

**A G E N D A**  
**WORK SESSION**  
**City of Moberly**  
**January 06, 2020**  
**6:00 PM**

**Requests, Ordinances, and Miscellaneous**

1. A Resolution Of The City Of Moberly, Missouri, Accepting Funding Approval Of Moberly's CDBG Application For Funding To Demolish Dilapidated Residential Structures And Authorizing The Mayor To Execute A Grant Agreement.
2. New Task Order for Engineering Services with McClure Engineering for Homestead Subdivision Sewer Replacement
3. An Ordinance Approving And Confirming Certain Licenses; Approving An Intergovernmental Cooperation Agreement; And Providing Further Authority

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_ WS #1.  
 Department: Community Development  
 Date: January 6, 2020

**Agenda Item:** A Resolution Of The City Of Moberly, Missouri, Accepting Funding Approval Of Moberly’s CDBG Application For Funding To Demolish Dilapidated Residential Structures And Authorizing The Mayor To Execute A Grant Agreement.

**Summary:** The project will include the demolition of 65 vacant dilapidated residential structures. All structures will be tested for asbestos prior to demolition. Additionally, title searches will be completed on each structure to ensure structures are free of liens. Demolition and debris disposal will be completed according to local, State and other governing regulations.

**Recommended**

**Action:** Direct staff to bring to the January 21, 2020 for final approval.

**Fund Name:** Demolition

**Account Number:** 100.005.5418

**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"/> Correspondence	<input checked="" type="checkbox"/> Proposed Resolution	<b>Council Member</b>		
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney’s Report	M___ S___ <b>Brubaker</b>	___	___
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M___ S___ <b>Kimmons</b>	___	___
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M___ S___ <b>Davis</b>	___	___
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M___ S___ <b>Kyser</b>	___	___
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice		Passed	Failed
<input type="checkbox"/> Consultant Report	<input checked="" type="checkbox"/> Other _____			

**BILL NO:** \_\_\_\_\_

**RESOLUTION NO:** \_\_\_\_\_

**A RESOLUTION OF THE CITY OF MOBERLY, MISSOURI, ACCEPTING FUNDING APPROVAL OF MOBERLY’S CDBG APPLICATION FOR FUNDING TO DEMOLISH DILAPIDATED RESIDENTIAL STRUCTURES AND AUTHORIZING THE MAYOR TO EXECUTE A GRANT AGREEMENT.**

**WHEREAS**, on April 15, 2019 this Council passed Resolution No. R-795 authorizing the Mayor to apply for grant funding through the Missouri Department of Economic Development (“DED”) for the demolition of dilapidated residential structures within the City of Moberly; and

**WHEREAS**, the city has been notified by DED of funding approval in the total amount of \$200,000 in CDBG funds for its demolition project; and

**WHEREAS**, the Funding Approval must be accepted by the city and a Grant Agreement must be entered into by the city as conditions for receiving the approved grant funds.

**NOW, THEREFORE, BE IT RESOLVED** this 6<sup>th</sup> day of January 2020, by the City of Moberly, Missouri, that the CDBG Funding Approval is accepted; and

**BE IT FURTHER RESOLVED**, that the Mayor of Moberly, Missouri hereby is authorized to execute and submit the Grant Agreement on behalf of the City and take such other and further actions as may be necessary to successfully obtain the grant funds.

\_\_\_\_\_  
**Presiding Officer**

**DATE:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
**City Clerk**



**MISSOURI DEPARTMENT OF ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM  
FUNDING APPROVAL**

under Title 1 of the Housing and Community Development Act of 1974 (Public Law 93-383) as amended.

<b>1. NAME AND ADDRESS OF GRANTEE</b> <b>Moberly</b> <span style="float: right;">DUNS#: 08-002-0845</span> <b>101 West Reed</b> <span style="float: right;">FEIN: 43-6002348</span> <b>Moberly, Missouri 65270</b> <b>Randolph County</b>					<b>10. PROJECT DESCRIPTION</b> (indicate specific scope of each activity regardless of funding source)  <b>The project will include the demolition of 65 vacant dilapidated residential structures. All structures will be tested for asbestos prior to demolition. Additionally, title searches will be completed on each structure to ensure structures are free of liens. Demolition and debris disposal will be completed according to local, State and other governing regulations. Following demolition, the lots will be leveled and seeded.</b>  <b>City Cash: \$144,975</b> <b>City In-Kind: \$34,125</b> <b>Private Match: \$32,500</b>							
<b>2. PROJECT NUMBER</b>  <b>2018-ND-03</b>		<b>3. SEN. DIST.</b>  <b>18</b>		<b>REP. DIST.</b>  <b>47</b>		<b>NATIONAL OBJECTIVE: Slum/Blight</b>  <b>LMI PERSONS: 49.96%</b> <span style="float: right;"><b>LMI FAMILIES: 49.96%</b></span>						
<b>4. POPULATION</b>  <b>13,974</b>		<b>5. NO. OF BENEFICIARIES</b>  <b>13,974p/4,960f</b>		<b>7. GRANTEE FYE DATE</b>  <b>6/30</b>								
<b>6. GRANT AWARD DATE</b>  <b>12/06/19</b>		<b>8. MAXIMUM CDBG GRANT AMOUNT AWARDED</b>  <b>\$200,000</b>		<b>9. FEDERAL AWARD IDENTIFICATION NUMBER</b>  <b>B-18-DC-29-0001</b>								
<b>PROGRAM ACTIVITY</b>		<b>ACT. NO.</b>	<b>REQ. ENV. REV.(1)</b>	<b>TOTAL</b>	<b>CDBG FUNDS(2)</b>				<b>MATCHING FUNDS</b>		<b>OTHER STATE/FED</b>	
<b>Demolition</b>		<b>3</b>	<b>Y</b>	<b>\$ 351,425</b>	<b>\$ 182,400</b>				<b>\$ 126,775</b>	<b>\$ 9,750</b>	<b>\$ 32,500</b>	
<b>Demolition Inspection</b>		<b>37</b>	<b>N</b>	<b>\$ 24,375</b>			<b>\$ 24,375</b>					
<b>Asbestos Inspection</b>		<b>68</b>	<b>N</b>	<b>\$ 11,700</b>		<b>\$ 11,700</b>						
<b>Administration</b>		<b>35</b>	<b>N</b>	<b>\$ 17,600</b>	<b>\$ 17,600</b>							
<b>Other Professional Services</b>		<b>47</b>	<b>N</b>	<b>\$ 6,500</b>		<b>\$ 6,500</b>						
<b>TOTAL</b>				<b>\$ 411,600</b>	<b>\$ 200,000</b>	<b>\$ 144,975</b>	<b>\$ 34,125</b>	<b>\$ 32,500</b>	<b>\$ 0</b>			
<p>(1) Funds for activities that are conditioned subject to an environmental review may not be incurred or obligated until a written "Authority to use Grant Funds" is issued by DED.</p> <p>(2) This column represents the maximum amount of CDBG funds approved for each activity, except that the grantee may transfer funds between activities an amount not to exceed \$10,000 or 10% of the total CDBG allocation, whichever is less, except that administration, audit, and engineering costs must be changed via a contract amendment.</p>												
<b>PREPARED BY</b>  <b>Denise Derks</b>					<b>DATE</b>  <b>12/12/2019</b>							



(DED Form GA-2018)  
STATE OF MISSOURI  
DEPARTMENT OF ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

WS #1.

