

A G E N D A
WORK SESSION
City of Moberly
December 18, 2023
6:00 PM

Requests, Ordinances, and Miscellaneous

1. An Ordinance Authorizing The City Manager To Execute A Cooperative Agreement For Tourism Promotion Services With The Moberly Chamber Of Commerce.
2. A Request From The Chamber Of Commerce For Matching Funds For A Marketing Grant.
3. Receipt Of Bids For A Mower For Oakland Cemetery.
4. Review Of Fennel Design Engineering Agreement.
5. An Ordinance Granting A Special Tax Bill For Demolition Costs At 1824 S. Morley.
6. Receipt Of Bids For Demolition of 515 S 5th Street.
7. Consideration Of An Appointment To The Fire Prevention Board Of Appeals.
8. Kiwanis Park Phase 1 Bids.
9. Heritage Hills Management Contract With Maxim.
10. Ace Pipe Cleaning – 42 In Sanitary Sewer Line Cleaning.
11. Ace Pipe Cleaning-Rollins CSO Lagoon.
12. DMC Concrete Expanding The Rollins CSO Material Drying Bed.

City of Moberly

City Council Agenda Summary

Agenda Number: WS #1.

Department: Administration

Date: December 18, 2023

Agenda Item: An Ordinance Authorizing The City Manager To Execute A Cooperative Agreement For Tourism Promotion Services With The Moberly Chamber Of Commerce.

Summary: Attached is the Chamber's proposal for the 2024 Tourism Contract. We have a cost for services at \$85,200. These funds will be used to promote events and attractions. Our marketing plan also allows for radio and print advertising in addition to the social media ads. The Marketing Plan is still very heavy on social media advertising so that we can easily track engagement and see ROI on our advertising investment.

Recommended

Action: Direct staff to bring to the January 16th Council meeting for final approval

Fund Name: Non-Resident Lodging Tax Fund/Contract Services

Account Number: 102.000.5406

Available Budget \$:

ATTACHMENTS:

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

Roll Call

Aye

Nay

Mayor

M___ S___ **Brubaker** ___ ___

Council Member

M___ S___ **Lucas** ___ ___

M___ S___ **Kimmons** ___ ___

M___ S___ **Jeffrey** ___ ___

M___ S___ **Kyser** ___ ___

Passed Failed

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT FOR TOURISM PROMOTION SERVICES WITH THE MOBERLY CHAMBER OF COMMERCE.

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

SECTION ONE: The City and the Moberly Chamber of Commerce entered into a Tourism Promotion Services Agreement in February of 2023 and desire to renew their agreement for the year 2024.

SECTION TWO: Attached hereto is a Tourism Promotion Services Agreement whereby the Chamber of Commerce will provide tourism services to the City in exchange for the payment of \$85,200.00 for the calendar year of 2024.

SECTION THREE: The City Manager of Moberly, Missouri is hereby authorized to execute the attached Agreement and take such other and further steps as may be needed to effectuate the terms of the Agreement.

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.

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri, this 16th day of January, 2024.

ATTEST:

Presiding Officer at Meeting

Shannon Hance, MRCC, City Clerk

CITY OF MOBERLY
TOURISM PROMOTION SERVICES AGREEMENT

The City of Moberly ("City") and the Moberly Chamber of Commerce ("Chamber"), referred to collectively as the "Parties," enter into the following Agreement for Tourism Promotion services:

I. Scope: The Chamber shall provide tourism promotion services for the City. Tourism promotion shall mean activities and expenditures designed to increase tourism to the City. Tourism promotion activities may include, but are not limited to, advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists to the City. The Chamber shall annually provide to the City a marketing and work plan, setting forth its goals and objectives for successful tourism promotion. The Chamber shall contract for services of a professional destination consulting services to conduct a Tourism Strategic Plan for the City of Moberly as attached to this agreement.

II. Term: This agreement shall commence on the date of execution of this Agreement and shall continue in full force and effect until December 31, 2024, unless terminated earlier pursuant to Section IX of this Agreement.

III. Compensation: In consideration of the services provided pursuant to this Agreement the City shall pay the Chamber an amount of \$85,200 annually. These funds may be paid monthly in an amount equal to \$7,100.00 per month.

The Chamber shall submit periodic billing statements detailing activities and services performed by the Chamber specifically promoting tourism in the City of Moberly including measurable results. Upon receipt of a conforming billing statement, the City shall promptly process payment within 30 days. If a billing statement does not conform to this Agreement, the City may withhold payment until the statement is brought into compliance. Such withholding does not relieve the Chamber of its obligations under this Agreement.

The Chamber shall not perform work beyond the Scope of Work, nor shall be compensated for such work, unless the Scope of Work or amount of compensation is modified pursuant to this Agreement.

IV. Relationship of Parties: The Chamber represents that it is skilled in the matters addressed in the Scope of Work and is performing independent functions and responsibilities within its field of expertise. The Chamber and its personnel are independent contractors and not employees of the City. The Chamber and its personnel have no authority to bind the City or to control the City's employees and other contractors. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub consultants of the Chamber. The Chamber will be solely

and entirely responsible for its acts and for the acts of the Chamber's agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work.

As an independent contractor, the Chamber is responsible for its own management. The City's administration and enforcement of this Agreement shall not be deemed an exercise of managerial control over the Chamber or its personnel. As an independent contractor, the Chamber is responsible for payment of all taxes and licensing fees necessary to perform its obligations under this Agreement. These taxes and fees include but are not limited to State industrial insurance, Business & Occupation, State professional licensing, and City business licensing. If any taxes or fees due the City have been declared delinquent, the City may withhold the delinquent amount, plus any additional charges arising from the delinquency, from any payments due to the Chamber.

V. Indemnification: The Chamber shall defend, indemnify, and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this Agreement, except for that portion of the injuries and damages caused by the City's sole negligence.

The City's review or acceptance of any of the work when completed shall not be grounds to avoid any of these covenants of indemnification.

The provisions of this section shall survive the expiration or termination of this Agreement.

VI. Insurance: Prior to and during the performance of the work covered by this Agreement, the Chamber shall make available, upon request from the Director of Finance for the City, the evidence that it has obtained and maintains in full force and effect during the term of this Agreement comprehensive general liability insurance coverage. In the event the Chamber organizes, promotes, or sponsors an event involving the sale or consumption of food or alcoholic beverages, the Chamber shall also provide evidence, upon request from the City, that it has obtained products liability and liquor liability insurance of at least \$1,000,000.00 per occurrence, for each event. The City shall be named as additional insured, and a copy of the appropriate additional insured endorsement shall be provided to the City's Director of Finance. The Director of Finance shall be provided thirty (30) days written notice of any cancellation of said insurance.

VII. General Conditions:

A. Reports and Information: The Chamber shall attend all quarterly Moberly Tourism Commission meetings and provide a report on activities for the previous quarter. The Chamber shall furnish monthly reports and documents on matters covered by this Agreement to the City Council. The reports and documents shall be furnished in the time and form requested. Such reports and

documents shall include: list of all tourism activities conducted on behalf of the City, special events sponsored by the Chamber, the estimated number of tourists and/or persons traveling to the destination, and the estimated number of lodging stays generated per tourism-related event.

B. Work Performed at the Chamber's Risk: The Chamber shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Chambers own risk, and the Chamber shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

C. Place of Work: The Chamber shall perform the work authorized under this Agreement at its offices in Moberly, Missouri or at the offsite office of an independent contractor. Any necessary meetings with the City staff shall take place at the City's offices, or at locations mutually agreed upon by the parties.

D. Entire Agreement: This Agreement and its Exhibits constitutes the entire agreement between the Parties, and the Parties acknowledge that there are no other agreements, written or oral, that have not been set forth in the text of this Agreement.

E. Severability: Should any part of this Agreement be found void, the balance of the Agreement shall remain in full force and effect.

F. Modification: This Agreement may only be modified by written instrument signed by both Parties.

G. Written Notices: All communications regarding this Agreement shall be sent to the parties at the addresses listed below by registered or 1st class mail, or by personal service, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

ADDRESS:
City of Moberly
Attn: City Manager
101 West Reed Street
Moberly, MO 65270

ADDRESS:
Moberly Chamber of Commerce
Attn: Executive Director
211 West Reed Street
Moberly, MO 65270

H. Waiver: Failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision. Waiver of any right or power arising out of this Agreement shall not be deemed waiver of any other right or power.

I. Non-Waiver of Breach: The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.

J. Compliance with Laws: The Chamber shall comply with all applicable Federal, State, and local laws in performing its obligations under this Agreement.

K. Choice of Law and Venue: This Agreement shall be interpreted according to the laws of the State of Missouri. Any judicial action to resolve disputes arising out of this Agreement shall be brought in Randolph County District Court.

L. Attorneys' Fees: In the event of litigation to enforce any of the terms or provisions herein, each party shall pay all its own costs and attorney's fees.

M. Assignment: Any assignment of this agreement by the Chamber without the written consent of the City shall be void.

VIII. Nondiscrimination: The Chamber shall not discriminate in employment or services to the public on the basis of race, color, national origin, sex, religion, age, marital status, sexual orientation or disability, except for employment actions based on bona fide occupational qualification.

IX. Termination: This Agreement may be terminated by either party for convenience upon sixty (60) days written notice to the other party, or for cause if either party fails substantially to perform through no fault of the other and does not commence correction within five (5) days of written notice and diligently completes the correction thereafter. Upon such termination, City will be entitled to reports showing the status of all services the Chamber is providing to the City as of the effective date of termination.

X. Termination of Other Contracts. This Agreement shall supersede all prior Agreements between the parties relating to the use of Hotel/Motel Tax.

CITY OF MOBERLY

By: _____

Name: Randall Thompson

TITLE: City Manager

Date: _____

Attest: _____

Shannon Hance, City Clerk

MOBERLY CHAMBER OF COMMERCE

By: _____

Name: Tim Siedel

TITLE: President

Date: _____

City of Moberly

City Council Agenda Summary

Agenda Number: WS #2.

Department: Administration

Date: December 18, 2023

Agenda Item: A Request From The Chamber Of Commerce For Matching Funds For A Marketing Grant.

Summary: City staff received a request from the Moberly Chamber of Commerce to provide matching funds needed by the Chamber for a Missouri Division of Tourism Marketing Matching Grant. The match funds are \$15,000.00 for a total grant amount of \$30,000.00.

Recommended Action: To consider the request and either grant the request or reject the request and if granted to direct a Resolution supporting the grant application and funding at the January 16, 2024 council meeting.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:

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

Roll Call

Aye **Nay**

Mayor

M___ S___ **Brubaker** ___ ___

Council Member

M___ S___ **Lucas** ___ ___

M___ S___ **Kimmons** ___ ___

M___ S___ **Jeffrey** ___ ___

M___ S___ **Kyser** ___ ___

Passed Failed

Randall Thompson

From: Megan Schmitt <director@moberlychamber.com>
Sent: Tuesday, December 5, 2023 10:54 AM
To: Randall Thompson; 'Sarah Graff'
Subject: FW: FY25 MMG Funding Amount
Attachments: Moberly FY25 CTL Letter.pdf; Moberly FY25 DMO Re-Cert Letter.doc

Hi Randall,

I emailed you this morning a reminder about the Tourism Contract. While unburying my inbox I found the MDT grant information for FY25. We do not currently have the match needed in our Tourism contract to take advantage of this opportunity. Our contract with the City was dialed back in 2020 due to COVID. We will be leaving money on the table unless the City is able to increase the marketing portion of our Tourism Contract so we can have the match dollars needed.

Thoughts?



Megan Schmitt
 Executive Director
 Moberly Area Chamber Commerce
 660-263-6070 | director@moberlychamber.com
Moberlychamber.com | moberly.com



[Don't miss Moberly's Christmas Festival!](#)

From: Michelle Westhues <tourism@moberlychamber.com>
Sent: Wednesday, November 29, 2023 1:23 PM
To: Megan Schmitt <director@moberlychamber.com>
Cc: Sarah Barfield Graff <sjb1129@hotmail.com>
Subject: FW: FY25 MMG Funding Amount

FYI I am attaching the MDT 2025 recertification award amount that we can apply for in April.

Sarah, this is for July 1, 2024 – June 30, 2025. I would love to apply for this full amount, but we do not have the full match of \$15,000 just for this grant alone.



VisitMo.com

November 29, 2023

Michelle Westhues
 Moberly Area Chamber of Commerce
 211 W Reed St
 Moberly, MO 65270

Dear Michelle,

The Missouri Division of Tourism (MDT) is pleased to present the Cooperative Marketing Program again for FY25. Your Destination Marketing Organization (DMO) certification is currently valid through June 30, 2029. This certification allows the Moberly Area Chamber of Commerce to participate in the Marketing Matching Grant. Our records indicate that your organization is marketing Randolph County and has a County Tourism Level (CTL) of 1.

- The **Marketing Matching Grant (MMG)** is designed to assist DMOs with strategic media placement. In the past, approved DMO media projects targeted at leisure travel, sports marketing and meeting/convention marketing could be reimbursed up to 50%. This program is available to all *certified* DMOs, regardless of CTL, and continues to be our most popular program.

Available funding for MMG is based on the Division's budget and is subject to restrictions any time throughout the year. The FY25 MDT budget will be approved by the Legislature in May 2024. Until that time, MDT is unable to determine a specific grant amount for each CTL. However, MDT estimates your CTL will translate to a MMG maximum award amount of **\$15,000**. Keep in mind that because the MMG applications may be due before the final announcements have been made, everyone should be prepared to be flexible and make some changes if needed. We appreciate your understanding and patience with this process.

Match Example

MDT Match Amount	\$15,000
DMO Match Amount	\$15,000
Total Project Budget	\$30,000

CITY PAYMENTS TO MOBERLY CHAMBER OF COMMERCE IN 2023

Annual Service Agreement	City pays \$21,000 and CID pays \$4,000
Tourism Promotion Agreement	\$85,200.00
Renovation to Chamber of Commerce	City pays \$6,000 and CID pays \$6,000 for 10 Years
Christmas Festival	\$6,550.00
Skate Rink Agreement	\$34,500.00
Google Ads and Facebook	\$2,500.00
Koozies purchased	\$1,834.32
Rack Cards	\$607.68
Placer AI contract	\$6,000.00
Homecoming Cruise	\$300.00
TOTAL	\$164.492.32

City of Moberly City Council Agenda Summary

Agenda Number: WS #3.
Department: Public Works
Date: December 18, 2023

Agenda Item: Receipt Of Bids For A Mower For Oakland Cemetery.

Summary: We received three (3) quotes:
Crown Power & Equipment Salisbury: \$11,800
Henderson Implement Company: \$12,150
Ennis Implement Co Mexico: \$12,530.

Staff recommends Crown as they are the low bid.

Recommended Action: Direct staff to bring forward to January 16, 2024 regular City Council meeting for final approval.

Fund Name: Street CIP

Account Number: 601.000.5502

Available Budget \$: 252,675.97

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

Grasshopper QuikQuote #19029N00051



WS #3.

Quoted by

Crown Power & Equipment Salisbury

103 E US Highway 24

Salisbury, MO 65281

P: (660) 388-6425

Quoted for

City of Moberly/Tim

E: timg@cityofmoberly.com

P: 660-651-6878

Trevor Wagy

Sales

E: twagy@crown-power.com

P: 660-388-6425



*Models may be shown with optional equipment
that may or may not appear on your specific quote*

Model 225 with 61" 4X Rear

Discharge Deck

Quoted: Dec 6, 2023

Power Unit & Deck

Model 225 (534123)

747cc Kohler Command Pro Engine; "no-gears"

hydraulic pump-and-wheel-motor transmission; heavy-duty extra-deep 61" cutting deck; luxury seat and shock-absorbing footrest

List

Bid

\$14,395.00 \$11,516.00

List Total: \$14,750.00

Bid Price: \$11,800.00

Grand Total: \$11,800.00

61" 4X Rear Discharge Deck – In lieu of standard 61" deck for 225-61. (534340)

\$355.00

\$284.00

Grasshopper QuikQuote

#27270N00149



Quoted by

Henderson Implement Company

Columbia

6111 Paris Rd

Columbia, MO 65202

P: (573) 442-1252

Roger Davidson

E: rdavidson@hendersonimp.com

P: 573-442-1252 C: 573-818-4340

Quoted for

CITY OF MOBERLY



*Models may be shown with optional equipment
that may or may not appear on your specific quote*

Model 225 with 61" 4X Rear

Discharge Deck

Quoted: Nov 16, 2023

Power Unit & Deck

List Bid

Model 225 (534123)

747cc Kohler Command Pro Engine; "no-gears"
hydraulic pump-and-wheel-motor transmission; heavy-
duty extra-deep 61" cutting deck; luxury seat and shock-
absorbing footrest

\$14,395.00 \$11,516.00

61" 4X Rear Discharge Deck – In lieu of standard 61"
deck for 225-61. (534340) \$355.00 \$284.00

List Total: \$14,750.00

Bid Price: \$11,800.00

Additional Pricing Adjustments

+ Freight \$200.00

+ Set-Up \$150.00

Grand Total: \$12,150.00

Stipulation(s):

✓ Quote Expires in 30 days



Grasshopper QuikQuote #22001N00088

Quoted by

Ennis Implement Co Mexico

1250 Littleby Rd

Mexico, MO 65265

P: (573) 581-3223

Kurt Childs

E: kurt@ennisimpl.com

P: 5735813223

Quoted for

City of Moberly



*Models may be shown with optional equipment
that may or may not appear on your specific quote*

**Model 225 with 61" 4X Rear
Discharge Deck**

Quoted: Dec 5, 2023

Power Unit & Deck

List

Bid

Model 225 (534123)

\$14,395.00 \$12,228.43

747cc Kohler Command Pro Engine; "no-gears"
hydraulic pump-and-wheel-motor transmission; heavy-
duty extra-deep 61" cutting deck; luxury seat and shock-
absorbing footrest

61" 4X Rear Discharge Deck – In lieu of standard 61" \$355.00 \$301.57
deck for 225-61. (534340)

List Total: \$14,750.00

Bid Price: \$12,530.00

Grand Total: \$12,530.00

City of Moberly

City Council Agenda Summary

Agenda Number: WS #4.

Department: Comm. Dev.

Date: December 18, 2023

Agenda Item: Review Of Fennel Design Engineering Agreement.

Summary: Attached is the design engineering agreement from McClure Engineering and affiliated firms. As you know we have just under \$1M committed from Com Rev. ARPA funds and City Match to renovate the Two-Story section of the Fennel Building into a community center. The engineering estimates show the proposed renovation to significantly exceed our budget, however these are only estimates and due to the type of construction, could vary by a fair margin. We need to bid out the work that we intended to complete and see where the bids come in. Based on that we can meet with the funding organization and see what our options are to see what we can cover with the allocated funding and what is acceptable for a final product.

The engineering fee is based on the projected estimated cost which ranges from just over \$1M to \$1.43M (See chart below, total est. const cost do not including design Eng. Design services).

At this point we need to get the design finished, put it out for bid and see how our real numbers come in and then work towards a solution of what will work.

Staff recommends approving the design engineering contract, which is eligible for reimbursement under the grant agreement.

Recommended Action: Direct staff to bring forward to the January 16, 2024 regular City Council meeting for final approval.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:

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

Roll Call

Aye Nay

Mayor

M___ S___ **Brubaker** ___ ___

Council Member

M___ S___ **Lucas** ___ ___

M___ S___ **Kimmons** ___ ___

M___ S___ **Jeffrey** ___ ___

M___ S___ **Kyser** ___ ___

Passed Failed

STANDARD AGREEMENT FOR CONSULTING SERVICES



WS #4.

