

**A G E N D A**  
**WORK SESSION**  
**City of Moberly**  
**December 16, 2019**  
**6:00 PM**

**Requests, Ordinances, and Miscellaneous**

1. Review of an agreement between J & M Display and the City of Moberly for the 2020 4<sup>th</sup> of July event.
2. An Ordinance Approving A Development Agreement; Making Certain Findings And Ratifying Prior Acts; And Providing Further Authority.
3. Appointment to the Downtown CID Board
4. Discussion for proposed stormwater solution for the Harrison/Garfield project as well as the Fox Run area.
5. Discussion Regarding Retaining KIMHEC for Services Related to Pretreatment Program Assistance
6. Review of an agreement with Howe Company LLC for professional services at Moberly Industrial Park Subdivision.

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
 Department: Parks and Re \_\_\_\_\_  
 Date: December 16, 2019

WS #1.

**Agenda Item:** Review of an agreement between J & M Display and the City of Moberly for the 2020 4<sup>th</sup> of July event.

**Summary:** The City has had a positive ongoing relationship with J&M Displays for many years. J&M is a very professional and safe company which is responsible for most of the larger shows in Missouri. Given the size and scale of the show, the professionalism and technical experience required, the potential safety risks given the mass crowd and adjacent forests, and the fact that J&M Displays provides bonus product given the size of the show and early order, staff recommends continuing with J&M Displays in 2020. We are also receiving a credit for a series that did not go off last year due to the rain the morning of the event.

The contract is attached for a \$20,000 show after discounts and bonus product (\$25,283.50 value). Please see the attached agreement and proposal.

Also note the \$10,000,000 insurance carried by J&M Displays. The City of Moberly will, as in past years, be listed as an additional insured.

\$15,000 was budgeted in the current year budget under the MPRD Recreation fund (Remaining balance \$17,100). The remaining \$5,000 was budgeted for in the General Fund (100.013.5406. Remaining balance \$104,331.60).

**Recommended**

**Action:** Direct staff to bring to the January 6<sup>th</sup> 2020 Council meeting

**Fund Name:** N/A

**Account Number:** N/A

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

ATTACHMENTS:	Roll Call	Aye	Nay
<input type="checkbox"/> Memo			
<input type="checkbox"/> Staff Report			
<input checked="" type="checkbox"/> Correspondence			
<input 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 _____			
	<b>Mayor</b>		
	M___ S___ <b>Jeffrey</b>	___	___
	<b>Council Member</b>		
	M___ S___ <b>Brubaker</b>	___	___
	M___ S___ <b>Kimmons</b>	___	___
	M___ S___ <b>Davis</b>	___	___
	M___ S___ <b>Kyser</b>	___	___
		Passed	Failed

### FIREWORKS DISPLAY AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between J & M Displays, Inc., an Iowa corporation, having its principal place of business at Yarmouth, Iowa, hereinafter referred to as "Seller", and \_\_\_\_\_, hereinafter referred to as "Buyer".

Seller shall furnish to Buyer one (1) fireworks display, as per the \$\_\_\_\_\_ program submitted and accepted by the Buyer, and which by reference is made a part hereof as Exhibit "A". The display is to take place on the evening of \_\_\_\_\_, 20\_\_\_\_ at approximately \_\_\_\_\_:\_\_\_\_\_ pm, weather permitting.

IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES AS FOLLOWS:

**1. Firing of Display (check one of the below options):**

\_\_\_\_\_ Seller agrees to furnish all necessary fireworks display material and personnel for a fireworks display in accordance with the program approved by the parties. Seller agrees to comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks.

\_\_\_\_\_ Buyer waives the services of Seller's technician. Buyer is a municipality or has a valid permit from the Bureau of Alcohol, Tobacco, Firearms & Explosives and will be firing the display. If Buyer shoots the display, proof of liability insurance is required as stated in paragraph number five (5), proof of auto insurance (if pyrotechnics will be transported), and proof of worker's compensation insurance coverage is required. Buyer agrees to comply with all local, state, and federal guidelines pertaining to the storing and displaying of fireworks.

**2. Payment. The Buyer shall pay to the Seller (check one of the below options):**

\_\_\_\_\_ the sum of \$\_\_\_\_\_ as a down payment upon execution of this Agreement. The balance of \$\_\_\_\_\_ shall be due and payable in full within fifteen (15) days after the date of the fireworks display. A service charge of one and one-half percent (1 1/2%) per month shall be added to the unpaid balance if the account is not paid in full within fifteen (15) days from the date of the show. If this account remains unpaid and is turned over to a collection agency for non-payment, all fees incurred in collecting the balance will be at the Buyer's expense. All returned checks will be assessed a \$30.00 fee.

\_\_\_\_\_ \$\_\_\_\_\_ in full by \_\_\_\_\_ (70 days prior to the event date).  
The Buyer will receive the 8% prepayment bonus product in this fireworks display.

\_\_\_\_\_ \$\_\_\_\_\_ in full by \_\_\_\_\_ (30 days prior to event date).  
The Buyer will receive the 5% prepayment bonus product in this fireworks display.

**3. Weather Delay/Cancellation.** Buyers intending to postpone a display due to inclement weather should contact J&M Displays as soon as possible to keep postponement fees to a minimum.

The following postponement fees are applicable *only* if the display is re-scheduled in the same calendar year.

- Displays postponed prior to being picked up at the magazine for delivery incur no postponement fee unless there are new costs associated with permit changes or display set-up has occurred prior to product delivery.
- Displays postponed after they are in transit to the shoot site will be charged the full delivery fee.
- Displays postponed after set-up by the shoot team will be charged delivery fee and 1.5 times the shoot fee for hand-fired displays and double the shoot fee for E-fired displays.
- Display set-ups that are allowed to remain on site overnight after a postponement to the following day will incur a fee of eight-percent (8%) of the total display budget. This will cover 24-hour security watch of fireworks and additional labor hours of shoot crew.

Displays cancelled and NOT re-scheduled within the same calendar year will be charged thirty-percent (30%) of the total display budget. This fee will cover all labor associated with order processing, packing & shipping, display set-up if applicable and re-stocking fees.

\*\* Displays cancelled due to circumstances beyond customer control, such as burn bans or other bans issued by the AHJ will be considered on a case by case basis.

4. **Rain Date.** Should inclement weather prevent the firing of the display on the date mentioned herein, the parties agree to a mutually convenient rain date of \_\_\_\_\_ or another date as agreed to by both parties. Once display set-up has begun, the determination to cancel the fireworks display because of inclement weather or unsafe weather conditions shall rest within the sole discretion of the AHJ, Seller, and the lead pyrotechnician.

5. **Insurance. (Check one of the below options):**

\_\_\_\_\_ Seller agrees to provide, at its expense, general liability insurance coverage, in an amount not less than \$10,000,000, and within two (2) weeks prior to the date of the fireworks display, shall submit to the Buyer, if requested in writing, a certificate of insurance. All entities listed on the certificate of insurance will be deemed an additional insured. In the event of a claim by Buyer, the applicable deductible shall be paid by the Seller.

The Seller agrees to defend, indemnify and hold harmless the Buyer and its agents, and employees from and against all claims, costs, judgments, damages and expenses, including reasonable attorney fees that may or shall arise from the performance of the fireworks by the Buyer. The Buyer agrees to give the Seller prompt notice of any claims or demands and to cooperate with the Seller or its successors in interest or assigns, if any, in the defense of any such claims and/or demands.

\_\_\_\_\_ Buyer agrees to provide, at its expense, general liability insurance coverage with a rating by AM Best of A VIII or higher, in an amount not less than \$5,000,000, and within two (2) weeks prior to the date of the fireworks display, shall submit to the Seller a certificate of insurance. All entities listed on the certificate of insurance will be deemed an additional insured. Any charge incurred from the insurance provider for additional insurance after insurance application has been sent in, shall be the responsibility of the Buyer. In the event of a claim by Seller, the applicable deductible shall be paid by the Buyer.

The Buyer agrees to hold the Seller harmless and defend Seller from any and all claims brought against the Seller by employees or sponsors of the Buyer for any and all acts of the Buyer relating to the event for which the fireworks is performed.

6. **Buyer agrees to provide:**

- (a) sufficient area for the display, including a minimum spectator set back as determined by Seller.
- (b) protection of the display area by roping off or similar facility.
- (c) adequate police protection to prevent spectators from entering display area.
- (d) dry, clean sand, if needed, for firing.
- (e) inspection and cleanup of fireworks debris in the fallout zone of the shoot site at first light the morning following the display for anything that may have been missed at the night search.
- (f) necessary local permits.

7. No representation of affirmation of fact, including but not limited to statement regarding capacity, suitability for use, or performance of equipment or products shall be, or deemed to be a warranty by the Seller for any purpose, nor give rise to any liability or obligation of the Seller whatsoever, except for acts of Seller's negligence as above stated.

8. It is further understood and agreed that nothing in this Agreement shall be construed or interpreted to mean a partnership. Both parties hereto being responsible for their separate and individual debts and obligations, and neither party shall be responsible for any agreements not stipulated in this Agreement.

9. The parties hereto do mutually and severally guarantee terms, conditions, and payments of this Agreement. This document shall be binding upon the parties, themselves, their heirs, executors, administrators, successors and assigns.

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

BY: \_\_\_\_\_  
J & M Displays, Inc.  
SELLER

BY: \_\_\_\_\_  
BUYER

**Please include the DISPLAY INFORMATION form with this Agreement so your order is processed accurately.**





# J&M Displays Proposal for: Moberly Parks & Recreation Department \$20,000

## Flight 1

### 3 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
2	Green peony		\$11.70	\$23.40
2	Lemon Peony	lemon tail	\$11.70	\$23.40
2	Orange peony		\$11.70	\$23.40
2	Peony with brocade ring assorted	Brocade tail	\$11.70	\$23.40
2	Pink Peony	pink tail	\$11.70	\$23.40
2	Purple peony		\$11.70	\$23.40
2	Red peony		\$11.70	\$23.40
2	White peony		\$11.70	\$23.40
2	Blue peony		\$22.30	\$44.60

Category Shell Count: 18

\$231.80

**Section Shell Count: 18**

## Main Event

### Multi-shell Barrage Units

Quantity	Name	Rising Effect	Price	Total
2	Small finale 100 shot		\$298.60	\$597.20

Category Shell Count: 200

\$597.20

### Ignition Items

Quantity	Name	Rising Effect	Price	Total
460	Igniter 3 meter leads		\$1.95	\$897.00
38	Igniter 4 meter leads		\$2.20	\$83.60

Category Shell Count: 0

\$980.60

### 3 Inch Salutes

Quantity	Name	Rising Effect	Price	Total
10	Silver sparked salute with silver tail	silver tail	\$10.85	\$108.50

Category Shell Count: 10

\$108.50

### 3 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
2	Green, orange, and purple peony	Gold tail	\$11.70	\$23.40
2	Red white and blue peony		\$11.70	\$23.40
2	Red ring pattern		\$11.70	\$23.40
2	Silver Spike		\$11.70	\$23.40
2	White ring pattern		\$11.70	\$23.40
2	Glittering willow	glitter tail	\$22.30	\$44.60
2	Assortment C of 20 (5 report& 15 color) shells ELECTRIC FIRE		\$229.00	\$458.00
2	Assortment F of 20 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$230.00	\$460.00
1	Assortment M of 20 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$230.00	\$230.00
1	Assortment S of 10 pairs (20 shells) of J&M Brand shells (Low fallout)	mixed tails	\$230.00	\$230.00
1	Assortment Y of 10 pairs of 3" J&M shells ELECTRIC FIRE (Low fallout)		\$230.00	\$230.00

Category Shell Count: 152

\$1,769.60



# J&M Displays Proposal for: Moberly Parks & Recreation Department \$20,000

## Main Event

### 3 Inch Special Effect Shells

Quantity	Name	Rising Effect	Price	Total
4	Red and Blue ELECTRIC FIRE ONLY (cylinder)		\$30.65	\$122.60
Category Shell Count: 4				\$122.60