This Grant Agreement is made by and between the State of Missouri, Department of Economic Development (DED), herein called the "State" or "DED," and the City of Moberly herein called the "Grantee," pursuant to the authority of the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, herein referred to as "The Act" and commonly referred to as the Community Development Block Grant Program (CDBG). The Grantee's submissions (including "Assurances") for CDBG assistance; Department of Housing and Urban Development (HUD) regulations at 24 CFR Part 570; Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200); the State's current "Consolidated Plan;" the State's CDBG Administrative Manual; the State's CDBG-DR Policies and Procedures Implementation Manual for CDBG-DR projects; and the State's CDBG Program Guidelines (as now in effect and as may be amended from time to time), which are incorporated by reference; together with the DED Funding Approval form, and any special conditions, which are hereto attached, constitute part of this Agreement.

In reliance upon and in consideration of the mutual representations and obligations hereunder, the State and the Grantee agree as follows:

1. Subject to the provisions of this Grant Agreement, the State will make the funding assistance specified in the attached DED Funding Approval form (the "Funding Assistance") available to the Grantee for completion of the project identified on the Grantee's CDBG Application (the "Project") upon execution of the Agreement by the parties. The obligation and utilization of the Funding Assistance is subject to the requirements for a release of funds by the State under the Environmental Review Procedures at 24 CFR Part 58 for any activities requiring such release.
2. The Grantee agrees to accept responsibility for adherence to this Agreement by any and all subrecipient entities to which it makes available any portion of the Funding Assistance.
3. The Grantee agrees that it will complete the Project within three years from the effective date of this CDBG Grant Agreement.
4. The Grantee agrees that it will adhere to the projection of grant expenditures by activity as submitted with the application, or as amended and approved by DED.
5. The Grantee agrees disbursement of funds must occur in a timely manner. If payment takes longer than three days ("three day rule" referenced in Financial Chapter of CDBG Administrative Manual), written justification is to be maintained in the project files.
6. The Grantee agrees that internal financial controls are in place and are adequate. The Grantee agrees to establish and maintain a financial management system in order to provide accurate, current, and complete disclosure of the financial status of the CDBG funded project by eligible program activity. The Grantee agrees to provide effective control over and accountability for CDBG funds, property and other assets, including proper segregation of duties.
7. The Grantee agrees to comply with the principles for determining allowable costs found in 2 CFR 200, (applicability 24 CFR 570.489).
8. The Grantee agrees to conduct the project in such a manner to ensure timely expenditure of funds and accomplishment reporting. The Grantee agrees to submit an update to expenditure projections on a quarterly basis, or in any event where the original timeline for full expenditure will be revised to a future date.
9. The Grantee agrees that any and all such amount of local funds or in-kind (force account) services or materials indicated in the attached Funding Approval form shall be equal to or greater than the amount indicated.
10. The Grantee agrees that any proposed activity budget variances (from the Funding Approval form) shall be approved by DED in writing prior to an obligation of funds for such activity; however, any variance shall be approved by the Grantee's governing body in advance of an obligation of such activity. An amendment to the grant is required under the following conditions: all budget revisions between activity lines; transfer of any amount of funds to any professional services line item; request for grant increase, or deobligation of funds remaining at the close of the grant; and a request for addition of funds for an activity not listed on the funding approval.
11. The Grantee agrees to complete the Project in its entirety and as indicated in the Funding Approval form unless amended in writing and executed by all parties to this Agreement.

12. The Grantee agrees to comply with all state or federal legal, programmatic, or administrative requirements imposed by or described in the CDBG Administrative Manual or the CDBG Guidelines. The Grantee also agrees to comply with other requirements of the State, including special requirements of law, program requirements, and other administrative requirements. The Grantee is aware that this includes, but is not limited to, the requirement that a grant recipient must repay to the State, upon sale of the CDBG-funded real property to a non-eligible entity, a pro-rata portion of the proceeds of the sale, as set forth in the CDBG Administrative Manual. Real property, acquired or improved in whole or in part with CDBG funds, must continue to meet the CDBG national objective for a period not less than five (5) years from the date of project closeout.
13. The Grantee agrees that upon Project completion, any CDBG funds remaining from the allocation indicated in the Funding Approval form shall be returned to DED if they have been drawn to the Grantee's local depository, or cancelled if such funds have not been drawn.
14. The Grantee agrees to comply with 2 CFR 200, which governs the auditing requirements of these grant monies in accordance with the Single Audit Act of 1984 (amended 1996), and to provide DED with all required audits. The Catalog of Federal Domestic Assistance (CFDA) number for state CDBG grants is 14.228.
15. CDBG Grantees and CDBG-DR Grantees agree to comply with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5121-5207), as amended and the "necessary and reasonable" cost principles found in 24 CFR Part 570 and in OMB Circulars as they relate to the responsibility to recognize, investigate, determine and account for any duplication of benefits for any project funded with CDBG or CDBG-DR funds in response to a disaster or emergency. CDBG Grantees and CDBG-DR Grantees may be subject to a demand for repayment to the DED for any amount of CDBG funding found to have duplicated another federal, state, or local program or private insurance.

The Grantee agrees to comply with the "hierarchy" of disaster assistance (as described in the Duplication of Benefits chapter) and shall take all steps to ensure that CDBG funds are not used in a manner that disrupts that hierarchy. Such a disruption that results in a duplication of benefits shall be cause for repayment of CDBG funds.