McCLURE ENGINEERING COMPANY

Project Name: Moberly Fennel Building Design

Project Number: 2023000354

Project Manager: Aaron McVicker

This Agreement, is made on the 16th day of November, 2023, by and between McClure Engineering Company, of Macon, Missouri, (herein referred to as "CONSULTANT") and City of Moberly, MO (hereinafter referred to as "OWNER"). The CONSULTANT will provide services per the terms and conditions outlined in this Agreement and in accordance with the scope and schedule presented in Exhibit 'C'. The services will be compensated for in accordance with the fees or hourly rates as presented in Exhibit 'B', for the Project described as:

Moberly Fennel Building Design

1. The **OWNER** shall provide information per the **OWNER's** responsibilities presented in Exhibit 'E' in a timely manner so as not to delay the services provided by the **CONSULTANT**.
2. Payment to the **CONSULTANT** shall be made within 30 days of invoice for work completed to date. The invoice will include the percentage of work complete, an estimate to complete and, a brief project status summary.
3. Past due amounts owed shall accrue interest at 1.5% per month from the 30th day. If the **OWNER** fails to make monthly payments due the **CONSULTANT**, the **CONSULTANT** may, after giving (7) days written notice to the **OWNER**, suspend services under this agreement.
4. THIS AGREEMENT IS SUBJECT TO ALL THE TERMS AND CONDITIONS ATTACHED TO THIS AGREEMENT.
5. This Agreement represents the entire and integrated agreement between the **OWNER** and the **CONSULTANT** and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the **OWNER** and the **CONSULTANT**.
6. Neither party to this AGREEMENT will be liable to the other party for unavoidable delays in performing the Scope of Services, or for the direct or indirect cost resulting from such delays, that may result from acts of God, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party. Each party will take reasonable steps to mitigate the impact of any force majeure. The **CONSULTANT** will adjust the schedule and compensation under this agreement to the extent that **CONSULTANT's** schedule and compensation are equitably adjusted by the **OWNER**.
7. The amount of the **CONSULTANT's** compensation is \$136,000.00. The contract type is Lump Sum.

Unavoidable Delays means delays in performance resulting from acts or occurrences outside the reasonable control of the party claiming the delay in performance, including but not limited to storms, floods, excessive rain, hail, wind, hurricanes, tornadoes, fires, explosions or other casualty losses, unusual weather conditions, global medical pandemics, including but not limited to that certain global medical pandemic which has come to be known as "Coronavirus" or "Covid-19", national medical pandemics in the United States of America, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts, restrictions, or prohibitions of any federal, State or local governmental unit.

Attached Exhibits		Included	Not Included
Exhibit 'A'	Standard Terms and Conditions	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'B'	Hourly Rate Schedule	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'C'	Detailed Scope of Work	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'D'	Subconsultant(s) Contract	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'E'	Owner's Responsibilities to Consultant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Exhibit 'F'	Duties and Responsibilities of RPR	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'G'	Drawing Depicting the Project	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'H'	Construction Item List Cost Estimate	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Exhibit 'I'	Regulatory Requirements	<input type="checkbox"/>	<input checked="" type="checkbox"/>

OWNER: City of Moberly, MO

CONSULTANT: McClure Engineering Company

By: _____

Signed:  _____

Title: _____

Title: _____ Authorized Signatory

M^CCLURE™

McCLURE ENGINEERING COMPANY
CONSULTANT STANDARD TERMS AND CONDITIONS
 (Effective 1/1/2023 through 12/31/2023)

- 1.0 ACCESS TO SITE:** The **Consultant** shall at all times have access to the Project site.
- 2.0 INFORMATION PROVIDED BY OTHERS:** The **Consultant** 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 **Consultant** 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 **Consultant** harmless from damages that may arise as a result of inaccuracies of information or data supplied by **Owner** or others to **Consultant**.
- 3.0 OWNERSHIP AND REUSE OF DOCUMENTS:** All documents are instruments of service, and **Consultant** shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the **Consultant**) whether or not the Project is completed.
- 3.1 **Owner** may make and retain copies of documents for information and reference in connection with the use of the documents on the Project. **Consultant** 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 **Consultant** 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 **Consultant**, 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 **Consultant**; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by **Consultant**, as appropriate for the specific purpose intended, will be at **Owner's** sole risk and without liability or legal exposure to **Consultant** or to its officers, directors, members, partners, agents, employees, and **Consultants**; (3) **Owner** shall indemnify and hold harmless **Consultant** 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 **Consultant**; and (4) such limited license to **Owner** shall not create any rights in third parties.
- 3.2 If **Consultant** 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 **Consultant** at an amount agreed upon by **Owner** and **Consultant**.
- 4.0 UNDERGROUND UTILITIES:** Due to the nature and uncertainty of the accuracy of data available for underground utilities, including drainage tile, and/or any information that may be supplied by the **Owner**, third parties, and/or research performed by the **Consultant** or its subcontractors, the **Owner** agrees to indemnify and hold harmless the **Consultant** for all claims, losses, costs and damages arising out of the location of underground utilities provided by the **Consultant** under this Agreement.
- 4.1 The **Owner** may choose to contract separately to have extensive investigations and research conducted if the **Owner** feels it necessary to have more accurate location of underground utilities confirmed.
- 5.0 SUBSURFACE CONDITIONS:** The **Consultant** may advise the **Owner** to conduct soil and/or subsurface testing and analysis to provide information to the **Owner**, **Consultant**, and contractor(s) as to the subsurface conditions that may generally be encountered during subsurface construction.
- 5.1 The **Consultant** 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.
- 5.2 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 **Consultant** shall be held harmless from issues arising out of these unseen subsurface conditions.
- 6.0 HAZARDOUS MATERIALS – INDEMNIFICATION:** The **Consultant** 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. **Consultant** 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.
- 7.0 OPINIONS OF PROBABLE COST:** **Consultant's** opinions (if any) of probable construction costs are to be made on the basis of **Consultant's** experience, qualifications, and general familiarity with the construction industry. However, because **Consultant** 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, **Consultant** cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable construction cost prepared by **Consultant**. If **Owner** requires greater assurance as to probable construction cost, then **Owner** agrees to obtain an independent, third-party cost estimate.
- 8.0 PROJECT FUNDING AND FINANCING:** It shall be the responsibility of the **Owner** to plan, organize, and secure funding to pay all costs associated with the project. The funding may include local financing and/or funding obtained through federal or state funding programs such as low interest loans, grants, etc. If the **Consultant** is retained to help apply and/or secure funding from internal or external funding agencies, the **Consultant** shall not be responsible for the acquisition of funding and makes no guarantee funding applications prepared by the **Consultant** will successfully secure funds.
- 8.1 If the **Owner** secures outside funding from any such programs, while the **Consultant** may be retained to help monitor and submit pay requests for loan or grant draws from the respective agencies, the **Consultant** shall not be responsible for the **Owner's** obligation to comply with any criteria required to use the funds, including responsibility for any funding match required by the **Owner**.
- 9.0 ADDITIONAL SERVICES:** It is not unusual for the **Owner** to request the **Consultant** to provide additional services or that additional work may be required to deal with a contractor during construction that was not foreseen at the time the original scope of work was agreed to when the **Consultant** contract was signed. The **Owner** recognizes the **Consultant** shall be entitled to additional compensation to coordinate such changes and schedules shall be adjusted accordingly. The **Consultant** may prepare drawings, specifications and other documents required to address the changes in the scope of work as necessary to satisfactorily complete the project.
- 10.0 BETTERMENT:** If the **Consultant** failed to include a component(s), or if during construction it is discovered a component(s) is required that was not in the **Consultant's** original plans or specifications, and that the component(s) is necessary to complete a satisfactory project, the **Consultant** shall not be responsible for paying the cost required to add such component(s) to the extent that such component(s) would have been required and included in the original construction documents.
- 10.1 In no event shall the **Consultant** be responsible for any cost or expense that provides betterment or that upgrades or enhances the value of the **Owner's** project if the component should have originally been included in the construction drawings and/or specifications.


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11.0 SHOP DRAWING REVIEW: If, as part of this Agreement **Consultant** reviews contractor submittals, such as shop drawings, product data, samples and other data, as required by **Consultant**, 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. **Consultant** shall not be responsible for any deviations from the contract documents not brought to the attention of **Consultant** in writing by the contractor. **Consultant** shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

12.0 CONSTRUCTION OBSERVATION: If, as part of this Agreement, **Consultant** is providing construction observation services, **Consultant** shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractor's or subconsultant's work and to determine if the work is preceding in general accordance with the Contract Documents. The **Consultant** is not a contractor and shall not at any time supervise, direct, control, or have authority over any of the contractor's and/or subconsultant's work.

- 12.1 **Consultant** shall not 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.
- 12.2 **Consultant** shall not be responsible for the acts or omissions of any contractor
- 12.3 **Consultant** 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.
- 12.4 **Consultant** 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 **Consultant** or its **Consultants**.
- 12.5 Unless otherwise specified in this Agreement, the **Owner** has not retained the **Consultant** to make detailed inspections or to provide exhaustive or continuous project review and observation services.

13.0 DESIGN WITHOUT CONSTRUCTION PHASE SERVICES: If **Consultant** is not retained for construction observation and/or on-site resident observation services, **Consultant** 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, surveying and professional services. **Owner** waives all claims against the **Consultant** that may be connected in any way to construction phase administrative, engineering, surveying or professional services.

14.0 MEDIA REPRESENTATIONS: The **Consultant** shall have the right to include photographic or artistic representations of the design of the Project among the **Consultant's** promotional and professional materials. The **Consultant** shall be given reasonable access to the completed Project to make such representations. However, the **Consultant's** materials shall not include the **Owner's** confidential or proprietary information. The **Owner** shall provide professional credit for the **Consultant** in the **Owner's** promotional materials for the Project. Notwithstanding anything to the contrary in the present agreement, the Parties' obligations outlined in this clause shall survive the termination of this Agreement for an indefinite term.

15.0 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 m

be terminated by the **Owner** upon not less than seven days' written notice to the **Consultant** in the event the Project is permanently abandoned.

15.1 Failure of the **Owner** to make payments to the **Consultant** 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 **Consultant** for services, the **Consultant** may, upon seven days' written notice to the **Owner**, suspend performance of services under this Agreement. Unless payment in full is received by the **Consultant** within seven days of the date of the notice, the suspension shall take effect without further notice.

15.2 In the event of a suspension of services, the **Consultant** 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 **Consultant**, the **Consultant** 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.

16.0 DISPUTE RESOLUTION: Claims, disputes or other matters 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**, **Consultant**, 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.

17.0 LIMITATION OF LIABILITY: The **Consultant'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.

18.0 STANDARD OF CARE: In providing services under this Agreement, the **Consultant** shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

19.0 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.

20.0 LIEN RIGHTS: **Consultant** retains all rights to mechanic's or design professional lien rights through the completion of the obligations of this agreement at the sole judgment of the **Consultant**.

21.0 WAIVERS: The **Owner** and the **Consultant** 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 **Consultant** each shall require similar waivers from their contractors, **Consultants** and agents.

22.0 ASSIGNMENT: The **Owner** and **Consultant**, 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 **Consultant** shall assign this Agreement without the written consent of the other.

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

24.0 COMPLETE AGREEMENT: This Agreement represents the entire and integrated agreement between the **Owner** and **Consultant** 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 **Consultant**. 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 **Consultant**.



McCLURE ENGINEERING COMPANY
HOURLY RATE SCHEDULE
 (Effective 1/1/2023 through 12/31/2023)

PERSONNEL	HOURLY RATE
Principal	\$270 - \$295
Project Manager	\$185 - \$230
Senior Professional.....	\$185 - \$285
Professional.....	\$155 - \$185
Junior Professional.....	\$125 - \$155
Senior Technician	\$155 - \$175
Technician.....	\$115 - \$135
Landscape Architect	\$125 - \$160
On-Site Representative	\$115 - \$155
Client/Project Liaison	\$135 - \$185
Administrative	\$65 - \$85
Public Relations	\$115 - \$150
3 Member Survey Crew	\$280
2 Member Survey Crew	\$210
1 Member Survey Crew	\$135

EQUIPMENT	
3D Scanner per Scan	\$30.00
UAV per Flight	\$125.00
Sonar Boat	\$125.00

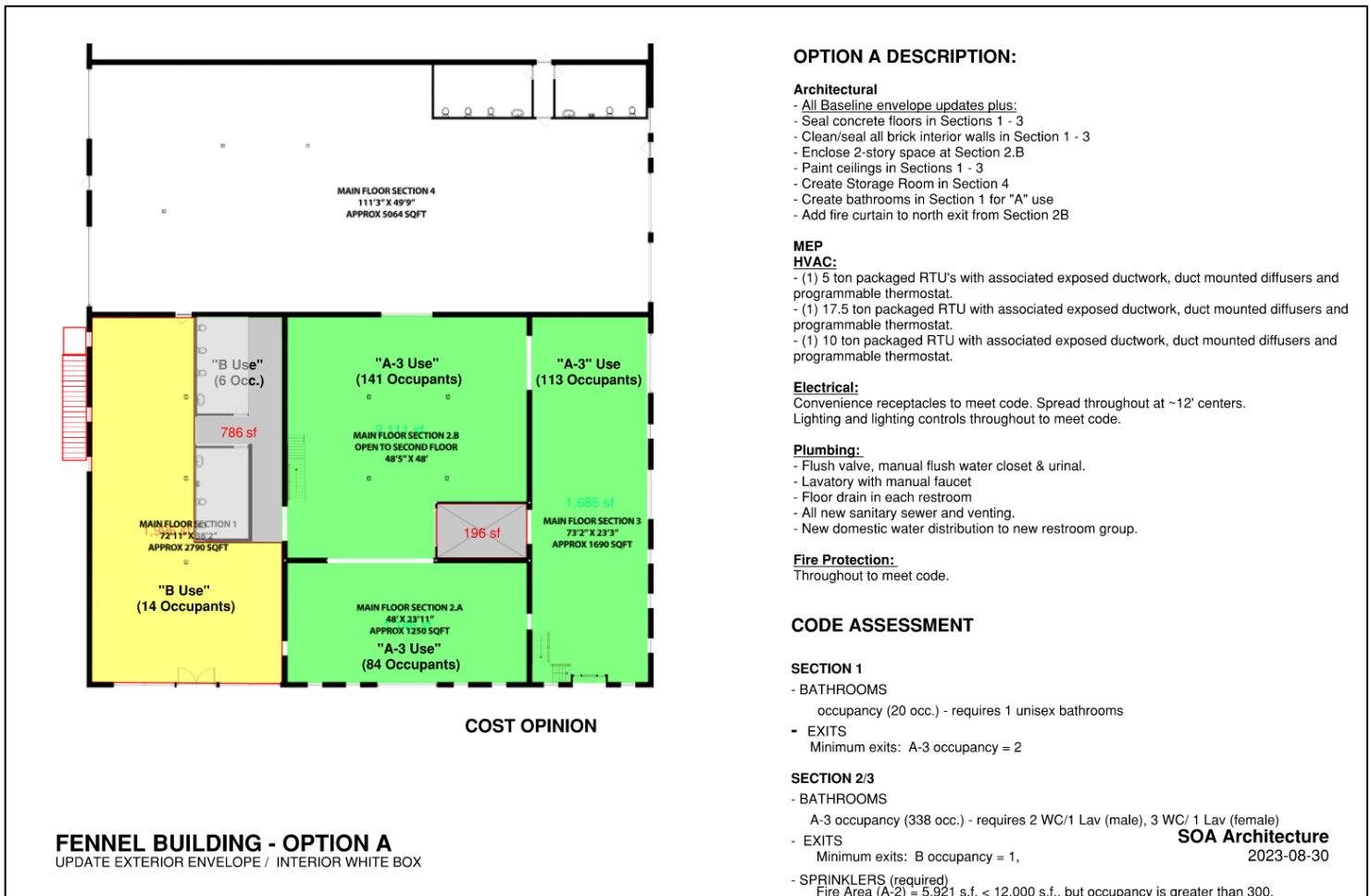
MISCELLANEOUS EXPENSES	
Survey Vehicle Mileage.....	\$0.75/Mile + \$0.15 fuel surcharge
Automobile Mileage (at current IRS rate).....	Current IRS Rate
Printing.....	Per Contract
Survey Supplies (Hubs, Lath, Paint, Nails, etc.)	Per Contract
Out-of-Pocket Expenses (Meals, Hotels, etc.).....	Per Contract

*Rates are subject to change based on billing rates for future years

DETAILED SCOPE OF WORK

Moberly Fennel Building Design

- A) The PROJECT includes design of renovations to the Fennel Building located in Downtown Moberly, MO.
- B) The PROJECT includes design as discussed in Option A shown below which includes complete renovation of sections 1,2, and 3 which includes approximately 8,060 sf of the main level.
- C) To the extent possible, the PROJECT will be designed in a way that sections could be removed to fit the available budget.
- D) The PROJECT team includes McClure for project management and structural design, SOA for Architectural Services, and Timberlake Engineering for Mechanical, Electrical, and HVAC Design.
- E) The PROJECT is partially funded by an EDA Grant such that the design must meet their criteria and be code compliant.
- F) Project Area:



A) Phase 400 – Preliminary Design

1) Task 401 – Preliminary Design and Plans

(a) The CONSULTANT will perform preliminary design services with the primary focus on including all desired aspects of the building renovation for confirmation by the OWNER.

- (b) The CONSULTANT will review the preliminary plan with the OWNER to ensure all design aspects are incorporated and as expected.
 - (c) The CONSULTANT will provide preliminary structural analysis and design based on the preliminary loads provided by the subconsultants.
 - (d) Order of Magnitude Opinion of Probable Construction Costs
 - (i) The CONSULTANT will prepare one (1) Preliminary Plan Opinion of Probable Construction Cost with a 15% construction contingency for the project.
 - (e) Quality Control
 - (i) The CONSULTANT will provide quality control for technical accuracy and general constructability for the preliminary PROJECT submittal.
 - (ii) This task includes time for the CONSULTANT to coordinate comment resolution with OWNER based on one (1) round of OWNER review comments received following submittal of the Preliminary Plans.
- B) Phase 500 – Final Design
- 1) Task 501 – Final Design, Plans, and Project Manual
 - (a) Based upon approved preliminary design, field review, and project information meeting, the CONSULTANT shall proceed to final design, contract drawings, specifications, and opinion of probable construction cost for the award of a single Contract for the construction of the proposed improvements.
 - (b) Special Provisions:
 - (i) CONSULTANT shall prepare special provisions, as necessary, to provide new or modified specifications for project specific products or procedures to describe their construction and payment.
 - (c) Project Manual:
 - (i) CONSULTANT shall prepare project manual documents that will include City of Moberly front end documents modified to support the project.
 - (d) Order of Magnitude Opinion of Probable Construction Costs
 - (i) The CONSULTANT will prepare one (1) Final Plan Opinion of Probable Construction Cost for the PROJECT. This estimate will be based on final quantities with 0% construction contingency for the project. The estimate shall be based on engineering judgement and does not represent a guarantee of actual construction costs. The CONSULTANT has no control over the cost of labor, materials, equipment, market conditions, and the Contractor's method of determining prices.
 - (e) The CONSULTANT shall assemble the documents for final submittal to the OWNER. Deliverables will be submitted electronically as well as two (2) hard copies.
 - (f)
- C) Phase 850 - Project Management and Coordination
- 1) Task 851 – Project Management and Coordination (Estimated 3 months).
 - (a) Project Management:
 - (i) The project manager of the CONSULTANT will be responsible for coordination with the OWNER.
 - (ii) The CONSULTANT will provide up to three (3) monthly progress reporting and project invoices to the OWNER.
 - (iii) The CONSULTANT will conduct internal design review meetings.
 - (iv) The CONSULTANT will develop and maintain PROJECT schedule.
 - (v) The CONSULTANT will maintain documentation of pertinent correspondence made by email, memos, letters, telephone, etc.
 - (b) Project Coordination:
 - (i) Kick-off Meeting: The CONSULTANT will hold a kickoff meeting with the OWNER to discuss the project data collection and timeframe, areas of concern or of special consideration, background information, and timeline.
 - (ii) Design Progress Meetings: The CONSULTANT will hold a meeting with the OWNER upon submittal of the Preliminary Design to review OWNER comments and address questions.
- D) Phase 950 – Subconsultants and Fees
- 1) Task 960 – MEP (Timberlake Engineering)

- (a) The CONSULTANT will retain the services of a subconsultant to provide Mechanical, Electrical, and Plumbing design services.
- (b) The subconsultant will provide:
 - (i) Heating, ventilating and air conditioning systems design drawings and specifications.
 - (ii) Power distribution systems design drawings and specifications.
 - (iii) Lighting design drawings and specifications.
 - (iv) Plumbing systems design drawings and specifications.
 - (v) Fire Alarm.
 - (vi) Opinion of Probable Cost (SD, DD, CD).
 - (vii) Attendance at project design meetings virtual and/or physical (5 meetings within 60 mile radius of our office).
 - (viii) Code analysis as it relates to M/E/P portion of the project.
 - (ix) Coordination of M/E/P design with architect, structural and civil design consultants.
 - (x) One set of construction document review drawings at 35, 65%, 90% completion.
 - (xi) One set of reproducible 100% construction drawings and specifications.
 - (xii) Response to code review comments.
- 2) Task 961 – Architectural Services (SOA)
 - (a) The CONSULTANT will retain the services of a subconsultant to provide Architectural Services.
 - (b) The subconsultant will provide:
 - (i) Existing Documentation
 - 1. Travel to Moberly to measure existing building.
 - 2. Create Revit Model for use by Design Team.
 - (ii) Construction Documentation (CD) – Based on “Option A” as detailed in the preliminary code assessment and Opinion of Probable Cost dated 2023/09/15, and attached hereto. The Scope of Work is for the entire building. SOA’s services include:
 - 1. Code assessment recap.
 - 2. Demolition, New Work and Ceiling Plans, Building and Wall Sections, Details and Schedules, Specifications on drawing sheets.
 - 3. Communications and coordination with Design Team.
 - (iii) Construction Document services as described above includes SOA’s participation in one (1) meeting with Tom Sanders to review both sets of documents.
 - (iv) Bidding Review –
 - 1. Review bid clarifications and communicate with contractors, update documents and provide addenda.
 - 2. Meet with Design Team and Owner to tabulate and assess submitted bids from contractors.