### 4 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
2	Wave to variegated	Silver tail	\$22.30	\$44.60
2	Purple to dark to Green		\$37.70	\$75.40
2	Red Coco Crossette	red tail	\$37.70	\$75.40
2	Red green and blue moving stars		\$37.70	\$75.40
2	Six angle chrysanthemum	Gold tail	\$37.70	\$75.40
2	Assortment J of 20 different J&M Brand shells (LOW FALLOUT)		\$420.00	\$840.00
2	Assortment L of 20 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$420.00	\$840.00
2	Assortment V of 20 different Patriotic J&M Brand shells ELECTRIC FIRE	mixed tails	\$420.00	\$840.00
Category Shell Count: 130				\$2,866.20

### 4 Inch Special Effect shells

Quantity	Name	Rising Effect	Price	Total
2	Glittering silver to magenta to green strobe chrys		\$47.35	\$94.70
2	Kamuro chrys niagara fall		\$47.35	\$94.70
Category Shell Count: 4				\$189.40

### 5 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
1	Assortment A of 15 Patriotic J&M shells ELECTRIC FIRE		\$540.00	\$540.00
1	Assortment H of 15 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$540.00	\$540.00
1	Assortment J of 15 different shells (ELECTRIC FIRE ONLY)	mixed tails	\$540.00	\$540.00
1	Assortment N of 15 different J&M Brand shells ELECTRIC FIRE		\$540.00	\$540.00
1	Assortment P of 10 Special J&M Brand pattern shells ELECTRIC FIRE		\$600.00	\$600.00
Category Shell Count: 70				\$2,760.00

### 5 Inch Special Effect Shells

Quantity	Name	Rising Effect	Price	Total
1	Golden wave to red to blue chrys		\$72.35	\$72.35
1	Red crackling double hearts		\$72.35	\$72.35
Category Shell Count: 2				\$144.70



# J&M Displays Proposal for: Moberly Parks & Recreation Department \$20,000

## Main Event

### 6 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
1	Aqua chrys with gold willow to white strobe ring with delayed crackle pistil		\$86.80	\$86.80
1	Blue dahlia w/crackling pistil		\$86.80	\$86.80
1	Blue spiderweb with red strobe pistil		\$86.80	\$86.80
1	Brocade ring with glitter pistil with double crackle	rising flowers	\$86.80	\$86.80
1	Chrysanthemum to time rain with time rain and coconut pistil		\$86.80	\$86.80
1	Green strobe willow		\$86.80	\$86.80
1	Green willow		\$86.80	\$86.80
1	Magenta sky blue and lemon dahlia with white glitter pistil		\$86.80	\$86.80
1	Red crossette		\$86.80	\$86.80
1	Assortment A of 9 different Patriotic shells ELECTRIC FIRE		\$530.00	\$530.00
1	Assortment C of 9 different J&M brand shells ELECTRIC FIRE	mixed tails	\$530.00	\$530.00
1	Assortment P of 9 different J&M brand shells ELECTRIC FIRE	mixed tails	\$530.00	\$530.00
1	Assortment W of 9 different J&M Brand Shells ELECTRIC FIRE	mixed tails	\$530.00	\$530.00
Category Shell Count: 45				\$2,901.20
<b>Section Shell Count: 617</b>				

## Finales

### 3 Inch Finales

Quantity	Name	Rising Effect	Price	Total
12	Color 10 Shot finale chain	silver tail	\$139.80	\$1,677.60
1	Report and palm 10 Shot finale chain		\$139.80	\$139.80
Category Shell Count: 130				\$1,817.40

### 4 Inch Finales

Quantity	Name	Rising Effect	Price	Total
3	Red white and blue dahlia 8 shot finale chain	mixed tails	\$221.15	\$663.45
5	Red white and blue peony 8 shot finale chain	mixed tails	\$221.15	\$1,105.75
Category Shell Count: 64				\$1,769.20
<b>Section Shell Count: 194</b>				

## 8% Free for Early Payment

### Multi-shell Barrage Units

Quantity	Name	Rising Effect	Price	Total
2	Variety color 50 shot		\$166.40	\$332.80
2	100 CAKE - Gold tail to gold crown		\$298.60	\$597.20
Category Shell Count: 300				\$930.00

### 3 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
2	Brocade crown with silver strobing pistil		\$22.30	\$44.60
2	Glittering willow waterfall	glitter tail	\$22.30	\$44.60
Category Shell Count: 4				\$1,019.20



# J&M Displays Proposal for: Moberly Parks & Recreation Department \$20,000

## 8% Free for Early Payment

### 3 Inch Special Effect Shells

Quantity	Name	Rising Effect	Price	Total
2	Gold Strobe		\$30.65	\$61.30
2	White strobe	Large Brocade tail	\$30.65	\$61.30
Category Shell Count: 4				\$1,141.80

### 5 Inch Special Effect Shells

Quantity	Name	Rising Effect	Price	Total
1	Twitter glitter to purple butterfly with green eyes		\$72.35	\$72.35
Category Shell Count: 1				\$1,214.15
<b>Section Shell Count: 309</b>				

## 15% Free for Multiple Year Agreement

### Multi-shell Barrage Units

Quantity	Name	Rising Effect	Price	Total
2	Silver tails to Red and silver strobe and blue 100 shot		\$166.40	\$332.80
2	Super crown with blue stars with mines 49 shot		\$166.40	\$332.80
2	8 X 5 Fan Shaped Golden crossette and red mines		\$216.80	\$433.60
2	8 X 5 Fan Shaped Green strobe and brocade mines		\$216.80	\$433.60
Category Shell Count: 394				\$1,532.80

### 4 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
2	Rainbow crossette		\$37.70	\$75.40
2	Tracer assorted		\$37.70	\$75.40
Category Shell Count: 4				\$1,683.60

### 4 Inch Special Effect shells

Quantity	Name	Rising Effect	Price	Total
2	Lemon strobe		\$47.35	\$94.70
Category Shell Count: 2				\$1,778.30

### 5 Inch Color Shells

Quantity	Name	Rising Effect	Price	Total
1	Twitter glitter to red to blue with red strobe pistil		\$61.40	\$61.40
1	Two times scattering with crackling pistil		\$61.40	\$61.40
Category Shell Count: 2				\$1,901.10

### 6 Inch Special Effect Shells

Quantity	Name	Rising Effect	Price	Total
2	Aqua to crackling ghost peony		\$119.70	\$239.40
1	Blue to red to crackling ghost peony		\$119.70	\$119.70
Category Shell Count: 3				\$2,260.20
<b>Section Shell Count: 405</b>				



J&M Displays Proposal for:  
Moberly Parks & Recreation Department  
\$20,000

Free for Customer Satisfaction

**3 Inch Finales**

Quantity	Name	Rising Effect	Price	Total
2	Report and palm 10 Shot finale chain		\$139.80	\$279.60
Category Shell Count: 20				\$279.60

**4 Inch Finales**

Quantity	Name	Rising Effect	Price	Total
1	Red white and blue peony 8 shot finale chain	mixed tails	\$221.15	\$221.15
Category Shell Count: 8				\$500.75
<b>Section Shell Count: 28</b>				



# J&M Displays Proposal for: Moberly Parks & Recreation Department \$20,000

This proposal includes an extension of our \$10,000,000.00 spectator liability insurance, and workers compensation on our shoot team.

Fireworks Price:	\$16,258.40
Discount:	\$1,308.40
Subtotal Fireworks:	<b>\$14,950.00</b>
Sales Tax:	
Local Sales Tax:	
Insurance Processing:	\$2,000.00
License and Permit:	\$50.00
Shoot Fee:	\$2,200.00
Delivery:	\$800.00
Musical Firing:	
Shoot Cost:	
Barge/Pontoon Fee:	
Total Price of Show:	<b>\$20,000.00</b>

Total Shot Count:	1571
Packing Check:	647
Date of Display:	07/04/20
Customer Number:	

**Summary of Free Items Added to Your Show**  
**See Previous Pages for a Listing of Free Items**  
**Free Items are Based on the \$14,950.00 Fireworks Subtotal**

<b>\$1,214.15</b>	<b>8% Free for Early Payment</b>
<b>\$2,260.20</b>	<b>15% Free for Multiple Year Agreement</b>
<b>\$500.75</b>	<b>Free for Customer Satisfaction</b>
<b>\$3,975.10</b>	<b>Total Free</b>

**Total Value of Show is \$25,283.50. Your Price is \$20,000.00**

### Please Note the Following Comments:

The data in this proposal is confidential, and is to be accorded confidential treatment and shall not be disclosed other than to the official representative of the organization listed on the cover, and only then when in the evaluation of this proposal. Any reproduction of the contents of this proposal, whether in whole or in part, is expressly forbidden. J&M Displays, Inc. requests that all information be safeguarded from release pursuant to any request under the Freedom of Information Law of this state or any other state or jurisdiction; as it may cause competitive disadvantage to our company. The enclosed concepts and materials are the sole and exclusive property of J&M Displays, Inc. We reserve the right to make substitutions of equal or greater value. Prices and specifications are subject to change without notice. For choreographed displays the quantity and sizes of product may change based on the music selected; however, the dollar value of the product will remain the same.

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
Department: City Manager  
Date: December 16, 2019

WS #2.

**Agenda Item:** An Ordinance Approving A Development Agreement; Making Certain Findings And Ratifying Prior Acts; And Providing Further Authority.

**Summary:** Since its creation in 2017, the Downtown Moberly Community Improvement District (the “**District**”) and the City of Moberly (the “**City**”) have worked cooperatively to improve the physical and economic environment and to alleviate blighted conditions extant within the City’s Central Business District. In furtherance of these goals, the City entered into a Memorandum of Understanding dated as of September 11, 2019 (the “**MOU**”) with Mashburn Development, LLC (the “**Developer**”) respecting the redevelopment of certain centrally located downtown properties for use as a boutique destination “**Merchants’ Hotel**” containing lodging, fine dining restaurants, convention and meeting areas, and retail space, all bringing increased patronage and enhancing the Moberly downtown area.

The Developer has over thirty years’ experience in the design, development, construction and management of over 200 large hotel, convention center, resort and mixed use projects nation-wide totaling over \$3,000,000,000 in development costs. The Developer’s principals have held senior level positions with major regional hotel and resort developers and destination retailers including John Q. Hammons Hotels and Resorts, Bass Pros Shops, True North Hotel Group and Leisure Hotels and Resorts. The MOU called for the negotiation of a definitive development agreement among the Developer, the City and the District respecting redevelopment the site of the City’s Municipal Auditorium and the structure formerly known as the “**Kelly Hotel**,” the adjacent City parking lot; and the commercial building known and numbered as 220 West Reed Street (the “**Smith Building**” and together with the Municipal Auditorium, the Kelly Hotel and the parking lot, the “**Hotel/Convention Center Properties**”).

The proposed Purchase and Development Agreement (the “**Development Agreement**”) calls for the rehabilitation and reuse of the Hotel/Convention Center Properties by the Developer and the construction of a new multi-story hotel building replicating the look of the historic “**Merchants Hotel**” and containing approximately 68 sleeping rooms, together with a 150 seat restaurant with ancillary dining and lounge facilities; remodeling of the Kelly Hotel building as a hotel annex to provide approximately 32 additional sleeping rooms; construction of a two story open roofed parking garage (the “**Parking Garage**”); and improvements to the Municipal Auditorium. Under the Development Agreement, the City will convey the Kelly Hotel and the Smith Building to the Developer and the Developer will additionally acquire the parking area between the Smith Building and the Commerce Bank building. The Developer will expend approximately \$14 Million to develop the Merchants’ Hotel and Kelly Hotel building as a high-quality boutique destination hotel and convention venue (the “**Project**”). The City will utilize Neighborhood Improvement District financing to construct the Parking Garage

and make improvements to the Municipal Auditorium at an approximate estimated total cost of \$1,668,000.

WS #2.

The City and the District will additionally provide to the Developer in consideration of the financing and development of the Project the following economic development and financing incentives. These will be limited to and derived solely from incremental revenues generated by the Project:

- 1% of the City Sales Tax on all taxable “sales at retail” occurring within the one block Project area;
- the District’s 1.0% Sales Tax on all taxable “sales at retail” occurring within the Project area;
- one half of the City’s 4% lodging tax applicable to sales of sleeping rooms at the completed Project; and
- franchise fees received by the City for electric power and other utility usage at the completed Project site.