The Grantee agrees to gather and retain documentation to prove the avoidance of a duplication of benefits as part of the Grantee's master files and make such proof available to the State CDBG staff or HUD staff, as requested. Duplication of benefit records kept by the Grantee include any documents related to Projects for which Grantee is the owner and records for which the Grantee may have sponsored an application on behalf of a sub-grantee, and all records related to each subrecipient or direct beneficiary of CDBG funds.

The Grantee will provide the following:

- Identify the total need of assistance,
  - Identify the total of all available assistance,
  - Identify the assistance determined to be not available for the same purpose / activity,
  - Perform calculation determining the total funds available from other sources,
  - Perform calculation determining the maximum eligible award,
  - Require all applicants to sign a subrogation agreement to repay any assistance later received for the same purpose, and
  - Recapture funds, if necessary. If additional need is established, subsequent CDBG or CDBG-DR funds would not be considered a duplication. If additional need is not demonstrated, CDBG or CDBG-DR funds must be recaptured to the extent they are in excess of the need and duplicate other assistance received by the beneficiary for the same purpose.
16. The Grantee agrees that State and HUD officials shall have full access to any documents or materials relating to this Agreement at any reasonable time.
  17. The Grantee agrees that all funds received under this Agreement shall be held and used by the Grantee for the purpose of accomplishing the Project only, and none of the funds so held or received shall be diverted to any other use or purpose.
  18. The Grantee agrees that any material prepared by the Grantee or persons or firms employed or contracted by the Grantee shall not be subject to copyright, and the State shall have the unrestricted authority to publish, distribute, or otherwise use, in whole or in part, any reports, data, or other material prepared under this Agreement.
  19. The Grantee agrees that any approval of contracts, sub-contracts, material or service orders, or any other obligation by the Grantee or its agents shall not be deemed an obligation by the State, and the State shall not be responsible for fulfillment of the Grantee's obligations.

20. The Grantee agrees to comply with the citizen participation requirements set out in Section 104(a) of the Act, including the State's written Citizens Participation Plan in accordance with Section 508 of the Housing and Community Development Act of 1987. WS #1.
21. The Grantee agrees to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations in accordance with Section 519 of Public Law 101-144, and also agrees to enforce applicable state and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within its jurisdiction.
22. Any Grantee receiving over \$100,000 in CDBG funds agrees to carry out the terms of the "Certification Regarding Government-Wide Restriction on Lobbying" attached hereto and made a part hereof by signing same.
23. The Grantee agrees to comply with all reporting requirements of the HUD performance measurement or financial systems, including but not limited to the Disaster Recovery Grant Reporting (DRGR) system or Integrated Disbursement and Information System (IDIS). DED may suspend requests for CDBG funds by the Grantee for failure to comply with any specific requirement of reporting.
24. The Grantee agrees to comply with the policies and procedures set forth in Executive Order 96-03 for the protection of Missouri's wetlands.
25. The Grantee agrees to obtain and comply with all relevant state and/or federal permits and licenses related to construction and operation of any development activity funded by CDBG. The Grantee agrees and understands that copies of those permits and licenses shall be made available to CDBG, DED, or HUD upon request. The Grantee acknowledges that a lack of any such applicable permit or license may restrict Grantee access to the Funding Assistance.
26. In the event that the Grantee has, in DED's sole discretion, failed to comply with this Agreement or any other CDBG program requirement, the Grantee shall perform any remedial actions determined appropriate by the State to correct the deficiency, which actions may include, but are not limited to:
- a. The Grantee's repayment or reimbursement to the State or local CDBG fund (at DED's discretion) of inappropriately used CDBG funds;
  - b. The Grantee's return to the State of CDBG funds deposited at the Grantee's local financial institution;
  - c. The Grantee's return to DED or the supplier of any equipment, materials, or supplies purchased, leased, or lease purchased using CDBG funds; and
  - d. Any other actions the State deems appropriate.
- Such actions shall be performed by the Grantee in the time period specified by the State in writing to the Grantee. The State may also refuse the Grantee's requests for CDBG funds or take other actions as the State deems appropriate to ensure proper performance of the terms of this Agreement and compliance with CDBG requirements.
27. The State may terminate this Agreement in whole or in part, at any time, including before Project completion, whenever it is determined by the State that the Grantee has failed to comply with the conditions of this Agreement. The State shall notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. The Grantee shall not obligate the Funding Assistance in any way after the effective date of the termination of the Agreement and it shall be the Grantee's duty to take any and all legal efforts to cancel any obligations outstanding upon termination.
28. The State and Grantee each binds himself to his successors, executors, administrators, assigns, and legal representatives to the other party to this Agreement and to the successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement.
29. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in Section 104(g) of the Act, the National Environmental Policy Act of 1969 and published in 24 CFR Part 58.
30. The Grantee agrees to comply with all applicable requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601), Sections 104(d), 104(k), and 105(a)(11) of the Act.
31. The Grantee agrees the use of CDBG funds for relocation activities must meet accessibility standards, provide reasonable accommodations to persons with disabilities, and take into consideration the functional needs of persons with disabilities in the relocation process.
32. The Grantee agrees to comply with the lead-based paint hazard control laws and regulations specified in Title X of the Housing and Community Development Act of 1992, implementing regulations at 24 CFR Part 35; state statutes governing the licensing and conduct of persons addressing lead paint at Sections 701.300 - 701.324, RSMO and Work Practice Standards at 19 CSR 30-70; and OSHA regulations at 29 CFR 1926.

