accounting activities related to the day-to-day management of this project.

## **Task 2 – Existing Conditions Survey**

### 2.1 Field Survey Data Collection

TREKK will conduct a field survey of the existing Moberly roadway network to determine existing pavement ratings using the RoadBotics platform.

TREKK will conduct a mobile field survey of the Moberly sidewalk network to identify:

- Missing sidewalk segments
- Sidewalk obstructions
- Missing ADA curb ramps
- Non-compliant ADA curb ramps

This survey will also provide probable locations of non-compliant cross slopes of the existing sidewalk areas. These cross slopes will need to be verified in place.

#### *Deliverables:*

- Access to desktop and mobile RoadBotics RoadWay platform
- High-Definition Pavement Condition Index (HD-PCI)/Pavement Surface Evaluation and Rating scores for existing roadway network
- Exported data in Arc-GIS and Excel applications and verification of system operation
- Individual Distress Identification mapping
- Technical Memo on Existing Conditions

### 2.2 Review of Historical Data

TREKK will review existing records including:

- Completed paving projects

- Roadway and paving standards
- Specifications and standards for in road utility work
- Permits and/or record of utility work within the roadway
- Mapping/location of existing utility infrastructure
- Record of public comments and work orders to repair pavement
- Record of public comments and work orders to repair/replace sidewalk
- Record of prior work and policies related to meeting ADA requirements
- Basic roadway information including widths and lengths
- Sidewalk and ADA Curb Ramp standards, specifications, and policies
- Existing traffic signal locations, plans, and equipment specifications
- Traffic volumes
- Weather

**Deliverables:**

- Technical Memo on Historical Data

### 2.3 Investigate Planned and Programed Construction Projects

TREKK will work with Moberly staff to gather information on planned and programmed projects that will directly affect the pavement surface quality and existing or planned sidewalks. This will include information on the following:

- Subsurface utility rehabilitation and construction
  - City of Moberly Public Utilities
  - Private telecom and other utilities
- New development projects requiring new driveways, utility cuts, curb & gutter, and placement/repair of sidewalk
- Planned Capital Improvement projects to be completed by Moberly, Randolph County, and/or the State of Missouri

**Deliverables:**

- GIS map of planned and programed work organized by program type and year

### 2.4 Peer Review of Pavement Maintenance Programs and ADA Transition Plans

TREKK will complete a peer review of pavement maintenance programs focusing on similar sized communities, the State of Missouri, and areas leading the development of best practices.

## **Task 3 – Public Involvement**

### 3.1 Public and Stakeholder Engagement

TREKK will work with Moberly staff to schedule and provide public outreach to provide a project overview, status updates, and final plan. These meetings will include:

- Two meetings with City Council to introduce program and delivery of final plan





- One general public meeting to introduce the program and receive feedback
- One general public meeting to discuss priorities for pedestrian/ADA improvements
- One meeting with pavement stakeholder group identified by Moberly staff to introduce program and receive feedback
- One meeting with sidewalk/ADA stakeholder group identified by Moberly staff to introduce program and receive feedback

### 3.2 Website

TREKK will provide documentation and interactive applications for publication on the City of Moberly website.

Deliverables:

- Embedded map of RoadBotics platform
- Embedded interactive map to receive public feedback on pedestrian/ADA problem locations
- Shapefiles and/or hard copy maps of paving schedule and transition plan
- Survey for public comment on existing conditions and program

## **Task 4 – Pavement Management Plan**

### 4.1 Establish funding plan for pavement maintenance program

TREKK will work with Moberly staff to determine future allocations and sources for paving program.

Deliverables:

- Technical Memo for funding plan

### 4.2 Develop Pavement Management Program and Standards

TREKK will review paving treatment options with Moberly staff to determine appropriate solutions and provide recommendations for interim pavement maintenance best practices.

Deliverables:

- Recommendation for new paving standards
- Technical Memo for Pavement Management Plan

### 4.3 Develop paving schedule and mapping

TREKK will provide a paving schedule for a time period agreed upon with the City of Moberly.

Deliverables:

- GIS map of scheduled improvements

## **Task 5 – ADA Transition Plan for Public ROW**

### 5.1 Establish funding plan for sidewalk, curb ramp, and pedestrian signal improvements and completing ADA Transition Plan

TREKK will work with Moberly staff to determine future allocations and sources for repair and modifications of sidewalk network to meet ADA Guidelines. Develop estimate to complete transition plan with review of all public buildings and facilities.

Deliverables:

- Technical Memo for funding plan

### 5.2 Develop ADA Transition Plan for Public ROW

TREKK will review sidewalk, curb ramp, pedestrian signal maintenance policies for new and existing facilities.

Deliverables:

- Recommendation for new sidewalk, curb ramp, and pedestrian signal standards
- Technical Memo for ADA Transition Plan for Public ROW

### 5.3 Develop prioritized plan and schedule

TREKK will provide a prioritization plan for scheduled implementation of upgrades to the existing pedestrian facilities.

Deliverables:

- GIS map of scheduled improvements

### Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. TREKK will not begin work on any additional services without the written authorization of the scope and fee of those services by the City of Moberly.

Additional services we can provide include, but are not limited to, the following:

- LIDAR evaluation and mapping of the public ROW may be included in the project's scope to capture roadway dimensions, curb & gutter, utility/light poles, street signs, manholes, sidewalks, and other infrastructure locations.
- Curb and Gutter repair and replacement program
- Design Services may be included in project's scope if roadway reconfiguration is incorporated into plans for future paving projects in Moberly.
- Traffic Counts will be completed as part of the project in the absence of existing count data. These counts will provide volume and vehicle classification.
- RoadBotics AgileMapper platform.
- Quarterly program review and adjustments of the Pavement Management Program.

### Information Provided by Client

Moberly Paving Assessment  
Project Scope of Services  
August 12, 2021 | v1.0

5



- GIS shapefiles of roadway network
- Existing standards and specifications
- Existing citizen comments on pavement conditions including location
- Recent bid estimates and cost information from executed paving contracts

#### **Schedule**

TREKK will provide our services as expeditiously as practicable with the goal of meeting a mutually agreed upon schedule.





A D/WBE, WOSB Certified  
Civil Engineering Firm

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**Exhibit A**  
**TREKK Design Group, LLC**  
**STANDARD TERMS AND CONDITIONS OF CONTRACT**

**1. RIGHT of ENTRY:**

The Client will provide for right of entry for Consultant in order to complete the work. While Consultant will take reasonable precautions to minimize any damage to the property, it is understood by Client that some damage may occur in the normal course of work, the correction of which is not part of this Agreement.

**2. CONSTRUCTION SITE INSPECTION:**

At construction sites, the presence of Consultant field representatives will be for the purpose of providing inspection of only the work with which Consultant has agreed to be involved. Opinion of Consultant as to the contractor's adherence to plans and specifications will be reported. Our work does not include supervision or direction of the actual work of the contractor, their employees, or agents. The Contractor should also be informed that neither the presence of our field representative, nor the observation by our firm shall excuse him in any way for defects discovered in their work. Our firm will not be responsible for job or site safety on this project. Job and site safety will be the sole responsibility of the Contractor.

**3. INVOICES:**

Consultant will submit invoices to the Client monthly and a final bill upon completion of services. Payment is due upon presentation of invoice and is past due thirty (30) days from each invoice date. Client agrees to pay a finance charge of one and one-half percent (1.5%) per month, or the maximum rate allowed by law, on past due accounts.

**4. OWNERSHIP of DOCUMENTS:**

Reports, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by Consultant as instruments of service shall remain the property of Consultant. Client agrees that reports and other work furnished to the Client or their agents that are not paid for will be returned upon demand and will not be used by the Client for any purpose whatsoever.

**5. STANDARD of CARE:**

Service performed by Consultant under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. No other warranty, expressed or implied, is made.

**6. LIMITATION of LIABILITY:**

In recognition of the relative risks and benefits of the Project to both the Client and the Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and sub consultants for any and all claims, losses, costs, damages of any nature whatsoever, or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Consultant and Consultant's officers, directors, partners, employees, shareholders, owners and sub consultants shall not exceed the Consultant's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**7. INSURANCE and INDEMNIFICATION:**

Consultant and the consultants employed by it are protected by worker's compensation insurance, and Consultant has such coverage under public liability and property damage insurance policies that Consultant deems to be adequate. Certificates for all such policies of insurance shall be provided to Client upon request in writing. Within the limits and conditions of such insurance, Consultant agrees to indemnify and hold Client harmless from and against damage, liabilities, or costs to the extent caused by the negligent acts by Consultant, and consultants employed by it. Consultant shall not be responsible for any loss, damage, or liability beyond the amounts, limits, and conditions of such insurance.



**8. ASSIGNMENT:**

Neither the Client, nor Consultant shall sublet, transfer, or assign any rights or duties under or interest in this Agreement, including, but not limited to, monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to sub consultants, normally contemplated by the Consultant as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

**9. TERMINATION:**

This Agreement may be terminated by either party upon ten (10) days written notice in the event of substantial failure by the other part to perform in accordance with the terms hereof. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. In the event of termination, Consultant shall be paid for services performed to the termination notice date plus reasonable termination expenses.

**10. PRECEDENCE:**

These Provisions and Agreement supersede all prior agreements and understandings and may be changed only by written amendment executed by both parties.

**11. REIMBURSABLE EXPENSES:**

Reimbursable Expenses are in addition to the Design Fee and shall be billed to the Client at 1.0 times our direct cost. Reimbursable expenses shall include, but not be limited to, all shipping and mailing costs, courier services, travel, printing, and photographic reproductions.

**12. ATTORNEY'S FEES and EXPENSES:**

The Client agrees to reimburse the Consultant for all attorney or collection agency fees, expenses, and court costs incurred to collect any amount due under this Contract.

**13. ADDITIONAL SERVICES:**

Any work required in addition to that detailed in this Contract will be billed on an hourly basis according to then current rates or a negotiated lump sum fee. Extra work will include, but not limited to: changes in the Scope of Services; changes made in response to program changes; changes due to revision of site/base information provided by others; changes due to error of contractor during construction; and design modifications requested by the client subsequent to prior approval.

**14. HOURLY RATES:**

Hourly rates are as defined in contract agreement.

**15. SCHEDULE:**

The Consultant shall perform its services as expeditiously as is consistent with professional skill, care and the orderly progress of the Project, but not subject to any firm schedule or completion date unless expressly outlined in the contract documents. The Client acknowledges that Client-directed changes, unforeseen conditions, and other delays may affect the completion of the Design services. Client waives any and all claims for consequential, incidental, and business interruption damages directly or indirectly related to the timeliness of the commencement, undertaking, and completion of design services. In no event shall the Consultant have control over or responsibility for any Contractor's or vendor's performance schedule.

**16. STANDARD CLEANING AND CCTV PRICING PROVISIONS:**

The pricing proposal does not include expenses for prevailing wages or certified payroll reporting, bypass pumping, or pipe plugging unless specifically stated as such. Any costs associated with repairs or extractions that are required due to existing structural system defects or failures will be completed at the expense of Client. Light traffic control is included in the unit rate and is defined as cones and Utility Work Ahead signs. Additional traffic control required will be billed as a Reimbursable Expense. The contract price is for the estimated footage in the proposal; additional work beyond the scope will be compensated at the project unit price or negotiated by addendum. Pricing is valid for sixty (60) days from the date of the proposal. Pipe diameters will be verified at the upstream and downstream manholes; midsection pipe diameter will not be documented. Pricing is valid based on the City/Owner providing adequate access to the work site, water/hydrant access with a meter, and a dump site and that there are no hazardous materials present.

# City of Moberly

## City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
 Department: Finance  
 Date: December 6, 2021

#7.

**Agenda Item:** A Resolution Authorizing The City Manager Of Moberly, Missouri To Execute An Agreement With Safety Fire Products, LLC To Provide Annual Fire Extinguisher Inspection Services.

**Summary:** Several months ago I investigated our fire extinguisher maintenance services, and found a lack of consistency with service and pricing. This led me to request bids from Safety Fire Products (Moberly), Fire Safety, Cintas, and Korsmeyer (all 3 in Columbia). The sole bid was received from Safety Fire for \$6 per extinguisher with no additional service call charge. This calculates to approximately \$1,200 per year, saving between \$1,800 - \$2,800 annually, plus we are dealing with a local vendor.

This was originally brought to you in work session in September. We have been working with Jerry Swartz to get this information finalized. Attached are the agreement that this resolution authorizes and a price list from Safety Fire Products for your review.

**Recommended Action:** Approve the resolution.

**Fund Name:** Various

**Account Number:** xxx.xxx.5406, Contracted Services

**Available Budget \$:** Varies with each department, but sufficient funds are available throughout

ATTACHMENTS:		Roll Call	Aye	Nay
___ Memo	___ Council Minutes	<b>Mayor</b>		
___ Staff Report	___ Proposed Ordinance	M___ S___ <b>Jeffrey</b>	___	___
___ Correspondence	<input checked="" type="checkbox"/> Proposed Resolution			
___ Bid Tabulation	___ Attorney's Report	<b>Council Member</b>		
___ P/C Recommendation	___ Petition	M___ S___ <b>Brubaker</b>	___	___
___ P/C Minutes	<input checked="" type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	___	___
___ Application	___ Budget Amendment	M___ S___ <b>Davis</b>	___	___
___ Citizen	___ Legal Notice	M___ S___ <b>Kyser</b>	___	___
___ Consultant Report	___ Other _____		Passed	Failed



BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER OF MOBERLY, MISSOURI TO EXECUTE AN AGREEMENT WITH SAFETY FIRE PRODUCTS, LLC. TO PROVIDE ANNUAL FIRE EXTINGUISHER INSPECTION SERVICES.**

**WHEREAS**, the City sought bids from four fire extinguisher inspection and maintenance services for an annual inspection and maintenance of city fire extinguishers; and

**WHEREAS**, Safety Fire Products, LLC was the lowest responsible bidder with a bid of \$6.00 for each fire extinguisher; and

**WHEEREAS**, an agreement between the parties for the desired services is attached hereto.

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby approves the attached Agreement and authorizes the City Manager to execute the Agreement on behalf of the City.

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk

**ANNUAL FIRE EXTINGUISHER INSPECTION  
AND MAINTENANCE AGREEMENT**

THIS CONTRACT by and between the City of Moberly, Missouri, a municipal corporation, (hereinafter called "City") and Safety Fire Products, LLC, (hereinafter called "Contractor") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (hereinafter the "Effective Date"). City and Contractor are each individually referred to herein as a "Party" or collectively as the "Parties".

WHEREAS, City sought bids from qualified vendors for the annual inspection and maintenance of fire extinguishers located in city facilities; and

WHEREAS, the Contractor is a locally owned business willing to provide the desired services and was the successful bidder for the City request; and

WHEREAS, the Parties desire to enter into an annual renewable agreement for services.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

**1. PROJECT DESCRIPTION AND SCOPE OF WORK.**

Project Description.

Contractor will provide annual inspections of all city fire extinguishers and maintain all extinguishers in operable condition.

Scope of Work.

Contractor shall perform the inspections of all extinguishers once annually within a two-week time period from the initial inspection. City will supply Contractor with a list of all extinguisher locations.

If an extinguisher must be removed from the city facility for repair, then Contractor shall provide a loaner unit until the city unit is returned. All city extinguishers shall be returned upon completion of repair.

**Other services** as described on the attached Exhibit "1" may be performed upon request by the City.

**2. CONTRACT AMOUNT.**

Not to Exceed.

Under no circumstance shall the payment from City to Contractor for the inspection and maintenance exceed the sum of \$6.00 per extinguisher. There will be no service fee on the annual inspections. Any additional services will include a \$29.00 service fee unless the unit is dropped off at 208 W. Rollins, Moberly, MO.

Other Services.

Charges for other services shall follow the pricing schedule on the attached Exhibit “1”.

Payment.

Payment of the agreed upon contract amount will be made within thirty (30) days of the date the Contractor’s invoices are received by City.

**3. TERM.**

The term of this Agreement shall begin on October 5, 2021, and end on October 4, 2022. The Agreement shall renew annually unless terminated by either party. In the event of termination, the terminating party agrees to provide no less than sixty (60) days written notice of the intent to terminate.

**4. HOLD HARMLESS AGREEMENT AND IMMUNITIES.**

Hold Harmless.

To the fullest extent not prohibited by law, Contractor shall indemnify and hold harmless the City of Moberly, its elected officials, officers, agents and employees from and against all claims, damages, losses, and expenses (including but not limited to attorneys and fees) arising by reason of any act or failure to act, negligence or otherwise of Contractor, of any subcontractor, or anyone directly or indirectly employed by Contractor or any subcontractor, in connection with this contract. These provisions do not, however, require Contractor to indemnify, hold harmless, or defend City from its own negligence.

Immunities.

The Parties hereto understand and agree City is relying on and does not waive or intend to waive by any provision of this Contract any monetary limitations, or any other rights, immunities and protections provided by the State of Missouri, as from time to time amended, or otherwise available to the City, or its elected officials and employees.

**5. DEFAULT.**

Contractor shall be in default for failure to comply with any provision of this Contract. City may immediately terminate the contract based upon the events of default described herein with or without notice to Contractor. At City’s option in the event of default it may provide Contractor with ten (10) days’ notice and allow Contractor to cure the default within that time.

**6. GOVERNING LAW AND VENUE.**

This Contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri. The venue for all litigation arising or relating to the Contract shall be in the Circuit Court of Randolph County, Missouri.

7. ENTIRE CONTRACT.

This document represents the entire contract between the Parties. All previous or contemporaneous representations, promises and conditions relating to Contractor’s services are superseded.

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and year first above written.

CITY OF MOBERLY

By: \_\_\_\_\_  
Brian Crane, City Manager

Attest: \_\_\_\_\_  
Shannon Hance, City Clerk

SAFETY FIRE PRODUCTS, LLC

By: \_\_\_\_\_  
Jerry Swartz



# SAFETY FIRE PRODUCTS LLC

PO Box 740

Moberly, MO 65270

660-998-1111, Fax 660-263-8908

## Prices for services as of November 1, 2021

Re-Inspection	\$6.00
Minimum service call fee	\$29.00
6 year recharge 2 ½ lb.	\$12.50
6 year recharge 5 lb.	\$17.50
6 year recharge 10 lb.	\$22.50
6 year recharge 20 lb.	\$30.00
Add Powder	\$3.00 per Pound
Must be Hydro tested every 12 yrs	\$14.00 Additional

\*Extinguishers with plastic heads **or** manufactured before October 1984 cannot be refilled

Pin	\$1.00 +tax
Valve stem	\$15.00 +tax
Gauge	\$15.00 +tax
Handle	\$15.00 +tax
Chemical powder per pound	\$3.00 per pound +tax
AC/DC lights inspection	\$8.00
AC/DC light battery	\$25.50 + \$19 labor +tax

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New 2.5 lb. extinguisher	\$49.60 +tax
New 5 lb. extinguisher	\$67.00 +tax
New 10 lb. extinguisher	\$97.70 +tax
New 20 lb. extinguisher	\$181.30 +tax
New 1 liter "Cold Fire" extinguisher	\$125.00 +tax
New 5 lb. CO2 extinguisher	\$233.30 + tax
New 10 lb. CO2 extinguisher	\$314.30 +tax
New 15 lb. CO2 extinguisher	\$363.00 +tax
New 20 lb. CO2 extinguisher	\$441.60 +tax
Kitchen extinguisher, Class K	\$270.50 +tax
Water extinguisher	\$170.75 +tax

# City of Moberly

## City Council Agenda Summary

Agenda Number: #8.  
 Department: Community Development  
 Date: December 6, 2021

**Agenda Item:** A Resolution Accepting A Quit Claim Deed From Janet N. Smith and Dorothy Smith For 707 South 5th Street To The City.

**Summary:** A quit claim deed for 707 South 5<sup>th</sup> St. with Janet N. Smith and Dorothy Smith giving the property to the City of Moberly. Attached is the quit claim deed.

Staff recommends approval of this.

**Recommended**

**Action:** Approve this resolution.

**Fund Name:** N/A

**Account Number:** N/A

**Available Budget \$:** N/A

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	<b>Mayor</b>		
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance	M___ S___ <b>Jeffrey</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	<b>Council Member</b>		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Brubaker</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Davis</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ <b>Kyser</b>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _		Passed	Failed



BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION ACCEPTING A QUIT CLAIM DEED FROM JANET N. SMITH AND DOROTHY SMITH.**

**WHEREAS**, Janet N. Smith and Dorothy Smith, as joint tenants, own Lot Eighteen (18) in Block Five (5) of Christian’s Subdivision of Outlots 4 to 16, inclusive, of Hunt and Godfrey’s Addition to the City of Moberly, Randolph County, Missouri; and

**WHEREAS**, They have expressed a desire to quit-claim their interest in said property to the city of Moberly; and

**WHEREAS**, city staff recommends accepting the property for purposes of furthering redevelopment of residential property in the city.

**NOW, THEREFORE**, the Moberly, Missouri, City Council authorizes the City Manager to accept a Quit Claim Deed from Janet N. Smith and Dorothy Smith on behalf of the city.

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk

## QUIT-CLAIM DEED

*THIS INDENTURE*, made on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between

**JANET N. SMITH AND DOROTHY SMITH, JOINT TENANTS, GRANTORS**

622 S Fairview Ave, Paris, Missouri 65275

County of Monroe, State of Missouri, party of the first part and

**CITY OF MOBERLY, MISSOURI, A Municipal Corporation, GRANTEE**

101 West Reed Street, Moberly, Missouri 65270

County of Randolph, State of Missouri, party of the second part

*WITNESSETH*, that the said party or parties of the first part, for and in consideration of the sum of **ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATIONS**, paid by the said party or parties of the second part, the receipt of which is hereby acknowledged, do or does by these presents, **REMISE, RELEASE AND FOREVER QUIT CLAIM** unto the said party or parties of the second part, the following described Real Estate situated in the County of Randolph, and State of Missouri.

*All of Lot 18, Block 6 of Christians Subdivision of Outlots 4 to 16, inclusive, of Hunt & Godfrey Addition to Moberly, or more commonly known as 707 South 5th Street, Moberly, Missouri.*

**TO HAVE AND TO HOLD THE SAME**, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part unto its heirs and assigns forever,

**IN WITNESS WHEREOF**, the said parties of the first part have hereunto set their hands and seal the day and year above written.

**DOROTHY SMITH, GRANTOR**

Dorothy Smith

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned, a notary in the said County, personally appeared **Janet N. Smith and Dorothy Smith**, personally known to me who declared themselves to be a married couple and declared that said instrument was signed by them, and acknowledged said instrument to be their free act and deed.

Notary Public

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# City of Moberly

## City Council Agenda Summary

Agenda Number: #9.