Moreover, the foregoing revenues shall be paid over only from amounts remaining after the allocation and use in the first instance of the portions of these revenues required to pay special assessments representing annual debt service on the NID Parking Garage financing.

**Recommended**

**Action:** Direct staff to bring to the January 6<sup>th</sup> 2020 Council meeting for final approval.

**Fund Name:** N/A

**Account Number:** N/A

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

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



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

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

**AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT; MAKING CERTAIN FINDINGS AND RATIFYING PRIOR ACTS; AND PROVIDING FURTHER AUTHORITY.**

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

WHEREAS, the City of Moberly (the “**City**”) is the fee owner of certain improved real properties located within a portion of the City’s downtown area determined by the Council of the City (the “**Council**”) to be a “blighted area” (as that term is used and defined in Chapter 353 of the Revised Statutes of Missouri, as amended) and to address and remediate blighted conditions within the aforesaid area, the City and the Downtown Moberly Community Improvement District (the “**District**”) have entertained proposals from interested persons to rehabilitate, improve and reuse the properties within the area (the “**Request**”); and

WHEREAS, in response to the Request, Mashburn Development, LLC (the “**Developer**”) has prepared and submitted to the City and the District a development program for the area which calls for construction of a new multi-story hotel building replicating the look of the historic downtown “Merchants Hotel” and containing a restaurant with ancillary dining and lounge facilities; the remodeling and reuse of the City’s Kelly Hotel building; and improvements to the City’s Municipal Auditorium (collectively, the “**Development Program**”); and

WHEREAS, to facilitate and obtain the benefits of the Development Program, the City in concert with the District wishes to take certain actions and make available certain economic

development and financing incentives available under Missouri law, all in consideration of the Developer’s implementation of the Development Program; and

WHEREAS, the City, the District and the Developer have jointly prepared a development agreement in substantially the form set forth as Exhibit A to this Ordinance (the “**Development Agreement**”) which provides for, among other things, delineation of the respective parties responsibilities and obligations in respect of the Development Program and the identification and commitment of the resources and financing incentives to be made available, and a timetable for implementation, and the City, the District and the Developer each now desire to enter into and be bound by the terms and conditions of and respective obligations imposed by the Development Agreement.

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

SECTION 1. The Development Agreement in substantially the form of Exhibit A is hereby approved and the Mayor is hereby authorized and directed to execute and deliver the Development Agreement on behalf of the City.

SECTION 2. The Council hereby finds and determines that the implementation of the Development Program and the activities contemplated in the Development Agreement are reasonably anticipated to remediate blighting conditions present in the aforesaid area of the downtown and that the commitments and expenditures by the City provided for in the Development Agreement are within the scope of the City’s powers and are for a public purpose. Any and all acts heretofore taken by the City Manager, City staff, other agents of the City, or any of them taken in connection with the Development Program and the Development Agreement are hereby acknowledged, confirmed, ratified and approved.

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

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

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

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri on this \_\_\_\_ day of \_\_\_\_\_, 2019.

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

ATTEST:

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

**EXHIBIT A**  
**DEVELOPMENT AGREEMENT**

**PURCHASE AND DEVELOPMENT AGREEMENT**

THIS PURCHASE AND DEVELOPMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”) by and among the CITY OF MOBERLY, a city of the third classification and Missouri municipal corporation located in Randolph County, Missouri and having a principal office at 101 West Reed Street – City Hall, Moberly, Missouri 65270 (the “**City**”); the DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT, a community improvement district and Missouri political subdivision established pursuant to the CID Act located within the corporate limits of the City and having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the “**District**”); and MASHBURN DEVELOPMENT, LLC, a Missouri limited liability company in good standing having a principal place of business at 1704 NW 450 Road, Kingsville, Missouri 64061 (the “**Developer**”). *Capitalized terms used and not defined in this Agreement shall have the meanings respectively ascribed to them in Article I of this Agreement.*

**RECITALS**

**A.** The City is the fee owner of certain improved real properties including the Kelly Hotel, the Parking Lot, and the Smith Building which are located within a designated redevelopment area determined by the City Council to be a “blighted area” (as that term is used and defined in Chapter 353 of the Revised Statutes of Missouri, as amended) and which are currently economically underutilized and, to address current conditions and to remediate blighted conditions within the aforesaid redevelopment area, the City and the District have entertained proposals from interested persons to rehabilitate, improve and reuse the Hotel/Convention Center Properties.

**B.** In response, the Developer has prepared and submitted to the City the Minimum Development Program for the rehabilitation and reuse of the Hotel/Convention Center Properties and in connection therewith desires to have the City convey or cause to be conveyed to the Developer fee title to each of the Developer Acquired Properties and, together with the District, take certain actions and make available certain economic development and financing incentives available under Missouri law, all in consideration for the development by the Developer of the Project.

**C.** To facilitate the foregoing, the Developer and the City with the concurrence of the District have entered into the Memorandum of Understanding which the parties acknowledge is intended to serve as the basis of this Agreement and in furtherance of the understandings and commitments set forth in the Memorandum of Understanding, the City, the District and the Developer each now desire to enter into and be bound by the terms and conditions of and respective obligations imposed by this Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the above premises and the mutual covenants set forth in this Agreement, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City, the District and the Developer each hereby agrees as follows:

**ARTICLE I.  
MEANINGS OF TERMS**

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

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

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

**“Approving Ordinance”** shall mean Ordinance No. \_\_\_ of the City adopted and approved by the City Council on \_\_\_\_\_, 20\_\_ approving this Agreement.

**“Approving Resolution”** shall mean Resolution No. \_\_\_ of the District adopted and approved by the Board of Directors of the District on \_\_\_\_\_, 20\_\_ approving this Agreement.

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

**“Bond Counsel”** shall mean Cunningham, Vogel & Rost, P.C., or other firm of nationally recognized bond counsel selected by the City.

**“Certificates of Occupancy”** shall mean one or more certificates of occupancy for any of the Hotel/Convention Center Properties properly and lawfully issued by the City in accordance with the Building Regulations.

**“Certificate of Reimbursable Improvement Costs”** shall mean a document, substantially in the form of Exhibit A, attached to and incorporated by reference in this Agreement, provided by the Developer to the City evidencing reimbursable costs incurred by the Developer of constructing the Parking Garage and making improvements to the City’s Municipal Auditorium, all subject to the terms, conditions and limitations of this Agreement.

**“CID Act”** shall mean the Community Improvement District Act, sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended.

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

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

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

“Closings” shall mean the contemporaneous closings on the City’s acquisition of the West Parking Lot Area and the City’s conveyance to the Developer of the Developer Acquired Properties, all in accordance with Article II of and as further contemplated in this Agreement.

“Closing Date” shall mean the date provided in Section 2.3 of this Agreement for the Closings.

“Commerce Bank Property” shall mean the portions of the former Commerce Bank property situated at 208 West Reed Street, Moberly Missouri, designated as lots 7 through 12, inclusive, all as further depicted on Exhibit B, attached to and incorporated by reference in this Agreement.

“Construction Contractors” shall mean those principal or general contractors (other than the Developer), if any, contractually obligated to undertake the construction of any portions of the Project with each designated in a writing to the City and the District by the Developer.

“Construction Plans” shall mean plans, drawings, specifications, and related documents, and construction schedules for the construction of the entire Project, together with all supplements, amendments or corrections, submitted by the Developer and approved by the City in accordance with this Agreement.

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

“Developer” shall mean Mashburn Development, LLC, a Missouri limited liability company in good standing having a principal place of business at 1704 NW 450 Road, Kingsville, Missouri 64061 or any Affiliate in accordance with Section 6.1 of this Agreement.

**“Developer Acquired Properties”** shall mean the Kelly Hotel, the West Parking Lot Area, and the Smith Building to be acquired in fee by the Developer from the City in accordance with **Article II** of this Agreement in furtherance of the implementation of the Project.

**“District”** shall mean the Downtown Moberly Community Improvement District, a community improvement district and Missouri political subdivision established pursuant to the CID Act located within the corporate limits of the City and having a principal office at 101 West Reed Street, Moberly, Missouri 65270.

**“Effective Date”** shall mean the date first above written.

**“Feasibility Period”** shall mean the One Hundred Fifty (150) day period following the Effective Date.

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

**“Hotel/Convention Center Properties”** shall mean, collectively, certain improved real properties situated in the City’s central business district and including: (i) the lot containing the structure formerly known as the “Kelly Hotel” and known and numbered as 109 North Clark Street (the “**Kelly Hotel**”); (ii) the adjacent City parking lot (the “**Parking Lot**”); (iii) numbered lots 5 and 6 of the former Commerce Bank building located at 28 West Reed Street together with any easement appurtenant thereto (the “**West Parking Lot Area**”); and (iv) the commercial building and lot known and numbered as 220 West Reed Street (the “**Smith Building**”), together with the City’s Municipal Auditorium located at West Rollins and North Clark Streets, all as further depicted and legally described in **Exhibit C**, attached to and incorporated by reference in this Agreement.

**“Investigations, Tests and Surveys”** shall mean, without limitation, the following: (a) inspecting, surveying, making engineering, environmental and architectural studies, testing the soil (including borings) and any portion or element of any of the Hotel/Convention Center Properties (including lead paint testing) and otherwise determining the condition of the Hotel/Convention Center Properties or any of them; (b) reviewing all documents received from the City, all applicable subdivision, zoning, and building code ordinances, rules and regulations of the City, and of the State of Missouri; (c) determining that utilities, including, but without limitation, water, gas, electricity, telephone and cable television services, can be made available to adequately serve the improvements which are intended to be constructed on the Hotel/Convention Center Properties; and (d) determining all other matters regarding the physical condition of the Hotel/Convention Center Properties and the development thereof which the Developer deems appropriate.



“IRC” shall mean shall mean the Internal Revenue Code of 1986, as amended, and the applicable regulations of the Treasury Department proposed or promulgated thereunder.

“Memorandum of Understanding” shall mean that certain Memorandum of Understanding dated as of September 11, 2019 by and between the City and the Developer defining the roles and responsibilities of each in the joint planning, funding, conveyance, and redevelopment of the Hotel/Convention Center Properties consistent with the Minimum Development Program and the business and marketing plans of the Developer and employing certain public incentives available from the City.

“Minimum Development Program” shall mean, collectively, construction of a new multi-story hotel building replicating the look of the historic “Merchants Hotel” and containing approximately 68 sleeping rooms, together with a 150 seat restaurant with ancillary dining and lounge facilities; remodeling of the Kelly Hotel building as a hotel annex to provide approximately 32 additional sleeping rooms; construction of the Parking Garage; and the improvements to the City’s Municipal Auditorium listed on Schedule 1, attached to and incorporated by reference in this Agreement, all as further depicted and described in schematic drawings prepared by \_\_\_\_\_, attached as Exhibit D to and incorporated by reference in this Agreement.

“NID Act” shall mean the Missouri Neighborhood Improvement District Act, sections 67.453 through 67.475 of the Revised Statutes of Missouri, as amended.

“NID Bonds” shall mean one or more series of neighborhood improvement district limited general obligation bonds issued by the City pursuant to the NID Act and in general accordance with and subject to limitations of this Agreement, the proceeds of which shall be used to pay, among other things, the costs of constructing the Parking Garage and making improvements to the City’s Municipal Auditorium.

“NID District” shall mean the “Merchants Hotel and Convention Center Neighborhood Improvement District” established pursuant to the NID Act and this Agreement encompassing the property bounded by West Reed Street on the north, North Clark Street on the east, West Rollins Street on the south and North Williams Street on the west and containing the Hotel/Convention Center Properties and the Commerce Bank Property.

“NID Petition” shall mean a proper petition for the establishment of the NID District which meets the requirements of section 67.457.3 of the NID Act and in substantially the form of Exhibit E, attached to and incorporated by reference in this Agreement.