33. 24 CFR Part 570.489(g), governing the procurement requirements of CDBG grantees, states: When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government on full and open completion. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposal) and their applicability shall be specified by the State. Cost plus percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. The Missouri CDBG Program follows the Missouri procurement process codified in Missouri Revised Statutes Chapter 34 as required by law. The Missouri CDBG program requires City and County Grantees and their subrecipients to follow the procurement policies developed and published by the CDBG program. Communities may use their own procurement procedures, which reflect applicable state and local laws and regulations, provided that the procurement conforms to the State CDBG Program's procurement policies and standards outlined in the CDBG Administrative Manual. The Grantee agrees to comply with the stricter of the procurement requirements between applicable state and local laws and the CDBG program procurement policy.
34. Applicable to requirements for CDBG-DR projects (Appropriations Act, Pub. L. 115-123), Procurement standards must include the evaluation of the cost or price of the product or service. Federal Register/ Vol. 83, No. 28 as amended by Federal Register/Vol. 83, No. 157. The CDBG-DR Grantee funds agrees to comply with the requirements to include the evaluation of the cost or price of the product or service, as described in the CDBG-DR Cost Reasonableness Policy.
35. Applicable to requirements for the CDBG Voluntary Buyout program, the Grantee agrees to develop and adopt guidelines for a voluntary buyout program, either funded in full or partially funded by CDBG or CDBG-DR funds. The guidelines must meet the minimum policy requirements for the CDBG program.
36. Applicable to requirements for the CDBG Voluntary Buyout program, the Grantee agrees that all real estate purchased in the name of the project, must have open space deed restrictions in perpetuity.
37. Applicable to requirements for CDBG-DR projects which include CDBG-DR Housing Program activities, the Grantee agrees to develop guidelines for all housing assistance programs. The guidelines must meet the minimum policy requirements for the CDBG program and shall be adopted by resolution. The Grantee's guidelines must include housing construction and rehabilitation standards, incorporating program design standards, minimum standards for compliance with Housing Quality Standards (HQS) and meeting compliance for Green Building Standards as outlined in the CDBG-DR Policies and Procedures Implementation Manual.
38. The Grantee agrees to adopt a Grievance and Appeals policy that address handling incoming complaints, including a complaint escalation process in order to ensure that complaints are handled at the earliest stage in the process.
39. The Grantee agrees to comply with affordability periods for housing assistance programs as stated in the most relevant Federal Registers.
40. The Grantee agrees to certify that the Grantee will administer funded program activities in accordance with the Fair Housing Act and that the Grantee will affirmatively further fair housing.
41. The Grantee agrees to comply with federal labor standards requirements as defined in the Davis-Bacon Act, the Copeland Anti-Kickback Act, the Contract Work Hours and Safety Standards Act and the Missouri Prevailing Wage Law.
42. The Grantee agrees to comply with the requirements of the eVerify federal work authorization program as defined in Section 285.525(6), RSMo., with respect to employees working in connection with the activities associated with the Funding Assistance.
43. The Grantee agrees that as applicable, contracting organizations and their principals are not suspended or debarred from federal procurement and non-procurement programs.
44. The Grantee agrees that any program income generated by the use of CDBG funds (including, but not limited to, sale of property acquired or constructed in whole or in part with CDBG funds) will be used for CDBG eligible activities that meet a HUD national objective, or returned to DED. Use of program income is entirely at DED discretion. The Grantee also agrees that it will inform DED of the generation of any program income after the closing of the project. Program income generated while the project remains open and active must be used for CDBG-eligible costs prior to drawing additional CDBG funds for those costs.
45. The Grantee agrees to comply with the conflict of interest provisions specified in the CDBG Guidelines.
46. The Grantee agrees to comply with the Missouri CDBG Grantee Language Access Plan Guidance to develop and adopt a Language Access Plan in order to provide Limited English Proficient (LEP) persons with meaningful access to programs and activities funded by the federal government and awarded by DED.



WS #1.

- 47. The protection of Personally Identifiable Information (PII) data applies to all CDBG Grantees, subrecipients and contracted agents. Requirements of PII protection must be adhered to and as such are set forth in: Grant Agreements and subcontracts and agreements. All entities participating with CDBG shall indicate their recognition, acceptance and consent with the CDBG PII policy by executing it and providing the executed copy to the CDBG Program. The existence of a signed copy for all entities will be a monitoring function and non-compliance may cause penalties for future grant awards.
48. The State agrees that it may, at any time, in its sole discretion, give any consent, deferment, subordination, release, satisfaction, or termination of any or all of the Grantee's obligations under this Agreement, with or without valuable consideration, upon such terms and conditions as the State may determine to be (a) advisable to further the purpose of the Project or to protect the State's financial interest therein, and (b) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it was made.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year indicated in the Funding Approval form.

GRANTEE (CITY/VILLAGE/COUNTY):

STATE OF MISSOURI

PRINTED NAME:

PRINTED NAME: Michael Lanahan

SIGNATURE

SIGNATURE

CHIEF EXECUTIVE OFFICER DATE

(City Mayor, Village Board Chairman, or Presiding County Commissioner)

Division Director DATE

Business and Community Solutions

DEPARTMENT OF ECONOMIC DEVELOPMENT

PRINTED NAME:

SIGNATURE

ATTEST DATE

(City, Village, County Clerk, or other official of the Grantee)

Note: The Grantee's seal must be affixed over the Grantee's signatures. If no such seal exists, it must be properly notarized. Three copies with original and printed signatures are required.

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
 Department: Public Utilities  
 Date: January 6, 2020

WS #2.

**Agenda Item:** New Task Order for Engineering Services with McClure Engineering for Homestead Subdivision Sewer Replacement

**Summary:** The sewer line will replace an existing line that has been exposed through erosion within the Homestead Subdivision between Heritage Place and Overland Lane. This project has been approved for FEMA disaster declaration reimbursement so the project will need to go through federally approved procurement processes. McClure is already working on the road slide at Sugar Creek Lake under a previously approved contract.

**Recommended Action:** Direct Staff to develop a resolution for adoption at the next regular Council meeting.

**Fund Name:** Capital Improvement Sales Tax Fund

**Account Number:** 304.000.5408

**Available Budget \$:** 0

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 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



WS #2.

**McCLURE**<sup>TM</sup>  
ENGINEERING CO.

107 Butler Street      O 660.385.6441  
Macon, MO 63552      www.mecresults.com

## Task Order – Homestead Subdivision Sewer

January 2, 2020

City of Moberly, Missouri  
Attn: Mary West-Calcagno, Director of Public Utilities  
101 W Reed Street  
Moberly, MO 65270  
660.269.8705  
mwc@cityofmoberly.com

Re: City of Moberly – Homestead Subdivision Sewer Replacement

Dear Ms. West-Calcagno,

I am pleased to submit to you a proposal for the preparation of engineering drawings and construction specifications for a gravity sewer line replacement in the Homestead Subdivision. The location is shown on the attached Exhibit C. The sewer line will replace an existing line that has been exposed through erosion within the Homestead Subdivision between Heritage Place and Overland Lane. This agreement is a task order under the On-Call Agreement between McClure, hereinafter referred to as "the Engineer", and the City of Moberly, Missouri, hereinafter referred to as "the Client", to provide the following services:

1. Topographic and utility survey of the sewer alignment. The preparation of easements or easement descriptions is not included.
2. Design of a gravity sanitary sewer main including preparation of project drawings and written specifications for construction of the sewer line.
3. Preparation of an Opinion of Probable Construction Cost.
4. Preparation of Record Drawings.

Engineering Fees to complete these services will be a lump sum amount and will not exceed **\$16,955.00**, including expenses.