III) FEES:

The fees for Consulting Services shall be described below:

D) Basic Services:

- 1) Phase 100 – Preliminary Planning and Reports
 - (a) Task 101 – Preliminary Planning and Reports (General)\$ 0.00
 - (b) Task 107 – Reports and Exhibits.....\$ 0.00
 - (c) Task 120 – Capital Improvement Plan.....\$ 0.00
 - (d) Task 160 – Annexation.....\$ 0.00
 - (e) Task 161 – Rezoning.....\$ 0.00
 - (f) Task 162 – Planned Development Zoning.....\$ 0.00
- 2) Phase 200 – Existing Conditions
 - (a) Task 201 – Existing Conditions (General)\$ 0.00
 - (b) Task 202 – Data Gathering / Inventory\$ 0.00
 - (c) Task 204 – Sewer Televising\$ 0.00
 - (d) Task 205 – Geographic Information System (GIS)\$ 0.00
 - (e) Task 210 – Environmental Assessment.....\$ 0.00

(f) Task 211 – Noise Analysis	\$	0.00
(g) Task 212 – Wetland Delineation	\$	0.00
(h) Task 213 – Biological Survey	\$	0.00
(i) Task 214 – Cultural Resource Evaluation (Archaeological Study)	\$	0.00
(j) Task 215 – Air Quality Analysis.....	\$	0.00
(k) Task 216 – Airspace Obstruction Survey.....	\$	0.00
3) Phase 300 – Funding		
(a) Task 301 – Funding (General)	\$	0.00
(b) Task 302 – Policy Development	\$	0.00
(c) Task 303 – Funding Administration	\$	0.00
4) Phase 400 – Preliminary Design		
(a) Task 401 – Preliminary Design and Plans.....	\$	3,500.00
(b) Task 412 – Traffic Study	\$	0.00
(c) Task 413 – Preliminary Geotechnical Design	\$	0.00
(d) Task 414 – Preliminary Stormwater Management Study	\$	0.00
(e) Task 415 – Preliminary Sanitary Sewer Study.....	\$	0.00
(f) Task 417 – Preliminary Site Lighting & Photometric Plan.....	\$	0.00
5) Phase 500 – Final Design		
(a) Task 501 – Final Design and Plans	\$	8,500.00
(b) Task 504 – Application for Permits/Approvals	\$	0.00
(c) Task 511 – Final Landscape Plan	\$	0.00
(d) Task 512 – Traffic Signal Design	\$	0.00
(e) Task 513 – Final Geotechnical Design	\$	0.00
(f) Task 514 – Final Storm Study	\$	0.00
(g) Task 515 – Final Sanitary Sewer Study.....	\$	0.00
(h) Task 517 – Final Site Lighting Design	\$	0.00
6) Phase 590 – Land Acquisition		
(a) Task 591 – Land Acquisition (General)	\$	0.00
(b) Task 592 – ROW Negotiations	\$	0.00
7) Phase 600 – Construction Administration		
(a) Task 601 – Construction Administration (General).....	\$	0.00
(b) Task 602 – Advertising, Bidding, and Contract Award	\$	0.00
(c) Task 604 – Record Drawings	\$	0.00
8) Phase 650 – Onsite Project Representative		
(a) Task 651 – RPR (General)	\$	0.00
(b) Task 654 – Project Audit	\$	0.00
9) Phase 700 – Survey Services		
(a) Task 701 – Survey Services (General)	\$	0.00
(b) Task 710 – Boundary Survey.....	\$	0.00
(c) Task 720 – Acquisition Plats and Legal Descriptions	\$	0.00
(d) Task 730 – Topographic Survey.....	\$	0.00
(e) Task 735 – Preliminary Design Survey	\$	0.00
(f) Task 740 – Subsurface Utility Investigation.....	\$	0.00
(g) Task 760 – Construction Staking.....	\$	0.00
(h) Task 770 – Restaking	\$	0.00
(i) Task 780 – As-built Survey.....	\$	0.00
(j) Task 790 – UAV Survey	\$	0.00
10) Phase 800 – Project Closeout		
11) Phase 850 – Project Management and Coordination		
(a) Task 851 – Project Management (General).....	\$	8,500.00
(b) Task 860 – General Meetings/Correspondence	\$	0.00
(c) Task 861 – Public Information Meetings	\$	0.00
(d) Task 862 – Client Meetings	\$	0.00
12) Phase 900 – Additional Services	\$	0.00
13) Phase 950 – Subconsultant and Reimbursable Fees		
(a) Task 951 – Miscellaneous	\$	376.00

(b) Task 960 – MEP (Timberlake Engineering)	\$ 59,224.00
(c) Task 961 – Architectural Services (SOA)	\$ 55,900.00
(d) Task 962 – Land Acquisition (Subconsultant's Name)	\$ 0.00
(e) Task 963 – Environmental Review (Subconsultant's Name).....	\$ 0.00
(f) Task 964 – Cultural Resources Review (Subconsultant's Name)	\$ 0.00
(g) Task 970 – Permit and Publication Fees.....	\$ 0.00

WS #4.

Lump Sum:\$ 136,000.00

IV) ADDITIONAL SERVICES NOT INCLUDED IN THIS AGREEMENT

The following services are excluded from the basic services but may be performed by the CONSULTANT upon written amendment to this agreement.

- Neighborhood meetings, individual meetings, and other meetings not specifically outlined in this agreement
- Grant administration
- Media correspondences and public outreach planning documents
- Land purchase costs, closing costs associated with land acquisition, and costs associated with condemnation process
- Appraisal fees and condemnation services
- Preparation of Acquisition Plats and Legal Descriptions not specifically mentioned herein.
- Land purchase costs, closing costs associated with land acquisition, and costs associated with condemnation process
- Testing of any suspect environmental material, including but not limited to asbestos, radon, lead based paint, air quality, or industrial waste
- Other permits not indicated within this scope
- Any permit and publication fees associated with permit applications except as noted
- Preparation of bidding or contract documents for alternate bid prices
- Construction material testing services
- Construction staking, RPR, and construction administration services
- Project management and coordination tasks beyond that scheduled project completion period
- Subsurface Utility Investigation Test Holes
- Drainage Report or Drainage Memorandum
- Environmental and/or Cultural Review and Assessment
- Special meetings and meetings not outlined in the Scope of Services
- Other services not specifically outlined in this Agreement
- Extensive Lighting Design Documentation. Photometric lighting level calculations for each room/space will not be provided. Photometric calculations for normal lighting conditions for a typical room or area type, i.e. a corridor of a certain width, may be furnished upon request. Coordination with the Architect is limited to two (2) reflected ceiling plan (RCP) revisions beyond the original RCP and two (2) coordination meetings. Lighting design will only include what is required by code for emergency egress illumination.
- Fire Alarm Construction Drawings (Only a performance specification and panel location will be provided).
- Fire Protection Construction Drawings (with all mains, branches and heads shown and sized on drawings).
- Full-time, on-site construction observation.
- Providing financial feasibility or other special studies.
- Providing extraordinary services to investigate existing conditions or facilities or to make measured drawings thereof.
- Providing formal life-cycle cost studies of mechanical and/or electrical systems.
- Providing revisions of drawings, specifications or other documents when such revisions are required by changes to previously approved design criteria.

- Providing consultation concerning replacement of any work damaged by fire or other causes during construction.
- Providing professional services made necessary by the default of the contractor or by major defects in the work of the contractor in the performance of the Construction Contract.
- Providing services or special consultants for other than the normal mechanical, electrical and plumbing engineering services for the Project.
- Preparing to serve or serving as an expert witness in connection with any public hearing, or legal proceeding where CEI is not a named party to such a hearing or proceeding.
- Preparing detailed cost estimates or opinions of probable construction cost.
- LEED energy points - due to the complexity of energy models and how different systems react in an energy model and the varying interpretations by LEED reviewers, we cannot assure any certain number of points will be achieved through energy savings.
- Kitchen Design
- Bar design
- Building Commissioning
- Value Engineering or redesign services. We can provide an additional services proposal if requested.
- Scope Increase: Changes in terms of deliverables may result in changes to the schedule and Cost of Services.

EXHIBIT D

McCLURE ENGINEERING COMPANY
SUBCONSULTANTS CONTRACTS
Moberly Fennel Building Design



November 7, 2023

Aaron McVicker
Project Manager
McClure Engineering
107 Butler Street
Macon, MO 63552

RE: Moberly Fennel Building Renovation

AGREEMENT FOR ENGINEERING SERVICES

1. SCOPE OF WORK

Custom Engineering, Inc. will provide mechanical, electrical and plumbing drawings and specifications for the renovation of the Fennel Building in Moberly, MO. Project scope to include renovation of approximately 8,060 sf of the main level in the Fennel Building as outlined in Option A build out of section 1,2,3 attached to the end of this proposal. Scope to include New HVAC, Electrical, Plumbing and Fire Alarm systems.

2. STANDARD SERVICES

- A. The following shall be provided by Custom Engineering under the terms of this Agreement:
1. Heating, ventilating and air conditioning systems design drawings and specifications.
 2. Power distribution systems design drawings and specifications.
 3. Lighting design drawings and specifications.
 4. Plumbing systems design drawings and specifications.
 5. Fire Alarm.
 6. Opinion of Probable Cost (SD, DD, CD).
 7. Attendance at project design meetings virtual and/or physical (5 meetings within 60 mile radius of our office).
 8. Code analysis as it relates to M/E/P portion of the project.
 9. Coordination of M/E/P design with architect, structural and civil design consultants.
 10. One set of construction document review drawings at 35, 65%, 90% completion.
 11. One set of reproducible 100% construction drawings and specifications.
 12. Response to code review comments.
- B. The Client shall provide the following if applicable under the terms of this Agreement:
1. Electronic copies of building floor plans, furniture and equipment plans, reflected ceiling plans, and site plan on disk in RVT., .DWG or .DXF format.
 2. Copy of site survey indicating utility line locations, sizes and capacities.
 3. Copies of architectural elevations, sections, details, etc. sufficient to show ceiling, wall and floor construction types, fire ratings, and clear spaces available.
 4. Cut sheets indicating electrical, plumbing and environmental requirements and rough-in locations for all equipment provided by others. This includes cut sheets and/or conduit routing plans for all audio-visual, security, telephone, data and kitchen equipment provided by others which have connections or conduit to be shown on plans drawn by CEI.

3. **CONSTRUCTION PHASE SERVICES**

- A. Construction Administration consisting of:
1. Response to questions during bidding by issuing addendums.
 2. Review of construction submittals, including shop drawings, test and balance reports, and O & M manuals.
 3. Response to contractor questions during course of construction via phone or email.

4. **EXCLUDED SERVICES**

- A. The following shall not be provided by CEI under the terms of this Agreement:
1. Storm drainage system design external to the building(s).
 2. Design of extension of water, sewer, storm, gas, electric and telephone utilities to the site.
 3. Construction coordination meetings or visits to the job site during construction.
 4. Detailed life-cycle costs and/or energy-use studies.
 5. Design of telephone, data, audio/visual, network and security systems. CEI will only provide conduit (pathway and locations) and boxes to support these systems.
 6. Special studies, reports or others items requested by lenders or governmental agencies are not provided.
 7. Overcurrent Protective Device Coordination Calculations and Study Reports.
 8. Arc Flash Calculations and Study Reports.
 9. See "Excluded Services" under Terms and Conditions for additional items not included.

5. **REIMBURSABLE EXPENSE**

- A. For reimbursable expenses, including out-of-town travel and living expenses, drawing reproductions, computer hardware and software utilization, long distance phone charges, film and photographic processing costs, postage and express mailing, courier service or handling charges, and other directly attributable to the project, the fixed multiple of **1.1** times the actual cost to us, will be charged (**included in fee**).

Plots 11 x 17	\$4/sheet
Plots 24 x 36	\$8/sheet
Copies	\$0.35/copy
Digital Color Prints	\$1.20/ 8.5 x 11
Computer CD	\$25
Mileage	\$0.65/mile

6. **COMPENSATION FOR PROFESSIONAL SERVICES**

- A. CEI, Inc. will provide professional services for this project in accordance with the Scope of Work, Basic Services and Terms and Conditions of Agreement listed herein for a lump sum fee of **\$59,224**. All payments shall be received by CEI no later than thirty (30) calendar days after invoice date.

Per-Trip site visit fee for change in project scope: **\$1,000**

- B. Payments for Basic and Additional Services shall not exceed the following percentages of the total Fee for Basic and Additional Services at the completion of each Phase of the Architect/Engineer's Work:

Schematic design documents 15%

Design development documents	35%
Construction documents	35 %
Bidding and negotiation assistance	5 %
Construction Phase	10 %
Submittal Review (shop drawings, catalogues, samples, etc.)	
Answer contractor questions via phone/email.	
Intermediate and final construction evaluation trips.	
TOTAL	100%

- C. **Additional Services:** Additional services shall be provided only upon authorization by the Client and shall be paid for by the Client as hereinafter provided. Fees will be billed on a time and expense basis for any Additional Services authorized in writing by the Client, and will be billed separately at the following hourly rates:

Principal	\$236.00
Project Manager	\$231.00
Sr Elect	\$205.00
Elect III	\$166.00
Elect II	\$155.00
Elect I	\$150.00
Sr. Mech	\$205.00
Mech III	\$166.00
Mech II	\$155.00
Mech I	\$150.00
Cadd/BIM	\$139.00
Proj Assist	\$105.00
Commissioning Technician (CxT)	\$160.00
Commissioning Agent (CxA)	\$215.00

7. **TERMS AND CONDITIONS**

This Agreement for professional services has been entered into by the Client, and CEI, Inc. The name CEI shall pertain to all employees, officers, directors, and all divisions of CEI, Inc.

- A. **Performance of Services:** CEI shall perform the basic services as outlined above, and any additional services as required or directed by the Client in consideration of the fee arrangements and payment terms described in "Compensation" above.
- B. **Excluded Services:** Other services available from CEI and applicable to the project have been made known and explained to the Client. Where CEI has deemed a service needed or advisable, CEI has made this opinion known to the Client and the Client has confirmed his or her opinion that such services are not requested from a source other than CEI. These excluded services include:
1. Civil Engineering.
 2. Extensive Lighting Design Documentation. Photometric lighting level calculations for each room/space will not be provided. Photometric calculations for normal lighting conditions for a typical room or area type, i.e. a corridor of a certain width, may be furnished upon request. Coordination with the Architect is limited to two (2) reflected ceiling plan (RCP) revisions beyond the original RCP and two (2) coordination meetings. Lighting design will only include what is required by code for emergency egress illumination.
 3. Fire Alarm Construction Drawings (Only a performance specification and panel location will be provided).

4. Structural Engineering.
 5. Fire Protection Construction Drawings (with all mains, branches and heads shown and sized on drawings).
 6. Full-time, on-site construction observation.
 7. Providing financial feasibility or other special studies.
 8. Providing extraordinary services to investigate existing conditions or facilities or to make measured drawings thereof.
 9. Providing formal life-cycle cost studies of mechanical and/or electrical systems.
 10. Providing revisions of drawings, specifications or other documents when such revisions are required by changes to previously approved design criteria.
 11. Providing consultation concerning replacement of any work damaged by fire or other causes during construction.
 12. Providing professional services made necessary by the default of the contractor or by major defects in the work of the contractor in the performance of the Construction Contract.
 13. Providing services or special consultants for other than the normal mechanical, electrical and plumbing engineering services for the Project.
 14. Preparing to serve or serving as an expert witness in connection with any public hearing, or legal proceeding where CEI is not a named party to such a hearing or proceeding.
 15. Preparing detailed cost estimates or opinions of probable construction cost.
 16. LEED energy points - due to the complexity of energy models and how different systems react in an energy model and the varying interpretations by LEED reviewers, we cannot assure any certain number of points will be achieved through energy savings.
 17. Kitchen Design
 18. Bar design
 19. Building Commissioning
 20. Value Engineering or redesign services. We can provide an additional services proposal if requested.
- C. **Betterment:** If, due to the Engineer's error, any required item or component of the project is omitted from the Construction Documents produced by CEI, CEI's liability shall be limited to the difference between the cost of adding the item at the time of discovery of the omission and the cost had the item or component been included in the construction documents. In no event will CEI be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.
- D. **Indemnification:** Indemnification: The Consultant agrees, to the fullest extent permitted by laws, to indemnify and hold harmless the Client against damages, liabilities and costs arising from the negligent acts of the Consultant in the performance of professional services under this Agreement, to the extent that the Consultant is responsible for such damages, liabilities and costs on a comparative basis of fault and responsibility between the Consultant and the Client. The Consultant shall not be obligated to indemnify the Client for the Client's own negligence. The Client hereby agrees, to the fullest extent permitted by law, to indemnify and hold CEI harmless from any claim, liability or cost, including reasonable attorney's fees and cost of defense, for injury or loss arising or allegedly arising from CEI's failure to perform a service listed above and excluded at the Client's direction.
- E. **Limitation of Liability:** In recognition of the relative risks and benefits of the project to both the Client and CEI, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of CEI and their subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all injuries, claims, losses, expenses, damages of any nature whatsoever or claim expenses arising out of this agreement from any cause or causes, so that the total aggregate liability of CEI and their subconsultants to all those named shall not exceed CEI's total fee for services rendered on this project. Such claims and clauses include, but are not limited to design professional's negligence, errors, omissions, strict liability, or breach of contract.
- F. **Insurance:** During the period this contract is in force, Custom Engineering shall carry Workmen's Compensation Insurance, Public Liability Insurance, and Professional Liability Insurance in the amounts of \$500,000/\$1,000,000/\$1,000,000 respectively.

- G. **Jobsite Safety:** Neither the professional activities of CEI, nor the presence of his or her employees and subconsultants at a construction site, shall relieve the Contractors and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing or coordinating all portions of the Work of construction in accordance with the contract documents and any health/safety precautions required by regulatory agencies. CEI and their personnel have no authority to exercise any control over any contractor or other entity or their employees in connection with their work or any health/safety precautions. The Client agrees that the Contractor is solely responsible for jobsite safety, and warrants that this intent shall be made evident in the Client's agreement with the General Contractor. The Client also agrees that the Client, CEI and CEI's consultants shall be indemnified and shall be made additional insured under the General Contractor's general liability insurance policy.
- H. **Hazardous Materials:** Both parties acknowledge that CEI's scope of services does not include any services related to asbestos, hazardous or toxic materials. In the event CEI or any other party encounters asbestos or hazardous or toxic materials at the jobsite, or should it become known in any way that such materials may be present at the jobsite or any adjacent areas that may affect the performance of CEI's services, CEI may, at their option and without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos, hazardous or toxic materials and warrant that the jobsite is in full compliance with applicable laws and regulations.
- I. **Information Provided by Others:** CEI shall indicate to the Client the information needed for rendering of services hereunder. The Client shall provide to CEI such information as is available to the Client and the Client's consultants and contractors, and CEI shall be entitled to rely upon the accuracy and completeness thereof. The Client recognizes that it is impossible for CEI to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because of errors or omissions which may have occurred in assembling the information the Client is providing. Accordingly, the Client agrees to indemnify and hold CEI and CEI's subconsultants harmless from any claim, liability or cost for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Client to CEI.
- J. **Opinions of Probable Costs:** In providing opinions of probable cost, the Client understands that CEI has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of CEI's qualifications and experience. CEI makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs. CEI shall be compensated as Additional Service, as provided for herein, for all time spent to review, redesign and to incorporate revisions due to probable costs.
- K. **Value Engineering:** If the Client retains the services of a Value Engineer (VE) or allows the General Contractor or any of his or her subcontractors to function as a VE to review the Construction Documents prepared for this project by CEI, it shall be at the Client's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of CEI's services. All recommendations of the VE shall be given to CEI for their review, and adequate time will be provided for CEI to respond to these recommendations. CEI shall be compensated as Additional Service, as provided for herein, for all time spent to review the recommendations off the VE and to incorporate those accepted by both the Client and CEI. If CEI objects to any recommendations made by the VE, CEI shall so state in writing to the Client, along with their reasons for objecting. If the Client insists on incorporating in the Construction Documents any changes to which CEI has objected in writing, the Client agrees to indemnify and hold CEI harmless from any damage, liability or cost which arise in connection with or as a result of the incorporation of such design changes insisted upon by the Client.