“NID Project Fund” shall mean the fund by that name established pursuant to an ordinance of the City authorizing the issuance of the NID Bonds pursuant to this Agreement into which shall be deposited the cash sale proceeds of the NID Bonds after payment of all reasonable and customary costs of issuance of the NID Bonds, including, but not limited to underwriters’ discounts and fees, bond counsel and attorneys’ fees, financial advisor fees, bond registration fees, prepaid interest, debt service reserves, costs of printing any NID Bonds and any offering documents relating thereto, costs of credit enhancement, if any, and fees of any rating agency rating the NID Bonds, together with any interest earned thereon.

“**Parking Garage**” shall mean an elevated two-story open roof public parking garage constructed and located on the Parking Lot in accordance with this Agreement.

“**Party**” or “**Parties**” shall mean as applicable, the City, the District, and/or the Developer.

“**Project**” shall mean, collectively, all demolition, site work, site improvements, utilities installation, landscaping and new construction required for the redevelopment of the Hotel/Convention Center Properties as a high quality boutique destination hotel and convention venue in accordance with the Minimum Development Program or as such may be expanded pursuant to provisions of **Section 3.1** of this Agreement.

“**Purchase Price**” shall mean the sum of Ten Dollars (\$10.00) paid in hand by the Developer at or prior to closing on the transfer of the Developer Acquired Properties as set forth in **Section 2.3** of this Agreement which amount shall constitute the entire purchase price for the Developer Acquired Properties.

“**Third Party Action**” shall mean any claim, action, proceeding or demand initiated at any time by any party other than a named Party to this Agreement and directed to the City or the District or any of their respective officials, officers, agents, attorneys, employees or representatives arising out of this Agreement, the Hotel/Convention Center Properties or any of them, the Commerce Bank Property, the Project, the Approving Ordinance, the Approving Resolution, the conveyances contemplated by this Agreement, any amounts paid or rebated to the Developer pursuant to **Sections 4.1** or **4.2** of this Agreement, the NID Bonds, the commitments and allocations made under **Sections 4.4** and **4.5** of this Agreement or any of them, or any portion(s) of any of the foregoing or any actions taken pursuant to any of the foregoing.

“**Title Commitments**” shall mean written commitments to issue one or more Title Policies for the Developer Acquired Properties provided by the Title Company in customary form.

“**Title Company**” shall mean a title insurance company selected by the City and reasonably acceptable to the Developer.

“**Title Policies**” shall mean one or more ALTA Owner’s Policies (6-17-06) of title insurance for the Developer Acquired Properties each of which shall contain an additional endorsement covering defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the date of the applicable Title Commitment but prior to the Closing Date.

“**Zoning Approvals**” shall mean any and all plat approvals, re-zoning or other zoning changes, site plan approvals, conditional use permits, design reviews, or other subdivision, zoning, site plan review, architectural or historic district review, or similar approvals required under Applicable Regulations for the implementation of the Project.

**Section 1.2. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context

shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

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

**ARTICLE II.  
PURCHASE AND TRANSFER OF PROPERTIES**

**Section 2.1. Feasibility Period and Investigations.** The Developer shall have the right, but only during the Feasibility Period, to investigate title and to make such investigations, studies and tests with respect to the any of the Hotel/Convention Center Properties as the Developer deems necessary or appropriate to determine the feasibility of acquiring the Developer Acquired Properties and completing the Project. During the Feasibility Period, the Developer may make Investigations, Tests and Surveys on any of the Hotel/Convention Center Properties as required to satisfy the Developer that the properties comprising the Hotel/Convention Center Properties including the Developer Acquired Properties are satisfactory for the Project. The City shall provide to the Developer within Five (5) days after the Effective Date all documents and information relating to the portions of the Hotel/Convention Properties which are in the City’s possession or control, and other pertinent information in the City’s possession relating to the Hotel/Convention Properties, if any. During the Feasibility Period, the City shall permit the Developer, its employees, agents, contractors and subcontractors to enter upon real property comprising the Smith Building, the Parking Lot, and the Kelly Hotel and shall use best efforts to cause the Developer to be permitted to enter upon the Commerce Bank Property and the West Parking Lot Area to perform Investigations, Tests and Surveys and the Developer shall indemnify and hold City and the District harmless from any and all claims related to the Developer, its employees, agents, contractors and subcontractors’ entry onto any of the Hotel/Convention Center Properties or the Commerce Bank Property to perform such Investigations, Tests and Surveys. The Developer shall have until expiration of the Feasibility Period to satisfy itself, in its sole discretion, with respect to the condition of the Hotel/Convention Center Properties. At any time prior to expiration of the Feasibility Period, the Developer may, in its sole discretion, for any reason or for no reason, terminate this Agreement by written notice to the City and the District. Upon any such termination of this Agreement, no Party hereto shall have any further obligation or liability to any other with respect to the transactions contemplated by this Agreement. Failure of the Developer to timely exercise the aforesaid right to terminate this Agreement shall be deemed conclusive evidence of the Developer’s satisfaction with the results of the Investigations, Tests and Surveys and with the condition of the Hotel/Convention Center Properties including the Developer Acquired Properties.

**Section 2.2. Title Issues.** Within the first Twenty (20) days of the Feasibility Period the City shall order the Title Commitments for the Developer Acquired Properties and promptly upon receipt, the City shall transmit or cause to be transmitted to the Developer a copy or copies of the Title Commitments showing merchantable title of the City in the Developer Acquired Properties (other than the West Parking Lot Area) subject only to the following permitted exceptions: the Title

Company’s customary and standard exceptions; (b) all taxes and special assessments credited to the Developer at the Closings; (c) building and building lines, use and occupancy restrictions, conditions and covenants of record; (d) zoning laws and ordinances; (e) easements for the use of public utilities; (f) roads and highways; (g) drainage ditches, feeders and laterals; and (h) existing leases, if any, approved by the Developer. The Developer shall have Fifteen (15) days after receipt of the last such Title Commitment to make any objections to any Title Commitment by sending the City notice thereof; *provided that* the Developer’s sole basis for any such objection shall be a demonstrated material impairment of the Developer’s ability to undertake the Project. In the event of such an objection, the City shall have Ten (10) days after receipt of the Developer’s notice of objection to notify the Developer which objections the City is willing to attempt to cure, if any, and in the event the City is willing to attempt to cure the objection, the City shall have an additional Thirty (30) days to do so and the Feasibility Period shall be extended by such time. If the City fails to so notify the Developer, then the City shall be deemed to have refused to cure any such objections. To the extent that the City fails or refuses to cure any such objections, the Developer shall have the right to: (i) cancel this Agreement; or (ii) proceed to the Closings and accept title subject to the matters so objected to (which shall then become permitted exceptions). At or before the Closings the City shall complete an ALTA Statement (or such other similar affidavit as may be currently used by the Title Company) and other documents required by the Title Company for clearance of all exceptions to title other than the foregoing permitted exceptions.

**Section 2.3. Closing Date; Utility Services; City’s Purchase of West Parking Lot.** The Closing Date shall be Ten (10) days after the earlier of: (i) delivery of written notice by the Developer to the City and the District of the Developer’s readiness to close; or (ii) the expiration of the Feasibility Period or such other date as may be mutually agreed among the Parties. On or prior to the Closing Date, the City, at the City’s sole cost, shall purchase and acquire in fee the West Parking Lot Area at a purchase price not to exceed One Hundred Twenty-Five Thousand Dollars and no cents (\$125,000.00). At all times prior to the Closing Date, the City shall maintain all insurance coverage currently in place with respect to the Kelly Hotel and the Smith Building and all utility services (including electrical, gas and water service) and City agrees to immediately notify the Developer of any damage to or affecting any of the foregoing properties. At the Closings the City shall take such steps as a reasonably necessary and the Developer shall cooperate with the City to have all utility services at the Developer Acquired Properties transferred to and registered in the name of the Developer.

**Section 2.3.1. Events At Closings; Transfers by Deed.** The Closings shall occur at the offices of the Title Company during normal business hours or at such other location as the Developer and the City with the consent of the District may mutually agree. At the Closings, and upon payment of the Purchase Price by the Developer, the City shall transfer and convey to the Developer and the Developer shall accept all of the City’s right, title and interest in each of the Developer Acquired Properties. Transfer shall be by one or more Special Warranty Deeds, each in such form reasonably acceptable to the Developer, free and clear of all tenancies, liens and encumbrances other than those created by this Agreement, or that are set forth in the Title Commitment and accepted by the Developer; *provided that* at the City’s discretion each such deed may contain a reverter or other required re-conveyance to the City in the event the Developer does not satisfactorily complete the Project. All Title

Company closing costs and charges shall be shared equally between the City and the Developer.

**Section 2.3.2. Prorations.** All real estate taxes, and all other public or governmental charges and public or private assessments against the Property which are or may be payable on an annual basis (including liens or encumbrances for sewer, water, drainage or other public improvements whether completed or commenced on or prior to the Effective Date or subsequent thereto), shall be prorated as of the day prior to the Closing Date and shall be paid by the City (as a credit to the Developer), or if prepaid, credited to the City, and shall from and after the Closings be assumed and paid by the Developer, whether or not assessments have been levied as of the Closing Date, subject to reimbursement in accordance with **Section 4.1** of this Agreement. Any tax proration shall be based upon the most recent assessment and shall be a final proration. Each such Party shall execute, acknowledge, and deliver, after the Closings, such further assurances, instruments and documents as the other may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby.

**BY CLOSING ON THE DEVELOPER ACQUIRED PROPERTIES, THE DEVELOPER SHALL HAVE ACKNOWLEDGED AND HEREBY ACKNOWLEDGES THAT THE DEVELOPER HAS HAD ADEQUATE OPPORTUNITY TO INSPECT, REVIEW AND CONSIDER ALL MATTERS AFFECTING THE USE, OWNERSHIP AND DEVELOPMENT OF THE HOTEL/CONVENTION CENTER PROPERTIES INCLUDING THE DEVELOPER ACQUIRED PROPERTIES AND EACH OF THEM AND THAT THE CONVEYANCE OF SAME BY THE CITY IS TO BE MADE ON AN “AS IS/WHERE IS” BASIS AND WITHOUT RECOURSE TO THE CITY. THE CONVEYANCE TO THE DEVELOPER OF THE DEVELOPER ACQUIRED PROPERTIES SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS OR HABITABILITY, GOOD OR FAIR CONDITION OR REPAIR OR GOOD AND WORKMANLIKE CONSTRUCTION AND (ii) ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO SITE CONDITIONS AS OF THE EFFECTIVE DATE AND OF THE CLOSINGS AND CONVEYANCES OF THE DEVELOPER ACQUIRED PROPERTIES OR POTENTIAL LIABILITIES UNDER OR WITH RESPECT TO ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAW OR REGULATION, ALL OF WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED BY THE CITY AND EACH OF WHICH DISCLAIMERS IS HEREBY AGREED TO AND ACCEPTED BY THE DEVELOPER. THE FOREGOING SHALL NOT APPLY TO ANY BREACH OR DEFAULT BY THE CITY UNDER THIS AGREEMENT OR INSTRUMENT OR DOCUMENT EXECUTED OR PROVIDED IN CONNECTION HERewith.**

**Section 2.4. Management Contract for Municipal Auditorium.** The City and the Developer hereby further agree and warrant each to the other to commence within Sixty (60) days of the Closing Date good faith negotiations of a management contract for the City’s Municipal Auditorium granting the Developer or the Developer’s designee “most favored nation” status with respect to rentals and use of the facilities and space comprising the City’s Municipal Auditorium. The foregoing negotiations shall continue until the terms of a management contract consistent with the provisions

of the Memorandum of Understanding are established by the City and the Developer; *provided that* to the maximum extent feasible, the parties agree to incorporate such limitations and provisions as may be required under the IRC to preserve the interest on portions of the NID Bonds used to finance the improvements to the City’s Municipal Auditorium exempt from federal income taxation. The City and the Developer hereby further agree and warrant each to the other to cooperate with one another in good faith to reduce such terms to a definitive management contract and to promptly execute and deliver same.