Department: Parks and Recreation

Date: December 6, 2021

**Agenda Item:** A Resolution Authorizing And Accepting A Change Order To The Energy Performance Contract With Energy Solutions Professionals, LLC., For Pavilion Construction And Solar Arrays.

**Summary:** MC Power under the previous Phase 2 solar agreement, has not done the work from Phase 2. City staff has been looking at alternative solutions. ESP has been involved in developing solutions and evaluating whether the full scope of Phase 2 cash flows, especially with today's increased materials and labor prices two years after the original agreement.

ESP concluded Phase 2 does not cash flow. City staff is recommending moving ahead with the solar pavilion only. This will allow for the construction of a pavilion with solar north of the Riley Pavilion. The rest of the original Phase 2 projects will not be done as they do not cash flow. This lone project is worth doing to fully develop the attached outdoor special event area, fulfill a project promised in the 10 year plan and sales tax renewal, and fulfill a project supported by Swift Prepared Foods.

Option 2 includes a concrete slab which we originally were going to do following the construction of the solar pavilion under the original Phase 2 agreement for an additional \$80,000-\$100,000.

\*The agreement has been revised (under Schedule F, Part C) with language taking into account Ameren rates at the time when calculating repayment of shortfalls.

**Recommended Action:** Approve the Resolution.

**Fund Name:** Parks – Capital Improvement

**Account Number:** 115.041.5502

**Available Budget \$:** \$771,062.22

### 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 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\_\_\_ **Davis**      \_\_\_      \_\_\_

M\_\_\_ S\_\_\_ **Kyser**      \_\_\_      \_\_\_

Passed      Failed

**BILL NO. R1158**

**RESOLUTION NO. R1158**

**A RESOLUTION AUTHORIZING AND ACCEPTING A CHANGE ORDER TO THE ENERGY PERFORMANCE CONTRACT WITH ENERGY SOLUTIONS PROFESSIONALS, LLC., FOR PAVILION CONSTRUCTION AND SOLAR ARRAYS.**

**WHEREAS**, on September 3, 2019, by Resolution, this Council approved an Energy Performance Contract (“EPC”) with Energy Solutions Professionals, LLC (“ESP”); and

**WHEREAS**, a proposed Change Order (attached hereto) has been submitted by ESP to design and build a Pavilion at the Lodge and various solar arrays at an additional cost of \$583,511.00 with reductions to this amount based on a Contingency Transfer from the underlying EPC; and

**WHEREAS**, staff recommends that the council authorize acceptance of the Change Order and authorize the City Manager to execute and pay said Order.

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby accepts and approves the attached Change Order and authorizes the City Manager to execute the Change Order on behalf of the City and to take such further action as may be necessary to carry out the intent of this Resolution.

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk

A motion was made by Jeffrey and seconded by Kyser to table Bill No. R1158 until the 12-06-2021, Council meeting. Ayes: Jeffrey, Brubaker, Kimmons, Davis and Kyser. Nays: none.  
11-15-2021



## Change Order

CO # 1

**Provider:** Energy Solutions Professionals, LLC  
c/o: Jeff Flathman  
9218 Metcalf, Suite 274  
Overland Park, KS 66212

**Project Name:**  
**Client** City of Moberly  
c/o: Brian Crane, City Manager  
101 W. Reed Street  
Moberly, MO 65270

Energy Performance Contract

**Original Contract Date:**

9/10/2019

The following addition/deletion of scope shall be incorporated in the the Agreement dated as listed above. All of the terms and conditions of the Agreement remain in place unless explicitly described otherwise in this change order or previous change orders to the Agreement.

**Project Scope Additions:**

- |   |                 |
|---|-----------------|
| 1) Design and build a new Pavilion at the Lodge along with a roof top solar array |                 |
| Total Cost of Pavilion and Solar Array  | \$ 583,511.00   |
| Contingency Transfer from Public Works Energy Project                             | \$ (137,337.00) |

The attached schedules are included with this Change Order, and are additions to the original contract scope

Schedule B: Additional Client Premises  
Schedule C: Additional Scope of Work  
Schedule D: Additional Compensation  
Schedule F: Savings Guarantee  
Schedule G: Measurement & Verification  
Schedule H: Funding  
Schedule J: Construction Schedule for this Change Order  
Schedule L: Maintenance  
Schedule O: Warranties

**Net Changer Order to Current Energy Project**

**\$ 446,174.00**

**Total Change Order Amount**

**\$ 446,174.00**

Original Contract Amount:

**\$ 4,642,447.00**

Sum of Previous Change Orders:

**\$ -**

Contract Amount Prior to this Change Order:

**\$ 4,642,447.00**

Amount of this Change Order:

**\$ 446,174.00**

Total Revised Contract Amount:

**\$ 5,088,621.00**

Revised Agreement substantial completion date (changed / ~~unchanged~~):

**5/15/2022**

**Energy Solutions Professionals, LLC**

**City of Moberly**

Date signed

Date Signed



SCHEDULE B (CO#1)

ADDITIONAL CLIENT PREMISES

**Description of Premises**  
The following buildings are included as part of this contract. The buildings affected are listed below.

Building	Address
Aquatic Center	100 Park Road Moberly, MO
The Lodge	111 Rothwell Park Moberly, MO

**SCHEDULE C (CO#1)****ADDITIONAL SCOPE OF WORK****GENERAL NOTES TO ALL SCOPE**

1. Work hours shall consist of Monday – Friday from 8:00 AM – 5:00 PM.
2. Comply with all local codes and regulations.
3. Acquire all required permits necessary to complete the work.
4. Exclude all sales taxes from the proposal to complete the scope of work as the project is tax exempt.
5. Asbestos abatement if necessary, will be completed by others and is not included in this scope. ESCO will however assist in identifying specific locations that need to be abated by others to complete ESCO's work. (No monies have been included in the price of the project to cover abatement)

TABLE C-1: DESIGN &amp; DOCUMENTATION REQUIREMENTS

ECM	Safety Manual/Safety Plan	Submittals	Commissioning plan	Equipment sizing/ selection	O&M Manual	Record (As Built) Drawings	Commissioning reports
#1 – Aquatic Center Solar Array	X	X	X	X	X	X	X
#2 – The Lodge Solar Array	X	X	X	X	X	X	X

**SCOPE OF WORK**

In summary, ESCO will design and install a new Pavilion with two roof top solar arrays.

- The Pavilion shall be a 80' x 110' x 14' tall structure located at the Lodge (111 Rothwell Park).
- The Aquatic Center solar array is a 47.50 kW-dc system that will be mounted to the Pavilion roof, then electrically connected to the Aquatic Center Ameren electric meter across the road next to the pool.
- The Lodge solar array is a 17.80 kW-dc system that will be mounted to the Pavilion roof, then electrically connected to the Pavilion Ameren electric meter located near the Pavilion.
- ESCO will perform all of the engineering required for a complete system, as well as working with Ameren and providing all documentation required for the Interconnect Agreement to tie the solar power into the existing electric system.
- ESCO will work with Ameren to calculate all solar rebates, and will assist Client in completing any required rebate forms in order to maximize the Ameren solar rebates.
- A production guarantee is also part of the scope of work for this project. The terms of the guarantee are defined in Schedules F and G.
- Client is responsible for providing and maintaining Internet access for both solar arrays so that the production data can be transmitted back to the solar reporting enterprise.

**PAVILION SCOPE OF WORK**

ESP will design and install an 80' x 110' x 14' tall clear span in at the Lodge located at 111 Rothwell Park, Moberly MO. For solar panels. 25lb. roof load, 21/2" pitch on roof, 90 MPH wind load. The following items are Included:

- Design of Pavilion structure and site and provide design documents.
- Provide necessary grading and prep work required for Pavilion floor.
- Install footings and support columns per design drawings
- Form and pour a 6” concrete floor slab with 6x6x10x10 wire mesh setting on chairs.
- Floor will be 4,000 psi. concrete with air, it will be broom finished, sawed to control cracking and cure and seal to be installed.
- Erect building and roof per manufacturer’s instructions.
- Install cable bracing.
- Purlins to be galvanized.
- Trim building per design documents.
- Clean up and haul any debris.

#### SOLAR ARRAY SCOPE OF WORK

The scope of work for each of the two solar arrays are detailed in the following pages which show the specific Helioscope reports.



Annual Production Report produced by Jeremy Merz

## Aquatic Center (100 Rothwell Park Rd) No pool canopy 9-22-2021 City of Moberly Phase 2, Moberly, MO

### Report

Project Name	City of Moberly Phase 2
Project Address	Moberly, MO
Prepared By	Jeremy Merz jmerz@mcpower.com



### System Metrics

Design	Aquatic Center (100 Rothwell Park Rd) No pool canopy 9-22-2021
Module DC Nameplate	47.5 kW
Inverter AC Nameplate	33.3 kW Load Ratio: 1.43
Annual Production	64.12 MWh
Performance Ratio	81.7%
kWh/kWp	1,349.4
Weather Dataset	TMY, 10km Grid (39.45,-92.45), NREL (prospector)
Simulator Version	717004a143-f61a4cf658-09acff7d07-9d8527e718

### Project Location

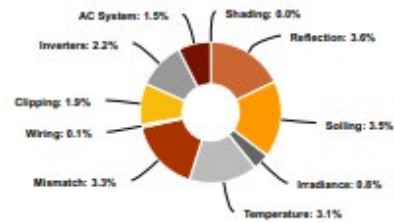


### Monthly Production



Month	GHI (kWh/m <sup>2</sup> )	POA (kWh/m <sup>2</sup> )	Shaded (kWh/m <sup>2</sup> )	Nameplate (kWh)	Grid (kWh)
January	63.9	77.7	77.7	3,293.5	3,234.5
February	78.3	90.9	90.9	3,886.2	3,664.3
March	125.8	138.3	138.3	6,091.0	5,527.2
April	151.1	158.7	158.7	7,086.1	6,088.1
May	180.3	183.9	183.9	8,218.4	6,967.3
June	187.2	188.5	188.5	8,423.5	7,040.5
July	196.7	199.9	199.9	8,948.8	7,429.5
August	180.9	188.3	188.3	8,416.1	7,093.7
September	142.4	154.3	154.3	6,878.4	6,027.0
October	101.1	114.6	114.6	5,067.3	4,622.7
November	69.3	83.2	83.2	3,618.8	3,384.6
December	59.3	73.8	73.8	3,155.6	3,043.0

### Sources of System Loss



Annual Production Report produced by Jeremy Merz



## Annual Production Report produced by Jeremy Merz

⚡ Annual Production

	Description	Output	% Delta
Irradiance (kWh/m²)	Annual Global Horizontal Irradiance	1,536.4	
	POA Irradiance	1,652.0	7.5%
	Shaded Irradiance	1,651.9	0.0%
	Irradiance after Reflection	1,593.1	-3.6%
	Irradiance after Soiling	1,536.9	-3.5%
	Total Collector Irradiance	1,536.9	0.0%
Energy (kWh)	Nameplate	73,083.6	
	Output at Irradiance Levels	72,528.0	-0.8%
	Output at Cell Temperature Derate	70,252.4	-3.1%
	Output After Mismatch	67,914.1	-3.3%
	Optimal DC Output	67,822.8	-0.1%
	Constrained DC Output	66,540.6	-1.9%
	Inverter Output	65,098.8	-2.2%
	Energy to Grid	64,122.3	-1.5%
Temperature Metrics			
	Avg. Operating Ambient Temp		15.1 °C
	Avg. Operating Cell Temp		23.6 °C
Simulation Metrics			
	Operating Hours	4663	
	Solved Hours	4663	

☁ Condition Set

Description	Condition Set 2											
Weather Dataset	TMY, 10km Grid (39.45,-92.45), NREL (prospector)											
Solar Angle Location	Meteo Lat/Lng											
Transposition Model	Perez Model											
Temperature Model	Diffusion Model											
Temperature Model Parameters	Rack Type				U <sub>coolst</sub>				U <sub>wind</sub>			
	Fixed Tilt				29				0			
	Flush Mount				15				0			
	East-West				29				0			
	Carport				29				0			
Soiling (%)	J	F	M	A	M	J	J	A	S	O	N	D
	6	6	4	3	3	3	3	3	3	3	4	5
Irradiation Variance	5%											
Cell Temperature Spread	4° C											
Module Binning Range	-2.5% to 2.5%											
AC System Derate	1.50%											
Module Characterizations	Module				Uploaded By				Characterization			
	JAP6(K)-72/330/48B (JA Solar)				Folsom Labs				Spec Sheet Characterization, PAN			
Component Characterizations	Device		Uploaded By				Characterization					

📦 Components

Component	Name	Count
Inverters	Sunny Tripower_Core1 33-US-41 (SMA)	1 (33.3 kW)
Strings	10 AWG (Copper)	8 (542.4 ft)
Module	JA Solar, JAP6(K)-72/330/48B (330W)	144 (47.5 kW)

👤 Wiring Zones

Description	Combiner Poles	String Size	Stringing Strategy
Wiring Zone	-	5-18	Along Racking
Wiring Zone 2	-	-	Along Racking

🏠 Field Segments

Description	Racking	Orientation	Tilt	Azimuth	Intrarow Spacing	Frame Size	Frames	Modules	Power
Field Segment 1 (copy)	Carport	Portrait (Vertical)	9.46°	170.80591°	0.1 ft	1x1	144	144	47.5 kW





Detailed Layout





## Annual Production Report produced by Jeremy Merz

## The Lodge (111 Rothwell) Canopy revised2 City of Moberly Phase 2, Moberly, MO

## Report

Project Name	City of Moberly Phase 2
Project Address	Moberly, MO
Prepared By	Jeremy Merz jmerz@mcpower.com



## System Metrics

Design	The Lodge (111 Rothwell) Canopy revised2
Module DC Nameplate	17.8 kW
Inverter AC Nameplate	15.0 kW Load Ratio: 1.19
Annual Production	22.72 MWh
Performance Ratio	82.9%
kWh/kWp	1,275.2
Weather Dataset	TMY, 10km Grid (39.45, -92.45), NREL (prospector)
Simulator Version	717004a143-f61a4cf658-09acff7d07-9d8527e718

## Project Location

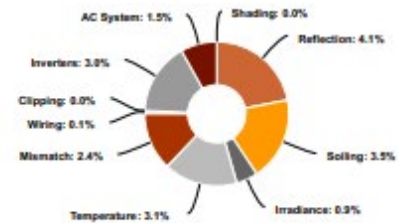


## Monthly Production



Month	GHI (kWh/m <sup>2</sup> )	POA (kWh/m <sup>2</sup> )	Shaded (kWh/m <sup>2</sup> )	Nameplate (kWh)	Grid (kWh)
January	63.9	64.6	64.6	1,008.0	989.5
February	78.3	79.5	79.5	1,259.7	1,190.9
March	125.8	124.9	124.8	2,047.0	1,912.2
April	151.1	150.9	150.9	2,517.4	2,273.5
May	180.3	180.0	180.0	3,012.0	2,668.1
June	187.2	187.8	187.8	3,147.5	2,710.5
July	196.7	196.7	196.7	3,300.1	2,809.3
August	180.9	180.5	180.5	3,017.6	2,590.6
September	142.4	142.9	142.9	2,376.1	2,106.8
October	101.1	101.2	101.1	1,660.8	1,520.6
November	69.3	70.1	70.1	1,126.0	1,054.4
December	59.3	59.4	59.4	931.0	897.2

## Sources of System Loss





## Annual Production Report produced by Jeremy Merz

Annual Production

	Description	Output	% Delta
Irradiance (kWh/m²)	Annual Global Horizontal Irradiance	1,536.4	
	POA Irradiance	1,538.6	0.1%
	Shaded Irradiance	1,538.4	0.0%
	Irradiance after Reflection	1,476.0	-4.1%
	Irradiance after Soiling	1,424.7	-3.5%
	Total Collector Irradiance	1,424.7	0.0%
Energy (kWh)	Nameplate	25,403.3	
	Output at Irradiance Levels	25,174.8	-0.9%
	Output at Cell Temperature Derate	24,401.8	-3.1%
	Output After Mismatch	23,814.7	-2.4%
	Optimal DC Output	23,783.8	-0.1%
	Constrained DC Output	23,783.1	0.0%
	Inverter Output	23,069.6	-3.0%
	Energy to Grid	22,723.6	-1.5%
Temperature Metrics			
	Avg. Operating Ambient Temp	15.1 °C	
	Avg. Operating Cell Temp	22.9 °C	
Simulation Metrics			
	Operating Hours	4663	
	Solved Hours	4663	

Condition Set

Description	Condition Set 2											
Weather Dataset	TMY, 10km Grid (39.45,-92.45), NREL (prospector)											
Solar Angle Location	Meteo Lat/Lng											
Transposition Model	Perez Model											
Temperature Model	Diffusion Model											
Temperature Model Parameters	Rack Type	U <sub>convect</sub>	U <sub>wind</sub>									
	Fixed Tilt	29	0									
	Flush Mount	15	0									
	East-West	29	0									
	Carport	29	0									
Soiling (%)	J	F	M	A	M	J	J	A	S	O	N	D
	6	6	4	3	3	3	3	3	3	3	4	5
Irradiation Variance	5%											
Cell Temperature Spread	4° C											
Module Binning Range	-2.5% to 2.5%											
AC System Derate	1.50%											
Module Characterizations	Module	Uploaded By	Characterization									
	JAM6(K)-72-335/PR (JA Solar)	Folsom Labs	Spec Sheet Characterization, PAN									
	JAP6(K)-72/330/4BB (JA Solar)	Folsom Labs	Spec Sheet Characterization, PAN									
	Device	Uploaded By	Characterization									

Components

Component	Name	Count
Inverters	Sunny Boy 5.0-US (208V) (SMA)	3 (15.0 kW)
Strings	10 AWG (Copper)	6 (256.9 ft)
Module	JA Solar, JAP6(K)-72/330/4BB (330W)	54 (17.8 kW)

Wiring Zones

Description	Combiner Poles	String Size	Stringing Strategy
Wiring Zone	-	-	Along Racking
Wiring Zone 2	-	7-11	Along Racking

Field Segments

Description	Racking	Orientation	Tilt	Azimuth	Intrarow Spacing	Frame Size	Frames	Modules	Power
Field Segment 3	Flush Mount	Landscape (Horizontal)	5°	170.43°	0.1 ft	1x1			0
Field Segment 3	Carport	Portrait (Vertical)	7°	270°	0.1 ft	1x1	54	54	17.8 kW
Field Segment 3 (copy)	Flush Mount	Landscape (Horizontal)	5°	350.43008°	0.1 ft	1x1			0



HelioScope

Annual Production Report produced by Jeremy Merz





**SCHEDULE D (CO#1)****ADDITIONAL COMPENSATION to ESCO**

Following is a table showing the total installed cost for each individual Energy Conservation Measure (ECM) included in Change Order#1 Schedule C – Additional Scope of Work. The ECM Summary table below provides a synopsis of the measures included in the scope of work and identifies what the total cost will be for each scope item included. The total cost is the Contract Sum which is due and payable to the ESCO under the terms set out in Section 6 of Schedule A.

**City of Moberly - Pavilion/Solar Project**

<b>Select</b>	<b>Energy Conservation Measure and Associated Building</b>	<b>Turnkey Installed Price</b>
<b>x</b>	AC-Pavillion Structure (80 x 110 x 14)	\$324,698
<b>x</b>	AC-Canopy Mount Solar (47.5 kW-dc)	\$163,140
<b>x</b>	TL-Canopy Mount Solar (17.80 kW-dc)	\$68,327
<b>x</b>	ESP Payment and Performance Bonds	\$11,123
<b>x</b>	Contingency	\$16,223
	<b>PROJECT TOTALS (for selected measures)</b>	<b>\$583,511</b>



SCHEDULE F (CO#1)

ADDITIONAL SAVINGS GUARANTEE

A. Magnitude of Savings Guarantee

The table below identifies the Production Guarantee in units of energy and associated dollar savings of the solar arrays. The table details the monthly projected production for each system, the associated dollar value of the production, and the combined monthly production of the systems along with that associated dollar amount.

City of Moberly - Pavilion Solar Array's Monthly Production Guarantee Table									
	Aquatic Center Projection		The Lodge Projection			Combined Projection		Combined Guarantee	
	Year 1	Year 1	Year 1	Year 1		Year 1	Year 1	Year 1	Year 1
	Projected Production (kWh)	Projected Production (\$)	Projected Production (kWh)	Projected Production (\$)		Projected Production (kWh)	Projected Production (\$)	Guaranteed Production (kWh)	Guaranteed Production (\$)
Jan	3,092	\$ 179.31	1,004	\$ 90.36		4,096	\$ 269.67	3,891	\$ 256.19
Feb	3,502	\$ 203.09	1,208	\$ 108.70		4,709	\$ 311.79	4,474	\$ 296.20
Mar	5,282	\$ 306.35	1,939	\$ 174.51		7,221	\$ 480.86	6,860	\$ 456.82
Apr	5,818	\$ 337.45	2,306	\$ 207.55		8,124	\$ 545.00	7,718	\$ 517.75
May	6,658	\$ 386.17	2,706	\$ 243.51		9,364	\$ 629.68	8,896	\$ 598.20
Jun	6,729	\$ 390.27	2,749	\$ 247.44		9,478	\$ 637.71	9,004	\$ 605.82
Jul	7,101	\$ 411.83	2,849	\$ 256.38		9,949	\$ 668.21	9,452	\$ 634.80
Aug	6,779	\$ 393.21	2,628	\$ 236.48		9,407	\$ 629.69	8,937	\$ 598.21
Sep	5,760	\$ 334.07	2,137	\$ 192.31		7,897	\$ 526.38	7,502	\$ 500.06
Oct	4,418	\$ 256.25	1,542	\$ 138.82		5,961	\$ 395.07	5,662	\$ 375.32
Nov	3,235	\$ 187.63	1,069	\$ 96.20		4,304	\$ 283.83	4,089	\$ 269.63
Dec	2,908	\$ 168.67	910	\$ 81.87		3,818	\$ 250.54	3,627	\$ 238.01
Annual	61,281	\$ 3,554.30	23,046	\$ 2,074.14		84,327	\$ 5,628.44	80,111	\$ 5,347.02

The table below details the annual production guarantee throughout the program. The parties acknowledge that the solar panels and other components of the System will naturally degrade over time and that actual performance will decrease and the performance warranted by ESP will be adjusted correspondingly pursuant to and according to the Production Guarantee Table below. The warranted performance for the first 5 years is 95% of Projected Annual Production. For years 6-10, the warranted performance will be 92% of the original Annual Projected Production. For years 11-15, the warranted performance shall be 89% of the original Annual Projected Production.