- L. **Unauthorized Changes:** In the event that the Client consents to, allows, authorizes or approves of changes to the Construction Documents, and these changes are not approved in writing by CEI, the Client recognizes that such changes and the results thereof are not the responsibility of CEI. Therefore, the Client agrees to release CEI from any liability arising from the construction, use or result of such changes. In addition, the Client agrees to indemnify and hold CEI harmless from any damage, liability or cost arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of CEI.
- M. **Design without Construction Phase Services:** It is understood and agreed that CEI's Standard Basic Service under this Agreement do not include project observation or review of the Contractor's performance or any other construction phase services, and that such services will be provided by the Client. The Client assumes all responsibility for interpretation of the Contract Documents and for construction observation and supervision and waives any claims against CEI that may be in any way connected thereto. The Client agrees to indemnify and hold CEI harmless from any loss, claim or cost arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the Contract Documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of CEI.
- N. **Changed Conditions:** The Client shall rely on CEI's judgment as to the continued adequacy of this Agreement in light of occurrences or discoveries that were not originally contemplated by or known to CEI. Should CEI call for contract negotiations, CEI shall identify the changed conditions necessitating renegotiation, and CEI and the Client shall promptly and in good faith enter into renegotiation of this Agreement. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement.
- O. **Defects in Service:** The Client shall promptly report to CEI any defects or suspected defects in CEI's work or services of which the Client becomes aware, so that CEI may take measure to minimize the consequences of such a defect. The Client warrants that he or she will impose a similar notification requirement on all contractors in his or her Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client, and the Client's contractors or subcontractors to promptly notify CEI, shall relieve CEI of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- P. **Dispute Resolution:** Any claims or disputes between the Client and CEI arising out of the services to be provided by CEI or out of this Agreement shall, as a condition precedent to litigation, be submitted to non-binding mediation. The Client and CEI agree to include a similar mediation agreement with all contractors, subcontractors, subconsultants, suppliers and fabricators, providing for mediation as the primary method for dispute resolution among all parties.
- Q. **Ownership of Documents:** All documents, including all documents on electronic media, prepared by CEI under this Agreement are instruments of CEI's professional service and shall remain the property of CEI and may not be used by the Client for any other purpose without the written prior consent of CEI.
- Q. **Termination of Services:** This Agreement may be terminated at any time by either party should the other party fail to perform its obligations hereunder. In the event of termination for any reason whatsoever, the Client shall pay CEI for all services rendered to the date of the termination, and all reimbursable expenses incurred prior to termination and reasonable termination expenses incurred as a result of termination.
- R. The Client confirms that neither the Consultant nor any of Consultant's subconsultants or subcontractors owes a fiduciary responsibility to the Client or owner. The Client shall, as a material element of the consideration the Consultant requires for performance of the services enumerated herein, require Owner to formally recognize this provision in Client's agreement.
- S. **REUSE OF DOCUMENTS:** All documents, including, but not limited to, drawings, specifications, and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to the Project. They are not intended or represented to be suitable for reuse by Engineer, Owner or others on modifications or extensions of the Project or on any other project without compensation. Any use except for the specific purpose intended

by this Agreement will be at the user's sole risk and without liability or legal exposure to Consultant.

8. TERMS AND CONDITIONS FOR ALL THE COLLECTION OF PROFESSIONAL SERVICE FEES

- A. **Interest:** If payment is not received by CEI within 30 calendar days of the invoice date, the Client shall pay as interest an additional charge of one-and-one-half (1.5) percent (or the maximum allowable by law, whichever is lower) of the PAST DUE amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.
- B. **Collection Costs:** In the event legal action is necessary to enforce the payment provisions of this Agreement, CEI shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by CEI in connection therewith and, in addition, the reasonable value of CEI's time and expenses spent in connection with such collection action, computed at CEI's prevailing fee schedule and expense policies.
- C. **Suspension of Services:** If the Client fails to make payments when due or otherwise is in breach of this Agreement, CEI may suspend performance of services upon five (5) calendar days' notice to the Client. CEI shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.
- D. **Set-Offs, Back-Charges, Discounts:** Payment of Invoices shall not be subject to any discounts or set-offs by the Client, unless agreed to in writing by the Consultant. Payment to the Consultant for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.
- E. **CEI shall have ability to claim energy tax credits(EPACT) for those portions of the scope for which it is responsible for, i.e, HVAC and lighting.**

9. EXTENT OF AGREEMENT

This proposal represents the entire agreement between the Client and CEI, Inc. and supersedes all prior negotiations, representations or agreements, whether written or oral. This agreement may be amended only by written instrument signed by both the Client and CEI, Inc. Please review this proposal, sign and return one copy to CEI, Inc. We look forward to working with you on this project. If CEI's involvement in the design of the project has not started within 6 months of the date of this agreement, CEI reserves the right to modify the fee. Agreement shall be signed by client within 60 days of writing.

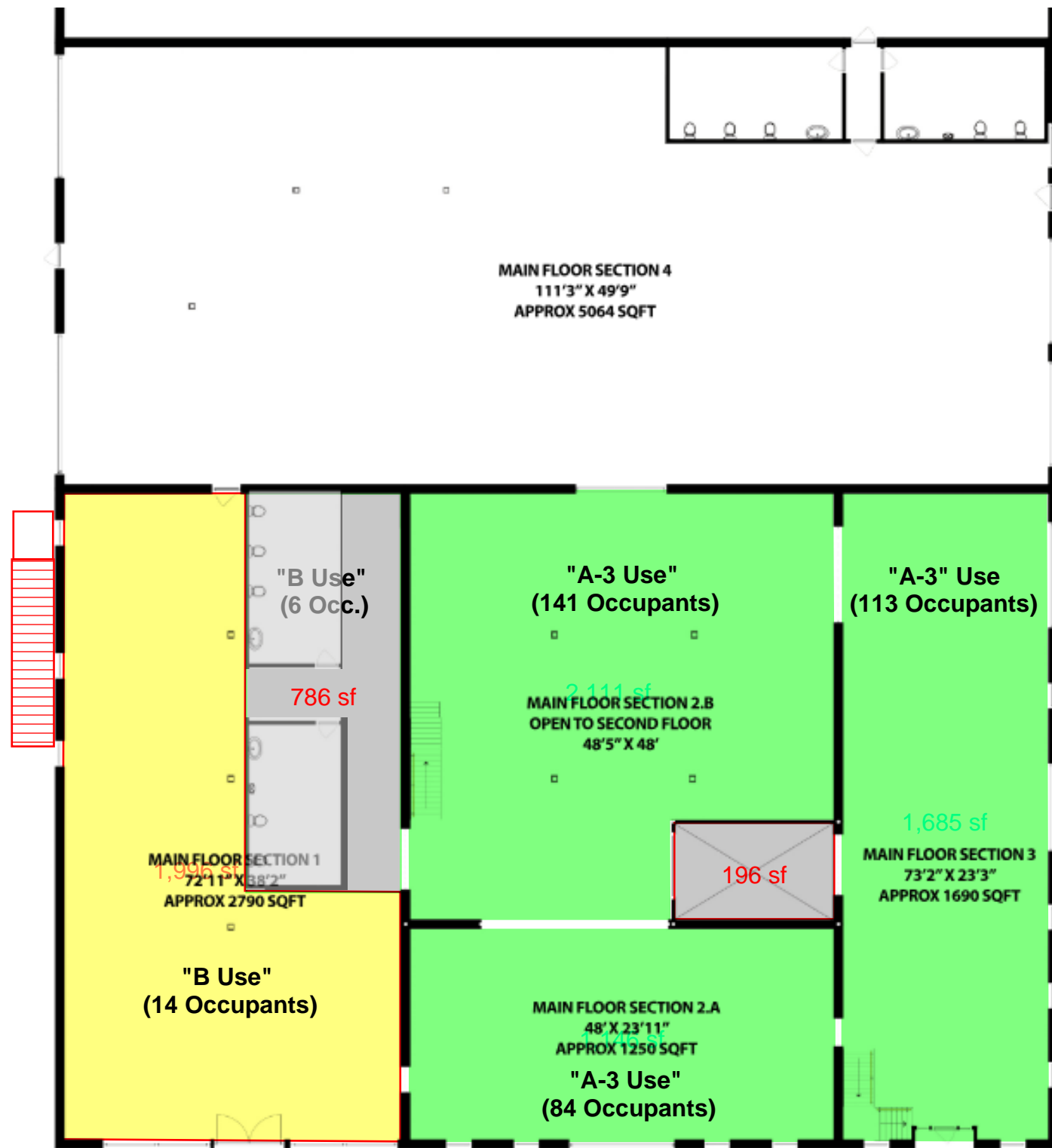
Joseph T. Davis, P.E.
Chief Executive Officer
Custom Engineering, Inc.

Date

I have read the above agreement and accept the terms and conditions stated herein:

For
Aaron McVicker
Project Manager

Date



COST OPINION

FENNEL BUILDING - OPTION A

UPDATE EXTERIOR ENVELOPE / INTERIOR WHITE BOX

OPTION A DESCRIPTION:

Architectural

- All Baseline envelope updates plus:
- Seal concrete floors in Sections 1 - 3
- Clean/seal all brick interior walls in Section 1 - 3
- Enclose 2-story space at Section 2.B
- Paint ceilings in Sections 1 - 3
- Create Storage Room in Section 4
- Create bathrooms in Section 1 for "A" use
- Add fire curtain to north exit from Section 2B

MEP

HVAC:

- (1) 5 ton packaged RTU's with associated exposed ductwork, duct mounted diffusers and programmable thermostat.
- (1) 17.5 ton packaged RTU with associated exposed ductwork, duct mounted diffusers and programmable thermostat.
- (1) 10 ton packaged RTU with associated exposed ductwork, duct mounted diffusers and programmable thermostat.

Electrical:

Convenience receptacles to meet code. Spread throughout at ~12' centers.
Lighting and lighting controls throughout to meet code.

Plumbing:

- Flush valve, manual flush water closet & urinal.
- Lavatory with manual faucet
- Floor drain in each restroom
- All new sanitary sewer and venting.
- New domestic water distribution to new restroom group.

Fire Protection:

Throughout to meet code.

CODE ASSESSMENT

SECTION 1

- BATHROOMS
 - occupancy (20 occ.) - requires 1 unisex bathrooms
- EXITS
 - Minimum exits: A-3 occupancy = 2

SECTION 2/3

- BATHROOMS
 - A-3 occupancy (338 occ.) - requires 2 WC/1 Lav (male), 3 WC/ 1 Lav (female)
- EXITS
 - Minimum exits: B occupancy = 1,
- SPRINKLERS (required)
 - Fire Area (A-2) = 5,921 s.f. < 12,000 s.f., but occupancy is greater than 300.

SOA Architecture
2023-08-30

November 9, 2023

Mr. Aaron McVicker
 McClure Engineering
amcvicker@mcclurevision.com

RE: Fennel Building
Construction Documents, Proposal for Professional Services
SOA# 23037

Dear Aaron:

Based on the Pre-Design work completed, and the Scope of Work identified by the City of Moberly, SOA proposes to provide professional architectural design services for Construction Documents and Bidding with McClure Engineering serving as the prime contract holder and project manager for the project.

Scope of Services:

SOA intends to provide the following architectural services:

- Existing Documentation
 - Travel to Moberly to measure existing building.
 - Create Revit Model for use by Design Team.
- Construction Documentation (CD) – Based on “Option A” as detailed in the preliminary code assessment and Opinion of Probable Cost dated 2023/09/15, and attached hereto. The Scope of Work is for the entire building. SOA’s services include:
 - Code assessment recap.
 - Demolition, New Work and Ceiling Plans, Building and Wall Sections, Details and Schedules, Specifications on drawing sheets.
 - Communications and coordination with Design Team.
- Construction Documentation – Based on “Option VE” as detailed in the preliminary Opinion of Probable Cost dated 2023/09/15. The Scope of Work includes enclosing Section 2B two-story space with second floor framing, White box build-out of Section 2B, bathrooms located in Section 1 sufficient for A3 occupancy. SOA’s services include:
 - Code assessment recap.
 - Demolition, New Work and Ceiling Plans, Building and Wall Sections, Details and Schedules, Specifications on drawing sheets.
 - Communications and coordination with Design Team.
- Construction Document services as described above includes SOA’s participation in one (1) meeting with Tom Sanders to review both sets of documents.
- Bidding Review –
 - Review bid clarifications and communicate with contractors, update documents and provide addendas.
 - Meet with Design Team and Owner to tabulate and assess submitted bids from contractors.



Architecture

Interior Design

Planning

Sustainability

Columbia

2801 Woodard Drive
 Columbia, MO 65202
 573.443.1407

Cost of Services:

SOA will provide these professional services for a fixed fee:

- Existing Conditions Documentation - \$8,200
- Option A - \$44,800
- Option VE - \$ 22,200
- Bidding Review - \$2,900

Project Schedule:

SOA offers the following schedule:

Week of January 8th, 2024 – Begin site measurement and documentation. Creation of Revit model for Design Team.

Week of January 22nd – Start Construction Documents (CD) for design of Option A and Option VE. Provide graphic illustrations with code and cost information of each option to McClure's for use in a final report to the City of Moberly.

Week of March 18th – Provide completed CD sets to McClure for master document.

Assumptions & Clarifications:

SOA assumes the following:

- **Engineering consultants:** This proposal excludes all engineering services. It is assumed that McClure Engineering will provide structural and civil engineering. It is further assumed that Timberlake Engineering will provide mechanical/electrical/plumbing engineering under direct separate contract with McClure Engineering.
- Permitting and Construction Phase Services are excluded from this proposal and agreement. The terms to provide these services will be negotiated when the city of Moberly determines which Option, A or VE, will be constructed.
- **Scope Increase:** Changes in terms of deliverables may result in changes to the schedule and Cost of Services.
- **Additional Services:** Services not included in this proposal can be performed upon written approval of compensation and schedule adjustments. Additional Services may include further options to the Scope of Work, renderings, or documentation for funding submissions by the City of Moberly. Prior to beginning any work associated with an Additional Service, SOA will submit a proposal for McClure's acceptance.
- **Reimbursable expenses** are in addition to the Cost of Services listed above and will be billed per the attached Reimbursable Expenses Schedule - 2023.
- **Invoices/Payments:** Invoices will be issued the first week of each month for work completed the month prior. SOA's Hourly Rate Schedule – 2023 is attached. Payments are due and payable twenty-one (21) days from the date of the invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of 1.5% monthly.
- **Meetings:** SOA includes one in-person meeting and one virtual meeting with the city of Moberly to execute the process as described above. If McClure requires additional meetings or presentations, those can be conducted as an Additional Service, the terms of which will be negotiated when the need arises.



Architecture

Interior Design

Planning

Sustainability

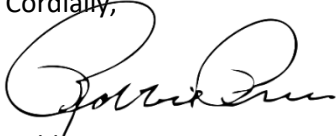
Columbia

2801 Woodard Drive
Columbia, MO 65202
573.443.1407

- **Proposal Expiration:** The terms of this proposal are valid for 28 days from the date of this letter. If an agreement is not executed within that time, adjustments may be made to the cost and schedule of proposed services.
- The attached Terms and Conditions dated November 9, 2023 are part of this agreement.

Consider this proposal a working document and that adjustments may need to be made to better align with your schedule and expectations. We welcome and encourage clarification of any questions or concerns you may have.

Cordially,



Robbie Price AIA, LEED AP BD+C
Architect/Associate

McClure Engineering Approval

Date

Name & Title

Encl: SOA Hourly Rates Schedule – 2023, Reimbursable Expenses

SOA's Terms and Conditions

Design Options A and VE dated 2023-09-15



Architecture

Interior Design

Planning

Sustainability

Columbia

2801 Woodard Drive
Columbia, MO 65202
573.443.1407

Attachment to Proposal Letter dated November 9, 2023.

Scope of Service: The Client and the Consultant have agreed to a list of services the Consultant will provide to the Client, set forth in the letter agreement. If agreed to in writing by the Client and the Consultant, the Consultant shall provide Additional Services, which shall be identified in a supplemental agreement. Additional Services are not included as part of the Scope of Services and shall be paid for by the Client in addition to payment for the services included. Payment for Additional Services will be made by the Client, in accordance with the Consultant's prevailing fee schedule, as provided for earlier. Any services not set forth in this agreement are specifically excluded and consultant assumes no responsibility for those services.

Code Compliance: The Consultant shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations in effect as of the date of this agreement. Design changes made necessary by newly enacted laws, codes and regulations after this date shall entitle the Consultant to a reasonable adjustment in the schedule and additional compensation in accordance with the Additional Service provisions of this Agreement.

Cost Opinions: The Client and Consultant agree an Opinion of Cost is general in nature and for a single moment in time. It is not a precise or exhaustive calculation of all cost components of site, building, building systems or design and construction services associated with this project. The Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Consultant's estimates of probable construction costs are made based on the Consultant's professional judgment and experience. The Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from the Consultant's estimate of probable cost.

Assignment: Neither party to this Agreement shall transfer, sublet 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 subconsultants, normally contemplated by the Consultant as a generally accepted business practice, shall not be considered an assignment for purposes of this Agreement.

Certification/Guarantee & Warranty: The Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant's having to certify, guarantee or warrant the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any amount due to the Consultant in any way contingent upon the Consultant's signing any such certification.

Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement.

Dispute Resolution: In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Client and the Consultant agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation. If the dispute or any issues remain unresolved after good faith mediation by both parties, the parties agree to attempt resolution by submitting the matter to a court of competent jurisdiction.

Indemnification: The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and

subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants, and anyone for whom the Client is legally liable.

WS #4.

Information Provided by Others: The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof. The Consultant shall not be held responsible for any errors or omissions that may arise as a result of erroneous or incomplete information provided by the Client and/or the Client's consultants and contractors.

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 Consultants officers, directors, partners, employees, shareholders, owners and subconsultants 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 Consultants officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed **\$10,000.00**. 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.

Standard of Care: In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality. The Consultant makes no warranty, either express or implied, as to the professional services rendered under this Agreement.

Ownership of Instruments of Service: The Client acknowledges the Consultant's documents, including electronic files, as the work papers of the Consultant and the Consultant's instruments of professional service. Nevertheless, upon completion of the services and payment in full of all monies due to the Consultant, the Client shall receive ownership of the final documents prepared under this Agreement. The Client shall not reuse or make any modification to the construction documents without the prior written authorization of the Consultant. The Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or allegedly arising from or in any way related to or connected with the unauthorized reuse or modification of the construction documents by the Client or any person or entity that acquires or obtains the construction documents from or through the Client without the written authorization of the Consultant.

Timeliness of Performance: The Client and Consultant are aware that many factors outside the Consultant's control may affect the Consultant's ability to complete the services to be provided under this Agreement. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices.

Unauthorized Changes to Plans: In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to any reports, plans, specifications or other construction documents, including electronic files, prepared by the Consultant without obtaining the Consultant's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore, the Client agrees to waive any claim against the Consultant and to release the Consultant from any liability arising directly or indirectly from such changes.

ACCEPTED: _____ (Init.)
McClure Engineering Co.