**ARTICLE III.  
IMPLEMENTATION OF THE PROJECT**

**Section 3.1. Applications for Zoning Reviews; City Approvals; Project Expansion.** Not later than Ten (10) days following expiration of the Feasibility Period, the Developer shall submit for City approval all required applications and supporting materials for the Zoning Approvals. All plans submitted by or on behalf of the Developer shall depict and describe the improvements to be made to the Hotel/Convention Center Properties for the Project and shall reflect the provisions of the Memorandum of Understanding and incorporate the requirements of this Agreement. The Developer shall diligently pursue the Zoning Approvals in accordance with the City’s normal procedures therefor. The City agrees to expeditiously process and timely review all applications for the Zoning Approvals as received, all in accordance with the applicable City ordinances and laws of the State of Missouri, and to take all further actions as are consistent with the Memorandum of Understanding and this Agreement; *provided that* nothing in this Agreement shall be deemed to require the City to grant any Zoning Approval, except in accordance with the City customary exercise of its police powers; and *provided further that* at the discretion of the Developer in consultation with the City and the District, the scope of the Project may be expanded beyond the Minimum Development Program to include remodeling, conversion and reuse of a portion of the Commerce Bank Property as a conference center or other annex to the Project. To the extent that the Developer elects such an expansion, any Zoning Approvals or other approvals attending such expansion may be pursued concurrent with those of the original Project and, upon the grant of requisite Zoning Approvals or other approvals required under Applicable Regulations for such expansion, the scope of the “Project” (as that term is defined and used in this Agreement) shall be deemed to include such expansion.

**Section 3.2. Developer to Construct Project; Developer as City’s Limited Agent.** The Developer shall obtain requisite approvals and permits and commence construction of the Project in accordance with the schedule provided in this **Section 3.2**, all subject to Force Majeure. As a component of the Project, the construction of the Parking Garage and the improvements to the City’s Municipal Auditorium shall be undertaken by the Developer as limited agent for the City for such purpose and the City shall promptly grant such rights of access and egress and use of the Parking Lot and the City’s Municipal Auditorium as may be reasonably requested by the Developer to facilitate construction of the Parking Garage, the improvements to the City’s Municipal Auditorium, and the Project; *provided that* title to the Parking Lot shall at all times remain in the City and, promptly upon satisfactory completion of the construction of the Parking Garage and the improvements to the City’s Municipal Auditorium, the Developer shall execute or cause to be execute such instruments and shall take or cause to be taken such actions as may be required to title all improvements, realty, and personalty at or serving the Parking Garage in the name of the City and to assign all attendant

equipment warranties and similar rights in connection with the construction and installation of the Parking Garage and the improvements to the City’s Municipal Auditorium to the City; and *provided further that* the Developer shall cause the applicable Construction Contractor to provide to the City a minimum One (1) year warranty against defects of all work performed and materials used in connection with the construction and installation of the Parking Garage and the improvements to the City’s Municipal Auditorium.

**Section 3.2.1. Construction Plans.** Within Thirty (30) days following the granting by the City of Zoning Approvals for the Project, the Developer shall submit for approval by the City Construction Plans in sufficient completeness and detail to show that construction will satisfy the Minimum Development Program and be in conformance with the Zoning Approvals and with the provisions of the Memorandum of Understanding and this Agreement. The Construction Plans shall be prepared by a professional engineer or architect licensed to practice in the State of Missouri. Construction Plans and all construction practices and procedures with respect to the Project shall be in conformity with all Applicable Regulations. The City hereby agrees to waive fees for building permits, sewer and water tapping fees, and all similar fees customarily applicable to the development and construction of the Project including any expansion thereof and the Hotel/Convention Center Properties.

**Section 3.2.2. City Review and Approvals.** Upon submittal by the Developer of the Construction Plans, the City shall expeditiously review and approve or reject same, in writing within Thirty (30) days of receipt by the City of the Construction Plans. If the City rejects any portion of the Construction Plans, said rejection shall specify any and all deficiencies in the Construction Plans relating to lack of conformity with the Zoning Approvals, the Memorandum of Understanding or this Agreement, the Minimum Development Program or with Applicable Regulations; *provided that* the City’s failure to specify deficiencies in the Construction Plans relating to Applicable Regulations shall not relieve the Developer of the Developer’s obligations to perform all construction work related to the Project in accordance therewith. Following receipt of any such rejection, the Developer shall submit new or corrected Construction Plans within Thirty (30) days after the date the Developer receives written notice of the City’s rejection of the Construction Plans or portion thereof referred to in the latest such notice. The provisions of this **Section 3.2.2** relating to approval, rejection and resubmittal of the Construction Plans shall continue to apply to resubmittal of corrected Construction Plans until the Construction Plans have been approved by the City; *provided that* the periods for each such subsequent review by the City shall be reduced to Fourteen (14) days. The Developer agrees that all construction work by or on behalf of the Developer or its Affiliates, agents or independent contractors shall be in substantial conformity with the Construction Plans as finally approved by the City.

**Section 3.2.3. Time for Project Completion; Delays; Notification Required; Developer’s Control Over the Project.** Within Thirty (30) days of the City’s approval of the Construction Plans and issuance of requisite permits, the Developer shall commence or cause to be commenced and shall diligently pursue the construction and development of the Project to completion, and shall substantially complete the Project and obtain a Certificate of Occupancy for the Developer Acquired Properties not later than the later of (i) Twenty-Two (22) months from the Effective Date; or (ii) Fifteen (15) months from the

date of receipt of the City’s approval of the Construction Plans and issuance of requisite permits for the Project, all subject to Force Majeure as provided in this **Section 3.2.3**. The times within which the construction of the Project is to commence and be completed as set forth in this **Section 3.2.3**, shall be automatically extended appropriately as a result of any event of Force Majeure; *provided that* in the event of any such delays, the Developer shall promptly notify the City in writing stating the nature of the delay which, in the reasonable opinion of the Developer, justifies the extension. Any delay under this **Section 3.2.3** shall result in a day-for-day extension of any obligations, deadlines or dates set forth in this Agreement that are directly affected by such delay. Other than time for completion requirements of this **Section 3.2.3**, the Developer shall have complete and exclusive control over the implementation and timing of the Project and the management and operation of the Project and the Hotel/Convention Center Properties, subject to the further requirements of this Agreement.

**Section 3.2.4. Construction Contracts.** In constructing or causing the construction of the Project, the Developer may enter into one or more contracts with one or more Construction Contractors. Prior to the commencement of construction, the Developer shall obtain or shall ensure that any such Construction Contractor obtains workers’ compensation, comprehensive public liability and builder’s risk insurance coverage in amounts customary in the industry for similar type projects. Prior to commencement of construction, the Developer shall deliver to the City evidence of all insurance to be maintained by such Construction Contractors as required by this **Section 3.2.4**. The Developer shall ensure that the insurance required is maintained by any such Construction Contractor for the duration of the construction of the Project. To the extent that payment bond requirements of section 107.170 of the Revised Statutes of Missouri, as amended, or successor enactments or prevailing wage or other wage and hour statutes or requirements apply to any portion of the Project, the Developer covenants and agrees on behalf of itself and for any Construction Contractor to take all such actions as are necessary to obtain such payment bonds, to apply for wage and hour determinations, and to otherwise comply with all such laws, regulations or requirements.

**Section 3.3. Developer to Adhere to All Applicable Regulations.** To the full extent that any Applicable Regulation applies to any aspect of construction of the Project or any portion thereof, the Developer for itself and for any Construction Contractor or sub-contractor as agent of the Developer hereby covenants and agrees to take or cause to be taken all such actions as are necessary to fully comply with such Applicable Regulation. The Project and any portions thereof shall be subject all lawful regulatory inspections and to periodic inspections by the City at reasonable times with prior notice to the Developer to determine compliance with the terms and conditions of this Agreement and the Developer shall promptly perform or cause to be performed all such necessary acts as may be required by Applicable Regulations or this Agreement. With respect to the construction of the Parking Garage and the improvements to the City’s Municipal Auditorium, and any other portions of the Project to be conveyed or dedicated to the City or other public entity, the Developer as limited agent for the City shall additionally comply with and satisfy all requirements of section 107.170 of the Revised Statutes of Missouri, as amended regarding the obtaining of payment bonds; the laws of the State of Missouri relating to the payment of prevailing wages; and the ordinances and purchasing policies of the City including any requirement for competitive bidding of contractor and subcontractor services.



**Section 3.4. Breach and Compliance; Right to Cure; Remedies Not Exclusive.** In the event of substantial non-compliance with any of the terms of this **Article III**, written notice of same may be delivered to the Developer by the City or by the District, and, if the Developer shall not have corrected such substantial non-compliance within Forty-Five (45) days after receipt of such notice (unless the time for such correction is further extended in writing by the City or the District, as applicable, or unless such correction reasonably requires more than 45 days to correct; *provided that*, the Developer in each case diligently pursues such correction to satisfactory completion), the City or the District may institute such proceedings as may be necessary or desirable in the City’s or the District’s sole opinion to cure and remedy such default including, without limitation, the remedy of specific performance. None of the foregoing remedies shall be exclusive of any other remedy specified in this **Section 3.4** or otherwise available to the City or the District at law or in equity and any and all such remedies may be exercised by the City or the District individually, sequentially, collectively, or in the alternative, all at the City’s or the District’s sole discretion.

**ARTICLE IV.  
CITY, DISTRICT CONTRIBUTIONS, COMMITMENTS AND INCENTIVES**

**Section 4.1. Real Property Tax Relief.** In consideration of the foregoing undertakings and covenants of the Developer set forth in **Article III** of this Agreement, the District during the life of the District, but in no event later than the period which is Twenty-Five (25) years from the date of substantial completion of the Project in accordance with **Section 3.3.3** of this Agreement shall annually rebate to the Developer all amounts actually collected on behalf of and received by the District (as verified by the District) in such year from levies of the District’s Special Real Property Tax in respect of the Hotel/Convention Center Properties and, in the event that the Project is expanded as provided in **Section 3.1** of this Agreement, the portions of the Commerce Bank Property included in such Project expansion. Rebates applicable to any tax year shall be made not later than the last day of February of the succeeding tax year. All such payments by the District shall be subject to annual appropriation by the Board of Directors of the District and in each case shall be considered current year expenses in the year to which they apply. In addition, to the extent that the District expires or is dissolved prior to the date which is Twenty-Five (25) years from the date of substantial completion of the Project, the City agrees to use best efforts to take such actions, hold such hearings, and grant such approvals under one or more then applicable redevelopment statutes to provide for equivalent annual real property tax relief in respect of the Hotel/Convention Center Properties and, as applicable, the portions of the Commerce Bank Property included in a Project expansion the for the period remaining of the aforesaid 25 years.

**Section 4.2. City Sales Tax.** The City shall cause to be paid directly to the Developer from lawfully available funds an amount equal to the revenue actually paid to and received by the City (as verified by the City) as provided in this **Section 4.2** by the Developer during the period provided in this Agreement for completion of the Project which was generated by the levy of the City Sales Tax on purchases by the Developer or on behalf of the Developer by a Construction Contractor, but only from vendors or suppliers having a principal place of business within the County of Randolph, of tangible materials and personal property actually incorporated into or consumed in the construction of the Project; *provided that* in each case, any excess re-salable tangible personal property or materials which were purchased for the Project by the Developer or

on behalf of the Developer by a Construction Contractor but which were not incorporated into or consumed in the construction of the Project shall either (i) be returned to the supplier for credit or the appropriate sales tax on such excess property; or (ii) be reported on a return and paid by the Developer or a Construction Contractor and in either case shall be deducted from the amounts due from the City; and *provided further that* notwithstanding anything in this Agreement to the contrary, the parties hereto acknowledge that provision for amounts constituting any portion of the payments made or to be made pursuant to this **Section 4.2** which extend for any reason beyond any calendar year in which such cost is incurred shall be subject to annual appropriation by the City Council.