The preparation of easements or easement descriptions can be added as an additional service. Any additional services beyond the scope of services outlined above will be billed separately based upon our current Hourly Rate Schedule (Exhibit 'A'). Any such work shall be approved by the Client in writing prior to execution. This letter agreement is subject to the attached Standard Terms and Conditions (Exhibit 'B').

If approved please print and sign this letter agreement where noted, return a copy to my attention via email and keep a copy for your records. If you have any questions, please do not hesitate to contact me at 660.386.6441. Thank you for considering McClure for your sanitary sewer system needs.

**McClure**

**City of Moberly, Missouri**

By: \_\_\_\_\_  
Philip R. Wilson, P.E.      Date:

By (sign): \_\_\_\_\_  
Mary West-Calcagno      Date:

Enclosure:  
Exhibit A – Standard Hourly Rate Schedule  
Exhibit B – Standard Terms and Conditions  
Exhibit C – Aerial of Sewer Alignment

CC: File

EXHIBIT 'A'  
 McCLURE ENGINEERING COMPANY  
 HOURLY RATE SCHEDULE  
 (Effective through December 31, 2019)

<u>PERSONNEL</u>	<u>HOURLY RATE</u>
Administrative .....	\$70.00
Client Liaison .....	\$180.00
Engineer I .....	\$110.00
Engineer II .....	\$140.00
Engineer III .....	\$170.00
Engineer IV .....	\$210.00
Project Manager I .....	\$170.00
Project Manager II .....	\$195.00
Project Coordinator .....	\$90.00
Principal .....	\$245.00
Senior Principal .....	\$295.00
Community Planner I .....	\$135.00
Community Planner II .....	\$225.00
Landscape Architect I .....	\$100.00
Landscape Architect II .....	\$130.00
Engineering Tech I .....	\$85.00
Engineering Tech II .....	\$105.00
Engineering Tech III .....	\$125.00
Engineering Tech IV .....	\$160.00
Land Surveyor I .....	\$130.00
Land Surveyor II .....	\$160.00
On-Site Representative I (OSR I) .....	\$105.00
On-Site Representative II (OSR II) .....	\$145.00
Crew Chief (CC) .....	\$120.00
Crew Member (CM) .....	\$90.00
Intern .....	\$70.00
Survey Crew .....	\$200.00
 <u>EQUIPMENT</u>	
3D Scanner per Scan .....	\$30.00
UAV per Flight .....	\$125.00
Sonar Boat .....	\$125.00
 <u>MISCELLANEOUS EXPENSES</u>	
Survey Vehicle Mileage .....	\$0.70/Mile
Automobile Mileage (at current IRS rate) .....	\$0.545/Mile
Printing .....	At Cost + 10%
Survey Supplies (Hubs, Lath, Paint, Nails, etc.) .....	At Cost + 10%
Out-of-Pocket Expenses (Meals, Hotels, etc.) .....	At Cost + 10%

# McCLURE ENGINEERING COMPANY STANDARD TERMS AND CONDITIONS

WS #2.

**ACCESS TO SITE:** The **Engineer** shall at all times have access to the site to complete his Work.

**INFORMATION PROVIDED BY OTHERS:** The **Engineer** shall be entitled to rely upon the accuracy and completeness of data provided by the **Owner** and shall not assume liability for such data. The **Engineer** does not practice law, insurance or financing, therefore, the **Owner** shall furnish all legal, accounting and insurance counseling services as may be necessary to protect themselves at any time during the Project. **Owner** shall hold **Engineer** harmless from damages that may arise as a result of inaccuracies of information or data supplied by **Owner** or others to **Engineer**.

**ADDITIONAL SERVICES:** As an Additional Service in connection with changes in the scope of the **Engineer's** work by the **Owner**, the **Engineer** shall prepare Drawings, Specifications and other documentation and data, evaluate Contractor's proposal and provide any other services made necessary by such Change Orders and Construction Change Directives. The **Engineer** will be entitled to additional compensation to coordinate such changes and schedules shall be adjusted accordingly.

**OWNERSHIP AND REUSE OF DOCUMENTS:** All documents are instruments of service, and **Engineer** shall retain an ownership and property interested therein (including the copyright and the right of reuse at the discretion of the **Engineer**) whether or not the Project is completed.

**Owner** may make and retain copies of documents for information and reference in connection with the use of the documents on the Project. **Engineer** grants **Owner** a limited license to use the documents on the Project, extensions of the Project, and for related uses of the **Owner**, subject to receipt by **Engineer** of full payment due and owing for all services relating to preparation of the documents, and subject to the following limitations: (1) **Owner** acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by **Engineer**, or for use or reuse by **Owner** or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by **Engineer**; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by **Engineer**, as appropriate for the specific purpose intended, will be at **Owner's** sole risk and without liability or legal exposure to **Engineer** or to its officers, directors, members, partners, agents, employees, and consultants; (3) **Owner** shall indemnify and hold harmless **Engineer** and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by **Engineer**; and (4) such limited license to **Owner** shall not create any rights in third parties.

If **Engineer** at **Owner's** request verifies the suitability of the documents, completes them, or adapts them for extensions of the Project or for any other purpose, then **Owner** shall compensate **Engineer** at rates or in an amount agreed upon by **Owner** and **Engineer**.

**OPINIONS OF PROBABLE COSTS:** **Engineer's** opinions (if any) of probable construction costs are to be made on the basis of **Engineer's** experience, qualifications, and general familiarity with the construction industry. However, because **Engineer** has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, **Engineer** cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by **Engineer**. If **Owner** requires greater assurance as to probable construction cost, then **Owner** agrees to obtain an independent cost estimate.

**BETTERMENT:** If a required item or component of the **Owner's** project should be omitted from **Engineer's** construction documents, **Engineer** shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will **Engineer** be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the **Owner's** project.

**SHOP DRAWING REVIEW:** If, as part of this Agreement **Engineer** reviews Contractor submittals, such as shop drawings, product data, samples and other data, as required by **Engineer**, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. **Engineer** shall not be responsible for any deviations from the contract documents not brought to the attention of **Engineer** in writing by the contractor. **Engineer** shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

**CONSTRUCTION OBSERVATION:** If, as part of this Agreement, **Engineer** is providing construction observation services, **Engineer** shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the Contractor's work and to determine if the work is proceeding in general accordance with the Contract Documents. **Engineer** shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall **Engineer** have authority over or be responsible for the means, methods, techniques, sequences, schedule, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for the security or safety at the site, nor for any failure of a contractor to comply with laws and regulations applicable to that contractor's furnishing and performing of its work. **Engineer** shall not be responsible for the acts or omissions of any contractor.