Because solar array systems inherently have some variation in performance, the parties agree, that in order to determine any adjustment payment or credit against future Services Fees, the parties will average the Actual Annual Production of the System over a two-year period to determine the extent of any shortfall in production and any adjustment in the Services Fee due. The production shall always be determined by taking the average of the current year's Actual Annual Production and the previous year's Actual Annual Production.

Annual Production Guarantee Table

Year	Annual Degradation Factor	Annual Combined Projected Production (kWh)	Annual Combined Projected Production (\$)	Annual Combined Guaranteed Production (kWh)	Annual Combined Guaranteed Production (\$)
1	95.0%	84,327	\$ 5,628.44	80,111	\$ 5,347.02
2	95.0%	84,327	\$ 5,628.44	80,111	\$ 5,347.02
3	95.0%	84,327	\$ 5,628.44	80,111	\$ 5,347.02
4	95.0%	84,327	\$ 5,628.44	80,111	\$ 5,347.02
5	95.0%	84,327	\$ 5,628.44	80,111	\$ 5,347.02
6	92.0%	84,327	\$ 5,628.44	77,581	\$ 5,178.16
7	92.0%	84,327	\$ 5,628.44	77,581	\$ 5,178.16
8	92.0%	84,327	\$ 5,628.44	77,581	\$ 5,178.16
9	92.0%	84,327	\$ 5,628.44	77,581	\$ 5,178.16
10	92.0%	84,327	\$ 5,628.44	77,581	\$ 5,178.16
11	89.0%	84,327	\$ 5,628.44	75,051	\$ 5,009.31
12	89.0%	84,327	\$ 5,628.44	75,051	\$ 5,009.31
13	89.0%	84,327	\$ 5,628.44	75,051	\$ 5,009.31
14	89.0%	84,327	\$ 5,628.44	75,051	\$ 5,009.31
15	89.0%	84,327	\$ 5,628.44	75,051	\$ 5,009.31

B. Term of Guarantee

The term of the Energy Savings Guarantee is 15 Years.

The Production Guarantee will commence on the first of the month following substantial completion. The Guarantee Year will commence this month and conclude at the end of the 12-month period.

C. Utility Rates Used to Calculate Utility Savings

The dollar savings values have been derived by applying the actual utility rate structures to each of the two electric meters, which are summarized in the table below

Baseline Electric Rates for Solar Production Guarantee

City of Moberly	Ameren Rate Structure	Electric Consumption (\$/kWh)
Aquatic Center Solar System	3M Large General Service	\$ 0.0580
The Lodge Solar System	2M Small Gen Svc-3Ph-No Demand-RSC	\$ 0.0900

It is anticipated that there will be some fluctuation in Ameren’s electric rate structure every year, therefore we will review these specific rate structures and recalculate the baseline electric rates to reflect the actual rates in each year. If the

solar production falls below the guaranteed level as detailed in the above paragraphs, the electrical deficit will be converted from kWh to dollars using these updated baseline energy rates corresponding to the year(s) in which the production falls below guaranteed levels as detailed in the above paragraphs.

## SCHEDULE G (CO#1)

### ADDITIONAL SAVINGS MEASUREMENT AND CALCULATION FORMULAE; METHODOLOGY TO ADJUST BASELINE

#### A. Savings Measurement & Methodology

The Measurement & Verification of all measures installed as part of this Project will follow either:

1. Federal Energy Management Program *M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 2.2.*, or
2. International Performance Measurement and Verification Protocol (*IPMVP Volume I EVO 10000-1:2012*), or
3. Engineering Calculations based on industry accepted standards, manufacturer data, and stipulated and/or measured values agreed to by the Client and ESCO.

The specific types of measurement and verification to be included in the Project are defined below:

- IPMVP Option B – For each measure identified as using IPMVP Option B, the ESCO will utilize field measurements of the energy consumption, production, and demand and/or related independent or proxy variables. The measurement frequency ranges from short-term to continuous, depending on the expected variations in savings and length of reporting period.

The table below provides a summary of the ECMs to be measured, the specific M&V methodology that will be utilized to verify the savings, the measured parameter(s), the number of times and/or duration of measurements, and the quantity of devices to be measured:

**Table G.1:** *Measurement & Verification Methodology by Energy Conservation Measure*

ECM Description	M&V Methodology	Measured Parameter	Number of times and/or duration measured
Solar Arrays	Option B	kWh	Annual (15 years) with 14 reports

## B. Measurement & Verification Reporting

The ESCO shall prepare and deliver an annual Measurement & Verification Report with the first one being delivered within 60-days following the completion of the Second Guarantee Year. A total of fourteen (14) reports will be delivered.

The M&V Report will clearly identify the Guaranteed and Achieved savings levels for the Year(s) being measured, based on the M&V Plan identified here-in.

ESCO shall include a summary of all adjustments, including calculations and assumptions used to derive each adjustment.

## C. ECM Specific Measurement Methods

The ESCO will utilize the methods and formulae identified on the following pages to measure, calculate and verify savings for each ECM identified above as “Measured”.

The formulae and measurement parameters for each Measured ECM are as follows:

### a. Solar Arrays

Under this production guarantee, it is intended that Client pay only for Services received and that Client not pay for any Services not received. All Parties further understand that solar systems in general will vary in their production of power due to factors outside the control of the parties (e.g. weather) and that while the Annual Production of a System may be estimated or projected, it is difficult to establish the reasons why projected and actual production may vary. For this reason, all parties agree to define “compliance” or “acceptable performance” within certain parameters. Production may exceed 100% of projected production at times and at other times may fall below 100%. All Parties agree that so long as the System is producing 95% or more of the estimated or Projected Power then the Solar System and Services being performed are satisfactory under the contract and that the Client is not paying for Services not received.

It is the intention of the Client (Owner of the Solar System) to contract directly with MC Power to provide annual maintenance and repair of said System. The Solar System and the maintenance and repair of the Solar System as well as all other Services to be provided shall be jointly referred to as the System (System meaning the combination of the Solar System and all other Services to be provided under this contract including the power generated by the System).

1. So long as the System is producing power on an annualized basis, at 95% or more of Projected Annual Production in Schedule F, the System will be considered as performing in a satisfactory manner and in compliance with this Agreement since variations of 5% or more in production are common among such facilities and can occur for a number of reasons which are not the “fault” of the Solar System or ESP (e.g. unusual or unexpected weather patterns being the most common cause for fluctuations in the system’s generation of power).

2. If Actual Annual Production is below 95% of Projected Annual Production, MC Power shall, under its service agreement with Client, test the System to determine the cause of any discrepancy between Projected Production and Actual Production. If the fault lies with the Solar System or ESP/MC Power, ESP/MC Power shall have the right to take whatever action is necessary and reasonably possible, to boost the production of the Solar System so that it performs at no less than 95% of Projected Annual Production. In this situation, the Client shall be entitled to an adjustment payment from ESP. Said payment shall be made within 60 days of the 12-month of the energy guarantee year following the failure to perform period.
3. Because solar array systems inherently have some variation in performance, the parties agree, that in order to determine any adjustment payment, the parties will average the Actual Annual Production of the System over a two-year period to determine the extent of any shortfall in production. The production shall always be determined by taking the average of the current year's Actual Annual Production and the previous year's Actual Annual Production. By way of example, if the System performs at 95% for the first year and at 97% for the second year, the production for said two-year period would be considered to be 96% and no adjustment would be due. If the System performs at 95% for the second year and 90% for the third year, then the actual production for the two-year period would be considered to be 92.5%, and the Client would be entitled to a credit of 2.5% of the Projected Annual Production for said two-year period and ESP would pay recipient 2.5% of the Projected Annual Production for said two-year period (the System being warranted to perform at 95% of Projected Annual Production). ESP/MC Power shall have the right, at any time, to have a photovoltaic System study (PVSyst Analysis Report) performed by an independent expert to determine the cause of any shortfall in production.
4. In order to determine the amount of any reimbursement owed to Client due to the failure of the System to perform at 95% or more of Projected Annual Production for any two-year period, the parties agree that the value of the lost energy will be calculated by multiplying the shortfall of production (kWh) by the contract rates identified in Schedule F.
5. Notwithstanding the forgoing, if ESP/MC Power can show that the loss of production was through no fault of its own, but rather was due to some other cause beyond its control (e.g. Owner letting trees grow to the point where they are partially blocking the sun, requesting a temporary shutdown of the System), then the loss of production from such cause must first be added back to the Actual Production to determine the extent of any Actual Production shortfall. The burden of establishing that the shortfall was due to factors beyond the control of ESP/MC Power shall be on ESP/MC Power. Weather shall be excluded from consideration with respect to this subparagraph and shall not for the purposes of this subparagraph, be considered a "matter beyond the control" of ESP/MC Power.
6. The parties also acknowledge that the solar panels and other components of the System will naturally degrade over time and that actual performance will decrease and the performance warranted by ESP will be adjusted correspondingly to the Production Guarantee Table below. The warranted performance for the first 5 years is 95% of Projected Annual Production. For years 6-10, the warranted



performance will be 92% of the original Annual Projected Production. For years 11-15, the warranted performance shall be 89% of the original Annual Projected Production. All other provisions of this Section shall apply to the duties of ESP/MC Power and the remedies of the Client except that the baseline performance levels required and warranted will be as adjusted as set forth in this paragraph.

### **Client Responsibilities**

In order for ESCO to perform its obligations under this Contract with respect to the Savings Guarantee and the M&V Services, Client shall be responsible for:

1. Entering into a Service/Maintenance Agreement with MC Power for the term of this Agreement. Failure of the Client to enter into an Agreement with MC Power, or termination of the Agreement with MC Power, shall entitle ESCO to terminate the Savings Guarantee and M&V Services.
2. Providing ESCO, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to M&V Services.
3. Providing for shut down and scheduling of affected locations as needed to accomplish M&V Services.
4. Providing the utility bills, reports, and similar information reasonably necessary for administering ESCO's obligations under the Savings Guarantee within five (5) days of Client receipt and/or generation or ESCO's request therefor.
5. Providing and maintaining an internet access to each of the solar arrays to allow the performance data to be transmitted to the solar reporting enterprise.

### **D. Measurement & Verification Templates**

ESCO will work with the Client to develop templates of tables to utilize for verification of equipment performance. The Client's staff will have the option to be present during all measurements and will have the opportunity to inspect all equipment and measurement devices utilized by ESCO in obtaining the field data that will be utilized to quantify the actual achieved energy saving levels for each measured ECM.

**SCHEDULE H (CO#1)****ADDITIONAL FUNDING**

Client has allocated existing capital and/or other budgeted funds to pay the ESCO the amount identified in ***Schedule D - Compensation to ESCO***. The parties agree that the imputed annual Debt Service for this Contract is \$35,376.

ESP's current contract with the Public Works department includes a contingency value of \$137,337. The Parks and Recreation department will reimburse Public Works by applying a \$110,000 grant which was received by Parks and Rec, plus the anticipated Ameren solar energy rebate estimated at \$15,400, plus the balance of \$11,937. When these are applied to this project, the net construction cost to Parks and Rec will be \$446,174, as shown below.

**Project Costs**

Energy Measures Installed Cost	\$	583,511
Grant Funds	\$	110,000
Utility Incentives	\$	15,400
Additional Buydown	\$	11,937
<b>Net Capitalized Costs</b>	<b>\$</b>	<b>446,174</b>

This energy performance contract is considered binding upon execution of the Lease and Escrow Agreements and other documents necessary to establish the funding-date and secure the financing in the Escrow Account.

**SAMPLE Cash Flow Table for Project**

The Cash Flow table on the following page is provided as a reference to give the Client an understanding of how the financial parameters of the Energy Performance Contract will work. Actual Debt Service payment amounts will be per the Final Amortization Schedule in the Lease Agreement between Client and Lessor. The Final Amortization schedule must be structured such that annual Debt Service payments are less than the Total Funds Available for the project. If the rate and resulting Debt Service amount is LOWER than estimated in the Potential Cash Flow table then the Savings Guarantee will be reduced accordingly. If the rate is higher than estimated, the Term may need to be extended beyond the Financing Term reflected below, or perhaps a balloon payment plan may be utilized.

### City of Moberly - Solar Projects

#### Potential Cash Flow for Energy Performance Contract Project (Energy)

**Project Costs**

Energy Measures Installed Cost	\$	583,511
Grant Funds	\$	110,000
Utility Incentives	\$	15,400
Additional Buydown	\$	11,937

**Net Capitalized Costs**

\$	446,174
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**Projected Annual Savings**

Utility Cost Savings	\$	5,628
O&M Savings	\$	-
Repair & Replace Savings	\$	-

**Total Annual Savings**

\$	5,628
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**Annual Costs**

On-Going Technical Service / M&V	\$	-
Avoided Future Costs	\$	32,000

**Finance Factors**

Term (10 to 15 Year)	15.00 years
Rate (Range 2.8% to 3.8%)	2.25%
Escalation Rate	0.0%
Energy Escalation Rate	0.0%

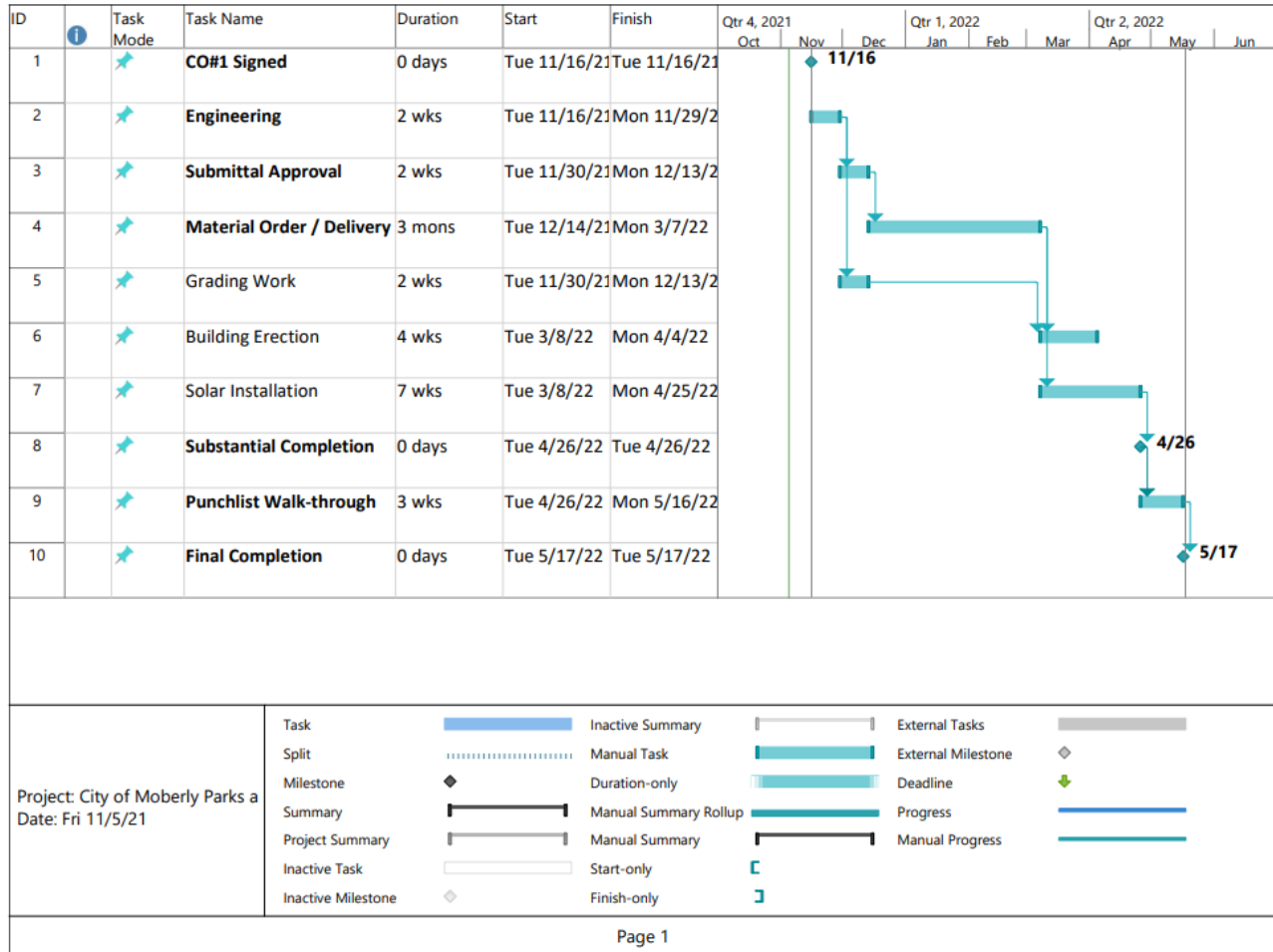
YEAR	PROJECTED UTILITY COST SAVINGS	GUARANTEED UTILITY COST SAVINGS	OPER & MAINT / R & R COST SAVINGS	AVOIDED FUTURE COST	TOTAL FUNDS AVAILABLE	DEBT SERVICE	ON-GOING TECHNICAL SERVICE FEE	GUARANTEED PROGRAM COST	PROJECTED EXCESS SAVINGS
Interim	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
1	\$5,628	\$5,347	\$0	\$32,000	\$37,347	\$35,376	\$0	\$35,376	\$2,252
2	\$5,628	\$5,347	\$0	\$32,000	\$37,347	\$35,376	\$0	\$35,376	\$2,252
3	\$5,628	\$5,347	\$0	\$32,000	\$37,347	\$35,376	\$0	\$35,376	\$2,252
4	\$5,628	\$5,347	\$0	\$32,000	\$37,347	\$35,376	\$0	\$35,376	\$2,252
5	\$5,628	\$5,347	\$0	\$32,000	\$37,347	\$35,376	\$0	\$35,376	\$2,252
6	\$5,628	\$5,178	\$0	\$32,000	\$37,178	\$35,376	\$0	\$35,376	\$2,252
7	\$5,628	\$5,178	\$0	\$32,000	\$37,178	\$35,376	\$0	\$35,376	\$2,252
8	\$5,628	\$5,178	\$0	\$32,000	\$37,178	\$35,376	\$0	\$35,376	\$2,252
9	\$5,628	\$5,178	\$0	\$32,000	\$37,178	\$35,376	\$0	\$35,376	\$2,252
10	\$5,628	\$5,178	\$0	\$32,000	\$37,178	\$35,376	\$0	\$35,376	\$2,252
11	\$5,628	\$5,009	\$0	\$32,000	\$37,009	\$35,376	\$0	\$35,376	\$2,252
12	\$5,628	\$5,009	\$0	\$32,000	\$37,009	\$35,376	\$0	\$35,376	\$2,252
13	\$5,628	\$5,009	\$0	\$32,000	\$37,009	\$35,376	\$0	\$35,376	\$2,252
14	\$5,628	\$5,009	\$0	\$32,000	\$37,009	\$35,376	\$0	\$35,376	\$2,252
15	\$5,628	\$5,009	\$0	\$32,000	\$37,009	\$35,376	\$0	\$35,376	\$2,252
<b>TOTALS:</b>	<b>\$84,420</b>	<b>\$77,670</b>	<b>\$0</b>	<b>\$320,000</b>	<b>\$557,670</b>	<b>\$530,647</b>	<b>\$0</b>	<b>\$530,647</b>	<b>\$33,774</b>

**Notes:**

- 1) ESP guarantees the energy savings identified in column 3 will be achieved. 100% of excess savings used at Client's discretion.
- 2) Escalation rates are conservative estimates to reflect increased utility and maintenance costs/savings over time.
- 3) Maintenance savings represent reduced costs for outsourced maintenance and materials costs, but no internal labor savings.

**SCHEDULE J****CONSTRUCTION & INSTALLATION SCHEDULE**

See next page for full construction schedule. The actual start date of the schedule will be adjusted to match the Contract Start Date and/or the date that proof of financing or funding is in place.



## SCHEDULE L

### MAINTENANCE RESPONSIBILITIES

#### **ESCO Maintenance Responsibilities**

The Client has elected to contract directly with MC Power to provide on-going maintenance services on the solar system, therefore ESCO does not have any direct responsibilities with respect to maintaining the equipment over time.



**SCHEDULE O****WARRANTIES**

The following items carry warranties beyond the first year and are detailed as follows:

ECM	Extended Manufacturer's Warranty (beyond 1 <sup>st</sup> year)
Solar Panels	9 years
Solar Inverters	9 years
Balance of Solar System	NA
Pavilion Structure	14 year limited on metal finishes

ESCO will pass along all Extended Warranties to Client that are applicable to equipment installed as part of the Scope of Work.

# City of Moberly

## City Council Agenda Summary

Agenda Number: #10.

Department: Parks and Recreation

Date: December 6, 2021

**Agenda Item:** A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN OPERATION AND MAINTENANCE AGREEMENT WITH MC POWER COMPANIES, INC.

**Summary:** MC Power will provide the maintenance of the solar panels as they have done with Phase 1. The agreement with MC Power for the annual maintenance during the 15 year lease is attached and includes a schedule of annual payments.

**Recommended**

**Action:** Approve the Resolution.

**Fund Name:** Parks and Recreation Administration – Principal & Interest

**Account Number:** 115.044.5500

**Available Budget \$:** \$22,719.54

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	<b>Mayor</b>		
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance	M___ S___ <b>Jeffrey</b>	___	___
<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	<b>Council Member</b>		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Brubaker</b>	___	___
<input type="checkbox"/> P/C Minutes	<input checked="" type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Davis</b>	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ <b>Kyser</b>	___	___
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed

BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN  
OPERATION AND MAINTENANCE AGREEMENT WITH MC POWER COMPANIES,  
INC.**

**WHEREAS**, the city has entered into an agreement with Energy Solutions Professionals to construct a new Pavilion at the Lodge along with a roof top solar array; and

**WHEREAS**, the roof top solar array will need to be maintained by an entity qualified to provide such service; and

**WHEREAS**, MC Power Companies, Inc., (“MC”) is qualified to provide such maintenance services and has proposed the attached Operation and Maintenance Agreement (“Agreement”) for such purpose; and

**WHEREAS**, city staff recommends entering into said Agreement for a term of fifteen (15) years.

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby approves the attached Agreement and authorizes the City Manager to execute the Agreement on behalf of the City.

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk



## Operation and Maintenance Agreement For City of Moberly MO Lodge/Aquatic Center Solar Arrays

This OPERATION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered into as of this [REDACTED] day of [REDACTED], 2021, by and between **City of Moberly MO** ("Owner"), and **MC Power Companies, Inc.** ("Operator").

### RECITALS

WHEREAS, Owner owns the Solar Arrays installed on the newly constructed metal building located at 100 Rothwell Park Rd, Moberly, MO 65270 (65.24 kW DC) and will be referred to as the (Array). The City of Moberly MO desires to contract for general management, operation and maintenance of the Arrays.