**Section 4.2.1. Frequency of Payments; Application and Verification Required; Cooperation; Current Year Expenses.** Payments as set forth in **Section 4.2** of this Agreement shall be made, subject to annual appropriation by the City Council, quarterly and upon written application by the Developer, together with submittal by the Developer, of accompanying receipts and documentation as or similar to that required by sections 144.635 and 144.640 of the Revised Statutes of Missouri, as amended, and reasonably sufficient in content and detail (in the sole judgment of the City) to permit the applicable officer of the City to reasonably verify the City Sales Tax amounts actually paid by the Developer or on behalf of the Developer by a Construction Contractor for purchases, but only from vendors or suppliers having a principal place of business within the County of Randolph, of tangible materials and personal property actually incorporated into or consumed in the construction of the Project during the period provided in this Agreement for the completion of the Project. Payments as set forth in **Section 4.2** of this Agreement shall be deemed to be current expenses in the applicable year to which such payments apply

**Section 4.2.2. Exemption Certificate.** The City shall prepare and furnish to Construction Contractors a sales tax exemption certificate containing the information set forth in section 144.062 of the Revised Statutes of Missouri, as amended, authorizing tax-exempt purchases of tangible personal property and materials to be incorporated into or consumed in construction but only for those portions of the Project to be owned or held by the City or the District and related to the City’s or the District’s exempt functions and activities. Any excess resalable tangible personal property or materials which were purchased for the portions of the Project to be owned or held by the City or the District and related to the City’s or the District’s exempt functions and activities by a Construction Contractor or subcontractor under the aforesaid exemption certificate but which were not incorporated into or consumed in the construction of such portions of the Project shall either be returned to the supplier for credit or the appropriate sales or use tax on such excess property or materials shall be reported on a return and paid by such Construction Contractor or subcontractor not later than the due date of that Construction Contractor’s or subcontractor’s Missouri sales or use tax return following the month in which it was determined that the materials were not to be used in such portions of the Project. In the event for any reason, (i) the City is found not to have had the authority to issue the exemption certificate provided for in this **Section 4.2.2**, in whole or in part; or (ii) any Construction Contractor or subcontractor under color of the exemption certificate shall make tax-exempt purchases of personal property and materials which are not incorporated into or consumed in the construction of those portions of the Project to be owned or held

by the City or the District and related to the City’s or the District’s exempt functions and activities, then the Developer shall be liable to the City for payments or repayments of any tax found to be owed on such personal property and materials.

**Section 4.3. NID Financing.** The City and the Developer shall cooperate to obtain financing under the NID Act for the construction of the Parking Garage and the installation of improvements to the City’s Municipal Auditorium as provided in this **Section 4.2**. Contemporaneous with the approval and execution of this Agreement, the City and the Developer by preparing and filing with the Clerk of the City the NID Petition and will expeditiously take such steps as are required under the NID Act to establish the NID District. During and subject to the Feasibility Period, the City shall expeditiously cause preparation, in cooperation with Developer, of plans and specifications describing the Parking Garage and the improvements to the City’s Municipal Auditorium in detail sufficient in the determination of Bond Counsel for inclusion in the ordinances approving the NID; cause preparation of requisite assessment rolls; conduct required public hearings; order that improvements be made and that associated assessments be levied. At the earliest feasible time consistent with market conditions and the application of prudent public finance principles the City shall, subject to availability of underwriting reasonably acceptable to the City, order and direct the issuance of the NID Bonds, all in accordance with this Agreement.

**Section 4.3.1. Terms of NID Bonds; Procedures for Issuance.** The Developer agrees to advance the costs of constructing the Parking Garage and the improvements to the City’s Municipal Auditorium as set forth on **Schedule 1** to this Agreement, subject to reimbursement in accordance with **Section 4.3.2** of this Agreement from monies deposited in the NID Project Fund and the City agrees to issue the NID Bonds, all as required by this Agreement, in an aggregate principal amount necessary to provide a minimum NID Project Fund of \$\_\_\_\_\_. All costs of constructing the Parking Garage and the improvements to the City’s Municipal Auditorium shall be paid from NID Project Fund. In conjunction with the issuance of the NID Bonds, the City shall select one or more underwriters or purchasers of the NID Bonds. Each series of NID Bonds shall bear interest at such rates, shall be subject to redemption, and shall have such terms as the City, acting through Bond Counsel and the respective underwriter or purchaser, shall determine. The City and the Developer hereby agree to assist and cooperate with one another and with Bond Counsel, the underwriter(s) or purchaser(s), in the preparation of offering statements, private placement memoranda or other disclosure documents and all other documents necessary to market and sell the NID Bonds. The NID Project Fund shall be held by the City in the custody of the City’s Director of Finance and amounts therein shall be disbursed to the Developer as reimbursements upon satisfactory completion of the portions of each improvement as further set forth in **Section 4.3.2** of this Agreement. The City shall retain interest on all amounts held in the NID Project Fund. In the event that the NID Bonds have not been successfully marketed, underwritten and sold by the City prior to construction of the Parking Garage and the improvements to the City’s Municipal Auditorium as set forth on **Schedule 1** to this Agreement, the City shall issue temporary notes to temporarily reimburse Developer for its costs upon satisfactory completion of the portions of each improvement as further set forth in **Section 4.3.2** of this Agreement and the City shall be reimbursed and the temporary notes retired upon receipt of the proceeds from the sale of the NID Bonds.

**Section 4.3.2. Payment of NID Assessments; Reimbursements to Developer.**

The City shall pay from lawfully available funds, subject to annual appropriation, all assessments to be levied under the NID Act against any and all platted lots and parcels of real property within the NID District, whether or not owned by the Developer or any Affiliate or by any other party, on or before the date such assessments are due. Requests for reimbursement of costs incurred by or on behalf of the Developer in connection with the construction of the Parking Garage and the improvements to the City’s Municipal Auditorium shall be submitted not more frequently than quarterly. Each request for reimbursement shall be accompanied by a Certificate of Reimbursable Improvement Costs and shall in each case be further evidenced by: (i) copies of each invoice prepared by the applicable vendor, contractor or other supplier for which a reimbursement is sought; and (ii) copies of cancelled check(s), front and rear, or other evidence of payment of such invoice. The City reserves the right to reject and require resubmittal of any request which does not satisfy the foregoing requirements, which determination of sufficiency shall be in the City’s discretion, exercise of which discretion shall be dispositive. Until the acceptance by the City of the Parking Garage and the improvements to the City’s Municipal Auditorium, the Developer shall maintain each such improvement in a first-class and workman-like manner in accordance with applicable City standards and in a condition reasonably satisfactory to permit such acceptance by the City or other applicable public entity. The City agrees to accept the aforesaid improvements (or portions thereof) as soon as is reasonably practicable; *provided that* construction and installation of each such improvement (or portion) to be accepted complies in all material respects with provisions of this Agreement.

**Section 4.4. Other Commitments and Contributions; Allocations.**

To further assist and support the implementation and financing of the Project, the City and the District hereby agree, subject to satisfactory completion by the Developer of the entire Project, to the full extent lawful to pledge and utilize toward the payment or financing of Project costs certain portions of revenues actually paid to and received by the City and the District, as applicable, but only from economic activities at the completed Project and in amounts which are over and above such amounts required to pay assessments levied under the NID Act and necessary to meet annual debt service requirements on the NID Bonds so long as the NID Bonds or any portion thereof remain outstanding, as follows:

- (i) portions of the City Sales Tax allocable to capital improvements and transportation improvements;
- (ii) the District’s 1.0% sales tax on all taxable “sales at retail” (as that term is defined and used in chapter 144 of the Revised Statutes of Missouri, as amended) occurring within the area of the NID District;
- (iii) one half of the City’s 4% lodging tax applicable to sales of sleeping rooms at the completed Project; and
- (iv) franchise fees received by the City for electric power and other utility usage at the completed Project.

The foregoing revenues shall be calculated by the City and the District on an annual basis for a period coterminous with the term of the NID Bonds and shall be paid, subject to annual appropriation by the governing bodies of the City and the District, respectively, to or to the order of the Developer or Affiliate or their designee not later than the last day of February of the succeeding year; *provided that* the City reserves the right to apply for and use such grant funds as made be made available at any time during the period required for construction of the Project and to substitute such amounts for any of the aforesaid revenue sources and in each such case, the City shall continue to calculate annually amounts attributable to revenue sources identified in clauses (i), (iii) and (iv) of this **Section 4.4** and shall pay to the order of the Developer or Affiliate or their designee, subject to annual appropriation by the City Council, such amounts whether from such revenue sources, from grant funds received, or from any combination of the foregoing; and *provided further that* any such amounts shall only be paid after and from amounts remaining from the aforesaid sources after payments by the City from such sources of assessments levied under the NID Act and necessary to meet annual debt service requirements on the NID Bonds; it being understood and agreed by the parties to this Agreement that the revenue sources identified in clauses (i) through (iv) of this **Section 4.4** shall provide the source of payment in any year of assessments levied under the NID Act on properties within the NID District which payment shall be a pre-requisite in any year for any payments under this **Section 4.4** to the Developer or Affiliate or their designee. Monies paid to or to the order of the Developer or Affiliate or their designee shall only be used and applied for lawful purposes.

**Section 4.5. Further Cooperative Efforts.** The City, the District, and the Developer each agree to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications supplemental hereto as may be necessary or appropriate to carry out the terms, provisions and intent of this **Article IV** and the Agreement and which do not impair the rights of the signing party as they exist under this Agreement, and to aid and assist each other in carrying out said terms, provisions and intent. Notwithstanding the generality of the foregoing, the City and the District each agrees to use commercially reasonable efforts to cooperate with and assist the Developer (i) to identify and secure additional and complementary investment in or near the Project and to identify potential end users of space within the Hotel/Convention Center Properties; (ii) to obtain inclusion of the Kelly Hotel on the National Register of Historic Places and in applications for historic preservation tax credits or other similar tax credits as and when available for the rehabilitation of the Kelly Hotel building; *provided that* the Developer shall be under no obligation to make applications to include the Kelly Hotel on the National Register of Historic Places or for historic preservation tax credits or other tax credits; (iii) to secure such additional private source funding as may be necessary or convenient to carry out the rehabilitation of the Hotel/Convention Center Properties; *provided that* nothing in the foregoing clause shall be deemed to require a financial contribution, pledge or commitment from the City or the District other than the express commitments made in **Sections 4.1** through **4.4**, inclusive of this Agreement; and (iv) to make approaches to local business and civic entities to secure commitments for hotel facility patronage during the first Three (3) years following completion of the Project. In addition to the foregoing, subject to satisfactory completion of the entire Project in accordance with this Agreement, the City and the District agree to commit additional funding but only from lawfully available sources and undertake on behalf of the Project marketing and promotion efforts during the first Three (3) years of operation of the Project.

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

**Section 5.1. Indemnification; Third Party Actions.** The Developer shall have the right, but not the obligation, to assume the costs of defense of any Third Party Action (including, without limitation, to settle or compromise any claim or action for which the Developer has assumed the defense) with counsel of the Developer’s choosing and reasonably acceptable to the City and the District and the City, the District and the Developer each agrees that so long as no conflicts of interest exist between or among them, the same attorney or attorneys may simultaneously represent the City, the District, and the Developer in any such proceeding; *provided that* in the event the Developer elects not to assume the costs of defense or subsequently abandons the defense of any Third Party Action undertaken by the Developer, in no event shall the City or the District have any obligation to assume such defense. In each Third Party Action for which the Developer has assumed the costs of defense, the Developer shall indemnify and hold the City and the District together with their respective officials, agents, employees, attorneys, and representatives acting in any capacity harmless from all such Third Party Actions. In no event shall the City or the District have any obligation to initiate or to assume the defense of any Third Party Action nor shall the City or the District nor any officer, official, agent, attorney, employee or representative of the either of them have any liability to the Developer or any officer, agent, employee or representative of the Developer for damages, costs or otherwise in the event that all or any part of this Agreement, the Approving Ordinance, the Approving Resolution, the conveyances set forth in **Article II** of this Agreement or any of them, the provisions for payment or rebate of City Sales Tax amounts set forth in **Section 4.1** or **4.2** of this Agreement, the NID Bonds, the commitments and allocations made under **Sections 4.4** and **4.5** of this Agreement or any of them, or any of the transactions or undertakings contemplated under this Agreement shall be declared invalid or unconstitutional in whole or in part by a final (as to which all rights of appeal have been exhausted or expired) judgment of a court of competent jurisdiction, or as a result of initiation of any claim, action or proceeding, the Developer is prevented from enjoying any of the rights and privileges of the Developer under this Agreement.