HOURLY RATES SCHEDULE – 2023

Effective January 1, 2023, through December 31, 2023

Senior Principal	\$200 per hour
Principal/Project Manager	\$190 per hour
Project Manager II	\$165 per hour
Project Manager I	\$150 per hour
Project Architect	\$150 per hour
Architect II	\$125 per hour
Architect I	\$120 per hour
Project Interior Designer	\$120 per hour
Design Professional III	\$120 per hour
Design Professional II	\$110 per hour
Design Professional I	\$100 per hour
Business Manager	\$125 per hour
Administrative Support	\$ 80 per hour
Undergraduate Student	\$ 55 per hour

REIMBURSABLE EXPENSES SCHEDULE - 2023

Effective January 1, 2023, through December 31, 2023

Travel	Current IRS mileage rate x 1.1 Other: 1.1 x direct cost
Mailing - Postage/Handling	1.1 x direct cost
International Long Distance Telephone	1.1 x direct cost
In-House Printing – Black & White	8 ½ x 11 = .15/sheet
In-House Printing – Color	8 ½ x 11 = .50/sheet
In-House Printing – Black & White – Large format	\$0.35/square foot
In-House Printing – Color – Large format	\$0.50/square foot
Outside Reproduction of Drawings, Specifications and Other Documents	1.1 x direct cost
Other Direct Items	1.1 x direct cost



Architecture

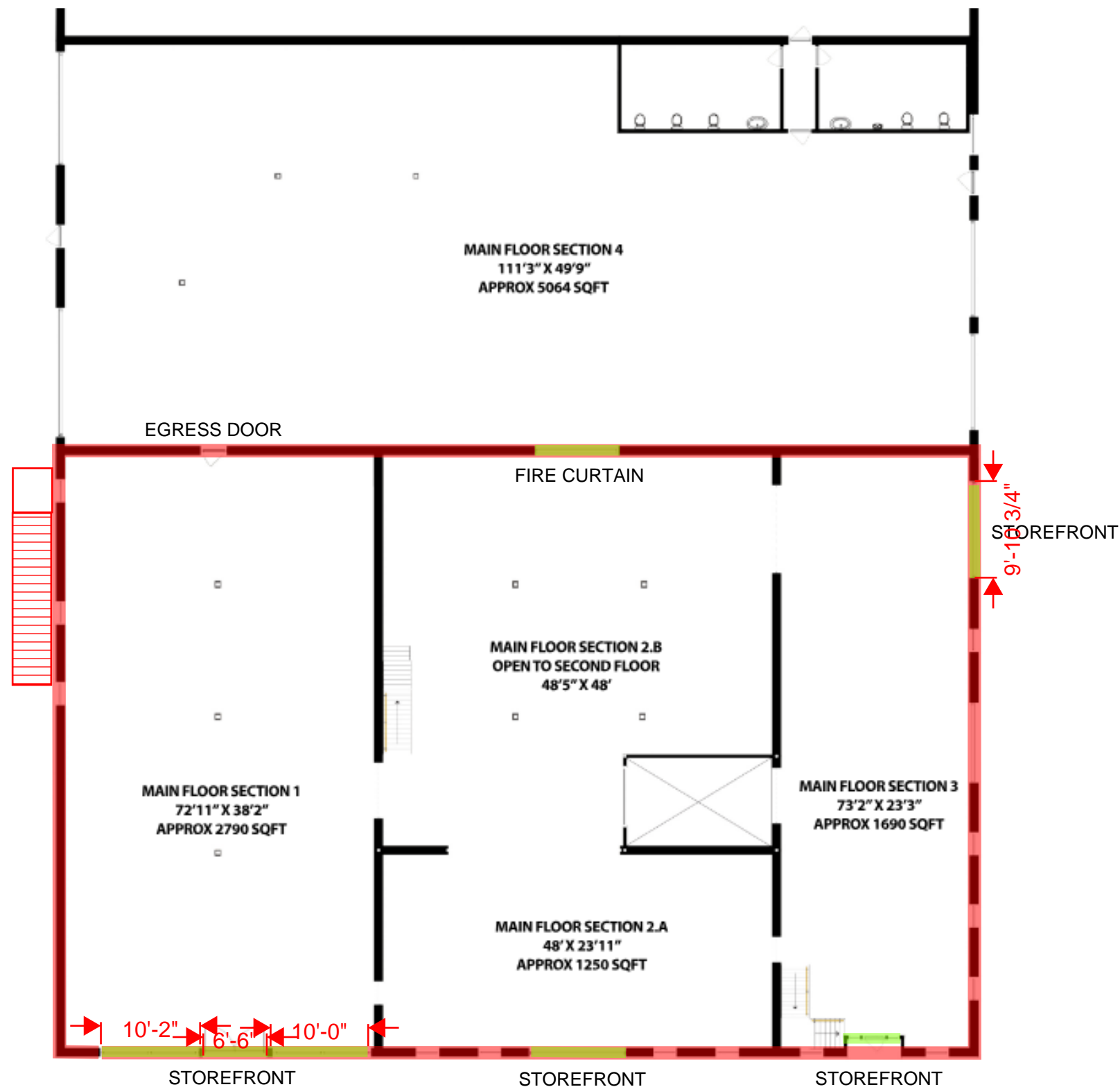
Interior Design

Planning

Sustainability

2801 Woodard Drive
Suite 103
Columbia, MO 65202
573.443.1407

www.soa-inc.com



BASELINE OPTION DESCRIPTION:

Architectural

- Remove interior stairs
- Insulate exterior walls to code
- Insulate roof to code
- Add insulated storefront/entry to Sections 1, 3
- Restore entry cornice to Section 1
- Repair/replace damaged sills in Sections 1 - 3
- Complete 2nd floor infill in Section 3
- Enclose elevator shaft
- Egress stair from 2nd floor Section 1

MEP

HVAC:

(2) 5 ton packaged RTU's with associated exposed ductwork, duct mounted diffusers and programmable thermostat. (1) 3 ton packaged RTU with associated exposed ductwork, duct mounted diffusers and programmable thermostat.

Electrical:

Convenience receptacles to meet code. Spread throughout at ~12' centers. Lighting and lighting controls throughout to meet code.

Plumbing:

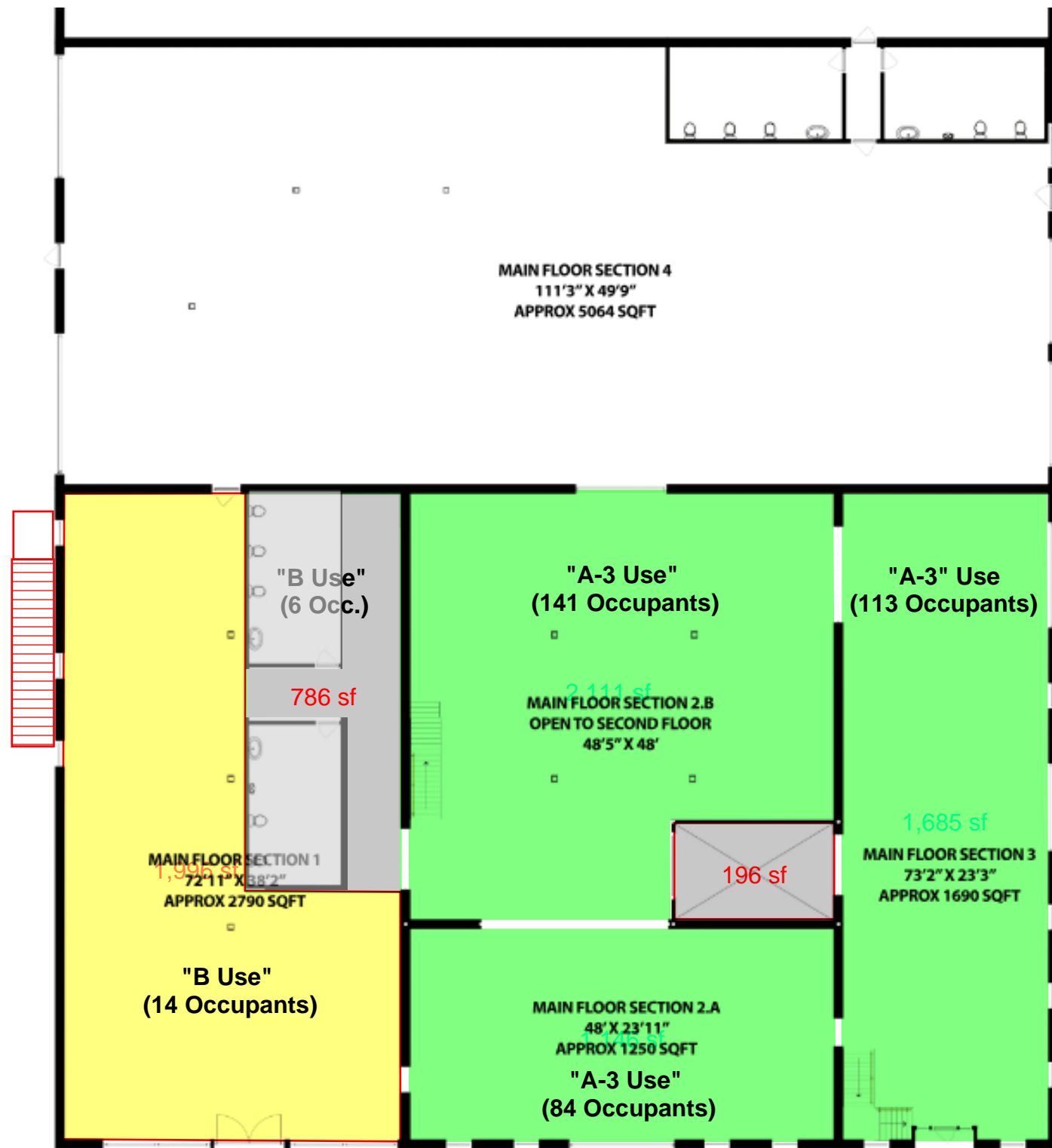
Backflow preventer at service entrance.

Fire Protection

Service line stub up.

CODE ASSESSMENT

- Not required based on scope



OPTION A DESCRIPTION:

Architectural

- All Baseline envelope updates plus:
- Seal concrete floors in Sections 1 - 3
- Clean/seal all brick interior walls in Section 1 - 3
- Enclose 2-story space at Section 2.B
- Paint ceilings in Sections 1 - 3
- Create bathrooms in Section 1 for "A" use
- Add fire curtain to north exit from Section 2B

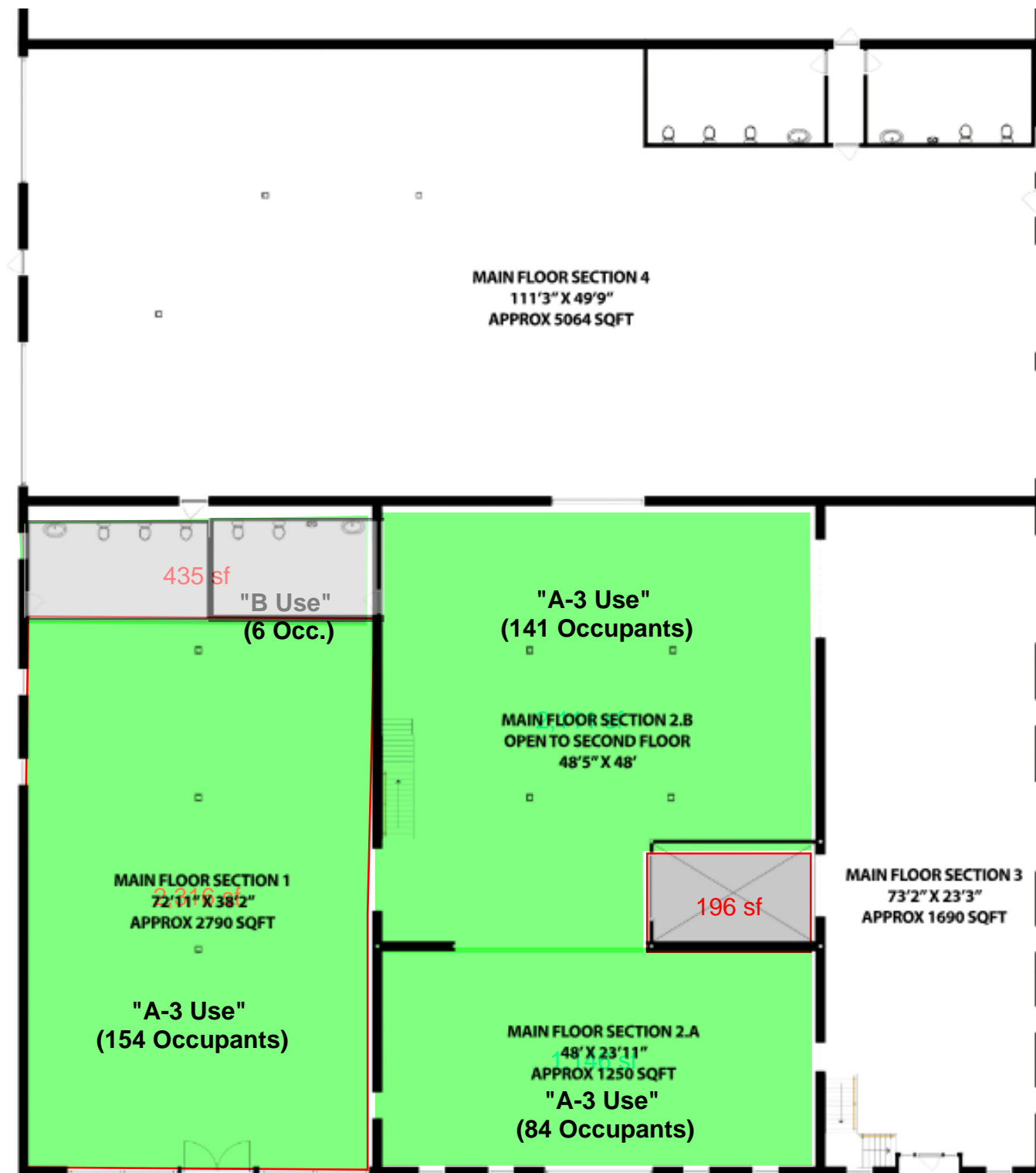
CODE ASSESSMENT

Section 1:

- BATHROOMS
 - occupancy (20 occ.) - requires 1 unisex bathrooms
- EXITS
 - Minimum exits: A-3 occupancy = 2

Section 2/3:

- BATHROOMS
 - A-3 occupancy (338 occ.) - requires 3 WC/1 Lav (male), 3 WC/ 1 Lav (female)
- EXITS
 - Minimum exits: B occupancy = 1,
- SPRINKLERS (required)
 - Fire Area (A-3) = 5,921 s.f. < 12,000 s.f., but occupancy is greater than 300.



OPTION VE DESCRIPTION

Architectural

- Renovate Section 1 and Section 2A/2B, ONLY first floor. Second floor will be unconditioned.
 - a. Total assembly space will be 6,300 s.f.
 - b. Total occupancy will be approximately 380.
 - c. Bathrooms will be located at the back of Section 1. Need 3 W/C, 2 Lavs for each sex.
- Enclose Section 2B 2-story space with floor joists/floor sheathing.
- Spray foam insulation in first floor exterior walls/partition between Section 2 and Section 3 – R13.
- Spray foam insulation between second floor joists – R19.
- Omit from Scope of Work
 - a. Exterior metal stairs
 - b. Storefront in Section 3
 - c. Cleaning brick interior walls
- Install roof-mounted mechanical systems and route insulated ducts to first floor.

CODE ASSESSMENT

Section 1:

- BATHROOMS
 - occupancy (22 occ.) - requires 1 unisex bathrooms
- EXITS
 - Minimum exits: A-3 occupancy = 2

Section 2/3:

- BATHROOMS
 - A-3 occupancy (253 occ.) - requires 2 WC/1 Lav (male), 2 WC/ 1 Lav (female)
- EXITS
 - Minimum exits: B occupancy = 1,
- SPRINKLERS (required)
 - Fire Area (A-2) = 5,921 s.f. < 12,000 s.f., but occupancy is greater than 300.

McCLURE ENGINEERING COMPANY
OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of the **CONSULTANT**:

1. Designate in writing a person to act, as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to **CONSULTANT'S** services for the Project.
2. Provide all criteria and full information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expendability, and any budgetary limitations; and furnish copies of all design and construction standards, which **OWNER** will require to be included in the drawings and specifications.
3. Assist **CONSULTANT** by placing at **CONSULTANT'S** disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
4. Arrange for access to make all provisions for **CONSULTANT** to enter upon public and private property as required for **CONSULTANT** to perform services under this Agreement.
5. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, obtain advice of an attorney, insurance counselor and other consultants as **OWNER** deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **CONSULTANT**.
6. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
7. Attend the prebid conference, bid opening, preconstruction conferences, construction progress and other job related meetings and substantial completion inspection and final payment inspection.
8. Give prompt written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect or non-conformance in the work of any Contractor.
9. Arrange for financing and pay for services as agreed to in this Agreement.

City of Moberly

City Council Agenda Summary

Agenda Number: WS #5.

Department: Community Develop

Date: December 18, 2023

Agenda Item: An Ordinance Granting A Special Tax Bill For Demolition Costs At 1824 S. Morley.

Summary: A building was demolished at 1824 S. Morley because it was deemed to be a dangerous building. The property is legally titled to Sandra Emert who is now deceased. To start the process of collecting on our lien we need to issue a Special Tax Bill against the property. We can then bring suit to convert our lien into a judgment which can be collected by selling the real estate.

Recommended Action: To authorize approval of an Ordinance during the January 16, 2024 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 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 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 <u>Agreement</u>

Roll Call

Aye **Nay**

Mayor

M ☐ S ☐ **Brubaker**

Council Member

M ☐ S ☐ **Lucas**

M ☐ S ☐ **Kimmons**

M ☐ S ☐ **Jeffrey**

M ☐ S ☐ **Kyser**

Passed Failed

Report of Director of Community Development

To: The Honorable Mayor and City Council

Ladies and Gentlemen:

The demolition of a structure located PARCELS...MOBERLY: BEG 687'(s) N & 147.5' W OF SE COR OF NW1/4, TH W 257', TH SWLY WITH RD R/W 175' E 254', TH NELY 175' TO POB or more commonly known as 1824 S Morley St, Moberly, Missouri has been completed.

According to County records, this property is owned by Sandra Emert - Estate of Moberly, Missouri

I find that said demolition has been completed in accordance with the Ordinances of the City of Moberly.

JT Holman Construction of Macon, MO was contracted to do the work.

Demolition fees	\$ 3,000.00
Materials, hauling fees & surcharges	\$ 4,249.87
Asbestos testing & abatement	\$ 7,272.00
Utility Disconnect	\$ 550.00
Recording fees & O&E report	\$ 133.00
Newspaper Public Notice Fee	\$ 485.00

The total cost(s) to be charged against the properties was heretofore determined to be **\$15,689.87**



Director of Community Development

City of Moberly

City Council Agenda Summary

Agenda Number: WS #6.
 Department: Comm. Dev.
 Date: December 18, 2023

Agenda Item: Receipt Of Bids For Demolition of 515 S 5th Street.

Summary: The City of Moberly has been monitoring the property at 515 S 5th St. Over the past 6 months, significant deterioration has occurred on the south side where a portion of the home has fallen away and compromised the remainder of the structure. Subject to weather and structural connections being weakened, The Office of Building Inspections is seeking permission to award a contract for demolition to Weideman Dozing LLC for the amount of \$6,500.00. Attached are bids taken from Holman Construction and Weideman Dozing for the Emergency Demolition to the property at 515 S 5th St. Notices have been posted on the property and due to a lack of mail delivery, notices have also been posted in the newspaper per Abatement of Dangerous Building requirements. Asbestos will be tested and the contractor indicated that after review of the property he felt he could abate any necessary asbestos if tested hot. We received 2 bids for the demolition of 515 S 5th Street. Wiedeman Dozing for \$6,500.00 and JT Holman Construction, LLC for \$8,000.00. Staff recommends accepting the lowest bid.

Recommended Action: Direct staff to bring forward to the January 16, 2024 regular meeting for final approval.

Fund Name: Structure Demolition & Debris Removal

Account Number: 100.005.5418

Available Budget \$: 175,000.00

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

ESTIMATE

WS #6.

Wiedeman Dozing LLC
PO Box 134
Leonard, MO 63451

wiedemandozing@yahoo.com
+1 (660) 651-5074



City of Moberly, Missouri

Bill to
City of Moberly, Missouri
101 West Reed Street
Moberly, MO 65270

Ship to
City of Moberly, Missouri
101 West Reed Street
Moberly, MO 65270

Estimate details
Estimate no.: 1026
Estimate date: 12/08/2023

#	Product or service	Qty	Rate	Amount
1.	Demolition, lot cleaned, graded, seeded & mulched. Demolition of the house, lot clean up, grading, seeding, and mulching of the lot located at, 515 S 5th St Landfill covered by the city.		\$6,500.00	\$6,500.00
Total				\$6,500.00

JT Holman Construction, LLC

PO Box 591
Macon, MO 63552

WS #6.