WHEREAS, Operator provides operation, maintenance and management services ("Services") for Solar Arrays and has agreed to provide those services for the Owner's Arrays on the terms and conditions set forth in this Agreement,

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE 1 AGREEMENT

Section 1.1 - *Agreement*. This Agreement consists of the terms and conditions set forth in this Agreement including its three appendices which are attached hereto and made part hereof and are titled as follows:

- Appendix A — Scope of Services
- Appendix B — Compensation
- Appendix C — Escalator

This Agreement contains the entire agreement between the parties and supersedes all prior agreements, whether oral or written, between the parties with respect to the Services. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the Services that are not contained in this Agreement.

Section 1.2 - *Effective Date and Term*. This Agreement shall be effective ("Effective Date") on **TBD, 2023** and shall govern the rights and obligations of the parties continuously from the Effective Date of this Agreement until the Termination Date (as defined herein) or until otherwise terminated pursuant to this Agreement. The term of this Agreement shall be fifteen (15) years ("Term") and the **Termination Date shall be TBD, 2038.**

### Section 1.3 - *Termination.*

a. At Owner's sole discretion, Owner may terminate this Agreement following the occurrence of (i) the bankruptcy of Operator, and/or (ii) Operator's breach or failure to observe or perform, in any material respect, any of Operator's material obligations or responsibilities under this Agreement and such failure or breach continues unremedied for thirty (30) days after written notice from Owner specifying the nature of such breach or failure; provided, however that if such cure cannot be completed within such thirty (30) day period, then Owner shall not have the right to terminate this Agreement as long as Operator commences such cure within such thirty (30) day period and thereafter diligently pursues such cure.

b. Operator may terminate this Agreement by written notice to Owner if Owner has failed to make any payment required to be made to Operator under this Agreement and such failure is not remedied within thirty (30) days after the date on which such payment first becomes due, provided that Owner shall have received prompt notice of such failure to make such payment.

c. In connection with any termination of this Agreement, Operator shall cooperate with Owner to provide for the orderly transition of performance of Services for the Arrays to a replacement operator.

## ARTICLE 2 SERVICES

Section 2.1 - *Scope of Services.* Operator shall operate and maintain the Project on behalf of the Owner by providing the Services set forth in this Agreement and as detailed in Appendix A.

Section 2.2 — *Standard of Services.* The Services provided by Operator hereunder shall be performed on a best efforts basis and in a timely and professional manner by qualified personnel familiar with the Operator's responsibilities hereunder, and shall conform to the standards observed in the industry for similar services by careful and prudent service providers. Such services shall be provided in compliance with all applicable federal, state and local laws, statutes, rules, regulations or orders.

### Section 2.3 — *Response Time.*

a. Operator shall ensure that a qualified Operator representative or agent is at all times reachable and capable of disconnecting and de-energizing the Arrays. Except as provided in Section 2.3(c) below with respect to an emergency, Operator personnel shall be available to visit the Arrays within (i) forty-eight (48) hours of the occurrence of any Material Adverse Event and (ii) five (5) business days of any other outage.

b. Operator shall take commercially reasonable measures to notify Owner of any actual or anticipated Material Adverse Event (but not material injury or harm), in each case within twenty-four (24) hours of the time that Operator first knew or should have known of such likelihood.

c. Upon discovery of a condition or event that Operator believes is both (i) reasonably likely to result in a Material Adverse Event or material injury to third parties and (ii) avoidable or susceptible to mitigation through Operator's commercially reasonable actions, then Operator shall, within a commercially reasonable time period under the circumstances, dispatch personnel and otherwise use commercially reasonable efforts to safely and prudently mitigate such Material Adverse Event or injury to third parties. Operator shall notify Owner as soon as circumstances dictate or reasonably allow.

d. For purposes of this Agreement, "Material Adverse Event" means an event that results or is reasonably expected to result in a reduction by more than twenty percent (20%) of annual aggregate production by the Arrays during the calendar month in which such event occurs.

### ARTICLE 3 OWNERS RESPONSIBILITIES

Section 3.1 - *Information*. Owner shall provide Operator with all vendor manuals, spare parts lists, Project data books and drawings which are in Owner's possession, which were provided to Owner pursuant to the construction of the Project or by any contractor responsible for construction, installation, repair or maintenance of the Project or any part thereof.

### ARTICLE 4 COMPENSATION AND PAYMENT

Section 4.1 - *Payments*. As compensation to Operator for performance of the Services, Owner shall pay Operator the Annual Operating Fee (as defined in Section 4.2) in one lump sum.

Section 4.2 - *Annual Operating Fee*. Owner shall pay to Operator the sum of Seven Hundred Forty Five dollars (\$745.00) for the first year. The Annual Operating Fee will be adjusted up two percent (2%) every year thereafter. Appendix C lists the Annual Operating Fee for years 1-15. The first Annual Operating payment will be due on xx/xx/21. The annual payment will be due on the same day every year thereafter.

Section 4.3 - *Reimbursable Costs*. In addition to payment of the Annual Operating Fee for the Services, Owner shall reimburse Operator for (i) all costs incurred by Operator related to the Arrays, including those set forth on Appendix B, and (ii) any additional work related to the Arrays outside the scope of the Services as set forth on Appendix A.



Section 4.4 - *Billing and Payment*. On or about the first day of each month during the Term of this Agreement, the Operator will provide an invoice to the Owner for any Reimbursable Costs as defined in Section 4.3 for the preceding month ("Monthly Invoice"). Owner will make payment to the Operator for the full amount of the Monthly Invoice within fifteen (15) days from the date of the Monthly Invoice. If the Operator fails to receive timely payment of the Monthly Invoice during the fifteen (15) day period set forth herein, the Operator may assess a two percent (2%) additional fee for each month beyond the fifteen (15) day payment period full payment of any Monthly Invoice is delinquent.

Section 4.5 — *Failure to make payment*. If payment of any Monthly Invoice is delinquent for a period of thirty-one (31) days or more, Operator may, with prior written notice to the Owner, discontinue the Services until such time that all outstanding payments, including any delinquent payment penalties, have been made in full to the Operator. If payments are delinquent for more than sixty (60) days, this Agreement may be terminated by Operator without further notice.

Section 4.6 — *Failure to provide services*. Except as a result of Force Majeure, in which case Operator shall be afforded reasonable time to perform the Services, if Operator fails to provide the Services, Owner shall notify Operator in writing of such alleged failure and may withhold payment(s) to the Operator of the Monthly Invoice for the current month until Services are provided as required under this Agreement. If the Operator fails to provide Services for a period of thirty (30) days after notice from the Owner of such alleged failure, this Agreement may be terminated by written notice from Owner.

## ARTICLE 5

### NOTICES; CONTACT INFORMATION

Section 5.1 — *Notices*. All notices, consents, approvals, requests, waivers, objections, or other communications (collectively, the "Notices", and individually, a "Notice") required or permitted under this Agreement shall be in writing and shall be deemed properly given: (a) if delivered personally; (b) if sent by United States certified or registered mail with return receipt requested; (c) if sent by Federal Express or other overnight delivery service; or (d) if sent by facsimile transmission or electronic mail, confirmed by certified or registered mail with return receipt requested; in each such case (except for personal delivery), with postage or charges prepaid or billed to sender.. A party's failure or refusal to accept service of a Notice shall constitute delivery of the Notice. Notices hereunder shall be deemed sufficiently served or given for all purposes hereunder on the earlier of the date of actual receipt, or: (a) if served by certified or registered mail, three days after the time such notice, demand or request shall be deposited for mailing in any Post Office or Branch Post Office regularly maintained by the United States Postal Service; (b) if sent by overnight delivery service, on the day following delivery thereof to such overnight delivery service; or (c) if sent by facsimile transmission or electronic mail, with confirmation by certified or registered mail, on the date such facsimile transmission or electronic mail is received by the party to whom it is sent if confirmation of receipt is received by the sender.

Section 5.2 — *Contact Information*. All notices required or permitted to be given pursuant to this Contract, in order to be effective, shall be in writing and sent to the following:

To Operator:

**MC Power Companies, Inc.**  
**4031 NE Lakewood Way**  
**Lee's Summit, MO 64064**  
**ATTN: Jeremy Lidberg**  
**Email: [JLidberg@mcpower.com](mailto:JLidberg@mcpower.com)**  
**Tel: 816-251-4700**  
**Fax: 816-251-4701**

To Owner:

**City of Moberly, MO**  
**101 W. Reed St.**  
**Moberly MO 65270**  
**ATTN: \_\_\_\_\_**  
**Email: \_\_\_\_\_**

## ARTICLE 6 MISCELLANEOUS

Section 6.1 — *Binding Effect; Assignment.* This Agreement shall be binding on the parties hereto, their successors, legal representatives and assigns, neither party shall have the right to assign this Agreement or any interest therein without the prior written consent of the other, which consent shall not be unreasonably withheld.

Section 6.2 — *Entire Agreement; No Waiver.* This document, together with applicable Appendices shall constitute the full, complete and entire agreement between the parties upon the same being duly executed by duly authorized officials of each company. There are no oral agreements or understandings affecting this instrument and any future agreement, understanding or waiver to be binding upon the parties must be confirmed in writing and executed by both parties in the manner indicated above. Failure to strictly enforce any provisions of the Agreement shall not be construed as a waiver thereof but the same shall continue in full force and effect as if no forbearance or waiver had occurred.

Section 6.3 — *Severability.* If any clause or provision contained in this Agreement shall be prohibited by any applicable statute or rule of law, such clause or provisions shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

Section 6.4 — *Insurance.* From the Effective Date and throughout the Term of this Agreement:

a. Operator shall maintain insurance covering claims arising out of the negligent acts or omissions of Operator under this Agreement with a minimum policy limit of One Million Dollars (\$1,000,000.00) each claim/aggregate. Operator shall maintain Commercial General Liability Insurance ("CGL") with a standard broad-form endorsement which shall protect Operator, Owner, their directors, officers, employees, agents, representatives and vendors against claims in connection with Operator's performance of its obligations under this Agreement. The CGL policy shall be on an occurrence basis and include contractual liability coverage and shall cover Operator's indemnification obligations under this Agreement. Such CGL policy shall have a minimum policy limit of One Million Dollars (\$1,000,000.00) each claim/aggregate. Operator shall maintain automobile insurance coverage for all owned, hired or non-owned vehicles utilized by Operator. Such automobile coverage shall be on an occurrence basis and have minimum limits of coverage of a combined limit of not less than One Million Dollars (\$1,000,000.00). Operator shall maintain workers' compensation insurance as required by law. The CGL policy and automobile policy shall be endorsed to include Owner as an additional insured. Operator shall provide Owner a certificate of insurance evidencing the maintenance of coverages required herein within ten (10) days from the Effective Date and thereafter promptly after demand by Owner. To the extent available from the insurance carrier, the policies required herein shall not be changed or modified until thirty (30) days' notice has been provided to Owner.

b. Owner shall maintain fire and casualty insurance in an amount adequate to cover the full cost of replacement of the Arrays, including all equipment, installations, fixtures thereof in the event of loss or damage by fire and against loss or damage by other risks now or hereafter embraced by so-called "All-Risk Coverage", with protection against weather incidents, vandalism and malicious mischief. To the extent available from the insurance carrier, the policies required herein shall not be changed or modified until thirty (30) days' notice has been provided to Operator.

Section 6.5 — *Waiver of Consequential Damages*. Operator and Owner waive all claims against each other for consequential damages arising out of or relating to this Agreement regardless of whether the other party has been advised of the possibility of such damages in advance or whether such consequential damages are foreseeable.

Section 6.6 — *Amendments and Modifications*. Waivers, alterations, modifications or amendments of a provision of this Agreement shall not be binding unless such waiver, alteration, modification or amendment is in writing and signed by Owner and Operator.

Section 6.7 — *Captions*. The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

Section 6.8 - *Governing Law; Venue*. This Agreement shall be interpreted, construed and governed by the laws of the State of Missouri and the parties hereby consent to the jurisdiction of the courts of the State in and for the county in which the Arrays are located with

respect to any action, suit or other legal proceeding commenced by either party and hereby waive any right to transfer any such action to any other court.

Section 6.9 — *Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

***[Signature Page Follows]***

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

**“Owner”**

**City of Moberly MO**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**“Operator”**

**MC Power Companies, Inc.**

By: \_\_\_\_\_

Name: Jeremy Lidberg

Title: Solar O&M Manager

**APPENDIX A**  
**SCOPE OF SERVICES**  
**for combined arrays totaling 65.24 kW DC**

OPERATOR SHALL PERFORM EACH OF THE SERVICES LISTED IN THIS APPENDIX A

**Management:**

- A. Read and confirm continuous functioning of the remote data monitoring*
- B. Read and monitor each inverter's production to ensure proper functioning and report in writing any corrective actions recommended.*
- C. Schedule planned maintenance events for the Project.*
- D. Act as the Owner's agent for the following:*
  - a. Receipt of notices from City of Moberly, Regional Transmission Authority, and any other entity or agency having jurisdiction over the Project.*
  - b. Issuance of all contracts and purchase orders*

**Reporting:**

- A. Make accurate assessments of the performance of the photovoltaic generation system and compare those assessments with the actual production results to determine if photovoltaic generation system is functioning within 5% of expected performance on an annual basis.*
- B. Maintenance activity on warrantied equipment and submit to owner electronically at completion of any activities undertaken as part of this scope of work.*

**Maintenance of Solar Farm Equipment:**

- A. Provide system and equipment checks as required by the manufacturers of the electrical and structural equipment placed in service*
- B. Make annual inspections of wiring and connections or other non-warrantied components.*
- C. Identification of system failure(s)*
- D. Reporting of all actions, including warranty maintenance work report and corrective action reports to Owner*
- E. Managing corrective action by warrantied or other parties*

## **APPENDIX B**

### **COMPENSATION**

Compensation shall be paid in the amounts and on the schedule described in Section 4.2 of this Agreement. Such compensation is specifically for the Services as described in Appendix A of this Agreement.

In addition to the Annual Operating Fee set forth in Section 4.2 and subject to the warranty provisions, Operator shall also be paid for Reimbursable Costs as set forth in Section 4:3 of this Agreement and such Reimbursable Costs include, but are not limited to, the following examples:

- A. The purchase of materials and/or equipment for any reason to repair or make corrective action to the Project.*
- B. The purchase of materials related to warrantied equipment that is not covered by warranty or insurances purchased by Owner.*
- C. Any labor, equipment rental or other services associated with the repair of equipment or materials associated with corrective actions or warrantied items not covered by manufacturer.*

Exclusions — This Agreement does not cover any costs associated with warranty extensions of existing base warranties by the manufacturer. Any labor costs incurred other than the management of others for corrective actions on warranty items are not included.



**APPENDIX C**

**Year            Amount Due            2% Escalator**

1	\$ 745.00	\$ 14.90
2	\$ 759.90	\$ 15.20
3	\$ 775.10	\$ 15.50
4	\$ 790.60	\$ 15.81
5	\$ 806.41	\$ 16.13
6	\$ 822.54	\$ 16.45
7	\$ 838.99	\$ 16.78
8	\$ 855.77	\$ 17.12
9	\$ 872.89	\$ 17.46
10	\$ 890.34	\$ 17.81
11	\$ 908.15	\$ 18.16
12	\$ 926.31	\$ 18.53
13	\$ 944.84	\$ 18.90
14	\$ 963.74	\$ 19.27
15	\$ 983.01	\$ 19.66

# City of Moberly

## City Council Agenda Summary

Agenda Number: #11.  
 Department: Administration  
 Date: December 6, 2021

**Agenda Item:** A Resolution Authorizing The City Manager To Register The City Of Moberly As A Participant In The Nationwide Opioid Class Action Settlement And Further Authority.

**Summary:** City staff has been notified by the Missouri Attorney General of its right to participate in a national opioid class action settlement. The AG indicated that our participation (as well as as many other Missouri cities as possible) could increase the amount of any award Missouri might receive in the settlement distribution.

City staff has completed an initial registration of the city as a claimant with the class action administrator. We must complete and submit additional information with the administrator by electronic means. This resolution authorizes the city's participation in the class action settlement and the city manager to provide whatever information and consent is necessary for the city's continued participation.

**Recommended Action:** To authorize approval of this Resolution during the December 6, 2021 city council meeting.

**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 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\_\_\_ **Davis**      \_\_\_      \_\_\_

M\_\_\_ S\_\_\_ **Kyser**      \_\_\_      \_\_\_

Passed      Failed

BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO REGISTER THE CITY OF MOBERLY AS A PARTICIPANT IN THE NATIONWIDE OPIOID CLASS ACTION SETTLEMENT AND FURTHER AUTHORITY.**

**WHEREAS**, the Missouri Attorney General has notified the city that it is eligible to participate in the nationwide opioid class action settlement and has encouraged all Missouri political subdivisions to participate; and

**WHEREAS**, city staff have completed initial registration with the class action administrator; and

**WHEREAS**, it is necessary to authorize the city manager to take such other and further actions as may be required to continue to participate in the settlement; and

**WHEREAS**, city staff recommends that the City Council authorize participation in the settlement and provide authority to the city manager to execute such forms and documents (by electronic signature) as may be required to participate in the settlement.

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby authorizes participation in the nationwide opioid class action settlement, and ratifies actions taken by city staff to initially register for the settlement and further authorizes the City Manager to take such actions as are necessary to continue participation in the settlement including, but not limited to, executing such forms and documents by electronic signature if necessary..

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

---

 Presiding Officer at Meeting

**ATTEST:**

---

 Shannon Hance, City Clerk

# Subdivisions Register Here to Receive Participation Agreements for Distributor and Janssen Settlement Agreements

## Registration Successful

Thank you for registering your Political Subdivision. See below for the details you provided.

Future correspondence will be sent to the email address provided.

---

State: Missouri

Political Subdivision: Moberly city | RANDOLPH COUNTY

---

## Your Submitted Form Details

First Name: Brian

Last Name: Crane

Email: bcrane@cityofmoberly.com

Address: 101 West Reed Street , Moberly, Missouri, 65270

Phone Number: 6602698705

Will your political subdivision be executing your settlement participation form via DocuSign or paper signature?: DocuSign

Name of the person submitting form: Randall D. Thompson

#11.

# City of Moberly

## City Council Agenda Summary

Agenda Number: \_\_\_\_\_

#12.

Department: Public Utilities

Date: December 6, 2021

**Agenda Item:** A Resolution Authorizing The City Manager To Execute A Scope Of Services Agreement With Barr Engineering Company For Stormwater Analysis Of Southeast Moberly.

**Summary:** The City of Moberly regulates Moberly stormwater management through a series of city ordinances. As part of an effort to partner with citizens during new and proposed additions to existing developments, the Utilities Department strives to provide relevant stormwater information to the public. Barr Engineering is proposing to perform a stormwater review of an area within SE Moberly bordered by the railroad on the west, McKinsey Street on the north, Highway 63 on the east and Urbandale Drive on the south. This area of 800+ acres hold multiple sites with current planned construction and additional properties where future development is likely. To assist with these efforts, the city wishes to hire Barr Engineering to complete a stormwater review according to the attached scope of work. Moberly is nearing the completion of a project identifying GIS coordinates within the entire city which will beneficially impact not only this survey effort but future efforts as well.

**Recommended Action:** Approve the resolution for the City Manager to execute the contract agreement.

**Fund Name:** Public Utilities Operations—Stormwater Department

**Account Number:** 301.115.5406

**Available Budget \$:** To be transferred from operating reserve fund.

### 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 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\_\_\_ **Davis**

M\_\_\_ S\_\_\_ **Kyser**

Passed    Failed

BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SCOPE OF SERVICES AGREEMENT WITH BARR ENGINEERING COMPANY FOR STORMWATER ANALYSIS OF SOUTHEAST MOBERLY.**

**WHEREAS**, city staff is in need of professional engineering services to review stormwater issues in southeast Moberly in anticipation of future development; and

**WHEREAS**, the city has previously worked with Barr Engineering Company and knows them to be highly proficient and knowledgeable in this area of expertise; and

**WHEREAS**, Barr Engineering Company has submitted a Scope of Services agreement (“attached”) to assist with the review of stormwater issues in an area in southeast Moberly bordered by the railroad to the west, McKinsey Street on the north, Highway 63 to the east and Urbandale Drive on the south; and

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby directs the City Manager to execute the Scope of Services Agreement and take such other and further actions as may be required to complete the agreement with Barr Engineering Services.

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk





November 5, 2021

Mr. Dana Ulmer  
Director of Public Utilities  
City of Moberly  
101 West Reed Street  
Moberly, MO 65270

**Re: Scope and Budget for Professional Services**

Dear Mr. Ulmer:

Thank you for the opportunity to provide this scope and budget for the professional services needed to complete the work identified below for the City of Moberly (city). We are grateful for the opportunity to work with you on this project. We consider our Barr team members to be an extension of your staff and we look forward to serving you.

**Scope and Budget**

Barr's scope of services is outlined in the following tasks:

**Evaluate Hydrology, Flood Potential, and Develop Conceptual Alternatives, for the Moberly Southeast Development Area Watershed**

**Task 1 – Review Available Data and Information**

Barr will review and utilize publicly available data, including LiDAR and other topographic data, storm sewer data (size, location, make, pipe inverts, catch basins, catch-basin inverts of all relevant pipes and surface drainage-ways, etc.), and street GIS overlay. Barr will gather other additional, publicly available field or resource data such as soils data, and precipitation data. If additional pipe or topographic information needs to be obtained, Barr will perform this work (as can be completed in one eight-hour field visit).

**Task 2 – Watershed and Subwatershed Delineation**

Major watershed and subwatershed delineations will be developed electronically, and then will be field verified. This methodology has been found to be very accurate and efficient, with watershed delineation being completed at a significantly lower cost than performing the detailed delineations in the field. Subwatersheds will be delineated to single discharge points into the city's storm sewer system, which is typically isolated catch basins or catch-basin clusters.

Drainage area (subwatershed) delineations will be performed to a high level of detail using Spatial Analyst features of ArcMap or similar ArcMap tools in conjunction with LiDAR data. LiDAR LAS (LAS = "LASer" file, or LiDAR data exchange file) data and building outline data files (if available) will be downloaded and used in conjunction with storm sewer pipe data to develop a hydrologically corrected elevation surface. The hydrologically corrected elevation surface will then be used to develop the "first-cut" subwatershed areas. Please note that some manual delineation efforts are often needed in urban areas where rooftops, curb and gutter, and street crowns are not captured in the LiDAR data. LAS datasets are described by Esri

in more detail here: <http://desktop.arcgis.com/en/arcmap/10.3/manage-data/las-dataset/what-is-a-las-dataset-.htm>

### **Task 3 – Hydrology and Hydraulics Modeling**

Barr will create a detailed existing conditions PCSWMM model of the entire watershed to the site. For this project, this step will be completed in two parts: 1) existing conditions model development and 2) future conditions model development, as described below.