**Section 5.2. Representations of Developer.** The Developer hereby represents and warrants to the City and the District that as of the Effective Date and as of the Closing Date:

- (a) The Developer is a duly organized Missouri limited liability company existing and in good standing under the laws of the State of Missouri;
- (b) The execution and delivery of this Agreement by the Developer will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Developer or any Affiliate is a party or by which the Developer or any Affiliate is bound or any applicable articles of organization, or operating agreement, or any of the rules or regulations of any governmental authority applicable to the Developer or any Affiliate;
- (c) The Developer has full corporate power to execute and deliver and perform the terms and obligations of this Agreement. The Developer has been authorized by all necessary action to execute and deliver this Agreement, which shall constitute the legal, valid and binding

obligation of the Developer, enforceable in accordance with its terms, subject to bankruptcy and other laws affecting creditors' rights generally and to general principles of equity;

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

(e) The Developer has obtained or will obtain as and when required by Applicable Regulations, and shall maintain, all government permits, certificates, and consents (including, without limitation, environmental approvals required by any Applicable Regulation) necessary to conduct the Developer's business and to construct, complete, and operate the Project.

**Section 5.3. Survival of Covenants.** All warranties, representations, covenants, and agreements of the Developer contained in this **Article V** shall survive termination of this Agreement for any reason.

**ARTICLE VI.  
MISCELLANEOUS PROVISIONS**

**Section 6.1. Assignment Limited.** The Developer shall have the right to assign this Agreement in whole or in part at any time, but only to an Affiliate and upon written notice of such assignment to the City and the District. Other than the foregoing, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part to any other individual or entity other than to an Affiliate without the written consent of the City which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 6.2. Term of Agreement.** Unless terminated prior to the Closing, this Agreement shall continue in force: (a) so long as any payments by the City required under **Section 4.1** of this Agreement remain unsatisfied; or (b) the date of the defeasance and satisfaction of the NID Bonds, whichever is later. The rights and privileges granted to and the duties and obligations imposed on the Developer by this Agreement shall apply only to the Project and the Hotel/Convention Center Properties.

**Section 6.3. Notices.** Whenever notice or other communication is called for in this Agreement to be given or is otherwise given, such notice shall be in writing addressed to the addressees at the addresses set forth below, and transmitted by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, return receipt requested:

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

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

St. Louis, Missouri 63122  
Attention: Thomas A. Cunningham, Esq.

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

If to the Developer: Mashburn Development, LLC  
1704 NW 450 Road  
Kingsville, Missouri 64061  
Attention: David Mashburn

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or to such other persons as any of the Parties may designate in writing from time to time in accordance with this **Section 6.3** and all said notices shall be deemed given, as applicable, (a) upon hand delivery, (b) upon deposit with an overnight courier, or (c) upon deposit in the United States mail.

**Section 6.4. Further Assistance.** The City, the District, and the Developer each agree to take such actions and execute such documents and instruments as may be reasonably necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

**Section 6.5. Survival; Severability.** Any provisions of this Agreement that by their terms provide for or contemplate obligations or duties of a Party that are to extend beyond the expiration or termination of this Agreement (and the corresponding rights of the other Party to enforce or receive the benefit of such obligations or duties) shall survive such expiration or termination of this Agreement for any reason. The provisions of this Agreement shall be deemed severable. If any word, phrase, term, sentence, paragraph, or other portion of this Agreement shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected by such partial invalidity, and each remaining word, phrase, term, sentence, paragraph covenant, or other portion of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**Section 6.6. Headings; No Presumption; Agreement Preparation.** The headings and captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement of any provision thereof and shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Agreement. Each Party to this Agreement and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Agreement and all documents attached as exhibits. This Agreement shall be construed without regard to any presumption or



other rule of construction whereby ambiguities within this Agreement or such other document would be construed or interpreted against the Party causing the document to be drafted. The Parties hereto each further represent that the terms of this Agreement and the documents attached as exhibits hereto have been completely read by them and that those terms are fully understood and voluntarily accepted by them. In any interpretation, construction or determination of the meaning of any provision of this Agreement, no presumption whatsoever shall arise from the fact that the Agreement was prepared by or on behalf of any Party hereto.

**Section 6.7. Choice of Law; Venue; Waiver of Objections.** This Agreement and its performance shall be deemed to have been fully executed, made by the Parties in, and governed by and construed in accordance with the laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. The Parties hereto each agree that any action at law, suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri or in federal court of the Eastern District of Missouri and waive any objection based upon venue or *forum non conveniens* or otherwise.

**Section 6.8. Entire Agreement; Amendments; No Waiver by Prior Actions.** The Parties hereto agree that this Agreement shall constitute the entire agreement between the Parties and no other agreements or representations other than those contained in this Agreement have been made by the Parties. This Agreement shall be amended only in writing and effective when signed by the duly authorized agents of the Parties. The failure of any Party hereto to insist in any one or more cases upon the strict performance of any term, covenant or condition of this Agreement to be performed or observed by another Party shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

**Section 6.9. No Waiver of Sovereign Immunity; Public Liability Strictly Limited; No Personal Liability.** Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's or the District's sovereign immunity. The Parties hereto agree that in no event shall the City, the District or any of their respective officials, officers, agents, attorneys, employees, or representatives have any liability in damages or any other monetary liability to the Developer or any Affiliate, assignee, sublessee, successor, assign, heir or personal representative of the Developer in respect of any suit, claim, or cause of action arising out of this Agreement other than for a failure of payment of the amounts agreed to be paid by the City or by the District, the remedy for which failure shall be limited to a suit for specific performance and no consequential or other damage theories shall be applied, all of which theories in consideration of the undertakings of the City and the District under this Agreement are hereby irrevocably waived by the Developer for itself and for any Affiliate, assignee, sublessee, successor, assign, heir or personal representative of the Developer. No official, officer, agent, attorney, employee, or representative of the City or of the District shall be personally liable to the Developer or any Affiliate or the assignees, sublessees, successors, assigns, heirs or personal representatives of the Developer or Affiliate in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

**Section 6.10. Relationship of the Parties; No Third Party Beneficiaries.** Nothing contained in this Agreement nor any act of the Developer or the City shall be deemed or construed to create

a partnership or agency relationship between or among the Parties or their agents or representatives and this Agreement is and shall be limited to the specific purposes set out herein. Other than as expressly provided in this Agreement, no Party shall be the agent of, or have any rights to create any obligations or liabilities binding on, the other Party. The Parties do not intend to confer any benefit under this Agreement on any person or entity other than the named Parties hereto.

**Section 6.11. Binding Effect.** Except as otherwise expressly provided in this Agreement, the covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the Developer, the City, and the District and their respective successors and permitted assigns.

**Section 6.12. Execution; Counterparts.** Each person executing this Agreement in a representative capacity warrants and represents that they have authority to do so, and upon request by another Party, proof of such authority will be furnished to the requesting Party. This Agreement may be executed at different times and in two or more counterparts, and all counterparts so executed shall for all purposes constitute one and the same instrument, binding on the Parties hereto, notwithstanding that both Parties may not have executed the same counterpart. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement is sought.

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

**CITY OF MOBERLY**  
(the "City")

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

**ATTEST:**

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

**DOWNTOWN MOBERLY COMMUNITY  
IMPROVEMENT DISTRICT**  
(the "District")

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

**ATTEST:**

\_\_\_\_\_  
Secretary

**MASHBURN DEVELOPMENT, LLC**, a  
Missouri limited liability company  
(the “**Developer**”)

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

**ATTEST:**

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

**ACKNOWLEDGEMENTS**

STATE OF MISSOURI            )  
  ) SS.  
COUNTY OF RANDOLPH        )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me appeared Jerry Jeffrey, to me personally known, who being by me duly sworn, did say that he is the Mayor of the CITY OF MOBERLY, a city of the third classification and Missouri municipal corporation and that the seal affixed to the foregoing instrument is the official seal of said City, and that said instrument was signed and sealed in behalf of said City by authority of its City Council and said Mayor acknowledged said instrument to be the free act and deed of said City.

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

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

My commission expires:

STATE OF MISSOURI            )  
  ) SS.  
COUNTY OF RANDOLPH        )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me appeared Brian Crane, to me personally known, who being by me duly sworn, did say that he is the Chair of the Board of Directors of the DOWNTOWN MOBERLY COMMUNITY IMPROVEMENT DISTRICT, a community improvement district and Missouri political subdivision and that the seal affixed to the foregoing instrument is the official seal of said District, and that said instrument was signed and sealed in behalf of said City by authority of its Board of Directors and said Chair acknowledged said instrument to be the free act and deed of said District.

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

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

My commission expires:

STATE OF MISSOURI     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2019, before me appeared David Mashburn, to me personally known, who being by me duly sworn, did say that he is the \_\_\_\_\_ of MASHBURN DEVELOPMENT, LLC, a Missouri limited liability company, and that said instrument was signed in behalf of said limited liability company by authority of its governing body and said person acknowledged said instrument to be the free act and deed of said limited liability company.

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

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

My commission expires:

**EXHIBIT A**

**CERTIFICATE OF REIMBURSABLE IMPROVEMENT COSTS (form)**

**PARKING GARAGE AND MUNICIPAL AUDITORIUM IMPROVEMENTS PROJECT  
CERTIFICATE OF REIMBURSABLE IMPROVEMENT COSTS NO. \_\_\_\_\_**

TO: City of Moberly  
101 West Reed Street – City Hall  
Moberly, Missouri 65270

c: Downtown Moberly Community Improvement District  
101 West Reed Street  
Moberly, Missouri 65270

*Capitalized terms not otherwise defined in this Certificate of Reimbursable Improvement Costs (this “Certificate”) shall have the meanings ascribed to such terms in that certain Purchase and Development Agreement, dated as of \_\_\_\_\_, 20\_\_\_, (the “Development Agreement”) by and among the City of Moberly, Missouri, the Downtown Moberly Community Improvement District, and Mashburn Development, LLC.*

In connection with the Development Agreement, the undersigned hereby states, certifies, and represents and warrants to the City and the District that:

1. Each item listed on Annex 1 attached hereto is an “improvement” (as that term is used and defined in the NID Act) the costs of which was incurred by or on behalf of the Developer in connection with the installation of the Parking Garage and/or improvements to the City’s Municipal Auditorium set forth on Schedule 1 to the Development Agreement and was paid by or on behalf of the Developer in connection with the Developer’s obligations under the Development Agreement; and
2. No item listed on Annex 1 has been previously paid or reimbursed to the Developer and no part thereof has been included in any other Certificate previously submitted to the City under the Development Agreement.
3. All necessary permits and approvals required for the entire Project have been issued or obtained and are in full force and effect; and
4. All work for which payment or reimbursement is requested pursuant to this Certificate has been performed in a good and workmanlike manner and in accordance with the Development Agreement; and
5. The Developer has made or caused to be made all required payments to contractors and sub-contractors in connection with the items listed on Annex 1 and lien waivers for each applicable item have been obtained and copies are attached hereto; there has not been filed with or served upon the Developer, any Affiliate, or any Construction Contractor any notice of any lien, right of

lien, or attachment upon or claim affecting the right of any person, firm, or corporation to receive payment of the amounts stated in this Certificate, except to the extent such lien is being contested in good faith and is listed as such in Annex 1; and

6. Neither the Developer nor any Affiliate is in default or breach of any term or condition of the Development Agreement.