**Engineer** neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the construction contract documents.

**Engineer** shall not be responsible for any decision made regarding the construction contract documents, or any application, interpretation, clarification, or modification of the construction contract documents, other than those made by the **Engineer** or its consultants.

Unless otherwise specified in this Agreement, the **Owner** has not retained the **Engineer** to make detailed inspections or to provide exhaustive or continuous project review and observation services.

**DESIGN WITHOUT CONSTRUCTION PHASE SERVICES:** If **Engineer** is not retained for construction observation and/or on-site resident observation services, **Engineer** shall have no

design, shop drawing review, or other obligations during construction, and **Owner** assumes all responsibility for the application and interpretation of construction contract documents, review and response to contractor claims, construction contract administration, processing of change orders and submittals, revisions to the construction contract documents during construction, construction observation and review, review of contractor's payment applications, and all other necessary construction phase administrative, engineering, and professional services. **Owner** waives all claims against the **Engineer** that may be connected in any way to construction phase administrative, engineering, or professional services.

**UNDERGROUND UTILITIES:** Information for location of underground utilities may come from the **Owner**, third parties, and/or research performed by the **Engineer** or its subcontractors. Unfortunately, the information the **Engineer** must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the **Owner** agrees to indemnify and hold harmless the **Engineer** for all claims, losses, costs and damages arising out of the location of underground utilities provided by the **Engineer** under this Agreement.

**SUBSURFACE CONDITIONS:** The **Engineer** may advise the **Owner** to conduct soil and/or subsurface testing and analysis to provide information to the **Owner**, **Engineer**, and contractor(s) as to the subsurface conditions that may generally be encountered during subsurface construction.

The **Engineer** cannot warrant or guarantee that the information provided is reflective of all subsurface conditions that may be encountered, or to the extent that subsurface conditions such as soil properties, groundwater, rock, etc., may vary from location to location throughout subsurface construction.

Any unexpected change or unforeseen subsurface conditions (including those that may be caused by weather conditions) will be addressed when encountered and may result in a change in construction price and/or schedule, and the **Engineer** shall be held harmless from issues arising out of these unseen subsurface conditions.

**HAZARDOUS MATERIALS – INDEMNIFICATION:** The **Engineer** is not in the business of making environmental site assessments for purposes of determining the presence of any toxic, hazardous or other environmental damaging substances. The purpose of this provision is to be certain that the **Owner** is aware of the potential liability if toxic, hazardous or environmental damaging substances are found on or under the property. **Engineer** makes no representations regarding an environmental site assessment, relies upon **Owner** to have fully investigated the need and/or scope of such assessment and assumes no responsibility for the determination to make an environmental site assessment on the subject property.

**DISPUTE RESOLUTION:** Claims, disputes or other matters, involving a value less than \$200,000.00, in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to mediation unless each of the parties mutually agrees otherwise. No mediation arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the **Owner**, **Engineer**, and any other person or entity sought to be joined. In no event shall the demand for mediation be made after the date when the institution of legal or equitable proceedings based upon such claim would be barred by the applicable statute of limitations. The award rendered in the mediation shall be non-binding.

**TERMINATION:** This Agreement may be terminated by either party upon not less than seven days written notice should the other party fail substantially to perform in accordance with the terms of the Agreement through no fault of the party initiating the termination. This Agreement may be terminated by the **Owner** upon not less than seven days' written notice to the **Engineer** in the event the Project is permanently abandoned.

Failure of the **Owner** to make payments to the **Engineer** in accordance with the Agreement shall be considered substantial non-performance and cause for termination. If the **Owner** fails to make payment when due the **Engineer** for services, the **Engineer** may, upon seven days' written notice to the **Owner**, suspend performance of services under this Agreement. Unless payment in full is received by the **Engineer** within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the **Engineer** shall have no liability to the **Owner** for delay or damage caused the **Owner** because of such suspension of services.

In the event of termination not the fault of the **Engineer**, the **Engineer** shall be compensated for services performed prior to termination and all termination expenses. Termination expenses are in addition to compensation for *Basic and Additional Services*, and include expenses which are directly attributable to termination.

**LIMITATION OF LIABILITY:** The **Engineer's** liability shall be limited to \$50,000.00 or the fee for the work performed, whichever is greater, or as specifically agreed to by separate agreement.

**PAYMENT:** Amounts unpaid 30 days after invoice date shall bear interest from the date payment is due at a rate of 1.5% per month compounded and shall include costs for attorney fees and other collection fees related to collecting fees for service.

**WAIVERS:** The **Owner** and the **Engineer** waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction. The **Owner** and **Engineer** each shall require similar waivers from their contractors, consultants and agents.