Quote

Date	Quote #
11/29/2023	2464

Name / Address
City of Moberly 101 West Reed Street Moberly, MO 65270

Rep	Project

Description	Qty	Total
515 S 5th St Moberly, MO Demo only & fill in basement City pays landfill fees		8,000.00
Fully licensed & insured. We appreciate your consideration.		Total \$8,000.00

City of Moberly

City Council Agenda Summary

Agenda Number: WS #7.
Department: Fire
Date: December 18, 2023

Agenda Item: Consideration Of An Appointment To The Fire Prevention Board Of Appeals.

Summary: In October 2023 Board Member Johnny Adams' term expired. The Fire Department has had a conversation with Mr. Adams where he stated he would like to remain on the Board of Appeals. The term of service is 5 years.

Recommended Action: Please approve Mr. Adams to the Fire Prevention Board of Appeals at the January 16, 2024, regular meeting.

Fund Name: N/A

Account Number: N/A

Available Budget \$: 0.00

ATTACHMENTS:

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

Roll Call

Aye **Nay**

Mayor

M___ S___ **Jeffrey** _____

Council Member

M___ S___ **Brubaker** _____

M___ S___ **Kimmons** _____

M___ S___ **Kyser** _____

M___ S___ **Lucas** _____

Passed Failed

Board/Commission Application Form

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

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

Name of Board or Commission: Fire Prevention Board Date: December 8, 2023

Your Name: John Adams Street Address: _____

Phone number(s): (evening) 573-489-4949 (day) _____

Email: john.adams.1951@gmail.com

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

How long have you been a resident of City of Moberly? _____

Occupation: retired Employer: _____

Optional Questions (use back of application if necessary)

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

30 years of service with the Moberly Fire Department

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

30 years in the fire service

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

1. Bob Hardy Phone: _____
2. _____ Phone: _____
3. _____ Phone: _____

John Adams
Signature of Applicant

*Additional Information may be attached to this form.

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

City of Moberly

City Council Agenda Summary

Agenda Number: _____

WS #8.

Department: Parks and Recreation

Date: December 18, 2023

Agenda Item: Kiwanis Park Phase 1 Bids.

Summary: Bids were received for the first phase of the Kiwanis Park LWCF grant project. The first phase includes the driveway, parking lot, sidewalk, pavilion, and restroom.

The attached tabulation shows the five bids received. Staff and Bartlett & West are still reviewing the bids, work history, and will consult with DNR Grants Division as the bids are significantly lower than expected. We will have a recommendation at the January 16th meeting for approval.

Recommended Action: Direct staff to bring a Recommendation and Resolution to the January 16, 2024, meeting for approval.

Fund Name: Parks > Capital Improvements

Account Number: 114.000.5406

Available Budget \$: \$641,024.03

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution
<input checked="" 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___ **Brubaker**

Council Member

M___ S___ **Lucas**

M___ S___ **Kimmons**

M___ S___ **Jeffrey**

M___ S___ **Kyser**

Passed

Failed

Company	Base Bid	Alternate
Holman Construction	799,500	29,950
S&A Equipment & Builders	492,829.32	30,872
Rhad A. Baker	585,300	22,000
Diamond Contractors	849,552	27,798
GBH Builders	693,700	19,200
Note: Alternate is for a concrete ribbon around the asphalt parking lot.		

City of Moberly

City Council Agenda Summary

Agenda Number: WS #9.
 Department: Parks and Recreation
 Date: December 18, 2023

Agenda Item: Heritage Hills Management Contract With Maxim.

Summary: The original 5-year management agreement with GreatLIFE (later assigned to Maxim) will expire at the end of March. The attached is a 5-year renewal with Maxim for management services. The cost follows the existing trajectory and is effectively full-service management of the course 365 days per year for the cost of an Administrative Assistant. Only relatively minor provisions changed – largely putting in print the current practices that were not spelled out in the original contract with GreatLIFE.

Maxim has performed reasonably well when managing this large operation for the City and are receptive to constructive feedback when we ask for changes to practice.

Note the agreement allows the management fee to be taken out of the City budget or the Heritage Hills operational budget. As membership and revenues grow, the goal will be to transfer that cost to the operational budget to give the Parks and Recreation budget some breathing room. Today, doing this would result in us having to make a transfer per the agreement late in the year to help cover operational costs, but we are heading in the right direction to absorb this in the operational budget in the near future.

Recommended Action: Direct staff to bring a Resolution to the January 16, 2024, meeting for approval.

Fund Name: Parks > Contracted Services

Account Number: 114.000.5406

Available Budget \$: \$50,000.

ATTACHMENTS:

<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes
<input type="checkbox"/> Staff Report	<input type="checkbox"/> Proposed Ordinance
<input type="checkbox"/> Correspondence	<input 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: <u>Agreement</u>

Roll Call

Aye

Nay

Mayor

M___ S___ **Brubaker** ___ ___

Council Member

M___ S___ **Lucas** ___ ___

M___ S___ **Kimmons** ___ ___

M___ S___ **Jeffrey** ___ ___

M___ S___ **Kyser** ___ ___

Passed

Failed

PERSONAL SERVICES AGREEMENT

For the Management of
Heritage Hills Golf Course

This PERSONAL SERVICES AGREEMENT (the "Agreement") is made and entered into as of this 1st day of April, 2024 by and between the City of Moberly, MO ("Owner"), and Maxim Golf, LLC, a Missouri limited liability company, ("Maxim").

Recitals

A. Owner desires to promote and provide for the management of Heritage Hills Golf Course, including, but not limited to, golf course, clubhouse, pro shop, maintenance building, driving range, grounds, and appurtenances (singularly referred to as "Facility" or collectively referred to as "Facilities").

B. Maxim is a professional golf course, fitness, and recreation management company whose principals have experience and expertise related to golf course, and recreation management and promotion.

C. Owner desires to retain Maxim to manage and operate the Facilities on behalf of Owner pursuant to the terms and conditions of this Agreement.

Agreement

The parties agree as follows:

1. TERM OF AGREEMENT. The standard term of this Agreement shall begin 12:00 a.m. on April 1st, 2024 (the "Start Date") and end at 11:59 p.m. on March 31st, 2029, subject to the termination provisions stated herein. If, on or before the expiration of the original term of this Agreement, the parties shall agree to mutually acceptable terms for a new Schedule of Fixed and Contingent Management Fees, then this Agreement shall be extended for an additional fiscal (one) year, and all terms and conditions of this Agreement between Owner and Maxim, other than the terms and conditions set forth in paragraph 7.c. or otherwise agreed upon shall remain as set forth herein. In no event shall the term of this Agreement exceed six (6) fiscal years. This Agreement is specifically conditioned upon an annual appropriation by Owner and in the event that the Owner shall, in its sole and exclusive discretion, determine not to make an annual appropriation of funds necessary for this Agreement, then this Agreement shall terminate and be null and void as of the last day of the fiscal year for which the golf course operation was funded. In the event Owner fails to approve appropriation of funds provided for in this Agreement for any year, Owner will pay Maxim the applicable Monthly Management Fee for three months thereafter, provided that such three-month period remains within the term of this Agreement. In the event that the Owner shall enter into a written contract with another to sell the Facilities or the real estate upon which the Facilities are located, then Owners shall give Maxim notice of the same and the intended date of Closing within 7 calendar days of its complete execution and this Agreement shall terminate upon the Closing of the Sale of the Golf Facility or the property upon which the golf course is located. In this event there shall be no payment of termination or cancellation fees, only liability for fees earned for services performed prior to termination. In the event that a determination is made by the Owner to discontinue its ownership of the Golf Facility, Owner agrees that it will consider sale of the

Facilities to Maxim among its options. The preceding sentence shall not be construed so as to create a right of first refusal or an option to purchase on behalf of Maxim. Maxim can make a reasonable proposal for the purchase of the Facility at any time for consideration by the City of Moberly.

2. SERVICES TO BE PERFORMED BY MAXIM. During the term of this Agreement, Maxim shall operate the Facilities, which shall include, but not be limited to, the collection and disbursement of all monies, the employment of all employees, the promotion and management of the golf course, the purchase and sale of food, beverages, merchandise, supplies and services, the purchase and maintenance of insurance coverage for its operations and equipment, the handling of disputes with third parties, the collection and payment of all appropriate taxes, the securing of all appropriate licenses, permits and approvals and the performance of all other day-to-day activities relative to the Facilities. With respect to the operation of the Facilities, the parties hereto agree as follows:

a. Owner Authorization. Owner hereby grants and delegates to Maxim the authority and the responsibility necessary to permit Maxim to perform its duties under this Agreement and agrees to take such additional steps as are necessary to evidence such delegation and authorization as are reasonably requested by Maxim. Owner hereby grants to Maxim the exclusive right to manage the Facilities according to the terms of this Agreement for the term of this Agreement.

b. Major Decisions. From time to time, Maxim shall submit to Owner or Owner's representative(s) for approval, proposals for major activities, improvements or events, including, but not limited to, capital improvements and expenditures and the Proposed Annual Budgets (as defined in subparagraph 2(d) below). Maxim shall secure Owner's prior approval of all such major proposals. Major Proposals shall be those in which the anticipated cost is in excess of \$10,000. Maxim shall, to the best of its ability, operate the Facilities in accordance with the major policy decisions approved by Owner.

c. Operational Guidelines. Maxim shall develop a set of written guidelines ("Operational Guidelines") for the Facilities. The Operational Guidelines shall include information necessary for the operation of the Facilities, including, but not limited to, operation and maintenance of the golf course, the maintenance facility, the clubhouse, the pro shops and other operations of the Facilities, the hours of operation and other policies relating to the operation of the Facilities. Upon development of the Operational Guidelines, same shall be submitted to Owner for approval and shall become effective only upon approval by Owner, which approval shall not be unreasonably withheld or delayed.

d. Annual Budgets. Not later than May 15th of each year during the term of this Agreement, Maxim shall submit a proposed operating budget (the "Proposed Annual Budget") to Owner for the upcoming fiscal year. The Proposed Annual Budget shall specify the amount of working capital required to continue operations of the Facility for the upcoming fiscal year in light of all major policy decisions, specify all anticipated expenses required to maintain a reasonable level of equipment, supplies and inventory and all projected expenses for long term capital improvements and equipment. Owner shall approve or reject the Proposed Annual Budget by June 15th, annually. Owner shall specify, in writing, the basis for any rejected item in the Proposed Annual Budget. The Proposed Annual Budget, once approved by Owner, shall be referred to as the "Annual Budget". In the event that the Owner and Maxim are unable to reach agreement regarding the Annual Budget, then either party may notify the other of their intent to terminate and this Agreement shall terminate on the last day of the term for which there

was a budget approved by Owner.

e. Promotion of Facilities. Maxim shall coordinate with and direct to Owner all work done in the promotion, advertisement and public relations with respect to the Facilities. Maxim shall coordinate the creation or modification of graphics, logos and other visual materials for letterheads, envelopes, temporary and permanent signs, brochures, information profiles, progress reports, press releases, digital media, website, and bulletins. Maxim will use reasonable efforts (as limited by Annual Budgets) to assure that the Facilities will be favorably presented in print and all other forms of communications media. All costs for the promotion of the facility shall be the responsibility of the property including contracted marketing services and corporate staff time assigned for marketing design and creation specific to the facility. The personnel cost for the marketing of the facility whether contracted through an outside marketing firm or corporate staff shall not exceed \$8,000 per year fiscal year without the written consent of the Owner. All materials or items developed pursuant to this paragraph shall be the exclusive property of Owner and shall be shown to the agent designated by Owner prior to dissemination.

f. Facility Personnel. Maxim shall hire Facility staff, including all on-site and off-site management personnel, golf professional staff, assistant golf professional staff, golf course superintendents, food and beverage staff, house and grounds maintenance personnel, janitorial staff, and others deemed by Maxim to be appropriate for the efficient operation of the Facilities and to the extent authorized by the Budget for the Facilities as approved by Owner; provided, however, that Owner shall have the right to approve the selection or removal of the golf course head professional, general manager, and golf course superintendent, such approval not to be unreasonably withheld or delayed. All Facilities personnel shall be hired by and be employees of, Maxim, except that Maxim may, in its discretion, elect to have some routine functions, such as janitorial functions, performed by independent contractors rather than employees. Maxim will not prevent any of the personnel employed at the Facilities from going to work for Owner or another management company in the event this Agreement expires or is terminated. At termination, Owner and Maxim shall have the right to offer employment to any employee of the Facilities. During the term of this Agreement, Maxim shall not remove or relocate the General Manager, and/or the golf course superintendent of the Golf Facility to another Facility managed by Maxim without obtaining prior Owner consent, which will not be unreasonably withheld or delayed.

g. Corporate Personnel Visitation and Inordinate Time Requirements. To the extent it is necessary for Maxim Golf extended service personnel, or corporate personnel to assist in the daily management of the facility, Maxim Golf shall be reimbursed up to \$600.00 per month for the reimbursement of such additional management needs. Maxim Golf shall bill these charges on an hourly rate of \$50.00 per hour plus travel expenses associated therewith for personnel with a maximum expense not to exceed \$600.00 per month for any given month. Maxim Golf shall have the right to bill the property directly for such expenses and all such expenses shall be reported in the monthly profit and loss statements as an operational expense of the property.

h. Food, Beverage and Merchandise. To the extent permitted by law, Owner shall permit the sale of food, beer, wine and liquor at the Facilities. Maxim shall apply for and obtain required State of Missouri and City of Moberly liquor licenses, and all other required permits and approvals. Owner shall cooperate with Maxim in obtaining such licenses, permits and approvals. Maxim shall comply with all laws relating to the sale of alcoholic beverages. In addition, Maxim shall purchase and sell such other food, beverage and merchandise at the Facilities for such prices as Maxim deems prudent.

3. REVENUES, EXPENSES, APPROVED CAPITAL EXPENDITURES & APPROVED

RESERVES.

a. Revenues. "Revenues" shall mean all cash receipts of any kind from operation of the Golf Facility, including, but not limited to, membership fees, green fees, cart rentals, range fees, proceeds from the sale of food, beverage and merchandise, rebates, rentals, interest income, Advances (as hereafter defined) and insurance proceeds. Revenues shall not include fees collected for golf lessons if the fees are paid directly to the professional providing such lessons. Owner also has the right to conduct lessons, schools and other activities on the Facilities and any fees paid by Owner to Maxim to conduct such lessons, schools, or other activities under an agreement with Maxim shall be included as "Revenues". Utility reimbursements, tax collections (non-sales tax), or gifts and contributions made to the facilities shall not be included in the calculation of "Revenues".

b. Expenses. "Expenses" shall mean all necessary, reasonable and ordinary cash expenditures authorized by the Annual Budget established by Owner and Maxim and incurred in connection with the Facilities, including, but not limited to:

- i. Payroll, payroll taxes, employee benefits (including, without limitation, insurance, health and welfare benefits) and unemployment insurance and taxes, and sales, rental and other taxes and governmental fees and charges assessed against the Facilities or their operations;
- ii. Payments for food, beverage, merchandise and supplies;
- iii. Insurance costs for the insurance coverage specified in paragraph 13 hereof and approved in the Annual Budget for the Facilities;
- iv. Payments for advertising and promotion of the Facilities;
- v. Acquisition costs, lease payments and debt service payments for the Facilities, equipment, furniture, fixtures and other capital items as included in the Annual Budget;
- vi. License fees, dues and subscriptions;
- vii. Expenses of hiring and training personnel, except expenses of training Maxim management personnel;
- viii. Costs of maintaining and improving the golf course, pro shop, and other assets of the facilities;
- ix. Fees of outside consultants and third-party contractors retained by Maxim in connection with the operation of the Facilities, such as accountants, attorneys, tax advisers, and marketing public relations consultants, if approved in advance by Owner or Owner's representative;
- x. All Management Fees (as defined in paragraph 7, below)

paid to Maxim in accordance with this Agreement, including the Fixed Management Fee. Owner may choose to not include this expense in the operating budget and the operating budget shall be amended accordingly.

- xi. Expenses associated with an annual audit of the Facilities by an Owner designated auditor; and
- xii. Expenses not specifically authorized by the Annual Budget that are approved in advance by the Owner or the Owner's representative.

c. Approved Capital Expenditures. "Approved Capital Expenditures" shall mean all cash payments for equipment, furniture, fixtures, Facility improvements or other capital items approved by Owner, which approval may be included in an Annual Budget or other separate form of approval.

d. Approved Reserves. "Approved Reserves" shall mean the amount of cash approved by Owner to be held by Maxim for future operation of the Facilities.

4. ADVANCES FROM OWNER. If at any time the Net Cash Flow from the operation of the Facilities is not sufficient to meet the Approved Capital Expenditures or Expenses as they become due, Owner shall advance, unless such advance is prohibited by law, to Maxim the amount of cash necessary to meet such obligations (such amount being referred to as an "Advance").

5. ACCOUNTS. All Revenues, Advances and Approved Reserves shall be held by Maxim for Owner, in an account in the name of the owner designating Maxim as an authorized agent on the account, such and sufficient to protect Owner's interest in such funds, subject to such funds being disbursed for Expenses and Approved Capital Expenditures. Maxim shall maintain one or more separate accounts so designated (collectively referred to as "Facility Accounts"), which shall, whenever possible, include interest bearing accounts, at one or more commercial banks in Moberly, Missouri, each approved in advance by Owner, for the receipt of Revenues, Advances and Approved Reserves and for the payment of Approved Capital Expenditures Expenses and Approved Reserves. Maxim agrees that Owner shall have one or two designated signers or at a minimum one or two designated viewers on such accounts (who will provide Maxim reasonable notice of and account for any transactions conducted by them with respect to the accounts) and that Owner may have access to such accounts via the internet or other methods so that Owner may, without notice, review transaction activity on the accounts. Any check or other order to pay, written for more than \$10,000 (Ten Thousand Dollars) will require a third signature or written approval by one of the Owner's designated signers or other authorized Owner's personnel. Maxim shall account to Owner and pay all payments due to Owner from Facility Accounts in accordance with this Agreement. Maxim shall not commingle Revenues, Advances and Approved Reserves with other money or accounts, and shall not take any money or property from the Facility Accounts or from the Facilities, except to make payments for Approved Capital Expenditures and Expenses as set forth in this Agreement. Maxim shall not purchase goods or services from an entity affiliated with Maxim unless such purchase is on terms reasonably competitive with terms available from non-affiliated sources. Maxim shall comply with requirements, if any, which may become applicable to it regarding purchase of equipment, materials and services.

6. EMPLOYEES. All employees of the Facilities shall be employees of Maxim.

7. MANAGEMENT FEES. In exchange for services rendered by Maxim under this Agreement, Maxim shall be (1) reimbursed from Facility Accounts for all direct and indirect out-of-pocket expenses authorized by this Agreement in connection with the operation of the Facilities, (2) paid from Facility Accounts a Fixed Management Fee as described in subparagraph 7.a. hereinafter, and (3) subject to the terms and conditions of subparagraph 7.b. below, paid from Facility Accounts a Contingent Management Fee. If on any date when any of the foregoing amounts is owing to Maxim the Facility Accounts contain insufficient funds to pay Maxim the amounts owing, Owner, unless prohibited by law, shall immediately make a disbursement to Maxim to cover the shortfall.

a. Fixed Management Fee. A "Fixed Management Fee" shall be paid to Maxim for each month this Agreement is in effect in the applicable amount described in subparagraph 7.c. (Schedule of Fixed and Contingent Management Fees). For any partial month, the Fixed Management Fee shall be prorated. The Fixed Management Fee shall be due and payable on the first day of each month.

b. Contingent Management Fee. A "Contingent Management Fee" shall accrue and be payable to Maxim at the end of the first (1st) month following a fiscal year in which Revenues equals or exceeds Revenues Base set forth in subparagraph 7.c. (Schedule of Fixed and Contingent Management Fees), provided, however, that no such Fee shall be due and owing unless and until the Owner has received the audited financial statements referenced in paragraph 8 hereof and as hereinafter provided. Within thirty (30) days of receipt of the unaudited annual financial statements for the Facilities that are in form and substance satisfactory to the Owner, said Owner will make a provisional payment of the Contingent Management Fee equal to seventy-five percent (75%) of the Contingent Management Fee as calculated based upon the unaudited financial statements. Upon receipt of the audited financial statements for the Facilities, the Contingent Management Fee will be recalculated based upon the audited financial statements, and the balance paid or refunded as the case may be. If the Owner does not exercise its option to conduct an audit of the Facilities annual financial statements, then the balance of the Contingent Management Fee shall be paid on or before July 1 of the following fiscal year. The amount of the Contingent Management Fee shall be determined by multiplying the Contingent Management Fee Percent set forth in subparagraph 7.c. by the amount by which Revenues for such year exceeds the Revenues Base for the applicable year as set for the in subparagraph 7.c. For purposes of determining the Contingent Management Fee, "Revenues" shall mean the total sum of all Revenues generated by the operation of the Golf Facility as specifically defined by Section 3(a). However, Revenue for purposes of this paragraph shall not include interest, proceeds from the sale of major assets, insurance proceeds, owner subsidies or advances and draws on letters of credit or other revenues not attributable to the operation of the Facilities such as taxes collected (non-sales tax), gifts, donations, and contributions.

c. Schedule of Fixed and Contingent Management Fees.