#### **Existing Conditions Model Development**

Barr will develop an existing conditions model of the larger watersheds surrounding the area of interest (see Figure 1), including the surrounding subdivisions and drainage area through the public school property. This will include the entire drainage area flowing through the area surrounding the school property that was discussed in our call on October 22. Tasks within existing conditions model development are as follows:

##### **Field Verification**

- Barr will collect field data from one existing stormwater basin as part of this task, to determine the size, depth and volume of the structure, and to determine locations of the inlet and outlet. Barr has included budget for an eight-hour site visit in this task to field review storm sewer inlets and structures within the site.

##### **Downstream Boundary Conditions**

- Barr will model the downstream system to a logical end location, such as the storm sewer outfall at a stream or flowage downstream of the flooding, or where there is a significant drop (15 to 20 feet vertically) to a manhole. The goal will be to choose an end location where it can be reasonably assumed that downstream hydraulics will not impact flows from the upstream system.
- In areas where incoming overland flows may occur from an adjacent watershed outside of the city, modeling beyond the area of interest may be necessary to establish a reasonable estimate of inflows.

##### **Model Resolution**

- One runoff node will be assigned per group of catch basins (catch basin cluster) draining to a single manhole connection to the storm sewer system; we assume that the hydraulic capacity of catch basins does not need to be accounted for in the model.
- Basin storage will be defined using depth/area curves at low points based on LiDAR elevation data and at stormwater storage facilities.

- All pipe segments (except catch basin connections) will be included in the PCSWMM model, recognizing that in some cases, the pipes may need to be manually entered based on survey, record drawings, or plans not reflected in GIS.

### **Model Elements**

- Overland flow paths will be defined so that high water elevations do not exceed spillcrest elevations for the Atlas 14 100-year event, and so that street/road overflows are reasonably defined.
- Development of infiltration parameters will be based on publicly available land cover data and soils data from the National Resources Conservation Service (NRCS) Soil Survey Geographic Database (SSURGO).
- Stormwater BMPs such as ponds, infiltration basins, filtration basins, and underground storage facilities will be included in the PCSWMM model when they might have an influence on projected water surface elevations for the Atlas 14 design events (if data is available for these). This will be included in the existing and future conditions models.

### **Model Validation**

- If possible, we will attempt to calibrate or verify the accuracy of the existing conditions model using information the city may be able provide, such as: surveyed drift lines after a flooding event has subsided, aerial photos or other photos taken during storm events that show extent of flooding at a moment in time, and rainfall information.

### **Future Conditions Model Development**

Once the existing conditions PCSWMM model has been developed, calibrated, and results reviewed by the city, we will use the model to evaluate several alternatives to address stormwater concerns in the project area.

Barr will work with the city to define anticipated future land use changes, including the currently planned project in this drainage area. The existing conditions PCSWMM model will be updated to reflect the future land use conditions to compare the impact the land use changes have on peak water surface elevations and peak flows through the project area for the Atlas 14 design events.

After creating the existing conditions model with both existing and future land use conditions, Barr will coordinate a meeting with the city to discuss the model elements and results for the 2-, 10-, and 100-year Atlas 14 storm events. The meeting will also be an opportunity for the city to confirm that the model is reflective of the area conditions and to receive feedback from the city on potential flood reduction options to incorporate in the Task 4 evaluation.

### **Task 4 – Conceptual Improvement Design and Review of Proposed Project**

Using the future conditions land use PCSWMM model, Barr will develop up to three conceptual flood improvement options for the site. These conceptual improvement options will be developed using

modeling results and input from city staff. The conceptual improvement options will be included in the future conditions PCSWMM model to evaluate impacts to flood elevations and peak flows during the Atlas 14 design events. Model results and conceptual design schematics will be summarized in a draft technical memorandum described in Task 5.

Barr will review the engineering plans for one current proposed project in the drainage area, as provided by the city, and use the model results to guide the review, as well as the city's Land Disturbance and Post Construction Manuals. This includes one round of review with written comments regarding the engineering plans. Results of the engineering plans review will be provided as part of the technical memorandum, as described in Task 5.

### **Task 5 – Technical Memorandum**

A technical memorandum will be developed to document the modeling results for each conceptual improvement option described in Task 4. A summary of the benefits and considerations for each conceptual improvement option will also be included in this draft technical memorandum. The memorandum will be provided to city staff for their use in determining what further actions to take at the site. The results of Barr's review of the proposed public schools project will also be included in this memorandum.

Barr will run any agreed-upon model refinements that result from communications regarding the conceptual improvements. The results will be included in the technical memorandum to document the computations and assumptions incorporated into the models for each conceptual improvement option.

### **Task 6 – Update Model and Conceptual Improvements**

The city is currently working with a contractor to survey and map the entire city stormwater collection system in GIS. Barr will review the GIS stormwater collection system data to understand if updates to the model and/or proposed conceptual improvements will be needed and useful to improve the accuracy of the deliverables for this project.

### **Assumptions**

Barr made the following assumptions in this scope of work:

- Publicly available LiDAR is available for the watershed area encompassing the project area of interest, shown in Figure 1.
- Stormwater structure information within the watershed will be provided by the city or obtained from other publicly available sources. We currently do not have any storm sewer structure information for the area on and around the public school property.
- Two site visits of eight hours each are included in the budget to collect supplemental field data from stormwater structures in the area of interest. The site visit(s) will also be used to support watershed delineation for the project area of interest.
- Deliverables and documents used to develop deliverables will be provided to the city in an electronic format; hard copies are not included.

**Figure 1 – Area of Interest**



## Budget and Schedule

Moberly will be invoiced on a time-and-materials basis for the scope of work described above. The total amount to conduct the work is \$44,945. This total budget amount will not be exceeded, without prior approval from the city.

### Budget Table

Tasks	Estimated Labor and Expenses Subtotal
Task 1 – Review Available Data and Information	\$3,755
Task 2 – Watershed and Subwatershed Delineation	\$4,045
Task 3 – Hydrology and Hydraulics Modeling	\$16,515
Task 4 – Conceptual Improvement Design and Review of Proposed Project	\$6,860
Task 5 – Technical Memorandum	\$9,095
Task 6 – Update Model and Conceptual Improvements	\$4,675
<b>Total</b>	<b>\$44,945</b>

### Schedule

Barr will complete these review tasks in accordance with the schedule developed with the city.

We appreciate the opportunity to continue to work with you. If you have any questions about this proposal, please contact Andrea Collier at [acollier@barr.com](mailto:acollier@barr.com) or 573-356-4423 (cell).

Sincerely,



Andrea D. Collier, P.E.  
Senior Environmental Engineer

By 

Rob K. Morrison, P.E.  
Its Vice President

Accepted this \_\_\_ day of \_\_\_\_\_, 2021  
Brian Crane, City of Moberly, Missouri

By \_\_\_\_\_  
Brian Crane,  
Moberly City Manager

# City of Moberly

## City Council Agenda Summary

Agenda Number: #13.

Department: Finance

Date: December 6, 2021

**Agenda Item:** A Resolution Authorizing Execution Of Agreements Required By Enterprise Fleet Management For Fuel, Telematics, Consignment, And Lease Approval.

**Summary:** These are follow-on agreements to the original program agreements authorized several weeks ago. These agreements (1) enroll us in Enterprise's WEX fuel card account so they can assist us in tracking fuel costs and usage, (2) make agreements with GeoTab and T-Mobile for possible real-time GPS tracking of our fleet vehicles (100% scalable), (3) consignment sale of our used vehicles by Enterprise, and (4) adding authorized signers for Enterprise documents in addition to the City Manager.

Tom Sanders advised that the fueling equipment we have at the Street Barn is at the end of its service life and giving us increasing problems. Replacement is well over \$100,000, so we have investigated and determined that utilizing the WEX fleet fuel card system will be much more cost effective. The State of Missouri and many large fleet owners use it and it works well. Virtually all major fuel retailers accept it, so no matter where our vehicles and equipment are we should have no problem using the cards. GPS vehicle tracking is purely an option for now, but we want to have the agreements in place in the event we want to move forward with it. The cost per unit is reasonable and we have the flexibility to add this to a handful of vehicles or the entire fleet. We will continue evaluating this and bring more information to you in the future.

### Recommended

**Action:** Adopt the resolution to authorize executing the agreements.

**Fund Name:** Various

**Account Number:** Various

**Available Budget \$:** No costs at this time

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	<b>Mayor</b>		
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance	M___ S___ <b>Jeffrey</b>	___	___
<input type="checkbox"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution			
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	<b>Council Member</b>		
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Brubaker</b>	___	___
<input type="checkbox"/> P/C Minutes	<input checked="" type="checkbox"/> Contract	M___ S___ <b>Kimmons</b>	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Davis</b>	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice	M___ S___ <b>Kyser</b>	___	___
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed



BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION OF AGREEMENTS REQUIRED BY ENTERPRISE FLEET MANAGEMENT FOR FUEL, TELEMATICS, CONSIGNMENT AND LEASE APPROVAL.**

**WHEREAS**, previously this council authorized an agreement with Enterprise Fleet Management and authorized purchasing fuel with state fuel cards; and

**WHEREAS**, Enterprise has requested execution of additional agreements to provide fuel cards, to use Telematics, to authorize auction consignment and provide a resolution authorizing signer on behalf of the city; and

**WHEREAS**, attached hereto are the following agreements: P66 TriBrand Application, WEX Electronic Fleet Data Form, EFM Telematics Agreement, T-Mobile Contract and Credit Application, EFM Consignment Auction Agreement and EFM Authorized Signer Resolution (hereinafter the “documents”); and

**WHEREAS**, city staff recommends authorizing the City Manager to execute the documents giving Enterprise Fleet Management authority to manage fuel and fleet related matters.

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby authorizes the City Manager to execute the attached documents and to take such other and further actions to accomplish the purposes of this Resolution

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

---

 Presiding Officer at Meeting

**ATTEST:**

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 Shannon Hance, City Clerk



## FLEET MANAGEMENT



## WEX ENTERPRISE FLEET MANAGEMENT/PHILLIPS 66 APPLICATION

#13.

**Fees:** \$40 one-time setup fee, \$2 per card, per month

### Tell us about your business

City of Moberly

Legal Name of Business

101 W Reed St

Business Physical Address

Moberly

MO

65270

City

State

Zip

43-6002348

660-269-8705

660-269-8171

Tax Payer Identification #

Company Phone #

Company Fax #

Local government

87

Legal Structure(Corp, Partnership, LLC, Proprietorship, Gov, PC or PA)

# of vehicles

155

\$13,000

Years in Business

Average Monthly Fuel Exp.

### Billing Contact Information

Greg

Hodge

Billing Contact First Name

Billing Contact Last Name

660-269-7637

Billing Contact Phone #

101 W Reed St

Billing Address

Moberly

MO

65270

City

State

Zip

### Authorization

By signing below, I represent and warrant that I am authorized to bind the Company to the terms & conditions of this offer and the Business Card Agreement, which is available upon request. I further acknowledge that I have read and agree to the Summary of Key Terms enclosed.

X

11/16/2021

Authorized Officer Signature

Date

Gregory L. Hodge

gregh@cityofmoberly.com

Print Name

Email Address

### Title of Applicant:

☐

President

☐

Vice President

☒

Treasurer

☐

Owner

☐

Partner

### Tell us about yourself

Required if this account is for a business incorporated less than one year, a proprietorship, a professional corporation, or a limited liability company.

First Name

Last Name

Residential Address

City

State

Zip

Social Security #

Date of Birth

gregh@cityofmoberly.com

Home Phone #

Email Address

I understand and acknowledge that by signing below, both the Company and I will be jointly and severally liable for all amounts owing on this account.

X

Signature

Print Name

Date

Card Issuer is WEX member FDIC.

137

EnterpriseFleetManagement.P66.APP(11/17)

### FOR OFFICE ONLY:

Sales Code	Plastic	Coupon Code	Acct. #
	ENP3		0496

Sales Rep Name

Title

Email Address gregh@cityofmoberly.com

Call

Opportunity #

4 Digit Group Code

Enterprise Employee Initials

## SUMMARY OF KEY TERMS

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**Credit Disclosure:** By submitting this application, Company requests a business charge account and if approved for credit, one or more business charge cards for use by Company and its employees. The Card Issuer is WEX BANK. Company agrees to the terms and conditions set forth in the Business Charge Account Agreement provided with this application and/or provided with the card(s). Use of any card issued pursuant to this application confirms Company agreement to said terms and conditions. In the event that this application is denied based upon information contained in a consumer credit report used to evaluate credit, Issuer is authorized to report the reason for the denial to the Company. Direct inquiries of businesses where the undersigned maintains accounts may also be made. If requested, Company agrees to provide company financial statements, including at minimum, a Balance Sheet and Income Statement for the last two years upon request.

**Joint and Several Liability:** If required, and if Bank issues card(s) to Company, both the Company and I am jointly and severally liable with the Company for all charges to the account established pursuant to this application. This is a guaranty of payment and not merely of collection. You agree to pay upon demand any amount owed by Company due under the Business Charge Account Agreement.

I understand that I am applying for commercial credit on behalf of the business. I authorize Issuer to obtain credit bureau reports, both personal (if required) and in the name of the Company, that may be used when considering this application for credit and any other information about me in connection with: 1) extensions of credit on this account; 2) the administration, review or collection of this account. I agree that I may be contacted at any of the numbers that I have provided. In the event that the account is not paid as agreed, Issuer may report my liability (both personally and for the Company) to credit bureaus or others that may lawfully receive such information.

**Federal Compliance:** Issuer complies with Federal Law which requires all financial institutions to obtain, verify and record information that identifies each company or person who opens an account. What this means for you: when you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents for your business.

# Certification of Beneficial Ownership

## I. GENERAL INSTRUCTIONS

### What is this form?

Federal regulations now require **all banks** to verify the ownership of certain business types when they open a new account.

You will be asked to identify any beneficial owners of this business, plus one person with significant managing control. The required information includes Name, Address, Date of Birth, and Social Security Number (or Passport Number, in the case of foreign persons). The Bank may also ask to see a copy of a driver's license or other identifying document for each person listed on this form.

**To learn more about this requirement:** Visit [wexinc.com/beneficial-ownership](http://wexinc.com/beneficial-ownership)

**To submit this information:** Fax the completed form to **800-374-4568**, or mail it to **WEX Inc., P.O. Box 639, Portland, ME 04104-9814**.

## II. ACCOUNT OPEN INFORMATION

The person opening an account on behalf of this business must provide the following information:

\_\_\_\_\_  
Name of Person Opening Account

\_\_\_\_\_  
Title

\_\_\_\_\_  
Business Name

\_\_\_\_\_  
Physical Address of Business (No P.O. Boxes)

\_\_\_\_\_  
Legal Structure

**If your legal structure is exempt (see list on right), check "Exempt" below and skip Sections III, IV and V.**

☐ **Exempt**

### Which businesses have to provide this information?

#### Required

The following legal entities must provide the requested information:

- Corporations
- Limited Liability Companies
- Partnerships
- Any other similar business entities formed in the United States or a foreign country.

#### Exempt

The following legal entities are exempt from this requirement:

- Non-Statutory Trust
- Bank/Bank Holding Co/Credit Union
- Federal/State/Local Government Agency or Authority
- Public Company and Majority Owned Affiliate
- Investment Company/Adviser
- Public Accounting Firm
- Insurance Company
- Non-Profits (Must identify a person with control. See Section IV.)

*NOTE: The following do not meet the definition of legal entity, and are not required to submit this form:*

- Natural Person
- Sole Proprietorship
- Unincorporated Association

## III. BENEFICIAL OWNERS

Identify **up to four** beneficial owners of this business, or individuals (if any) who own 25 percent or more of the equity interests. **If no individuals meet this definition, check "Beneficial Owner Not Applicable" below and skip this section.**

☐ **Beneficial Owner Not Applicable**

All fields are required for each beneficial owner, except as noted below:

- **For persons with a Social Security Number (SSN):** Provide the SSN and leave Passport/Other Government ID # and Issuing Country blank.
- **For foreign persons without a SSN:** Leave SSN blank and provide a Passport Number (or Other Government ID #) and the Issuing Country.

## Beneficial Owner 1

First Name

Residential Address (no P.O. Boxes)

Last Name

Address Line 2 (optional)

Date of Birth (mm/dd/yyyy)

City

Social Security #

State/Province

Passport/Other Government ID #

Country of Residence

Issuing Country

Postal Code

## Beneficial Owner 2

First Name

Residential Address (no P.O. Boxes)

Last Name

Address Line 2 (optional)

Date of Birth (mm/dd/yyyy)

City

Social Security #

State/Province

Passport/Other Government ID #

Country of Residence

Issuing Country

Postal Code

## Beneficial Owner 3

First Name

Residential Address (no P.O. Boxes)

Last Name

Address Line 2 (optional)

Date of Birth (mm/dd/yyyy)

City

Social Security #

State/Province

Passport/Other Government ID #

Country of Residence

Issuing Country

Postal Code

## Beneficial Owner 4

#13.

<input type="text"/> First Name	<input type="text"/> Residential Address (no P.O. Boxes)
<input type="text"/> Last Name	<input type="text"/> Address Line 2 (optional)
<input type="text"/> Date of Birth (mm/dd/yyyy)	<input type="text"/> City
<input type="text"/> Social Security #	<input type="text"/> State/Province
<input type="text"/> Passport/Other Government ID #	<input type="text"/> Country of Residence
<input type="text"/> Issuing Country	<input type="text"/> Postal Code

## IV. PERSON WITH CONTROL

Identify one individual with significant responsibility for managing this business — for example, an executive officer, senior manager, or any other person who regularly performs similar functions. If appropriate, an individual listed as beneficial owner above must also be listed in this section. **If no beneficial owners are listed above, this information is still required.**

<input type="text"/> First Name	<input type="text"/> Residential Address (no P.O. Boxes)
<input type="text"/> Last Name	<input type="text"/> Address Line 2 (optional)
<input type="text"/> Title	<input type="text"/> City
<input type="text"/> Date of Birth (mm/dd/yyyy)	<input type="text"/> State/Province
<input type="text"/> Social Security #	<input type="text"/> Country of Residence
<input type="text"/> Passport/Other Government ID #	<input type="text"/> Postal Code
<input type="text"/> Issuing Country	

## V. CERTIFIED/AGREED TO

I, \_\_\_\_\_, hereby certify, to the best of my knowledge,  
Print Name  
that the information provided above is complete and correct.

<input type="text"/> Signature	<input type="text"/> Date
-----------------------------------	------------------------------

Date:

**FLEET OPERATOR ENROLLMENT AGREEMENT FOR WIRELESS SERVICES**

Fleet Operator Name:

Address:

Billing Address (if different from above):

This Fleet Operator Enrollment Agreement for Machine-to-Machine Services ("Enrollment Agreement") is executed by and between T-MOBILE USA, INC. ("T-Mobile") and \_\_\_\_\_, as a "Fleet Operator", to enable Fleet Operator to obtain the Fleet Management Solution and receive discounts for Wireless Services and Products in accordance with the terms and conditions hereto. This Enrollment Agreement will govern the provision to the Fleet Operator of the Fleet Management Solution and T-Mobile wireless Products and Services. Capitalized terms not defined in this Enrollment Agreement are defined in the T-Mobile Terms and Conditions, as amended from time-to-time [Terms and Conditions \(t-mobile.com\)](https://www.t-mobile.com/terms-and-conditions) ("T-Mobile T&Cs").

T-Mobile and Fleet Operator agree as follows:

**1. FLEET MANAGEMENT SOLUTION.**

HIGHLIGHTS OF KEY FEATURES	GEOTAB BASIC	GEOTAB REGULATORY	GEOTAB PROFESSIONAL	GEOTAB PROFESSIONAL +
GPS Antenna	X	X	X	X
Location Tracking	X	X	X	X
VIN	X	X	X	X
Driver ID	X	X	X	X
Basix IOX Support	X	X	X	X
Compliance Features				
Engine Odometer		X	X	X
Engine Hours of Service		X	X	X
International Fuel Tax Agreement (IFTA) Reporting		X	X	X
Temperature Monitoring		X	X	X
Detailed Vehicle Information				
Basic Engine Data			X	X
Accelerometer Data			X	X
Additional Functionality				
Active Location Tracking				X
Limited Lifetime Device Warranty				X
Full Range of Engine Data				X
Electric Vehicle (EV) Data				X
Advanced IOX Support				X
Advanced Driver Coaching				X



- 1.1 Web-based Telematics Software Applications.** The Fleet Management Solution Version will include the following web-based telematics software applications [The complete list of features can be found on the Geotab's link]: [https://docs.google.com/document/d/1KOupT7RNKmvx4sBZhD0VQG TZXwiwryEs\\_mFcwpiZs/edit](https://docs.google.com/document/d/1KOupT7RNKmvx4sBZhD0VQG TZXwiwryEs_mFcwpiZs/edit)
- 1.2 Wireless Data Services.** The Fleet Management Solution will include the T-Mobile [Data Access Plan] for Fleet Operators, as more fully described below.
- 1.3 Ordering, Installation and Training.**
- A. Orders.** Fleet Operator will order the Fleet Management Solution through Enterprise Fleet Management, Inc. ("EFM").
  - B. Training.** After the Fleet Management Solution is installed in Fleet Operator's vehicles, Fleet Operator will coordinate with Application Provider for any training Fleet Operator may need in learning the operation of the Fleet Management Solution.
  - C. Care Process.** Fleet Operator will work with the Application Provider to resolve any technical issues with the Fleet Management Solution. Application Provider will provide Fleet Operator with its contact information for providing technical and operational assistance, and to assist Fleet Operator in resolving any issues with the Fleet Management Solution.
- 2. TERM.** The term of this Enrollment Agreement ("Term") begins on the first day of the first complete billing month after the parties sign this Enrollment Agreement ("Commencement Date") and will expire on the earlier of the following: (a) July 23, 2023; or (b) notice from the Fleet Operator to T-Mobile; or (c) notice from Fleet Operator to T-Mobile due to breach by T-Mobile; (d) notice from T-Mobile to Fleet Operator due to breach by Fleet Operator; or (e) termination by T-Mobile as provided immediately as follows. If the Enterprise Fleet Management Solution Co-Marketing Agreement between T-Mobile and EFM expires, is not renewed by EFM, or is terminated by either EFM or T-Mobile before the end of its stated term, T-Mobile may either adjust the discounts in the Enrollment Agreement as a condition for continuing to provide wireless Services under this Enrollment Agreement or terminate this Enrollment Agreement by giving Fleet Operator at least 60 days prior written notice.
- 3. RESALE OF WIRELESS SERVICES AND PRODUCTS.** Fleet Operator may not resell or lease Wireless Services or Products, including any component of the Fleet Management Solution.
- 4. ELIGIBILITY.** To be eligible for the Fleet Management Solution and any additional Wireless Services to be provided under this Enrollment Agreement, Fleet Operator must meet all of the following conditions in each month of the Term:
- 4.1** Fleet Operator must be in good standing under the terms of the Master Lease Agreement.
  - 4.2** Fleet Operator must meet the definition of Fleet Operator as defined in Section 8 below. If at any time during the Term of this Enrollment Agreement, Fleet Operator ceases to meet this definition, T-Mobile may (A) terminate the Fleet Management Solution, and (B) either adjust the discounts for Wireless Services and Products set forth in this Enrollment Agreement as a condition for continuing to provide Wireless Services under this Enrollment Agreement or terminate this Enrollment Agreement by giving Fleet Operator at least 60 days' prior written notice.
  - 4.3** Fleet Operator must execute and return this Enrollment Agreement to T-Mobile.
  - 4.4** Fleet Operator must include T-Mobile in any solicitation, RFP, request, etc. for wireless products and services for Fleet Operator's business.
  - 4.5** Fleet Operator must meet and maintain T-Mobile's credit approval; and
  - 4.6** If Fleet Operator has an existing agreement with T-Mobile for wireless Products or Services, Fleet Operator must not purchase the Fleet Management Services Plan via this Enrollment Agreement and is not eligible for any other wireless Products and Services pricing and discounts in this Enrollment Agreement, unless and until its existing agreement with T-Mobile has expired or is terminated. Existing agreements terminated for convenience are subject to early termination liability, subsidy repayment liability, and other applicable charges and fees.
- 5. PRODUCT AND SERVICE CHARGES.**
- 5.1 Fleet Management Services Plan.** Except as provided in Section 5.2.A below, Fleet Operator will be charged a fixed net MRC for each Fleet Management Solution including T-Mobile Data Access Plan in service during the Term of this Enrollment Agreement, for one of the following four options as selected by the Fleet Operator:
- A. NET \$17 MRC – Geotab Basic
  - B. NET \$20 MRC – Geotab Regulatory
  - C. NET \$24 MRC – Geotab Professional
  - D. NET \$29 MRC – Geotab Professional +

The net MRC is net of all discounts. Additional Services, Applications, modifications, and/or customization requested by Fleet Operator may be subject to additional monthly charges.