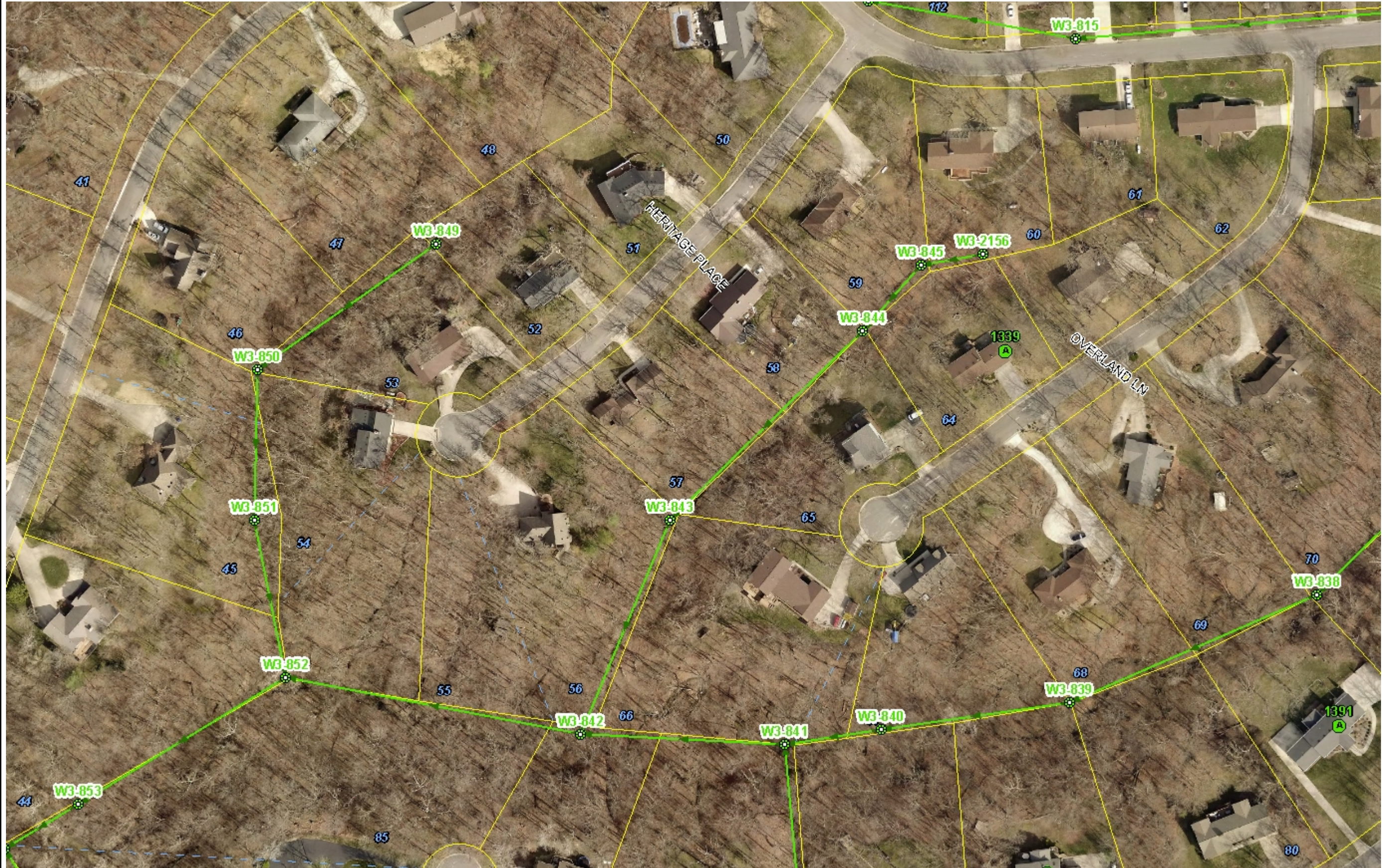
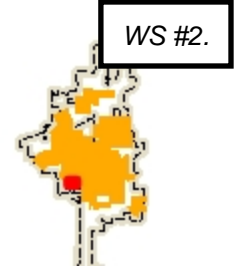
**ASSIGNMENT:** The **Owner** and **Engineer**, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither **Owner** nor **Engineer** shall assign this Agreement without the written consent of the other.

**GOVERNING LAW:** Unless otherwise provided, the Agreement shall be governed by the laws of the State of Iowa.

**COMPLETE AGREEMENT:** This Agreement represents the entire and integrated agreement between the **Owner** and **Engineer** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both **Owner** and **Engineer**. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the **Owner** or **Engineer**.

# Moberly, MO

WS #2.



- Legend**
- Sewer Line Investigation Locat
  - Manhole
  - Air Release Valve
  - Lamphole
  - Lift Station
  - Other Sewer Feature
    - Area Inlet
    - Bar Screen
    - Curb Inlet
    - Grate Inlet
    - Grit Chamber
    - Storm Drain
    - Tee
  - Gravity Main
  - Force Main
  - Roads
  - Corporate Limit
  - Parcel
  - Original Lot
  - Stream
  - Lots
  - South Ridge Lot Line

1 in. = 114ft.



Notes

227.2 0 113.58 227.2 Feet

This Cadastral Map is for informational purposes only. It does not purport to represent a property boundary survey of the parcels shown and shall not be used for conveyances or the establishment of property boundaries.  
THIS MAP IS NOT TO BE USED FOR NAVIGATION

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
 Department: City Manager  
 Date: January 6, 2020

WS #3.

**Agenda Item:** An Ordinance Approving And Confirming Certain Licenses; Approving An Intergovernmental Cooperation Agreement; And Providing Further Authority

**Summary:** The Downtown CID and the Moberly Chamber are working on a banner program for downtown buildings. These banners will be very similar to the one placed on the chambers building with our new slogan/campaign, "We chose Moberly". The banners will be funded with Downtown CID funds and cover building with cosmetic and aesthetic issues. The hope is to brighten up buildings that have been an eyesore until the owner can renovate the property. This agreement allows the Downtown CID and city work with property owner to install and maintain banner

**Recommended**

**Action:** Direct staff to bring to the January 21<sup>st</sup> Council meeting for final approval.

**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"/> 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 AND CONFIRMING CERTAIN LICENSES;  
APPROVING AN INTERGOVERNMENTAL COOPERATION AGREEMENT;  
AND PROVIDING FURTHER AUTHORITY.**

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

WHEREAS, the City has obtained certain licenses (collectively, the “**Banner Licenses**”) to allow the placement at the City’s expense of one or more promotional banners celebrating the history, culture, tourism, and economics of the City’s downtown area (collectively, the “**Banners**”) and wishes confirm and acknowledge the Banner Licenses and further wishes to obtain funding to support the installation of the aforesaid Banners; and

WHEREAS, the Downtown Moberly Community Improvement District is willing to contribute funds to the City to support the purchase of the Banners, subject to the terms and conditions of and as further set forth in a certain Intergovernmental Cooperation Agreement, in substantially the form of **Exhibit A**, attached to and incorporated by reference in this Ordinance (the “**Banner Agreement**”);

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

SECTION 1. The Banner Licenses and each of them, which are each hereby incorporated by reference in this Ordinance as if set forth in their entirety in this place, are hereby approved, acknowledged and confirmed. Any and all acts heretofore taken by the City Manager, City staff,



other agents of the City, or any of them taken in connection with the obtaining and delivery of the Banner Licenses are hereby acknowledged, confirmed, ratified and approved.

SECTION 2. The Banner Agreement in substantially the form of Exhibit A is hereby approved and the Mayor is hereby authorized and directed to execute and deliver the Banner Agreement on behalf of the City.

SECTION 3. The Mayor, City Manager, City Clerk, and applicable City staff are hereby authorized and directed to take such further actions as may be necessary or convenient to carry out and satisfy the City’s obligations under the Banner Agreement and the Banner Licenses.

SECTION 4. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council of the City would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 5. This Ordinance shall take effect and be in force from and after its passage and adoption by the Council of the City and its signature by the officer presiding at the meeting at which it was passed and adopted.

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri on this \_\_\_\_ day of \_\_\_\_\_, 2020.