Fiscal Year	Fixed Monthly Fee	Contingent Management Fee Percentage	Revenues Base
2024/2025	\$3,917	10%	\$630,000
2025/2026	\$4,000	11%	\$635,000
2026/2027	\$4,167	12%	\$640,000
2027/2028	\$4,250	13.5%	\$645,000
2028/2029	\$4,333	15%	\$650,000

*If Revenues for Owner equals \$640,000 in fiscal year 2024/2025 then the Contingent Management Fee

would be computed as follows: (Example Revenue Base) = \$630,000
(\$10,000 times 10% or a contingent management fee of \$1,000).

If this Agreement is terminated prior to the end of any fiscal year, for purposes of determining the Contingent Management Fee the dollar amount of Revenue Base for that year set forth above shall be adjusted downward, based upon reasonable proration, as determined by utilizing the monthly average of the preceding two fiscal years. If Revenues for any calendar year are less than Adjusted Revenues Base, Owner may, in Owner's sole discretion, consent to the payment of all or any portion of the Contingent Management Fee for that period.

8. ACCOUNTING. Maxim shall maintain books and records relating to the business activities of the Facilities separate from its other books and records. Maxim shall prepare an opening balance sheet listing assets and liabilities used or incurred in the operation of the Facilities. Thereafter, Maxim shall have monthly financial statements prepared which shall include unaudited balance sheets and income statements (each month's records shall be referred to separately as the "Monthly Financial Statements") prepared as if the operation of the Facilities is a business entity separate from Maxim and Owner. Maxim shall deliver to owner a copy to of each month's Monthly Financial Statements by the twentieth day of the following month except where circumstances beyond the reasonable control of Maxim delay delivery of such statements. Owner agrees that if the deadline set forth in the preceding sentence is impractical or impossible for Maxim to meet, Owner shall modify such requirements. In addition, Maxim shall deliver to Owner, not later than August 1st of each year during the term of this Agreement, a copy of fiscal year-end financial statements for the Facilities for the preceding fiscal year prepared in accordance with General Accepted Accounting Principles. At any time during the term of this Agreement and for three (3) years thereafter, Owner shall be entitled to inspect and make copies of the books and records of the Facilities maintained by Maxim, and Owner may conduct a separate audit of the Facilities and/or include the Facilities within the audit of Owner conducted by Owners independent auditors, all Monthly Financial Statements and all annual financial statements. As a Facilities Expense, Maxim shall comply with Owner's audit recommendations. Additionally, at the request of the Owner, Maxim will provide any and all supporting documentation that substantiates the monthly/annual Financial Statements.

9. OWNER'S OPTION TO TERMINATE FOR DEFAULT. At any time during the term of this Agreement, Owner shall have the option of terminating this Agreement upon the occurrence of an event of Default, as defined in subparagraph 9.a. below. At any time during this Agreement, Maxim shall have the option of terminating this Agreement for cause upon the occurrence of a material breach by Owner of any material term or provision of this Agreement, which breach remains uncured following notice and opportunity to cure as provided elsewhere in this Agreement.

a. Events of Default. Any one or more of the following events shall, unless cured in accordance with paragraph 9.b below, constitute a default of this Agreement by Maxim ("Default"):

- i. Any breach by Maxim or Owner of the obligations under the terms of paragraph 5 of this Agreement;
- ii. A discontinuance by Maxim or Owner of its business or abandonment of its activities at the Facilities;
- iii. A material breach by Maxim or Owner of any material term or provision of this Agreement; or

- iv. The filing of a voluntary or involuntary action by Maxim, Owner or its creditors seeking to declare it as bankrupt.

b. Cure. Maxim shall have thirty (30) days after receipt of written notice from Owner specifying the nature of its Default under paragraph 9.a. above within which to cure such Default, or such longer period of time as may be reasonably required to cure such Default, provided that Maxim promptly commences the remedying of such Default and is continuing diligently to complete such cure. Owner shall have thirty (30) days after receipt of written notice from Maxim specifying the nature of its Default under paragraph 9. above within which to cure such Default, or such longer period of time as may be reasonably required to cure such Default, provided that Owner promptly commences the remedying of such Default and is continuing diligently to complete such cure, and provided further that Maxim will not discontinue performing services under this Agreement in the event that Owner disputes, in good faith, that it is in default until the parties have resolved the dispute.

c. Exercise of Termination Option. In the event of a Default, the Owner may terminate this Agreement upon expiration of the cure period described in subparagraph 9.b above by giving Maxim written notice of its election to terminate this Agreement, provided that Maxim has not timely cured the Default. Should Termination Option be exercised, Owner would pay to Maxim the Management Fee and Contingent Fee through the date of termination and reimburse Maxim for all expenses authorized under the terms of this Agreement incurred through the date of termination less damages caused by the breach. For purposes of this paragraph, the date of termination is the date specified by Owner in its notice to Maxim. In the event of a Default by Owner, Maxim may terminate this Agreement upon expiration of the cure period described in subparagraph 9.b above by giving Owner written notice of its election to terminate this Agreement, provided that Owner has not timely cured the Default, or is not diligently attempting to cure said default.

10. OPTION OF EARLY TERMINATION. Owner shall have the option to terminate this Agreement if any of the following occur without Owner approval: (1) Maxim or substantially all of its assets are sold without Owner's prior consent; (2) Maxim's management team or executive officers significantly change; (3) there is a change in control of Maxim or Owner finds reasonable evidence of fraud or defalcation of its funds or assets by employees or agents of Maxim. Owner may exercise the option for a period of six (6) months after receipt of notice that the respective event has occurred by notifying Maxim in writing. Unless otherwise agreed by the parties, the effective date of termination shall be thirty (30) days from the date Owner gives notice to Maxim except for evidence of theft or defalcation, in which Owner's Notice may be immediate. Early Termination shall not absolve the parties from any obligations of accounting and reimbursement for actions occurring prior to termination.

11. TRANSFER UPON TERMINATION. Upon termination of this Agreement, Maxim shall immediately transfer and assign to Owner any and all interest of Maxim in the Facilities if any, including the assets set forth in subparagraph 11.a. below, and Owner shall assume and agree in writing to indemnify Maxim to the extent allowable by law against all liabilities set forth in subparagraph 11.b. below, and any existing obligations and liabilities relating to the Facilities authorized by the Annual Budget or approved by Owner. However, Owner shall have no obligation to indemnify Maxim for tort liabilities or other claims against Maxim that result from the negligence, intentional malfeasance, gross negligence or other misconduct of Maxim or its agents.

a. Assets to be Transferred. Assets to be transferred and assigned to Owner shall include, but not be limited to, all of Maxim's right, title and interest in and to any of the following arising out of activities of the Facilities or purchased by Maxim from Advances from Owner or Revenues of the Facilities (other than insurance proceeds relating to liabilities not required to be assumed by Owner, which proceeds will be assigned by Owner to Maxim):

- i. Cash in all Facility Accounts;
- ii. Accounts receivable;
- iii. Other receivables;
- iv. Inventories of merchandise, food, beverages and supplies;
- v. All equipment, furniture and fixtures;
- vi. Prepaid accounts and deposits;
- vii. Contract rights;
- viii. Trade names;
- ix. Books and records relating to the Facilities;
- x. Goodwill; and
- xi. Operational guidelines and procedures.

b. Liabilities to be Assumed. Liabilities Owner shall assume, or against which Owner shall indemnify Maxim to the extent allowable by law, shall be all debts and other contractual obligations arising out of the operation of the Facilities. Provided however, Owner shall have no obligation to indemnify Maxim for a debt or contractual obligation incurred by Maxim that was not authorized under the terms of this Agreement.

c. Closing. The rights and responsibility of management of the Facilities shall transfer to Owner on the effective date of any termination of this Agreement unless the parties agree otherwise.

12. INDEMNITY. The parties agree that Maxim is not an agent or employee of Owner, and all activities of Maxim relating to the Facilities shall be in Maxim's capacity as independent contractor to Owner.

a. Obligations of the Facilities. Maxim shall pay all obligations and defend all disputed claims arising out of or resulting from Maxim's activities conducted in connection with or incidental to this Agreement. If the obligation or claim arises from activities authorized under the terms of this Agreement, then Maxim's defense and payment of such claims shall be an Expense of Facilities. Maxim shall keep Owner advised of any such matters.

b. Notice of Claims. Maxim and Owner shall provide each other with prompt written notice of any claim.

13. INSURANCE. As an Expense of the Facilities, Maxim shall obtain insurance of the types and in the amounts set forth below from an underwriter(s) licensed to do business in the State of Missouri. Maxim shall furnish to Owner certificates of insurance or copies of policies, evidencing the required insurance, on or before April 1, 2023, and thereafter shall furnish new certificates upon request.

a. Type and Amount of Insurance. The type and amount of insurance Maxim shall obtain for the Facilities shall be:

Worker's Compensation and Employer's Liability or reasonably acceptable alternative as provided by law.

The Limits for the Employer's Liability shall be not less than:

Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 Each Employee

Commercial General Liability Policy with a Combined Single Limit of \$3,000,000.00/\$4,000,000.00 including (but not limited to) Premises/Operation, Independent Contractors, Personal Injury, and Products/Completed Operation.

Commercial crime coverage to include:

Forgery or alteration	\$25,000	\$ 1,000 ded.
Theft, Disappearance & Destruction	\$15,000	\$100 ded.
Employee Dishonest-Per Loss	\$300,000	\$10,000 ded.

Comprehensive Automobile Liability (or its equivalent) to include coverage for:

- a) Owned/Leased Automobiles
- b) Non-owned Automobiles
- c) Hired Cars

Limits of \$1,000,000.00 Liability for Bodily Injury and/or Property Damage.

Excess Liability for general and automobile liability purposes in the amount of \$10,000,000.

b. Additional Insurance, Requirements. With respect to the above-described insurance, Owner agrees to:

1. Have Maxim named as an insured as its interest may appear with no waiver of city's sovereign immunity.
2. Provide for thirty days' written notice of cancellation, termination or any material change to the insurance.
3. All of the above stated limits shall apply separately to each location managed by Maxim.

14. COVENANT OF COOPERATION. Maxim shall provide Owner with prompt written notice of any material injuries suffered at the Facilities, significant complaints in reference to service or conditions, whether written or otherwise, about the Facilities or its management, and actual or anticipated disputes with or claims by third parties, including, but not limited to, adjacent landowners. Maxim further covenants to cooperate with Owner in resolving any such complaints, disputes or claims and Owner covenants to cooperate with Maxim in resolving any such complaints, disputes or claims.

15. OWNER'S REPRESENTATIONS AND WARRANTIES. To induce Maxim to enter into this Agreement, Owner makes the following representations and warranties to Maxim:

a. Each of the Recitals set forth in this Agreement is true and correct.

b. Owner has power and authority and all legal rights to enter into and perform this Agreement. The officers of Owner executing this Agreement are duly and properly in office and fully authorized to execute this Agreement, subject to express ratification by the Owner's Governing Body. This Agreement, when duly executed, ratified and delivered by the parties hereto, shall create a valid and binding obligation on the part of Owner, enforceable against Owner in accordance with its terms.

16. MAXIM'S REPRESENTATION AND WARRANTIES. To induce Owner to enter into this Agreement, Maxim makes the following representations and warranties to Owner:

a. Each of the Recitals set forth in this Agreement is true and correct.

b. Maim Golf, LLC is a duly organized and validly existing company in good standing under the laws of the State of Missouri.

c. Maxim has the full power and authority and all legal rights to enter into and perform this Agreement and any other agreement referred to herein or contemplated by this Agreement. This Agreement, when duly executed and delivered by the parties hereto, shall create a valid and binding obligation on the part of Maxim, enforceable against Maxim in accordance with its terms.

d. Maxim has sufficient knowledge, training, expertise, skill and resources as to enable it to operate the Facilities in a reasonable and prudent business manner.

e. During the term of this Agreement, Maxim will use all reasonable care to prevent the introduction of any hazardous substances into the Facilities, whether contained in barrels, tanks, equipment (movable or fixed) or other containers deposited or located in land, water, sumps or any other part of the Facilities or incorporated into any structure on the Facilities. Maxim will hold owner harmless from and indemnify owner for any damages and expenses which owner may incur as a result of Maxim's failure to comply with this warranty. Owner acknowledges that some substances necessary for performance of this Agreement may be deemed "hazardous." Owner agrees that this paragraph shall not apply to such necessary substances, provided that Maxim uses all care necessary in the handling and use of such substances.

17. RELATIONSHIP OF THE PARTIES. The relationship between Owner and Maxim shall be and at all times remain that of owner and independent contractor, respectively. Neither Owner nor Maxim shall be construed or held to be a partner, limited partner, associate or agent of the other, or be

joint venturers with one another. Neither Owner nor Maxim shall be authorized by the other to contract any debt, liability or obligation for or on behalf of the other.

18. CONFIDENTIALITY.

a. Each party agrees that Maxim will provide its knowledge and advice concerning marketing, equipment, financial models, membership retention and other expertise to the Owner, and Owner will provide similar information to Maxim ("Proprietary Information" of the disclosing party). Except as expressly allowed herein, the receiving party will hold in confidence and not use or disclose any Proprietary Information of the disclosing party, shall take reasonable protective measures to insure same (and at least the same measures it takes for its own Proprietary Information) and shall similarly bind its employees in writing. Nothing herein shall prevent Maxim Employees from disclosing Facility performance data to Heritage Hills Golf Course's authorized representatives upon request as determined from time to time by its Board of Advisors, but such information should never be provided to Owner's members or competitors. The receiving party shall not be obligated under this Section with respect to information the receiving party can document:

- i. is or has become readily publicly available without restriction through no fault of the receiving party or its employees or agents; or
- ii. is received without restriction from a third party lawfully in possession of such information and lawfully empowered to disclose such information; or
- iii. was rightfully in the possession of the receiving party without restriction prior to its disclosure by the other party; or
- iv. was independently developed by employees or consultants of the receiving party without access to such Proprietary Information; or
- v. is required to be disclosed by law.

b. If either party breaches any of its obligations with respect to confidentiality, or if such a breach is likely to occur, the other party shall be entitled to equitable relief, including specific performance or an injunction, in addition to any other rights or remedies, including money damages, provided by law.

c. The obligation to keep this information confidential shall continue indefinitely during and following the termination of the term of this Agreement.

19. GOVERNANCE. The parties agree to attempt informal dispute resolution before proceeding with further action. Specifically, should either party believe that a dispute has arisen, then that party shall meet and confer with a designated representative of the other party.

20. NOTICES. Except as otherwise specifically provided herein, any and all notices required or permitted under this Agreement shall be in writing and shall be deemed delivered upon personal

delivery or upon mailing thereof when properly addressed and deposited in the United States Mail, first-class postage prepaid, registered or certified mail, return receipt requested, or when properly addressed upon deposit with Federal Express, Express Mail or other overnight courier service. Notices shall be properly addressed if addressed to the parties as follows:

If to Owner: Agent for City of Moberly - Heritage Hills Golf Course
 Attn: Randall Thompson
 Interim City Manager
 101 West Reed Street
 Moberly, MO 65270

If to Maxim: Bryan Minnis
 Chief Executive Officer
 5757 East Eagle Knoll Dr
 Hartsburg, MO 65039

The names and addresses for notices may be changed by written notice given to the other party as provided above.

21. FURTHER ACTS AND COMPETITION. Each party to this Agreement agrees to execute and deliver all documents and instruments and to perform all further acts and to take any and all further steps that may be reasonably necessary to carry out the provisions of this Agreement and the transactions contemplated herein. During the term of this Agreement Maxim will not directly or indirectly invest in nor provide services, whether or not for fees or other consideration, to another entity that has one or more golf courses any part of which is located in Randolph County, Missouri, unless agreed upon by Maxim and Owner.

22. SECTION HEADINGS. The section headings in this Agreement are for convenience of reference only and shall in no way define, limit, extend or interpret the scope of this Agreement or of any particular section contained herein.

23. INTERPRETATION. Unless the context requires otherwise, words used in the singular number shall include the plural and vice-versa; words used in the masculine shall include the feminine and vice-versa.

24. AMENDMENTS AND WAIVERS. This Agreement shall be modified only by written instrument executed by the parties hereto. Any waiver of any provision of this Agreement shall be made in writing executed by the party who could demand fulfillment of such waived provision.

25. ASSIGNMENT. This Agreement shall not be assigned by Maxim without the express written consent of Owner.

26. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

27. GOVERNING LAW. This Agreement shall be construed under and in accordance with the laws of the State of Missouri.

28. COUNTERPARTS. This Agreement and all amendments and supplements to it may be executed in counterparts and all such counterparts shall constitute one agreement binding on both of the parties.

29. SEVERABILITY. Should one or more of the provisions of this Agreement be determined to be illegal or unenforceable, the other provisions nonetheless shall remain in full force and effect. The illegal or unenforceable provision or provisions shall be deemed amended to conform to applicable laws so as to be valid and enforceable if such an amendment would not materially alter the intention of the parties.

30. ENTIRE AGREEMENT. This Agreement (together with any attached Exhibits) constitutes the entire agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior agreements, arrangements, understandings, restrictions, representations or warranties, whether oral or written, between the parties relating to the subject matter of this Agreement.

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

Owner:
City of Moberly, MO.

By: _____
Tim Brubaker, Mayor
101 West Reed Street
Moberly, MO 65270

ATTEST:

Maxim:
Maxim Golf , LLC.

By: _____
Bryan Minnis, Executive Officer
5757 East Eagle Knoll Dr
Hartsburg, MO 65039

City of Moberly

City Council Agenda Summary

Agenda Number: WS #10.
 Department: Public Utilities
 Date: November 18, 2023

Agenda Item: Ace Pipe Cleaning – 42 In Sanitary Sewer Line Cleaning.

Summary: Removal of grease build up in the 42in sanitary sewer line from Saint Charles St. to the Taylor St. sewer basin. Approx.2000ft Estimate- \$39,750.00
 Staff recommends immediate cleaning of this line to avoid another possible sanitary sewer overflow due to excessive grease build up.

Recommended Action: Please bring this item forward to the January 16, 2024, regular meeting for approval.

Fund Name: Sewer Line Maintenance

Account Number: 301 112 5314

Available Budget \$: Unbudgeted Expense

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___ **Brubaker**

___ ___

Council Member

M___ S___ **Lucas**

___ ___

M___ S___ **Kimmons**

___ ___

M___ S___ **Jeffrey**

___ ___

M___ S___ **Kyser**

___ ___

Passed Failed



ACE PIPE CLEANING
A Carylon Company

6601 Universal Avenue
Kansas City, MO 64120
p: (816) 241-2891
f: (816) 241-5054
office@acepipe.com

CONTRACT PROPOSAL

Date: 11/29/23

Customer: City Of Moberly
Attn: Steve Wilson
Address: 101 W Reed St
Moberly MO
Email: swilson@cityofmoberly.com
Phone: 660-269-7673

Proposal #: 24-070

1. PROJECT DESCRIPTION:

Moberly, MO - Cleaning

2. SCOPE OF WORK:

Ace Pipe Cleaning, Inc. ("APC") will provide the labor, equipment, material, and supplies for work performed on the Project in accordance with this Proposal (the "Work"), and will include the following:

APC will provide Operators, One Jumbo Jetter Unit, One Jet-Vacuum Combo Unit and One Additional Laborer to clean a 42 inch Sanitary Sewer line as directed by customer.