**5.2 T-Mobile Data Access Plan for Fleet Operators.** The T-Mobile Data Access Plan for Fleet Operators provides access to the T-Mobile Network. Wireless data coverage is not available everywhere. Please see the following for coverage details: <https://www.t-mobile.com/coverage/coverage-map>

**A. Overage Charges and Usage Limitations.** The T-Mobile Data Access Plan for Fleet Operators is not subject to an aggregate monthly data usage cap, but is subject to overage charges, Roaming usage limitations, and other data usage restrictions and limitations are contained in the following: [Geotab Fleet Management for Business | C2 \(t-mobile.com\)](#). If a Fleet Management Solution exceeds 10 Megabytes per month in usage on the Geotab Basic, Geotab Regulatory and Geotab Professional, or 25 Megabytes per month in usage on the Geotab Professional +, T-Mobile will charge Fleet Operator \$0.25 per MB used in excess of the Megabyte limitation.

**B.** Activations of the T-Mobile Data Access Plan for Fleet Operators are only available for Fleet Management Solution. Activations of the T-Mobile Data Access Plan for Fleet Operators are not available for Fleet Operator [Corporate-Liable] Active Units and are not eligible for service credits, wireless device discounts, or rebates.

**5.3 Taxes Not Included.** T-Mobile's rates and charges for Products and Services do not include taxes. Fleet Operator will pay all taxes, including, but not limited to, sales, use, gross receipts, excise, VAT, property, transaction, or other local, state, or national taxes or charges imposed on, or based upon, the provision, sale or use of Products or Services. Additional information on the taxes, fees, charges, and surcharges collected by T-Mobile is posted on the [Regulatory Programs Fees | Recovery Fee FAQs \(t-mobile.com\)](#)

**5.4 Rate Adjustments.** T-Mobile may impose on Fleet Operator additional regulatory fees; administrative charges; and charges, fees or surcharges for the costs T-Mobile incurs in complying with governmental programs. These fees, charges or surcharges include, but are not limited to, state and federal Carrier Universal Service Charges ("CUSC"), or Gross Receipts surcharges. If the Federal Communications Commission ("FCC") requires that T-Mobile contribute to the Universal Service Fund ("USF") based on interstate revenues derived from services that T-Mobile in good faith has treated as exempt, including but not limited to, information services, T-Mobile will invoice Fleet Operator the CUSC for such Services beginning on the date established by the FCC as the date such Services became subject to USF contributions. The amount of the fees, charges and surcharges imposed may vary, provided that any fees, charges and surcharges imposed will be in amounts comparable to those imposed on other similarly situated T-Mobile customers.

## 6. WIRELESS MINIMUM SERVICE TERM.

**6.1 Minimum Service Term Generally.** Wireless Services may require a device or [Business Plan] to remain active for a minimum period of time ("Minimum Service Term"). The Minimum Service Term begins on the wireless device purchase date and ends on the expiration of the [device Minimum Service Term] or the [Business Plan Minimum Service Term], whichever is later. The applicable Minimum Service Term(s), if any, are available [at Customer's My Sprint Business account or] by contacting Customer's T-Mobile Account Representative. Service terminations before the end of the applicable Minimum Service Term, including due to the termination of this Enrollment Agreement (unless the termination is due to T-Mobile's breach or material failure), may be subject to an early termination fee ("ETF") or a deactivation fee.

**A.** Fleet Management Solution, if activated with the Fleet Management Services Plan described in Section 5.1 above, does not require a minimum service term ("Minimum Service Term") and is not subject to an early termination fee ("ETF") or a deactivation fee.

## 7. OTHER TERMS AND CONDITIONS.

**7.1** Fleet Operator is responsible for all charges and obligations incurred by it, and for its actions or omissions under this Enrollment Agreement.

**7.2** Fleet Operator accepts and agrees that the T-Mobile T&Cs, as reasonably amended from time-to-time by T-Mobile, are incorporated into this Enrollment Agreement and apply to all T-Mobile wireless Products and Services, including the Fleet Management Solution.

**7.3** This Enrollment Agreement and any information concerning its terms and conditions are, as between T-Mobile and Fleet Operator are deemed Confidential and Proprietary Information. T-Mobile and Fleet Operator agree not to disclose this Enrollment Agreement or any information in it to any third party, except EFM or as otherwise agreed to by the parties.

## 8. DEFINITIONS.

**8.1 "Active Unit"** means an active piece of wireless Product.

**8.2 "Fleet Management Solution"** means (A) certain third-party, mutually approved vehicle, tracking and telematics software applications and (B) certain T-Mobile wireless data services.

**8.3 "Fleet Operator"** means an entity or group that is party to a current, valid and fully executed Master Lease Agreement with EFM.

Date:

- 8.4 “Fleet Operator Corporate-Liable Active Unit”** means an Active Unit activated by Fleet Operator for its end use and for which Fleet Operator is financially liable, excluding the Fleet Management Solution or any component thereof.
- 8.5 “MRC”** means monthly recurring charge.
- 8.6 “Product(s)”** includes equipment, software, hardware, cabling or other materials sold or leased to Fleet Operator by or through T-Mobile as a separate item from, or bundled with, a Service.
- 8.7 “Service(s)”** means wireless business communications services provided to Fleet Operator by or through T-Mobile under this Enrollment Agreement, excluding Products.
- 8.8 “Master Lease Agreement”** is an overall management relationship agreement between EFM and Fleet Operator.

To become effective, this Enrollment Agreement must be duly executed by a duly authorized representative of Fleet Operator and delivered to T-Mobile and thereafter executed by a duly authorized representative of T-Mobile. Any modification, interlineation, addition, supplement and/or other change(s) to this Enrollment Agreement by Fleet Operator is null and void.

<div style="border-bottom: 1px solid black; margin-bottom: 10px;"></div> <p><b><i>(Fleet Operator's Legal Name)</i></b></p> <p>By: _____</p> <p>Name: _____                 Print or Type</p> <p>Title: _____</p> <p>Date: _____</p> <p>Address: _____  _____</p>	<p>T-MOBILE USA, INC.</p> <p>By: _____</p> <p>Name: _____                 Print or Type</p> <p>Title: _____</p> <p>Date: _____</p> <p>Address: _____  _____</p>
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AUTHORIZED SIGNER

AUTHORIZED SIGNERS FOR MOTOR VEHICLE LEASE(S)

RESOLVED, The undersigned hereby certifies (i) that he/she is the duly appointed \_\_\_\_\_ (Title) for \_\_\_\_\_ (Entity legal name) hereafter known as "The Entity", (ii) that he/she is authorized by The Entity to execute and deliver on behalf of The Entity to Enterprise Fleet Management, hereafter known as "Enterprise" ("Lessor") and the Master Lease Agreement between Enterprise and the Entity ) the ("Lessee"), and (iii) that the following individuals are authorized and empowered on behalf of and in the name of The Entity to execute and deliver to Enterprise Schedules to the Lease for individual motor vehicles, together with any other necessary documents in connection with those Schedules:

RESOLVED FURTHER, that:

Print Name	Title
Print Name	Title
Print Name	Title
Print Name	Title
Print Name	Title
Print Name	Title

are authorized and empowered on behalf of and in the name of this Company to execute Motor Vehicle with EFM on such terms as may be agreed to by said person.

RESOLVED FURTHER, that EFM is authorized to act upon this authorization until written notice of its revocation is received by EFM.

I do hereby certify that I am an authorized representative of this Company and have been given the authority to sign this agreement on behalf of the Company.

Print Name	Title
Signature	Company Name
Date	





### **CONSIGNMENT AUCTION AGREEMENT**

THIS AGREEMENT is entered into by and between Enterprise Fleet Management, Inc. a Missouri Corporation (hereinafter referred to as "Enterprise") and \_\_\_\_\_ (hereinafter referred to as "CUSTOMER") on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as the "Execution Date").

### **RECITALS**

- A. Enterprise is in the business of selling previous leased and rental vehicles at wholesale auctions; and
- B. The CUSTOMER is in the business of \_\_\_\_\_.
- C. The CUSTOMER and Enterprise wish to enter into an agreement whereby Enterprise will sell at wholesale auction, CUSTOMER's vehicles set forth on Exhibit A, attached hereto and incorporated herein, as supplemented from time to time (collectively, the "Vehicles").

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

### **TERMS AND CONDITIONS**

1. **Right to Sell:** Enterprise shall have the non-exclusive right to sell any Vehicles consigned to Enterprise by a CUSTOMER within the Geographic Territory.
2. **Power of Attorney:** CUSTOMER appoints Enterprise as its true and lawful attorney-in-fact to sign Vehicle titles on behalf of CUSTOMER for transfer of same and hereby grant it power in any and all matters pertaining to the transfer of Vehicle titles and any papers necessary thereto on behalf of CUSTOMER. The rights, powers and authorities of said attorney-in-fact granted in this instrument shall commence and be in full force and effect on the Execution Date, and such rights, powers and authority shall remain in full force and effect thereafter until terminated as set forth herein.
3. **Assignments:** Vehicle assignments may be issued to Enterprise by phone, fax, or electronically.
4. **Service Fee:** For each Vehicle sold, the CUSTOMER shall pay Enterprise a fee of \$400 ("Service Fee") plus towing at prevailing rates.
5. **Sales Process:** Enterprise shall use reasonable efforts sell each Vehicle. CUSTOMER may, at its discretion, place a Minimum Bid or Bid to be Approved (BTBA) on any Vehicle by providing prior written notification to Enterprise.
6. **Time for Payment:**
  - (a) No later than ten (10) business days after the collection of funds for the sale of a Vehicle, Enterprise will remit to the CUSTOMER an amount equal to the Vehicle sale price minus any seller fees, auction fees, Service Fees, towing costs, title service fees, enhancement fees and any expenses incurred by Enterprise while selling Vehicle, regardless of whether the purchaser pays for the Vehicle.
  - (b) Enterprise's obligations pursuant to Section 6(a) shall not apply to Vehicle sales involving mistakes or inadvertences in the sales process where Enterprise reasonably believes that fairness to the buyer or seller justifies the cancellation or reversal of the sale. If Enterprise has already remitted payment to CUSTOMER pursuant to Section 6(a) prior to the sale being reversed or cancelled, CUSTOMER agrees to reimburse Enterprise said payment in full. Enterprise will then re-list the Vehicle and pay CUSTOMER in accordance with this Section 6. Examples of mistakes or inadvertences include, but are not limited, to Vehicles sold using inaccurate or incomplete vehicle or title descriptions and bids entered erroneously.
7. **Indemnification and Hold Harmless:** Enterprise and CUSTOMER agree to indemnify, defend and hold each other and its parent, employees and agents harmless to the extent any loss, damage, or liability arises from the negligence or willful misconduct of the other, its agents or employees, and for its breach of any term of this Agreement. The parties' obligations under this section shall survive termination of this Agreement.

8. Liens, Judgments, Titles and Defects: CUSTOMER shall defend, indemnify and hold Enterprise its parent, employees and agents harmless from and against any and all claims, expenses (including reasonable attorney's fees), suits and demands arising out of, based upon, or resulting from any judgments, liens or citations that were placed on the Vehicle, defects in the Vehicle's title, or mechanical or design defects in the Vehicle.
9. Odometer: Enterprise assumes no responsibility for the correctness of the odometer reading on any Vehicle and the CUSTOMER shall defend, indemnify and hold Enterprise its parent, employees and agents harmless from and against any and all claims, expenses (including reasonable attorney's fees), suits and demands arising out of, based upon or resulting from inaccuracy of the odometer reading on any Vehicle or any odometer statement prepared in connection with the sale of any Vehicle, unless such inaccuracy is caused by an employee, Enterprise, or officer of Enterprise.
10. Bankruptcy: Subject to applicable law, in the event of the filing by CUSTOMER of a petition in bankruptcy or an involuntary assignment of its assets for the benefit of creditors, Enterprise may accumulate sales proceeds from the sale of all Vehicles and deduct seller fees, auction fees, Service Fees, towing costs, title service fees, enhancement fees and any expenses incurred by Enterprise while selling Vehicle from said funds. Enterprise will thereafter remit to CUSTOMER the net proceeds of said accumulated sales proceeds, if any.
11. Compliance with Laws: Enterprise shall comply with all federal, state, and local laws, regulations, ordinances, and statutes, including those of any state motor vehicle departments, department of insurance, and the Federal Odometer Act.
12. Insurance: CUSTOMER shall obtain and maintain in force at all times during the term of this Agreement and keep in place until each Vehicle is sold and title is transferred on each Vehicle, automobile third party liability of \$1,000,000 per occurrence and physical damage coverage on all Vehicles. This insurance shall be written as a primary policy and not contributing with any insurance coverage or self-insurance applicable to Enterprise.
13. Term: This agreement is effective on the Execution Date and shall continue until such time as either party shall notify the other party with thirty (30) days prior written notice to terminate the Agreement with or without cause.
14. Modification: No modification, amendment or waiver of this Agreement or any of its provisions shall be binding unless in writing and duly signed by the parties hereto.
15. Entire Agreement: This Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements, promises, representations, understandings, and negotiations, whether written or oral, with respect to the subject matter hereto.
16. Liability Limit: In the event Enterprise is responsible for any damage to a Vehicle, Enterprise's liability for damage to a Vehicle in its possession shall be limited to the lesser of: (1) the actual cost to repair the damage to such vehicle suffered while in Enterprise's possession; or (2) the negative impact to the salvage value of such vehicle. Enterprise shall not be liable for any other damages to a Vehicle of any kind, including but not limited to special, incidental, consequential or other damages.
17. Attorney's Fees: In the event that a party hereto institutes any action or proceeding to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party reasonable attorney's fees and costs for legal services rendered to the prevailing party.
18. Authorization: Each party represents and warrants to the other party that the person signing this Agreement on behalf of such party is duly authorized to bind such party.

"ENTERPRISE"

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

"CUSTOMER"

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

# City of Moberly

## City Council Agenda Summary

Agenda Number: #14.  
 Department: Administration  
 Date: December 6, 2021

**Agenda Item:** A Resolution Approving A Contract For The Purchase Of Real Estate And Ratifying The Execution Of Contracts On Behalf Of The City.

**Summary:** This resolution approves the purchase of the property at 215-217 N 4<sup>th</sup> Street. The purchase price is \$83,000 and is part of the development agreement with the Lawrence Family Real Estate Holding LLC. All past taxes currently unpaid by Eldon Smith will be paid for past tax years and this current year from the proceeds of this sale.

**Recommended Action:** Approve this Resolution.

**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\_\_\_ **Davis**      \_\_\_      \_\_\_

M\_\_\_ S\_\_\_ **Kyser**      \_\_\_      \_\_\_

Passed      Failed

BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROVING A CONTRACT FOR THE PURCHASE OF REAL ESTATE AND RATIFYING THE EXECUTION OF CONTRACTS ON BEHALF OF THE CITY.**

**WHEREAS**, city staff previously notified the city council during closed session of the opportunity to purchase real estate from Eldon R. Smith, as Trustee of the Eldon R. Smith, Jr. Revocable Trust u/t/a dated August 7, 2006 (“Smith”); and

**WHEREAS**, the city council authorized the Mayor to execute a Purchase and Sale Agreement (the “Agreement”) with Smith, a copy of which is attached; and

**WHEREAS**, the purchase price for the real estate is \$83,000.00 and the closing date is set for no later than December 15, 2021; and

**WHEREAS**, city staff recommends that the city council ratify the signature of the Mayor on the attached Agreement and approve the Agreement and further authorize the City Manager to proceed with closing once marketable title has been demonstrated by the seller and all contractual conditions have been satisfied.

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby approves the Agreement as recommended by city staff and ratifies the Mayor’s execution of the Agreement on behalf of the City of Moberly and authorizes the City Manager to take such other action as may be necessary to carry out the intent of this Resolution including proceeding with closing once marketable title has been demonstrated and all contractual conditions have been satisfied.

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk



## PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** (this “**Purchase Agreement**”), is made and entered into this 1 day of November, 2021 (the “**Effective Date**”), by and between ELDON R. SMITH JR., as Trustee of the Eldon R. Smith, Jr. Revocable Trust u/t/a dated August 7, 2006, having a principal office at 1203 Raymond Court, Boonville, Missouri 65233 (“**Seller**”) and THE CITY OF MOBERLY, MISSOURI, a city of the third class and Missouri municipal corporation having a principal office at 101 West Reed Street, Moberly, Missouri (“**Purchaser**”).

### **RECITALS**

**A.** Seller is the owner in fee of improved real property located in the County of Randolph known and numbered as 215-217 North Fourth Street, Moberly, Missouri, identified by the Randolph County Assessor as parcel number 10-1.0-01.0-2.0-003-002.000 and legally described in Exhibit A, attached to and incorporated by reference in this Purchase Agreement (together with all improvements and fixtures thereon, the “**Property**”).

**B.** The Property is each situated within an area designated by the Council of the City of Moberly as a “blighted area” and located within the corporate limits of Purchaser and to facilitate the revitalization of the area and mitigate blighted conditions therein, Purchaser desires to purchase, and Seller desires to sell the Property on the terms and conditions set forth in this Purchase Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

**1. Purchase and Sale.** Subject to the terms and conditions of this Purchase Agreement, Seller hereby agrees to sell, and Purchaser hereby agrees to purchase the Property.

**2. Purchase Price.** The total purchase price for the Property shall be Eighty-Three Thousand Dollars and no cents (\$83,000.00) (the “**Purchase Price**”), subject to adjustments as hereinafter provided, and payable by Purchaser to Seller as follows:

**(i)** Five Thousand Dollars (\$5,000.00) earnest money to be paid to the Title Company (as that term is hereinafter defined) by check upon full execution of this Purchase Agreement (the “**Earnest Money**”); and

**(ii)** The principal amount of the balance of the Purchase Price adjusted as set forth in this Purchase Agreement to be paid on or before the Closing Date (as hereinafter defined) as provided in this Purchase Agreement.

3. **Transferred Personalty.** Within Ten (10) days of the Effective Date, Purchaser shall furnish to Seller a list of equipment and personalty currently located on the Property which equipment and personalty (collectively, the “**Transferred Equipment**”) shall be conveyed in its present condition to Purchaser by bill of sale at Closing; *provided that* (i) within Forty-Eight (48) hours prior to the Closing (as hereinafter defined) Purchaser and its potential lessees shall have the right to come upon the Property to inspect and verify the condition of the Transferred Equipment; and (ii) Purchaser’s satisfaction in Purchaser’s sole and unfettered judgment with the location and the condition of the Transferred Equipment as reflecting the location and condition of such Transferred Equipment as of the Effective Date shall constitute a condition precedent to Purchaser’s obligation to close on the sale of the Property. In the event Purchaser is not satisfied that the then-current location and condition of the Transferred Equipment reflects the location and condition of such Transferred Equipment as of the Effective Date, Purchaser may, at Purchaser’s sole and unfettered discretion, (i) cancel this Purchase Agreement and receive a full refund of the Earnest Money; or (ii) negotiate in good faith with Seller to reach agreement on a commensurate reduction in the Purchase Price; *provided that* if Purchaser concludes that no such agreement will be reached within a reasonable time, Purchaser may cancel this Purchase Agreement and receive a refund of the Earnest Money.

4. **Closing Date; Place of Closing.** The purchase and sale of the Property shall be closed (the “**Closing**”) on a date specified by Purchaser which shall be no later than December 15, 2021 (“**Closing Date**”). The Closing shall be held at a title company selected by Purchaser (the “**Title Company**”) having an office in Randolph County, Missouri or such other place as the parties may mutually agree in writing.

5. **Remittance of Delinquent Real Property Taxes; Other Closing Adjustments and Prorations.**

(a) At Closing, the Title Company shall withhold from the Purchase Price (i) the sum of Eleven Thousand Six Hundred Forty-Three Dollars and fifty-one cents (\$11,643.51) representing amounts due and payable to the Downtown Moberly Community Improvement District (the “**District**”) for District special real estate taxes for tax year 2020 and currently delinquent on properties currently owned by Seller located within the corporate limits of the District which sum shall be promptly paid to the Randolph County Collector for remittance to the District; and (ii) the sum of Eleven Thousand Six Hundred Forty-Three Dollars and fifty-one cents (\$11,643.51) representing amounts coming due for District special real estate taxes for tax year 2021 which sum shall be placed and held in escrow for payment to the Randolph County Collector not later than December 31, 2021. Upon such payments, the Title Company shall provide a receipt to Seller evidencing payment of District special real estate taxes for tax years 2020 and 2021.