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

**ATTEST:**

\_\_\_\_\_  
Diane Kay Galloway, CMC/MRCC, City Clerk

**EXHIBIT A**  
**INTERGOVERNMENTAL COOPERATION AGREEMENT**

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT (this “**Agreement**”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT, a community improvement district and Missouri political subdivision having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**District**”) and THE CITY OF MOBERLY, a city of the third class and Missouri municipal corporation having a principal office at 101 West Reed Street – City Hall, Moberly, Missouri 65270 (the “**City**”).

**RECITALS**

**A.** Sections 70.210 through 70.320 of the Revised Statutes of Missouri, as amended, authorize municipalities and other political subdivisions to contract and cooperate with other municipalities or political subdivisions for the planning, development, construction, acquisition, or operation of any public improvement or service, the subject and purposes of which are within the scope of the powers of such municipality or political subdivision.

**B.** Pursuant to a proper petition submitted to and approved by the Council of the City (the “**Petition**”), the District was established as a political subdivision of the State of Missouri authorized to exercise the powers provided under the Community Improvement District Act, sections 67.1401 through 67.1571 the Revised Statutes of Missouri, as amended (the “**CID Act**”).

**C.** Under the CID Act, the District is empowered, among other things, (i) to make and enter into contracts with public and private entities necessary or convenient to exercise its powers under the CID Act; (ii) to make expenditures and use its revenues as necessary to carry out its powers under the provisions and purposes of the CID Act; and; (iii) to produce and promote any tourism, recreational or cultural activity or special event in the district by, but not limited to, advertising, decoration of any public place in the District.

**D.** The City has obtained various licenses (collectively, the “**Banner Licenses**”) to allow the placement and installation on various private buildings and locations of promotional banners celebrating the history, culture, tourism, and economics of the City’s downtown area (collectively, the “**Banners**”) and wishes to obtain funding to support the installation of the aforesaid Banners and the Board of Directors of the District (the “**Board of Directors**”) is willing to contribute funds to the City to support the installation of the Banners, subject to the terms and conditions of and as further set forth in this Agreement.

**AGREEMENT**

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

1. **Confirmation of Findings and Determinations.** The Board of Directors hereby confirms its finding and determination that the installation of the Banners at the locations provided for in the Banner Licenses are in furtherance of the goals and objectives of the Revitalization Program set forth in the Petition and that the expenditures by the District provided for in this Agreement are within the scope of the District’s powers pursuant to the CID Act and are for a public purpose.

2. **Undertakings by the District; Indemnification by City.** Subject to receipt of written notice from the City that the City has entered into binding agreements for or incurred costs related to the installation of the Banners at locations specified in the Banner Licenses, the District shall pay to the City the amount of \$2,500 to be used by the City solely for the purchase of five (5) Banners at an estimated cost of \$500.00 each (collectively, the “**Banner Costs Amount**”). In the event such payments occur in any subsequent year, the payments for the Banner Costs Amount shall be subject to annual appropriation by the Board of Directors for the applicable year. To the full extent lawful, the City hereby agrees to indemnify, defend and hold harmless the District, its officials, officers, agents, attorneys, employees or representatives from and against any claim, action, proceeding, demand or award initiated at any time by or on behalf of any party other than a named Party to this Agreement and directed to the District or any of its officials, officers, agents, attorneys, employees or representatives and arising out of this Agreement, the expenditure of funds authorized hereunder, the Banner Licenses or any of them, the installation, maintenance or removal of the Banners or any of them, failure or deficiency of any payment to contractors or subcontractors of the City, personal injury or property damage related to the installation, maintenance or removal of any Banner, or any actions taken or omitted by an agent or employee of or contractor or subcontractor to the City involved in any way in connection with the installation, maintenance or removal of the Banners or any of them.

3. **Undertakings by the City; Reviews of Banner Design; Acknowledgement of the District a Pre-condition.** The City using the Banner Cost Amounts shall arrange for the design and purchase of five (5) of the Banners (the “**Downtown Banners**”) to be installed at the locations specified in the Banner Licenses; *provided that* in each case prior to the finalization of any Downtown Banner design, the City shall submit or cause to be submitted a color sketch and sample depicting and describing each of the Downtown Banners to be purchased for review and approval by the Board of Directors of the design content and quality, which approvals shall not be unreasonably withheld or delayed. Upon receiving such approval, the City shall arrange for the fabrication of the Downtown Banners and for the timely installation using the City’s own forces or private contractors of the Downtown Banners; *provided that* the foregoing review and approval requirements shall not apply to any Banner not purchased using the Banner Costs Amount.

4. **Mutual Cooperation.** Each party to this Agreement hereby further agrees and covenants: (i) to cooperate in good faith with one another in each of the undertakings authorized by this Agreement; (ii) to promptly make and deliver such timely decisions as may be required to permit the other party to perform its obligations under this Agreement; (iii) to take such actions and execute and deliver such further documents and instruments as may be reasonably necessary to facilitate the undertakings authorized by this Agreement and which do not impair the rights of the acting or signing party as they exist under this Agreement; and (iv) to otherwise aid and assist each other in carrying out the terms, provisions and intent of this Agreement.

5. **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 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.

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.

6. **Term of Agreement; Assignment.** This Agreement shall terminate upon the expiration of the last Banner License to be entered into by the City, including such renewal terms as may from time to time be agreed to by the parties to such Banner License; *provided that* the indemnification obligations of the City shall survive expiration or termination for any reason of this Agreement. This Agreement shall not be assignable by any party without prior written consent of the other party.

7. **No Personal Liability.** No present or future official, agent, employee, or representative of the City or of the District shall be personally liable to any other for any default, breach of duty or other claim arising from this Agreement or actions hereunder.

8. **No Waiver of Sovereign Immunity.** Nothing in this Agreement shall constitute or be deemed to be a waiver by the City or the District of that party’s sovereign immunity.

9. **No Third Party Beneficiaries.** This Agreement is not intended to create or result in any third party beneficiary and shall not create any rights enforceable by any third party.

10. **Entire Agreement; Amendment; 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.

11. **Severability.** In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

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 City, the District, and their respective successors and permitted assigns.

13. **Choice of Law; Venue.** This Agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. 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.

14. **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. 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 has 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.

15. **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 DISTRICT and the CITY have caused this Agreement to be executed in their respective names and attested to as of the date first above written.

**DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT**

By : \_\_\_\_\_  
Brian Crane, Chair

**ATTEST:**

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

**THE CITY OF MOBERLY**

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

**ATTEST:**

\_\_\_\_\_  
D. K. Galloway, CMC/MRCC, City Clerk