3. PRICING AND PAYMENT:

DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
Mobilization	1	HRS	\$ 2,250.00	\$ 2,250.00
Jumbo Jetter with/Operator	60	HRS	\$ 235.00	\$ 14,100.00
Jet-Vac Combo unit w/Operator	60	HRS	\$ 215.00	\$ 12,900.00
Additional Labor	60	HRS	\$ 121.00	\$ 7,260.00
Equipment Fuel	60	HRS	\$ 54.00	\$ 3,240.00
TOTAL ESTIMATED PRICE				\$ 39,750.00

Payment shall be due Net 30 days from APC's invoice date. Quantities are estimated. Billing will reflect actual quantities achieved.

4. SCHEDULE: To be determined upon acceptance of this Proposal.

5. CLARIFICATIONS/ASSUMPTIONS; TERMS & CONDITIONS:

The Clarifications/Assumptions are part of this Proposal. APC's Terms and Conditions are attached and are incorporated into and part of this Proposal. Please review the Clarifications/Assumptions and APC's Terms and Conditions carefully. The pricing is based upon Customer's acceptance of APC's Clarifications/Assumptions and Terms and Conditions. This Proposal represents our complete offering. If there are any conflicts between Customer's requirements or plans and specifications and this Proposal, this Proposal shall govern.

PREVAILING WAGE? YES ☐ NO ☒

If yes, please provide Wage Determination.

TAX EXEMPT? YES ☒ NO ☐

If yes, please provide Tax Exemption Certificate.

ACE PIPE CLEANING, INC.	ACCEPTED by CUSTOMER:
Signed: <u>Mark Calvert</u> Date <u>11/29/23</u> Title: <u>Ops Manager</u>	Signed: <u>Steve Wilson</u> Date <u>11/29/23</u> Title: <u>Interim Utility Director</u>

CLARIFICATIONS / ASSUMPTIONS

All pricing is conditioned upon the Clarifications/Assumptions listed below.

1. CLARIFICATIONS:

- a. The Proposal excludes any sales or use or other similar taxes. If the Project is tax exempt, Customer shall provide APC the appropriate documentation.
- b. Except as otherwise stated herein, the Proposal does not include payment of prevailing wages or certified payroll reporting. If payment of prevailing wages or submission of certified payroll reports is required, Owner shall provide a wage determination sheet and/or certified payroll instructions.
- c. Except as otherwise stated herein, the Proposal does not include by-pass pumping.
- d. Overtime rates will apply for any work that exceeds an (8) eight-hour workday (applicable to hourly rate quoted).
- e. Any corrections, repairs, or extractions required due to existing structural defects or failures are excluded from the Work.
- f. APC will provide light traffic control (cones) if necessary.
- g. Except as otherwise provided herein, the Proposal is for normal cleaning only. Normal cleaning is considered three passes or less using high-velocity hydraulic equipment capable of pumping 80 gpm up to 2,000 psi. Heavy cleaning shall be considered all cleaning other than normal cleaning but does not include mechanical cleaning with bucket machines and winches. Heavy cleaning will be charged at a negotiated hourly rate.

2. ASSUMPTIONS:

- a. Customer will provide free access to the work site which will be adequate for APC's equipment and will be at least 150 feet from the manhole. APC reserves the right to charge Customer if additional mobilizations are required if access is not available.
- b. Customer will coordinate the Work with any private property owners.
- c. Customer will provide environmentally responsible disposal site.
- d. Customer will provide water for cleaning and access to hydrant and hydrant meter.
- e. Pricing is subject to change 30 days from the date of the proposal.
- f. There are no hazardous materials present in the project area.

Terms and Conditions

1. **General Conditions:** These general terms and conditions are incorporated by reference into the proposal and are part of the Agreement under which services are to be performed by the Contractor for the Customer. Customer's signature and return of the proposal as presented, or Customer's authorization of Contractor to commence the work, shall constitute acceptance of all its terms and conditions.

2. **Warranty:** Contractor warrants that its work will be free from defects caused by faulty workmanship for a period of twelve months after substantial completion of the work. Any warranty claim must be presented in writing to Contractor within 12 months after the substantial completion of Contractor's work, or the claim shall be waived.

3. **Terms of Payment:** Unless otherwise noted, payments are due within thirty days from the submission to Customer of an invoice. A "past due payment" charge of one and one-half percent (1½ %) per month or the maximum legal interest rate, whichever is greater, will be made on all monies past due and shall be paid immediately.

4. **Customer Responsibilities:** Customer will provide mechanical services. Operation and control of Customer's equipment is the Customer's responsibility. If Contractor's work is interrupted due to circumstances caused or allowed by Customer and of which Contractor was not apprised prior to starting the work, an hourly fee will be charged.

5. **Pre-existing Conditions:** The Contractor is not responsible for liability, loss or expense (including damage caused by the backup of basement sewers) caused by pre-existing conditions, including faulty, inadequate or defective design, construction, maintenance or repair of property or contamination of the subsurface where the condition existed prior to the start of the Contractor's work. Customer is responsible for loss of service equipment caused by the pre-existing condition at the job site.

6. **Environmental Conditions:** The debris is represented to Contractor to be non-hazardous, requiring no manifesting or special permitting. The Customer will be responsible for any additional costs or claims associated with the treatment, storage, disposal of the removed debris, or breach of the above representation, at any time during or after the completion of this project. Notwithstanding anything herein to the contrary, when the Work includes removal of industrial waste, Customer represents and warrants it holds clear title to all waste debris or other materials Contractor may handle, process or transport and Customer agrees to supply all necessary manifests or permits and Customer shall indemnify Contractor for liability, loss and expense caused by discharge, escape, release of liquids, gases or any other material contaminant or pollutant into the atmosphere or into or onto land, water or property, except to the extent such liability, loss and expense is caused by Contractor's negligence.

7. **Indemnification:** The Customer and Contractor will each indemnify the other in proportion to relative fault for liability, loss and expense incurred by the other party resulting from a negligent act or omission in performance of work under this Agreement. The Customer also will indemnify Contractor for liability, loss and expense resulting from Contractor services if the Contractor is acting at the direction or instruction of the Customer, or where the primary cause of any damages is due to information provided by the Customer. Where the Customer provides labor for the Contractor, the Customer will indemnify the Contractor for liability, loss or expense for work related injuries to those laborers not provided by the Contractor.

8. **Entire Agreement:** This proposal together with any written documents which may be incorporated by specific references

herein, constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written. The waiver by Contractor of any term, condition or provision herein stated shall not be construed to be a waiver of any other term, condition, or provision hereof.

9. **Performance Dates:** The performance schedule, if stated in the proposal, is approximate and is not guaranteed by Contractor. Contractor shall not be liable for delays in the progress of the Work due to acts of government, acts of God, adverse weather, war, riot, labor disputes, civil insurrection or any other causes beyond Contractor's reasonable control, and the date of performance shall be adjusted for any such delays. Further, Contractor shall not be responsible for delays in the project caused by the failure of material/equipment suppliers to deliver material, equipment or services in the time and manner agreed upon or in the time and manner anticipated.

10. **Scope Limitations:** Any material, equipment, structure, or service item that is not explicitly a part of this Contract is specifically excluded from Contractor's Work.

11. **Contract Amendments:** The following contract amendment procedure is to be used for work performed for the Customer by Contractor, which is beyond the scope of the proposal. (a) As change order items are identified and before any work is done, Contractor and the Customer will review and agree on the work to be performed; (b) A contract amendment or change order will be completed with regard to scope and price and any schedule impact. All parties involved will sign the contract amendment or change order; and (c) Contractor will perform the work and bill the Customer. For time and materials work, back-up documentation will be provided.

12. **Limitation of Liability:** In no event shall Contractor be liable for any indirect, special, or consequential loss or damage arising out of any work performed for Customer. To the fullest extent permitted by law, the total liability, in the aggregate, of Contractor to Customer or anyone claiming by or through Customer, for any and all liabilities, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Contractor's services, the Project, or the Proposal, from any cause or causes whatsoever, including without limitation, negligence, strict liability, indemnity, warranty, or breach of contract, shall not exceed the Contract Amount. The Contractor is not responsible for the rendering of or failure to render architectural, engineering or surveying professional services. Customer and Contractor waive all rights of subrogation for claims covered by the parties' insurance.

13. **Attorney's Fees:** The prevailing party in any dispute between Contractor and Customer shall be entitled to receive attorneys' fees, court costs and other legal fees from the non-prevailing party. APC shall be entitled to collect reasonable attorney's fees incurred to collect any "past due payments."

14. NOTICE TO OWNER FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT, YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

City of Moberly City Council Agenda Summary

Agenda Number: _____

WS #11.

Department: Public Utilities

Date: December 18, 2023

Agenda Item: Ace Pipe Cleaning-Rollins CSO Lagoon.

Summary: Removal of floating grease cap on the lagoons surface that is causing additional odor to the surrounding area. Estimate \$16,242.00.
The excess grease will be placed in the Rollins drying bed until it is suitable for hauling to the Columbia landfill.

Recommended

Action: Recommend approval in work session and proceed to consent agenda.

Fund Name: Lift Station and Lagoon Maintenance

Account Number: 301 114 5309

Available Budget \$: Unbudgeted Expense

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___ **Brubaker**

___ ___

Council Member

M___ S___ **Lucas**

___ ___

M___ S___ **Kimmons**

___ ___

M___ S___ **Jeffrey**

___ ___

M___ S___ **Kyser**

___ ___

Passed Failed



ACE PIPE CLEANING
A Carylton Company

WS #11.

6601 Universal Avenue
Kansas City, MO 64120
p: (816) 241-2891
f: (816) 241-5054
office@acepipe.com

CONTRACT PROPOSAL

Date: 11/17/23

Customer: City Of Moberly
Attn: Steve Wilson
Address: 101 W Reed St
Moberly MO 65270
Email: swilson@cityofmoberly.com
Phone: 660-269-7673

Proposal #: 24-055

1. PROJECT DESCRIPTION:

Moberly, MO – Lagoon Cleaning

2. SCOPE OF WORK:

Ace Pipe Cleaning, Inc. ("APC") will provide the labor, equipment, material, and supplies for work performed on the Project in accordance with this Proposal (the "Work"), and will include the following:

APC will provide One Operator, One Jetter/Combination Unit, One Additional Laborer and One Pipe Truck to clean a lagoon sanitary pipe as directed by customer.

3. PRICING AND PAYMENT:

DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
Mobilization	1	LS	\$ 2,250.00	\$ 2,250.00
Operator & Jetter/Combo Unit	30	HRS	\$ 220.00	\$ 6,600.00
Additional Labor	30	HRS	\$ 110.00	\$ 3,300.00
Pipe Truck	30	HRS	\$ 110.00	\$ 3,300.00
Equipment Fuel	30	HRS	\$ 26.40	\$ 792.00
TOTAL ESTIMATED PRICE				\$ 16,242.00

Payment shall be due Net 30 days from APC's invoice date. Quantities are estimated. Billing will reflect actual quantities achieved.

4. SCHEDULE: To be determined upon acceptance of this Proposal.

5. CLARIFICATIONS/ASSUMPTIONS; TERMS & CONDITIONS:

The Clarifications/Assumptions are part of this Proposal. APC's Terms and Conditions are attached and are incorporated into and part of this Proposal. Please review the Clarifications/Assumptions and APC's Terms and Conditions carefully. The pricing is based upon Customer's acceptance of APC's Clarifications/Assumptions and Terms and Conditions. This Proposal represents our complete offering. If there are any conflicts between Customer's requirements or plans and specifications and this Proposal, this Proposal shall govern.

PREVAILING WAGE? YES NO x

If yes, please provide Wage Determination.

TAX EXEMPT? YES NO x

If yes, please provide Tax Exemption Certificate.

ACE PIPE CLEANING, INC.	ACCEPTED by CUSTOMER:
Signed: <u>Mark Calvert</u> Date <u>11/17/23</u> Title: <u>Ops Manager</u>	Signed: _____ Date _____ Title: _____

CLARIFICATIONS / ASSUMPTIONS

All pricing is conditioned upon the Clarifications/Assumptions listed below.

1. CLARIFICATIONS:

- a. The Proposal excludes any sales or use or other similar taxes. If the Project is tax exempt, Customer shall provide APC the appropriate documentation.
- b. Except as otherwise stated herein, the Proposal does not include payment of prevailing wages or certified payroll reporting. If payment of prevailing wages or submission of certified payroll reports is required, Owner shall provide a wage determination sheet and/or certified payroll instructions.
- c. Except as otherwise stated herein, the Proposal does not include by-pass pumping.
- d. Overtime rates will apply for any work that exceeds an (8) eight-hour workday (applicable to hourly rate quoted).
- e. Price quoted is portal to portal from our location 6601 Universal Ave., Kansas City, MO and is a four-hour minimum charge (applicable to hourly rate quoted).
- f. Any corrections, repairs, or extractions required due to existing structural defects or failures are excluded from the Work.
- g. APC will provide light traffic control (cones) if necessary.
- h. Except as otherwise provided herein, the Proposal is for normal cleaning only. Normal cleaning is considered three passes or less using high-velocity hydraulic equipment capable of pumping 80 gpm up to 2,000 psi. Heavy cleaning shall be considered all cleaning other than normal cleaning but does not include mechanical cleaning with bucket machines and winches. Heavy cleaning will be charged at a negotiated hourly rate.

2. ASSUMPTIONS:

- a. Customer will provide free access to the work site which will be adequate for APC's equipment and will be at least 150 feet from the manhole. APC reserves the right to charge Customer if additional mobilizations are required if access is not available.
- b. Customer will coordinate the Work with any private property owners.
- c. Customer will provide environmentally responsible disposal site.
- d. Customer will provide water for cleaning and access to hydrant and hydrant meter.
- e. Pricing is subject to change 30 days from the date of the proposal.
- f. There are no hazardous materials present in the project area.

Terms and Conditions

1. **General Conditions:** These general terms and conditions are incorporated by reference into the proposal and are part of the Agreement under which services are to be performed by the Contractor for the Customer. Customer's signature and return of the proposal as presented, or Customer's authorization of Contractor to commence the work, shall constitute acceptance of all its terms and conditions.

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3. **Terms of Payment:** Unless otherwise noted, payments are due within thirty days from the submission to Customer of an invoice. A "past due payment" charge of one and one-half percent (1½ %) per month or the maximum legal interest rate, whichever is greater, will be made on all monies past due and shall be paid immediately.

4. **Customer Responsibilities:** Customer will provide mechanical services. Operation and control of Customer's equipment is the Customer's responsibility. If Contractor's work is interrupted due to circumstances caused or allowed by Customer and of which Contractor was not apprised prior to starting the work, an hourly fee will be charged.

5. **Pre-existing Conditions:** The Contractor is not responsible for liability, loss or expense (including damage caused by the backup of basement sewers) caused by pre-existing conditions, including faulty, inadequate or defective design, construction, maintenance or repair of property or contamination of the subsurface where the condition existed prior to the start of the Contractor's work. Customer is responsible for loss of service equipment caused by the pre-existing condition at the job site.

6. **Environmental Conditions:** The debris is represented to Contractor to be non-hazardous, requiring no manifesting or special permitting. The Customer will be responsible for any additional costs or claims associated with the treatment, storage, disposal of the removed debris, or breach of the above representation, at any time during or after the completion of this project. Notwithstanding anything herein to the contrary, when the Work includes removal of industrial waste, Customer represents and warrants it holds clear title to all waste debris or other materials Contractor may handle, process or transport and Customer agrees to supply all necessary manifests or permits and Customer shall indemnify Contractor for liability, loss and expense caused by discharge, escape, release of liquids, gases or any other material contaminant or pollutant into the atmosphere or into or onto land, water or property, except to the extent such liability, loss and expense is caused by Contractor's negligence.

7. **Indemnification:** The Customer and Contractor will each indemnify the other in proportion to relative fault for liability, loss and expense incurred by the other party resulting from a negligent act or omission in performance of work under this Agreement. The Customer also will indemnify Contractor for liability, loss and expense resulting from Contractor services if the Contractor is acting at the direction or instruction of the Customer, or where the primary cause of any damages is due to information provided by the Customer. Where the Customer provides labor for the Contractor, the Customer will indemnify the Contractor for liability, loss or expense for work related injuries to those laborers not provided by the Contractor.

8. **Entire Agreement:** This proposal together with any written documents which may be incorporated by specific references

herein, constitutes the entire agreement between the parties and supersedes all previous communications between them, either oral or written. The waiver by Contractor of any term, condition or provision herein stated shall not be construed to be a waiver of any other term, condition, or provision hereof.

9. **Performance Dates:** The performance schedule, if stated in the proposal, is approximate and is not guaranteed by Contractor. Contractor shall not be liable for delays in the progress of the Work due to acts of government, acts of God, adverse weather, war, riot, labor disputes, civil insurrection or any other causes beyond Contractor's reasonable control, and the date of performance shall be adjusted for any such delays. Further, Contractor shall not be responsible for delays in the project caused by the failure of material/equipment suppliers to deliver material, equipment or services in the time and manner agreed upon or in the time and manner anticipated.

10. **Scope Limitations:** Any material, equipment, structure, or service item that is not explicitly a part of this Contract is specifically excluded from Contractor's Work.

11. **Contract Amendments:** The following contract amendment procedure is to be used for work performed for the Customer by Contractor, which is beyond the scope of the proposal. (a) As change order items are identified and before any work is done, Contractor and the Customer will review and agree on the work to be performed; (b) A contract amendment or change order will be completed with regard to scope and price and any schedule impact. All parties involved will sign the contract amendment or change order; and (c) Contractor will perform the work and bill the Customer. For time and materials work, back-up documentation will be provided.

12. **Limitation of Liability:** In no event shall Contractor be liable for any indirect, special, or consequential loss or damage arising out of any work performed for Customer. To the fullest extent permitted by law, the total liability, in the aggregate, of Contractor to Customer or anyone claiming by or through Customer, for any and all liabilities, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Contractor's services, the Project, or the Proposal, from any cause or causes whatsoever, including without limitation, negligence, strict liability, indemnity, warranty, or breach of contract, shall not exceed the Contract Amount. The Contractor is not responsible for the rendering of or failure to render architectural, engineering or surveying professional services. Customer and Contractor waive all rights of subrogation for claims covered by the parties' insurance.

13. **Attorney's Fees:** The prevailing party in any dispute between Contractor and Customer shall be entitled to receive attorneys' fees, court costs and other legal fees from the non-prevailing party. APC shall be entitled to collect reasonable attorney's fees incurred to collect any "past due payments."

14. **NOTICE TO OWNER FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT, YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.**

City of Moberly

City Council Agenda Summary

Agenda Number: WS #12.

Department: Public Utilities

Date: December 18, 2023

Agenda Item: DMC Concrete Expanding The Rollins CSO Material Drying Bed.

Summary: Excess grease is to be removed from the Rollins CSO Lagoon, the blocked 42in sanitary line and the recently blocked Force Main line. This material needs to dry before it can be hauled to the Columbia Landfill. Our current drying bed does not have the capacity to accommodate this amount of material, so the drying bed needs to be doubled in size. Estimate-\$33,000

Recommended

Action: Staff recommends approval in work session and proceed to consent agenda.

Fund Name: Lift Station and Lagoon Maintenance

Account Number: 301 114 5309

Available Budget \$: Unbudgeted Expense

ATTACHMENTS:

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

Roll Call

Aye

Nay

Mayor

M___ S___ **Brubaker** ___ ___

Council Member

M___ S___ **Lucas** ___ ___

M___ S___ **Kimmons** ___ ___

M___ S___ **Jeffrey** ___ ___

M___ S___ **Kyser** ___ ___

Passed Failed

DMC Concrete LLC
1525 South Williams Street
MO 65270

WS #12.

Estimate

Date

11/27/2023

Name / Address
City of Moberly 101 West Reed Moberly, MO 65270

Description of work to be completed	Total
Materials & labor to pour bunker at Water Waste Treatment plant with 78' of 4' wall, 78' of 2' wall for grate drain, a 48' X 30' slab 8" thick and to cut out 2' X 4' of existing wall and floor and connect the 2 grate drains.	33,110.00
Total	
\$33,110.00	

Phone #

660-651-5694

E-mail

dmcconcrete@gmail.com