(b) Purchaser shall pay the costs of any title commitment and for premiums on any owner’s or lessee’s policy, as applicable, of title insurance, and any title endorsements to any such policies, issued by the Title Company that Purchaser elects to obtain on the Property. All other costs of Closing shall be borne equally by Purchaser and Seller including, without limitation, any applicable state, county and municipal transfer taxes, closing costs and recording and escrow fees charged by the Title Company.



6. **Events of Closing.** At Closing:

(a) Purchaser shall cause to be delivered to Seller the balance of the Purchase Price, adjusted as hereinbefore provided;

(b) Seller shall remove, by application of the Purchase Price or otherwise, any financing liens encumbering the Property;

(c) Seller and Purchaser shall execute and deliver customary affidavits and such other reasonable documents as may be required by the Title Company conducting the Closing and Seller and Purchaser shall each deliver to the other such other documentation as is reasonably requested by such party.

Closing shall be through an escrow, with the Title Company acting as escrowee.

7. **Expenses.** Purchaser shall pay for all costs of Purchaser's inspection of the Property and the fees and expenses of its counsel. Seller shall pay the fees and expenses of its counsel.

8. **Purchaser's Due Diligence.** Purchaser shall have a period of Thirty (30) days after the Effective Date (the "**Due Diligence Period**") to pursue satisfaction of all of Purchaser's Contingencies to this Purchase Agreement as hereinafter defined, including conducting, at Purchaser's sole cost and expense, document examinations and inspections of the Property specified in sub-paragraphs (a) through (d) below. All of the items outlined in paragraphs (a) through (d) below shall be considered Purchaser's Contingencies (collectively, the "**Contingencies**") to this Purchase Agreement, which are for Purchaser's benefit only. In the event any of the Contingencies are not satisfied within the Due Diligence Period, Purchaser may, at Purchaser's sole option and subject to Seller's right to cure in accordance with this Paragraph 8, either waive such Contingency or terminate this Purchase Agreement. In the event that Purchaser is not satisfied with the document examinations and/or inspections of the Property specified below, Purchaser shall, on or before the date which is Fifteen (15) days prior to the last day of the Due Diligence Period, provide Seller with written objections to such document examinations and/or inspections of the Property. In the event Purchaser provides written objections to Seller to said document examinations and/or inspections of the Property, Seller shall thereafter have the right but not the obligation to cure all such objections and to give written notice of such cure to Purchaser within said Ten (10) days. If Seller fails to or elects not to cure any such objections or fails to give notice of such cure to Purchaser within said Ten (10) days, Purchaser may terminate this Purchase Agreement by providing Seller with written notice of termination within Five (5) days following the expiration of said Ten (10) day cure period and if Purchaser does not terminate this Purchase Agreement within such Five (5) day period, Purchaser shall be deemed to have waived Purchaser's objections to said document examinations and/or inspections of the Property. If Purchaser terminates this Purchase Agreement in accordance with this Paragraph 8, Seller shall immediately direct the Title Company to return all Earnest Money to Purchaser and neither party shall have any further rights or obligations hereunder or otherwise and this Purchase Agreement shall be terminated. If Purchaser fails to provide or elects not to provide written objections to said document examinations and/or inspections of the Property on or before the last day of the Due Diligence Period, Purchaser shall

be deemed to have waived the Contingencies and any objections to said document examinations and/or inspections of the Property.

(a) Obtain, review and become satisfied with the location of utilities and easements on the Property;

(b) Obtain from the Title Company and review a title commitment or title report on the Property to determine and become satisfied with the condition of title on the Property;

(c) Conduct an environmental inspection of the Property and become satisfied with the environmental condition of the Property; and

(d) Conduct a structural evaluation of the improvements on the Property to determine its suitability for Purchaser's intended uses.

It is intended by the parties that the foregoing Contingencies may be exercised by Purchaser independently. Purchaser hereby agrees to the extent permitted by law to indemnify and hold Seller harmless from and against: (i) any and all claims, actions, damages or expenses arising from Purchaser's inspections conducted on the Property; and (ii) any mechanic's liens filed against the Property resulting from Purchaser's inspections. This indemnity shall survive the Closing and/or termination of this Purchase Agreement.

9. **Access to Property.** From the date hereof, through the Due Diligence Period, Purchaser and its agents are granted permission to come upon the Property for the purpose of conducting the activities described in Paragraph 8 of this Purchase Agreement at Purchaser's sole cost and expense. Any such entry onto the Property shall be during normal business hours, shall be after giving Seller reasonable advance notice. Purchaser shall repair or cause to be repaired any damage to the Property caused by any such inspections.

10. **Real Estate Brokers.** Seller and Purchaser hereby state and warrant to each other that other than Century 21 McKeown & Associates and RG Mongler Real Estate (the "**Brokers of Record**") neither has dealt with any real estate broker, agent or salespersons in connection with this transaction and the sale of the Property. Seller and Purchaser 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 other than those of the Brokers of Record. Such obligations to indemnify and hold harmless shall include, without limitation, all costs and attorneys' fees relating to litigation and other proceedings.

#### 11. **Condition of Property; Termination of Current Tenancies.**

(a) Purchaser acknowledges that Purchaser is relying solely on the results of those inspections and evaluations of the Property performed by or on behalf of Purchaser during the Due Diligence Period, rather than any representation of Seller or Seller's agents in connection with Purchaser's negotiations with Seller.

(b) THE PROPERTY AND THE TRANSFERRED EQUIPMENT ARE BEING SOLD IN "AS IS/WHERE IS" CONDITION WITH ALL FAULTS. SELLER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO THE PROPERTY OR THE TRANSFERRED EQUIPMENT.

(c) Seller shall terminate all tenancies affecting the Property not later than Ten (10) days prior to the Closing Date and shall take all lawful steps to remove all tenants or other in possession prior to the Closing Date. In the event that all such persons remain in possession, the Closing Date shall be extended day for day as reasonably necessary to effectuate all lawful steps to remove such persons from the Property.

12. **Risk of Loss.** In the event the Property, or any portion thereof, is destroyed or substantially damaged by fire, other casualty, or any other cause before the Closing Date or in the event Seller fails to meet Seller's obligations under this Agreement, including, without limitation, obligations of Seller under paragraph 3 of this Agreement, Purchaser may, at Purchaser's option and by prompt written notice to Seller, either (a) terminate this Purchase Agreement and receive a full refund of Earnest Money; or (b) declare that this Purchase Agreement shall continue in full force and effect without reduction in the Purchase Price, and Seller shall assign to Purchaser, at Closing, all of its interest in insurance claims and proceeds payable as a result of said damage.

13. **Default.** In the event of any default hereunder by Purchaser, and provided Seller is not then in default in the performance of Seller's obligations hereunder, Seller may, after having given Purchaser Ten (10) days written notice and opportunity to cure, either cancel this Purchase Agreement and retain all Earnest Money as liquidated damages for Purchaser's breach or enforce the specific performance of this Purchase Agreement. In the event of any default hereunder by Seller, which is not cured within the time periods set forth herein, Purchaser may cancel this Purchase Agreement and, thereupon, the Title Company shall promptly refund the Earnest Money to Purchaser and thereupon Seller and Purchaser shall have no further liability to the other under this Purchase Agreement or otherwise, or Purchaser may enforce the specific performance of this Purchase Agreement.

14. **Seller's Covenants, Representations and Warranties.** Seller covenants, represents and warrants that, as of the Effective Date and the Closing Date:

(a) Seller has full and lawful right and authority to execute and deliver this Purchase Agreement and no other consents or approvals are required to consummate the transactions contemplated hereunder;

(b) Seller owns good fee simple marketable title to the Property;

(c) To the best of Seller's knowledge there is currently no litigation, bankruptcy or other proceeding pending in any manner affecting the Property;

(d) To the best of Seller's knowledge, there are no violations of any federal, state or local law, code, ordinance, rules, regulation or requirement affecting the Property;



(e) To the best of Seller's knowledge, the Property was at no time used for the dumping, disposal, storage, generation, release, transportation, spilling, emission or handling of Hazardous Wastes as defined in 42 U.S.C. §6901 - §6987, Hazardous Substances as defined in 42 U.S.C. §9601, toxic substances, asbestos, or petroleum and/or petroleum by-products; to the best of Seller's knowledge there are no, nor have there ever been any, above-ground or underground storage tanks on the Property;

(f) To the best of Seller's knowledge, there are no conditions on the Property which are materially violative of any applicable Environmental Laws, and no claims or demands have been asserted or made by any third parties arising out of, relating to or in connection with any Hazardous Substances on, or allegedly on, the Property for any injuries suffered or incurred, or allegedly suffered or incurred, by reason of a violation of applicable Environmental Laws;

(g) To the best of Seller's knowledge, no unrecorded liens, encumbrances or adverse claims exist with respect to the Property or any portion thereof;

(h) There are no management contracts, repair contracts, service contracts, options or any other material agreements relating to the Property;

(i) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and are therefore exempt from the withholding requirements of said section;

(j) To the best of Seller's knowledge, there are no unrecorded restrictions, contracts or other documents which could, in any manner or at any time whatsoever, affect or prohibit the development of the Property for any commercial use or which could affect the manner or type of goods or services to be provided or sold from or at the Property;

As provided in this Paragraph 14, Purchaser's obligations under this Purchase Agreement are expressly conditioned on the foregoing covenants, representations and warranties of Seller being true on the Effective Date and remaining true through Closing. The foregoing covenants, representations and warranties shall survive Closing. For purposes of this Paragraph 14 the term "Environmental Laws" shall mean shall mean and include the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act (49 U.S.C. §1801 et seq.), the Toxic Substances Control Act (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §136 et seq.), the Occupational Safety and Health Act (29 U.S.C. §651 et seq.), any state super-lien and environmental clean-up statutes and all other applicable federal, state and local environmental laws, including obligations under the common law, ordinances, rules, regulations and publications, and any other legal requirements, now or hereafter existing relating to the pollution and protection of the environment, the preservation or reclamation of natural resources, the management or release of Hazardous Substances, or to human health or safety; the term "Hazardous Substances" shall mean shall mean: (i) those substances (whether solid, liquid or gas), included within the definitions of or identified as "hazardous substances", "hazardous materials", or "toxic substances" in or pursuant to, without

limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 100 Stat. 1613), the Resource Conservation and Recovery Act of 1976 (42 U.S.C., § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), and the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., or in the regulations promulgated pursuant to said laws, all as amended; (ii) those substances listed in the United States Department of Transportation Table (40 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); (iii) any material, waste, substance, pollutant or contamination which is or contains (A) petroleum, its derivatives, by-products and other hydrocarbons, including crude oil or any fraction thereof, natural gas, or synthetic gas usable for fuel or any mixture thereof, (B) asbestos and/or asbestos-containing materials in any form that is or could become friable, (C) polychlorinated biphenyls, (D) flammable explosives, (E) infectious or medical waste, or (F) radioactive materials; and (iv) such other substances, materials, wastes, pollutants and contaminants which are or become regulated as hazardous, toxic or "special wastes" under applicable local, state or federal law, or the United States government, or which are classified as hazardous, toxic or as "special wastes" under any Environmental Laws.

**15. Notices.** All notices between the parties hereto shall be in writing and shall be sent by certified or registered mail, return receipt requested, by personal delivery against receipt or by overnight courier, shall be deemed to have been validly served, given or delivered immediately when delivered against receipt or Three (3) business days after deposit in the mail, postage prepaid, or One (1) business day after deposit with an overnight courier, and shall be addressed as follows:

If to Purchaser: City of Moberly  
101 West Reed Street – City Hall  
Moberly, Missouri 65270  
Attn: City Manager

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

If to Seller: Eldon R. Smith Jr, as Trustee of the Eldon R. Smith, Jr.  
Revocable Trust u/t/a dated August 7, 2006  
1203 Raymond Court  
Boonville, Missouri 65233

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Each party shall have the right to specify that notice is to be addressed to another address by giving to the other party Ten (10) days written notice thereof.



## 16. Miscellaneous.

(a) In the event either party to this Purchase Agreement commences a legal proceeding to enforce any of the terms of this Purchase Agreement or any rights under this Purchase Agreement, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and costs from the other party.

(b) The paragraph headings herein are solely for convenience and shall in no way be deemed to affect the meaning or construction of any part hereof. This Purchase Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Missouri without regard to its conflicts of law rules. If any term or provision of this Purchase Agreement shall be unlawful, then such term or provision of this Purchase Agreement shall be null and void, but the remainder of the Purchase Agreement shall remain in full force and effect and be binding on both parties.

(c) This Purchase Agreement shall not be assignable by either party without prior written consent of the other party.

(d) This Purchase Agreement constitutes the entire understanding between the parties and may not be amended, supplemented, or modified except by a writing executed by both of the parties hereto.

(e) This Purchase Agreement shall be binding upon the parties hereto and their successors and permitted assigns.

(f) Time is of the essence of this Purchase Agreement.

(g) This Purchase Agreement may be executed in two or more identical counterparts which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, Purchaser and Seller have caused this Purchase Agreement to be executed in their respective names as of the date first above written.

**PURCHASER:**  
CITY OF MOBERLY

By: \_\_\_\_\_  
Mayor

ATTEST:

Shannon Hance  
City Clerk



**SELLER:**

ELDON R. SMITH JR., as Trustee of the Eldon R. Smith, Jr. Revocable Trust u/t/a dated August 7, 2006

By: Eldon R Smith Trustee  
 Printed Name: ELDON R SMITH Trustee  
 Title: owner

**ACKNOWLEDGEMENTS**

STATE OF MISSOURI )  
 ) SS  
 COUNTY OF RANDOLPH )

On this 8 day of November, 2021, before me personally appeared Jerry Jeffrey, to me personally known, who being by me duly sworn, did say that he is the Mayor of the City of Moberly named in the foregoing instrument and said Mayor acknowledged that said instrument was executed on behalf of said City by order of its City Council and that said instrument constitutes the free act and deed of said City.

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

Shirley Olney  
 Notary Public

My commission expires: Jan 29, 2024

STATE OF MISSOURI )  
 ) SS  
 COUNTY OF Randolph )

SHIRLEY OLNEY  
 Notary Public - Notary Seal  
 Randolph County - State of Missouri  
 Commission Number 11383173  
 My Commission Expires Jan 29, 2024

On this 1 day of November, 2021, before me personally appeared Eldon R. Smith, Jr., to me personally known, who being by me duly sworn, did say that he is the Trustee of the Eldon R. Smith, Jr. Revocable Trust u/t/a dated August 7, 2006, named in the foregoing instrument and said Trustee acknowledged that said instrument was executed on behalf of said Trust and that said instrument constitutes the free act and deed of said Trust.

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

Mark S. Fischer  
 Notary Public

My commission expires: November 17, 2024

Mark S. Fischer  
 NOTARY PUBLIC, NOTARY SEAL  
 STATE OF MISSOURI  
 Randolph County  
 COMMISSION # 15634843  
 MY COMMISSION EXPIRES: November 17, 2024

**EXHIBIT A**  
**THE PROPERTY – LEGAL DESCRIPTION**

The North Half (N1/2) of Lot Four (4) and all of Lot Five (5) in Block Eight (8) of Williams Second Addition to Moberly, Randolph County, Missouri.

# City of Moberly

## City Council Agenda Summary

Agenda Number: #15.

Department: City Manager

Date: December 6, 2021

**Agenda Item:** A Resolution Authorizing The City Manager To Enter Into A Letter Agreement With Lauber Municipal Law, LLC., For Professional Legal Services Related To Eminent Domain Matters.

**Summary:** The city has multiple properties that need to be acquired for future development of infrastructure and park land. The city has attempted to acquire these properties in the past with no success. Staff is recommending using special council to go through the acquisition process on these properties with due to time constraints and workload. The properties required for acquisition have been previously identified by the council and initial offers have been made to the property owners. The council will review the progress on acquiring these properties through closed sessions in the coming months.

### Recommended

**Action:** Approve this resolution.

**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 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\_\_\_ **Davis**    \_\_\_\_\_

M\_\_\_ S\_\_\_ **Kyser**    \_\_\_\_\_

Passed    Failed

BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A  
LETTER AGREEMENT WITH LAUBER MUNICIPAL LAW, LLC., FOR  
PROFESSIONAL LEGAL SERVICES RELATED TO EMINENT DOMAIN MATTERS.**

**WHEREAS**, city staff sought legal services to acquire properties for development of infrastructure and parkland through the use of eminent domain; and

**WHEREAS**, at the City's request Lauber Municipal Law, LLC, submitted a proposed Letter Agreement and Terms of Engagement, attached, outlining their fee structure for eminent domain legal services; and

**WHEREAS**, city staff recommends acceptance of the Letter Agreement and the use of the Lauber Municipal Law firm.

**NOW, THEREFORE**, the Moberly, Missouri, City Council hereby authorizes the City Manager to enter into the Letter Agreement with Lauber Municipal Law, LLC, consistent with the terms and costs detailed in the attached Agreement.

**RESOLVED** this 6th day of December, 2021, by the Council of the City of Moberly, Missouri.

\_\_\_\_\_  
Presiding Officer at Meeting

**ATTEST:**

\_\_\_\_\_  
Shannon Hance, City Clerk



LAUBER MUNICIPAL LAW, LLC  
*Serving those who serve the public*

December 2, 2021

Mr. Brian Crane, City Manager  
City of Moberly  
101 West Reed Street  
Moberly, MO 65270

Re: Provision of Special Counsel Legal Services for Eminent Domain Matters

Dear Mr. Crane:

You have requested Lauber Municipal Law, LLC (the "Firm") to provide services as special counsel for eminent domain actions and other general municipal law matters as requested from time to time by you or the City Council for the City of Moberly (the "Matters"). I am submitting this letter to you to serve as the written agreement for the Firm's engagement to provide legal services concerning the Matters. We look forward to serving as special counsel for this engagement. I am submitting this letter to you to serve as the written agreement for this Firm's engagement to provide legal services concerning the Matters. We look forward to serving as special counsel for this engagement.

The City will be our client for this engagement. I will be primarily responsible for the engagement on behalf of the Firm. The scope of this engagement will be limited to the provision of legal services for the Matters described above unless otherwise directed by you.

Our fees for this engagement will be based upon and billed at an hourly rate, at one-tenth hour increments, for purposes of this engagement for the time devoted to it. Our hourly rates for this engagement are \$215. Any type of work being done for the City by our paralegal or law clerk (non-attorney) will be billed at \$75 per hour. The Firm reserves the right to charge an hourly rate less than those indicated in this agreement at its sole discretion. If we need to travel to Moberly, we will not charge for the first ½ hour of travel.

If you have any questions concerning the terms of this engagement, or if you ever have a question about our charges or their reasonableness, please contact me at your convenience to

discuss the matter. Our engagement for the City will continue upon our receipt of a signed copy of this agreement (by fax, mail or hand delivery). Thank you for choosing Lauber Municipal Law, LLC, to provide these important legal services to the City. We look forward to a continued good and productive relationship.

Kindest Regards,

**LAUBER MUNICIPAL LAW, LLC**



Nathan M. Nickolaus

Enclosure

**ACCEPTED AND AGREED:**

CITY OF MOBERLY, MISSOURI

By: \_\_\_\_\_  
Brian Crane, City Manager



LAUBER MUNICIPAL LAW, LLC

*Serving those who serve the public*

## Additional Terms of Engagement

Lauber Municipal Law, LLC (the “Firm”), appreciates the opportunity to serve you. Our goal is to provide legal services that address your legal needs effectively and efficiently through our offices in Lee’s Summit and Jefferson City. The following information explains the client service practices and billing procedures that apply to our representation of your interests (unless you have reached a different written understanding with me). We encourage you to discuss these practices with us whenever you have questions during the course of this engagement.

**Provision of Legal Services.** This engagement is for provision of professional legal services, and not for the provision of business, personal, accounting, technical, or other advice not constituting legal services. It is agreed that the client is not relying upon counsel in this engagement for advice in areas other than professional legal services, even if such matters should be discussed in connection with the engagement.

**Entire Agreement.** The accompanying engagement letter together with these Additional Terms of Engagement shall constitute the entire agreement between us concerning the engagement, and shall not be modified or supplemented, except in a subsequent writing signed by the parties. These documents are intended to supersede all prior documents related to the same matter.

**Expectations.** Upon hiring the Firm you have put at your disposal the resources of multiple attorneys who practice municipal law exclusively; in essence, you have hired a full law department. In order to serve the needs of all of our municipal clients quickly and efficiently, it is our business practice to attempt to acknowledge all calls and e-mails within one business day of when they were received. We prefer that you contact us via e-mail or calls to our office at (816) 525-7881. Text messages or calls to our cell phones are not as easy to track and should be limited to emergency matters or other matters requiring immediate attention. Text messages or calls to our cell phones should not be used to communicate general requests for work to be completed. Messages received after 5:30 p.m. will be treated as though received on the following business day. We will make every effort to complete assignments communicated to us using appropriate channels within five business days. If a situation exists that requires a more immediate response or completion date, be sure to communicate this at the time you contact us regarding the matter. Please be sure to allow our attorneys adequate time to review documents and provide solutions prior to your meeting packet deadlines.

**Subcontractors.** From time-to-time, it may be necessary for us to engage subcontractors to assist in the provision of services to you. It is agreed that we are not authorized to engage any such subcontractors without the prior approval of the City Council.

**Periodic Billings for Legal Services.** It is our policy to render periodic statements for legal services on a monthly basis. We will base these periodic statements on the hourly rates set forth in the attached Engagement Letter. Statements will be due upon presentation, and are to be paid no later than 30 days following the invoice date. If any statement amount remains unpaid 60 days after the invoice date, the Firm reserves the right at its sole discretion to elect to charge a reasonable late fee or to terminate its services, or both, consistent with applicable Rules of Professional Conduct.

**Annual Rate Adjustment.** All hourly rates for legal services provided by the Firm are subject to annual adjustment, or less frequently at the sole discretion of the Firm, with written notice of at least thirty days.



**Client Disbursements.** Some matters require, from time to time, certain monetary advances to be made on your behalf by the Firm. Some “client disbursements” represent out-of-pocket charges that the Firm advances, while others represent internal costs (including costs such as fees for service of process, court filing fees, deliveries, etc.). It is understood that while acting as your attorney, we have the authority to use our best judgment in making such expenditures on your behalf. Unless we have made prior arrangements with you, we will send you monthly billings for client disbursements incurred during the preceding month. Substantial individual items in excess of \$250, such as expert witness fees, the costs of deposition transcripts, etc., may be billed directly to you by the vendor of such services.

**File Retention.** After Lauber Municipal Law, LLC’s services conclude, we will, upon your request, deliver the file for this engagement to you. If you do not request the file, we will retain it for a period of six years after the matter is closed. If you do not request delivery of the file before the end of the six year period the Firm will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to you. At any point during the six year period, you may request delivery of the file.

**Disbursements and Other Charges.** We may charge the City for certain expense items listed below that we provide in connection with the legal services:

Photocopying. We will not charge the City for in-house photocopies which do not exceed 100 copies in a month. If in-house photocopies exceed 100 in a month, then we reserve the right to charge \$0.12 per page (or the Firm’s cost, whichever is less) but only for each page over 100 in number. If the need for an outside copying job (e.g., Kinko’s) arises, we only bill the actual cost incurred for photocopying without markup.

Computer Research. We do not charge for the Firm’s service agreement with Lexis or other electronic provider of legal research resources.

Telecommunications. We do not charge for local or long-distance phone calls or facsimiles.

Mail/Messengers. We do not charge for regular mail; however, bulk mailings, packages and special postal services may be charged at the Firm’s actual cost. Messengers are used as appropriate to assure expedited delivery. The actual cost of such messenger services is charged without markup.

Travel. We will not charge the City for travel for the first half-hour from our office to City Hall and back for City business.

Internet Usage. We regularly use the Internet as a means for communicating about matters concerning your representation. Any such communication could be randomly intercepted and otherwise used or disclosed by anyone, including someone specifically interested in your matter or business. This could cause you to lose your confidentiality and attorney/client privilege protections. However, to facilitate your representation, you approve the use of Internet communications during your representation by us unless we are instructed otherwise.

**Termination of Services.** You may terminate the services of Lauber Municipal Law, LLC, at your discretion by giving us 30 days written notice of termination. We retain the right to cease performing legal services and to terminate our legal representation for any reason consistent with ethical rules, including conflicts of interest or the failure to pay legal fees and expenses when due. Termination by us will be effective upon 30 days written notice delivered to you. Our termination or your termination of services does not affect your obligation to pay legal fees and expenses incurred prior to the effective date of such termination.

**Questions.** One of our goals is to ensure that legal services are delivered effectively and efficiently, and that all billings are accurate and understandable. Please direct any questions about services, billing, or payment status of your account to me.

# City of Moberly

## City Council Agenda Summary

**Agenda Number:** \_\_\_\_\_  
**Department:** City Clerk  
**Date:** December 6, 2021

**Agenda Item:** A Resolution Appropriating Money Out Of The Treasury Of The City Of Moberly, Missouri.

**Summary:** Appropriation Resolution.

**Recommended**

**Action:** Please approve this Resolution.

**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 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\_\_\_ **Davis** \_\_\_\_\_

M\_\_\_ S\_\_\_ **Kyser** \_\_\_\_\_

Passed Failed

BILL NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION APPROPRIATING MONEY OUT OF THE TREASURY OF THE CITY OF MOBERLY, MISSOURI IN THE AMOUNT OF \$658,559.75.**

**WHEREAS**, the funds are to be disbursed as follows;

SECTION 1: There is hereby appropriated out of the **General Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$128,012.48.

SECTION 2: There is hereby appropriated out of the **Non-Resident Lodging Tax Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$7,082.33.

SECTION 3: There is hereby appropriated out of the **Payroll Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$5,174.34.

SECTION 4: There is hereby appropriated out of the **Solid Waste Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$30.45.

SECTION 5: There is hereby appropriated out of the **Heritage Hills Golf Course Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$17,569.27.

SECTION 6: There is hereby appropriated out of the **Parks and Recreation Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$43,444.09.

SECTION 7: There is hereby appropriated out of the **Airport Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$119,544.11.

SECTION 8: There is hereby appropriated out of the **Perpetual Care Cemetery Sales Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$54.00.

SECTION 9: There is hereby appropriated out of the **Veteran Memorial Flag Project Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$111.98.

SECTION 10: There is hereby appropriated out of the **Utilities OP & Maintenance Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$89,691.33.

SECTION 11: There is hereby appropriated out of the **Utilities OP Reserve Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$9,400.79.

SECTION 12: There is hereby appropriated out of the **Capital Improvement Trust Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$247.50.

SECTION 13: There is hereby appropriated out of the **Route JJ Sewer Extension Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$34,540.00.

SECTION 14: There is hereby appropriated out of the **2021 EDA Grant Projects Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$57,768.00.

SECTION 15: There is hereby appropriated out of the **2004B SRF Bonds Debt Service Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$38,195.69.

SECTION 16: There is hereby appropriated out of the **2006A SRF Bonds Debt Service Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$27,572.66.

SECTION 17: There is hereby appropriated out of the **2004C Bonds Debt Service Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$26,552.63.

SECTION 18: There is hereby appropriated out of the **2008A Bonds Debt Service Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$37,896.84.

SECTION 19: There is hereby appropriated out of the **Emergency Telephone Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$4,704.94.

SECTION 20: There is hereby appropriated out of the **Transportation Trust Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$7,085.00.

SECTION 21: There is hereby appropriated out of the **Street Improvement Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$2,681.32.

SECTION 22: There is hereby appropriated out of the **Downtown CID Sales Tax Fund** of the Treasury of the City of Moberly, Missouri to pay expenses due December 6, 2021 in the amount of \$1,200.00.

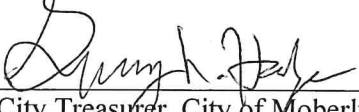
**NOW, THEREFORE**, the Moberly City Council authorizes these expenditures.  
**RESOLVED** this 6th day of December 2021 by the Council of the City of Moberly, Missouri.

ATTEST:

\_\_\_\_\_  
Presiding Officer

\_\_\_\_\_  
City Clerk


I hereby certify that there is sufficient money standing to the credit of the City of Moberly, Missouri, unappropriated in the several funds covered by this resolution to meet the requirements of this resolution.

  
\_\_\_\_\_  
City Treasurer, City of Moberly, Missouri

**EXPENSES PAID NOVEMBER 10, 2021 - DECEMBER 2, 2021 FOR THE  
FOLLOWING FUNDS ARE TO BE INCLUDED WITH THE  
DECEMBER 6, 2021 APPROPRIATION RESOLUTION TOTAL.**

General Fund	\$ 128,012.48
Non-Resident Lodging Tax Fund	\$ 7,082.33
Payroll Fund	\$ 5,174.34
Solid Waste Fund	\$ 30.45
Heritage Hills Golf Course Fund	\$ 17,569.27
Parks and Recreation Fund	\$ 43,444.09
Airport Fund	\$ 119,544.11
Perpetual Care Cemetery Sales Fund	\$ 54.00
Veteran Memorial Flag Project Fund	\$ 111.98
Utilities OP & Maintenance Fund	\$ 89,691.33
Utilities OP Reserve Fund	\$ 9,400.79
Capital Improvement Trust Fund	\$ 247.50
Route JJ Sewer Extension Fund	\$ 34,540.00
2021 EDA Grant Projects Fund	\$ 57,768.00
2004B SRF Bonds Debt Service Fund	\$ 38,195.69
2006A SRF Bonds Debt Service Fund	\$ 27,572.66
2004C Bonds Debt Service Fund	\$ 26,552.63
2008A Bonds Debt Service Fund	\$ 37,896.84
Emergency Telephone Fund	\$ 4,704.94
Transportation Trust Fund	\$ 7,085.00
Street Improvement Fund	\$ 2,681.32
Downtown CID Sales Tax Fund	\$ 1,200.00
<b>Total</b>	<b>\$ 658,559.75</b>

I hereby certify that there is sufficient money standing to the credit of the City of Moberly, Missouri, unappropriated to cover the above funds.

  
\_\_\_\_\_  
City Treasurer, City of Moberly, Missouri

12/2/2021  
\_\_\_\_\_  
Date



BANK#	BANK NAME	CHECK#	DATE	ACCOUNT#	NAME	CHECK AMOUNT	CLEARED	MANUAL	VOID	REASON FOR VOID
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## 24 DISBURSEMENTS

88320	11/19/2021	790	ARISTA INFORMATION SYSTEMS INC	2,600.26
88321	11/19/2021	17	AT&T 5001	2,265.07
88322	11/19/2021	17	AT&T 5001	661.70
88323	11/19/2021	15	AUSTIN COFFEE SERVICE	165.79
88324	11/19/2021	6641	CAPTVR3D LLC	1,200.00
88325	11/19/2021	6642	CCIMW LLC	21,586.00
88326	11/19/2021	598	CHARITON VALLEY COMMUNICATIONS	245.97
88327	11/19/2021	1405	CLAYPOOLE NURSERY LLC	170.00
88328	11/19/2021	2839	FUSION TECHNOLOGY LLC	1,461.63
88329	11/19/2021	2916	ICMA MEMBERSHIP RENEWALS	924.01
88330	11/19/2021	763	SUMNER ONE	345.05
88331	11/19/2021	801	BENN RYAN D	150.00
88332	11/19/2021	2717	MATHESON TRI GAS INC	25.11
88333	11/19/2021	1688	MFA OIL COMPANY	12,605.10
88334	11/19/2021	604	MISSOURI MUNICIPAL LEAGUE	45.00
88335	11/19/2021	1604	NAPA AUTO PARTS OF MOBERLY	.00
88336	11/19/2021	1604	NAPA AUTO PARTS OF MOBERLY	791.02
88337	11/19/2021	2152	NEMO ELECTRIC CO INC	1,128.95
88338	11/19/2021	2976	NEUMAYER EQUIPMENT CO INC	765.44
88339	11/19/2021	596	PENTAIR PUMP GROUP	3,521.00
88340	11/19/2021	2166	PERSONNEL EVALUATION INC	40.00
88341	11/19/2021	6643	ROAD RUNNER LOW VOLTAGE	5,698.00
88342	11/19/2021	2850	ROTARY CLUB OF MOBERLY	187.00
88343	11/19/2021	617	SCHULTE SUPPLY INC	3,084.06
88344	11/19/2021	3697	SMITH JACLYN	540.00
88345	11/19/2021	1849	SPRINT	.00
88346	11/19/2021	1849	SPRINT	1,555.90
88347	11/19/2021	5700	STAPLES	320.94
88348	11/19/2021	6301	STLF DIESEL REPAIR LLC	11,041.67
88349	11/19/2021	2646	VALIC	1,042.00
88350	11/19/2021	6622	WATERS EDGE	1,000.00
* 88351	Thru 88365			
88366	12/02/2021	2903	ABAN PEST CONTROL INC	215.00
88367	12/02/2021	4965	ADAM FLOCK DESIGN	1,000.00
88368	12/02/2021	6649	AED SUPERSTORE	481.72
88369	12/02/2021	1	ALTORFER INC	499.03
88370	12/02/2021	6120	AMAZON CAPITAL SERVICES	449.42
88371	12/02/2021	6	AMEREN MISSOURI	15.77
88372	12/02/2021	3	AFLAC GROUP INSURANCE	2,016.81
88373	12/02/2021	2420	AMES SHAWN	300.00
88374	12/02/2021	1825	APOLLO PORTA POTTIES	300.00
88375	12/02/2021	790	ARISTA INFORMATION SYSTEMS INC	2,968.12
88376	12/02/2021	30	WOOGEDY LLC	810.00
88377	12/02/2021	17	AT&T 5001	1,702.77
88378	12/02/2021	4710	ATKINS INC	1,098.00
88379	12/02/2021	6245	AZAVAR	386.11
88380	12/02/2021	26	B & D LOCK & KEY	399.90
88381	12/02/2021	4729	BARTLETT & WEST	225.00
88382	12/02/2021	34	BOB'S TIRE, LLC	54.00
88383	12/02/2021	6313	BOONE CONSTRUCTION CO	375.00
88384	12/02/2021	2885	BOTKINS TRUCKING LLC	1,544.40

VOID:

VOID:

BANK#	BANK NAME	ACCOUNT#	NAME	CHECK AMOUNT	CLEARED	MANUAL	VOID	REASON FOR VOID
CHECK#	DATE							
88385	12/02/2021	5580	BOYER LISA	100.00				
88386	12/02/2021	6644	BRIGGS BRIAN	100.00				
88387	12/02/2021	191	BROWNFIELD OIL CO INC	185.00				
88388	12/02/2021	424	BUTLER SUPPLY INC	423.36				
88389	12/02/2021	6645	BUTTERWORTH MICHAEL	95.00				
88390	12/02/2021	4022	CARDEN JOHNNY	75.00				
88391	12/02/2021	6633	CARROLL GREG	100.00				
88392	12/02/2021	653	COE EQUIPMENT	389.03				
88393	12/02/2021	3063	CONLEY FOREST DO	85.00				
88394	12/02/2021	2645	CORE & MAIN LP	.00			VOID:	
88395	12/02/2021	2645	CORE & MAIN LP	9,489.15				
88396	12/02/2021	2913	CULLIGAN WATER CONDITIONING	.37				
88397	12/02/2021	3473	DITCH WITCH	795.24				
88398	12/02/2021	194	DMC CONCRETE CONSTRUCTION	6,860.00				
88399	12/02/2021	6651	E.S.C.I.	603.91				
88400	12/02/2021	693	ED ROEHR SAFETY PRODUCTS INC	574.76				
88401	12/02/2021	37	EMERY SAPP & SONS INC	118,452.12				
88402	12/02/2021	3139	EVOQUA WATER TECHNOLOGIES LLC	8,477.90				
88403	12/02/2021	2433	FANNING VICKY	100.00				
88404	12/02/2021	3103	FASTENAL COMPANY	423.78				
88405	12/02/2021	2839	FUSION TECHNOLOGY LLC	37,500.00				
88406	12/02/2021	704	GALLS LLC	.00			VOID:	
88407	12/02/2021	704	GALLS LLC	712.07				
88408	12/02/2021	988	GULF STATES DISTRIBUTORS	1,717.60				
88409	12/02/2021	1338	HAWKINS INC	4,724.65				
88410	12/02/2021	4974	HAYSLIP PAULA	25.00				
88411	12/02/2021	758	HEIMAN FIRE EQUIPMENT INC	230.00				
88412	12/02/2021	6646	HENDREN GARY	100.00				
88413	12/02/2021	5874	HILL FARMS EXCAVATION LLC	2,100.00				
88414	12/02/2021	471	HYDRO KINETICS	3,760.00				
88415	12/02/2021	2812	JACOBS ENGINEERING GROUP INC	98,194.75				
88416	12/02/2021	4347	JOHN DEERE FINANCIAL	.00			VOID:	
88417	12/02/2021	4347	JOHN DEERE FINANCIAL	.00			VOID:	
88418	12/02/2021	4347	JOHN DEERE FINANCIAL	2,796.85				
88419	12/02/2021	380	KNAPHEIDE TRUCK EQUIPMENT CENT	285.00				
88420	12/02/2021	4776	KNOT AS IT SEEMS FLOWERS AND	41.00				
88421	12/02/2021	579	LAND/CHARITON COUNTY CONCRETE	8,737.01				
88422	12/02/2021	1381	LEON UNIFORM COMPANY	811.68				
88423	12/02/2021	6647	LITTLE SPARTAN FOOTBALL	150.00				
88424	12/02/2021	3015	LOWE'S HOME CENTERS, LLC	715.53				
88425	12/02/2021	1565	MACON ELECTRIC COOP	20.23				
88426	12/02/2021	1565	MACON ELECTRIC COOP	20.23				
88427	12/02/2021	679	MARTECK	1,191.77				
88428	12/02/2021	1136	MFA PROPANE	1,794.65				
88429	12/02/2021	1726	MIDWEST ENVIR CONSULTANTS INC	336.00				
88430	12/02/2021	2889	MISSOURI DEPART OF CORRECT	360.00				
88431	12/02/2021	72	MISSOURI PARK AND RECREATION A	929.00				
88432	12/02/2021	195	MISSOURI WATER & WASTEWATER CO	70.00				
88433	12/02/2021	2771	MO POLICE CHIEFS ASSOCIATION	475.00				
88434	12/02/2021	2740	MOBERLY AREA CHAMBER OF COMMER	7,082.33				
88435	12/02/2021	2907	MOBERLY READY MIX	15,453.50				
88436	12/02/2021	4267	MOPERM	1,200.00				
88437	12/02/2021	4998	NELSON JOYCE	100.00				



BANK#	BANK NAME	ACCOUNT#	NAME	CHECK AMOUNT	CLEARED	MANUAL	VOID	REASON FOR VOID
CHECK#	DATE							
88438	12/02/2021	2976	NEUMAYER EQUIPMENT CO INC	106.58				
88439	12/02/2021	2865	NEWMAN SIGNS INC	379.00				
88440	12/02/2021	5727	PEST PRO SOLUTIONS INC	60.00				
88441	12/02/2021	2596	PLUMB SUPPLY COMPANY-MOB	467.40				
88442	12/02/2021	6551	PRO PUMPING & HYDROJETTING LLC	2,435.00				
88443	12/02/2021	4924	R P LUMBER COMPANY INC	1,612.84				
88444	12/02/2021	2593	RANDOLPH COUNTY RECORDER	27.00				
88445	12/02/2021	2593	RANDOLPH COUNTY RECORDER	27.00				
88446	12/02/2021	3014	SAM'S CLUB	900.05				
88447	12/02/2021	323	SCHMITT IRRIGATION & PUMP SERV	1,554.16				
88448	12/02/2021	617	SCHULTE SUPPLY INC	3,556.51				
88449	12/02/2021	787	SELF CHARLES E	700.00				
88450	12/02/2021	2823	SIRCHIE ACQUISITION CO LLC.	139.76				
88451	12/02/2021	2610	BRENDLINGER ENTERPRISES INC	711.50				
88452	12/02/2021	6648	SPILMAN CONCRETE LLC	6,715.00				
88453	12/02/2021	5700	STAPLES	.00			VOID:	
88454	12/02/2021	5700	STAPLES	2,324.75				
88455	12/02/2021	6301	STLF DIESEL REPAIR LLC	12.00				
88456	12/02/2021	5990	SUGAR CREEK VETERINARY SE	1,111.84				
88457	12/02/2021	3617	TAYLOR LEANNA	100.00				
88458	12/02/2021	2640	THOMAS HILL PUBLIC WATER SUPPL	156.23				
88459	12/02/2021	1562	UNITED FIRST AID & SAFETY,LLC	187.92				
88460	12/02/2021	2643	UNITED WAY	1,073.53				
88461	12/02/2021	2223	US CELLULAR	379.76				
88462	12/02/2021	2644	USA BLUE BOOK	2,508.29				
88463	12/02/2021	2646	VALIC	1,042.00				
88464	12/02/2021	5800	VERIZON CONNECT NWF INC	17.33				
88465	12/02/2021	2656	WESTLAKE HARDWARE	.00			VOID:	
88466	12/02/2021	2656	WESTLAKE HARDWARE	463.64				
88467	12/02/2021	2772	WIRELESS USA	912.97				
88468	12/02/2021	5298	ZAMKUS AND ASSOCIATES LLC	1,000.00				
88469	12/02/2021	6519	ZERO9 SOLUTIONS	248.70				
*20211025								
20211026	11/15/2021	5898	MOBERLY SOLAR, LLC	15,660.16		E-PAY		
*20211027			(NOT IN SELECTED DATE RANGE)					
20211028	11/19/2021	2591	MOBERLY AREA ECONOMIC DEVELOPM	2,575.16		E-PAY		
20211029	11/24/2021	5783	BANKCARD SERVICES	10,960.06		E-PAY		
*20211030			(NOT IN SELECTED DATE RANGE)					
20211031	11/24/2021	2708	UMB BANK	130,217.82		E-PAY		
20211032	11/30/2021	6	AMEREN MISSOURI	39,244.60		E-PAY		

\* See Check Summary below for detail on gaps and checks from other modules.

BANK TOTALS:	
OUTSTANDING	658,559.75
CLEARED	.00
-----	
BANK 24 TOTAL	658,559.75
***VOIDED**	.00

## ACCOUNTS PAYABLE CHECK REGISTER

#16.

BANK# BANK NAME  
CHECK# DATE

ACCOUNT# NAME

CHECK AMOUNT CLEARED MANUAL VOID REASON FOR VOID

FUND	TOTAL	OUTSTANDING	CLEARED	VOIDED
100 GENERAL FUND	128,012.48	128,012.48	.00	.00
102 NON-RESIDENT LODGING TAX	7,082.33	7,082.33	.00	.00
105 PAYROLL FUND	5,174.34	5,174.34	.00	.00
110 SOLID WASTE FUND	30.45	30.45	.00	.00
114 HERITAGE HILLS GOLF CRSE	17,569.27	17,569.27	.00	.00
115 PARKS & RECREATION FUND	43,444.09	43,444.09	.00	.00
120 AIRPORT FUND	119,544.11	119,544.11	.00	.00
125 PERPETUAL CARE CEM SALES	54.00	54.00	.00	.00
140 VETERAN MEMORIAL FLAG PRJ	111.98	111.98	.00	.00
301 UTILITIES OP & MAINT	89,691.33	89,691.33	.00	.00
303 UTILITIES OP RESERVE	9,400.79	9,400.79	.00	.00
304 CAPITAL IMPROVEMENT TRUST	247.50	247.50	.00	.00
314 ROUTE JJ SEWER EXTENSION	34,540.00	34,540.00	.00	.00
350 2021 EDA GRANT PROJECTS	57,768.00	57,768.00	.00	.00
377 2004B SRF BONDS DEBT SERV	38,195.69	38,195.69	.00	.00
378 2006A SRF BONDS DEBT SERV	27,572.66	27,572.66	.00	.00
379 2004C BONDS DEBT SERVICE	26,552.63	26,552.63	.00	.00
380 2008A BONDS DEBT SERVICE	37,896.84	37,896.84	.00	.00
400 EMERGENCY TELEPHONE FUND	4,704.94	4,704.94	.00	.00
600 TRANSPORTATION TRUST FUND	7,085.00	7,085.00	.00	.00
601 STREET IMPROVEMENT FUND	2,681.32	2,681.32	.00	.00
911 DOWNTOWN CID SALES TAX	1,200.00	1,200.00	.00	.00

**ACCOUNTS PAYABLE CHECK REGISTER**  
\*\*\* CHECK SUMMARY \*\*\*

#16.

BANK# BANK NAME

CHECK# DESCRIPTION

## 24 DISBURSEMENTS

88320 Thru 88350 Accounts Payable Checks

88351 Thru 88365 Utility Billing Checks

88366 Thru 88469 Accounts Payable Checks

20211026 Thru 20211032 Accounts Payable E-Pay