Submitted, verified and signed under pains and penalties of perjury this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MASHBURN DEVELOPMENT, LLC

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF MOBERLY, MISSOURI

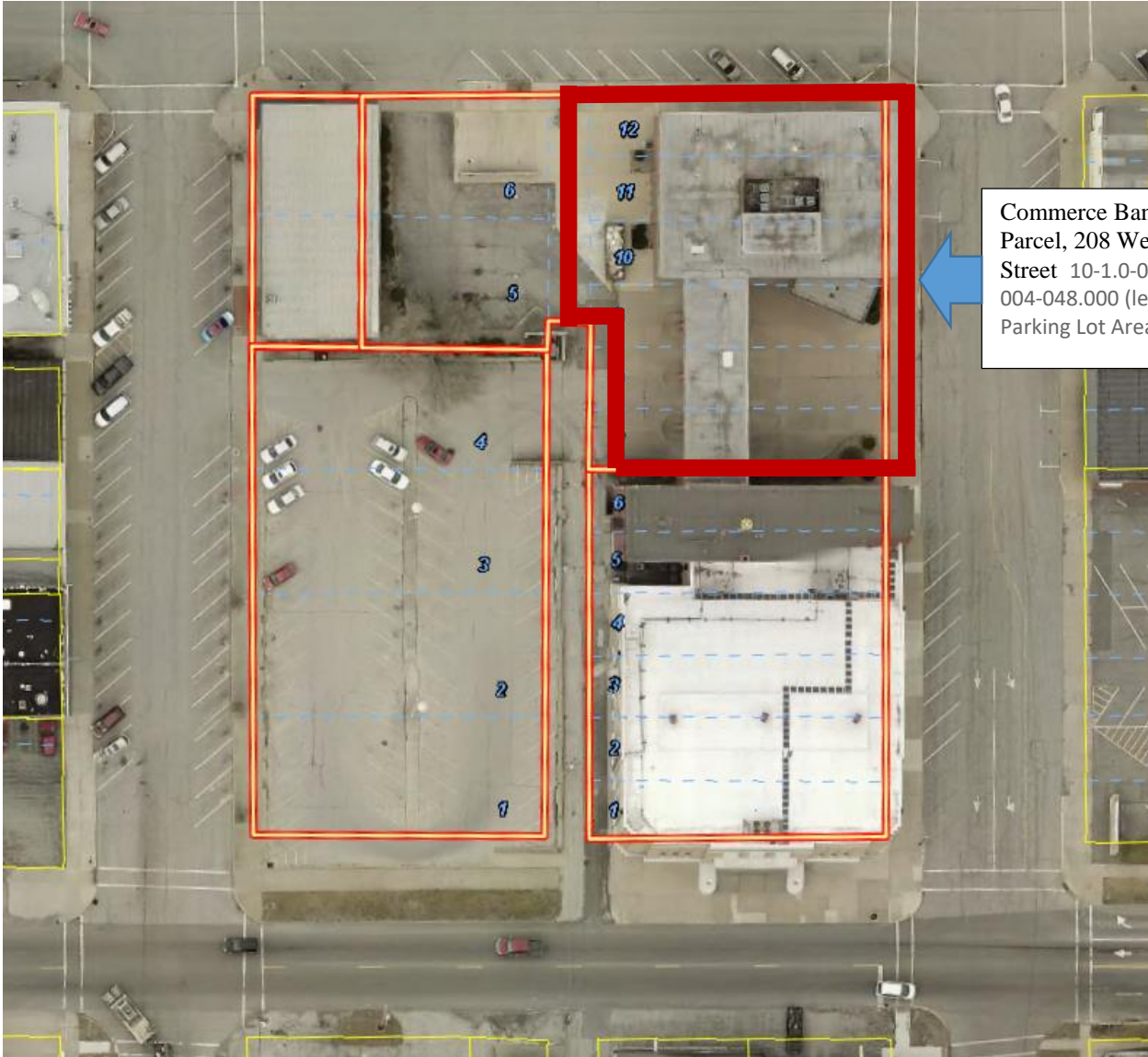
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Annex 1 to Certificate of Reimbursable Improvement Costs

<u>Item Description</u>	<u>Cost</u>
1.	\$
2.	
3.	

Total this Certificate: \$

**EXHIBIT B**  
**COMMERCE BANK PROPERTY**



Commerce Bank  
Parcel, 208 West Reed  
Street 10-1.0-01.0-2.0-  
004-048.000 (less West  
Parking Lot Area)



**EXHIBIT C**

**THE HOTEL/CONVENTION CENTER PROPERTIES**



**EXHIBIT D**

**MINIMUM DEVELOPMENT PROGRAM SCHEMATIC DRAWINGS**

**EXHIBIT E**

**NID PETITION (form)**

STATE OF MISSOURI )  
 ) SS.  
COUNTY OF RANDOLPH )

**PETITION FOR THE CREATION OF A  
NEIGHBORHOOD IMPROVEMENT DISTRICT**

**TO THE COUNCIL OF THE CITY OF MOBERLY, MISSOURI:**

The undersigned, representing the owners of record of at least two-thirds by area of all real property located within a proposed Neighborhood Improvement District (as that term is defined and used in section 67.453(6) of the Revised Statutes of Missouri, as amended) as further described below, hereby file and submit this Petition for the creation of a Neighborhood Improvement District (this “**Petition**”) and request that the Council of the City of Moberly (the “**City Council**”) by resolution or ordinance determine the advisability of the Improvements (as hereinafter defined) and order that the Merchants Hotel and Convention Center Neighborhood Improvement District be established, all pursuant to the Neighborhood Improvement District Act, sections 67.453 through 67.457 of the Revised Statutes of Missouri, as amended (the “**NID Act**”), and as further set forth in this Petition. *Capitalized terms used and not defined in this Petition shall have the meanings respectively ascribed to them in that certain Purchase and Development Agreement, dated as of \_\_\_\_\_, 20\_\_\_, by and among the City of Moberly, Missouri, the Downtown Moberly Community Improvement District, and Mashburn Development, LLC (the “Development Agreement”)* which is hereby incorporated by reference in this Petition as if set forth in its entirety in this place.

1. The project name for the proposed Improvements shall be the Parking Garage and Municipal Auditorium Improvements Project (the “**Project**”).
2. The general nature of the proposed Improvements includes: (a) construction and installation of an elevated two-story open roof public parking garage; (b) relocation, installation and renovation of sanitary and storm sewerage in connection with the foregoing; (c) construction and reconstruction of sidewalks, pavement, curbs and gutters in conjunction with the foregoing; (d) improvements to the City’s Municipal Auditorium as set forth in the Development Agreement; and (e) such other streetscape and other public improvements and facilities as may be appurtenant to the redevelopment of the Hotel/Convention Center Properties as a high quality boutique destination hotel and convention venue in accordance with the Minimum Development Program and which satisfy the definition of the term “improvement” as set forth in section 67.453(5) of the NID Act, all generally located within and serving that portion of the Moberly downtown area bounded by West Reed Street on the north, North Clark Street on the east, West Rollins Street on the south and North Williams Street on the west and benefitting the properties within the proposed Merchants Hotel and Convention Center Neighborhood Improvement District (collectively, the “**Improvements**”), together with the costs of issuance, debt service reserves, and accrued interest

on associated temporary notes or neighborhood improvement district bonds (“NID Bonds”) issued with respect to any and all portions of the Project. Maintenance of the Improvements and the Project will be provided by the City of Moberly using City forces or through private contracts.

3. The total estimated cost of the proposed Improvements is \$\_\_\_\_\_ plus costs of issuance, debt service reserves, and accrued interest on NID Bonds.

4. The Merchants Hotel and Convention Center Neighborhood Improvement District boundaries are legally described on **Exhibit A**, attached to and incorporated by reference in this Petition. The proposed Merchants Hotel and Convention Center Neighborhood Improvement District lies entirely within the corporate limits of the City of Moberly, Missouri.

5. The proposed method of assessment of real property within the proposed Merchants Hotel and Convention Center Neighborhood Improvement District is as follows: the total cost of the Improvements (together with the costs of issuance, debt service reserves, and accrued interest, if any, on NID Bonds issued to finance the Improvements) will be divided and assessed ratably per parcel (as set forth in the records of the Randolph County Assessor) deemed to be benefited thereby, based upon the acreage or fraction thereof, for a duration of not more than twenty (20) years; *provided that* the City of Moberly has agreed in the Development Agreement to pay all such assessments.

6. NOTICE: The names of the signers of this Petition may not be withdrawn later than Seven (7) days after this Petition is filed with the City Clerk of the City of Moberly, Missouri.

7. NOTICE: The total final total costs of the Improvements plus costs of issuance, debt service reserves, and accrued interest on NID Bonds assessed against property within the proposed Merchants Hotel and Convention Center Neighborhood Improvement District and the amount of such general obligation bonds or temporary notes issued therefor shall not exceed the estimated costs of such Improvements as stated in paragraph 3 of this Petition by more than twenty-five percent (25%).

**Respectfully submitted,**

**PETITIONER:**

CITY OF MOBERLY, MISSOURI

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

Name: Brian Crane

Title: City Manager

ATTEST:

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

Exhibit A to NID Petition

Legal Description of Proposed  
Merchants Hotel and Convention Center Neighborhood Improvement District

**Schedule 1**

**Improvements to City's Municipal Auditorium**

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
 Department: City Manager  
 Date: December 16, 2019

WS #3.

**Agenda Item:** Appointment to the Downtown CID Board

**Summary:** At this time Christy Colston has resigned from the board, due to her resignation we have one open board member position. Kelsey Jeffries has submitted an application to be appointed to this board. The board is looking to appoint someone to complete this term. Communication is being sent to other individuals that might be interested in fulfilling this position or if City Council has names to submit please let staff know and an application will be forwarded to them.

**Recommended Action:** Direct staff to bring to the January 6<sup>th</sup>, 2020 Council meeting for final approval

**Fund Name:** N/A

**Account Number:** N/A

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

ATTACHMENTS:	Roll Call	Aye	Nay
<input type="checkbox"/> Memo			
<input type="checkbox"/> Staff Report			
<input checked="" type="checkbox"/> Correspondence			
<input 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 _____			
	<b>Mayor</b>		
	M___ S___ <b>Jeffrey</b>	___	___
	<b>Council Member</b>		
	M___ S___ <b>Brubaker</b>	___	___
	M___ S___ <b>Kimmons</b>	___	___
	M___ S___ <b>Davis</b>	___	___
	M___ S___ <b>Kyser</b>	___	___
		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: CID Date: 12-05-2019  
 Your Name: Kelsey Jeffries Street Address: 1743 Corinth Dr.  
 Phone number(s): (evening) 660-998-1925 (day) 660-414-7424  
 Email: vintage424.moberly@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? 31 years  
 Occupation: retail business owner Employer: Vintage 424

### Optional Questions (use back of application if necessary)

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

I have previously served on a variety of boards and committees, including Moberly Area Council on the Arts, Light Up Moberly/Community Betterment, Moberly Area Young Professionals, Main Street Moberly Design Committee. I have served as Vice President and President for Moberly Area Council on the Arts.

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

As a business owner in the CID, I feel I can contribute ideas and suggestions that come from practical experience. Additionally, I am confident in my skills and intelligence for design and aesthetic.

***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. Cassie Carpenter Bugalski Phone: 660-833-8225
2. Faye Lescoe Phone: 66-413-2273
3. Leslie Joseph Phone: 660-651-3096

  
 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 #4.  
 Department: Community Development  
 Date: December 16, 2019

**Agenda Item:** Discussion for proposed stormwater solution for the Harrison/Garfield project as well as the Fox Run area.

**Summary:** Attached is an email from Tom explaining the funding and change order.

**Recommended Action:** Bring forward to the January 6, 2020 regular City Council meeting for final approval.

**Fund Name:** N/A

**Account Number:** N/A

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

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

**Carla Beal**

---

**From:** Tom Sanders  
**Sent:** Thursday, December 12, 2019 11:14 AM  
**To:** Shirley Olney; Carla Beal  
**Cc:** Brian Crane; Mary West; Austin Johnson  
**Subject:** Harrison & Garfield - Fox Run Detention  
**Attachments:** Willis01632620191211142336.pdf

Shirley/Carla,

Please print this out for council packets and put this discussion item on for Dec. 16<sup>th</sup> work session. This is a proposed stormwater solution for the Harrison/Garfield project as well as the Fox Run area.

As you know, Willis Brothers was approved by ordinance 9555 to complete improvements to Harrison and Garfield in part with CDBG funding. These improvements would cause a slight increase in stormwater downstream and under this project, it wasn't being addressed. We were proceeding with the understanding Utilities was working on a regional detention basis that would more than compensate for the added stormwater. After learning that they did not have the funding to complete this regional facility, I met with Willis Brothers to discuss some Phasing of the detention work that would be more affordable and timely. Working with Willis and Bartlett & West, we have three phases laid out at this time.

I received pricing back from Willis Brothers on Wed, Dec. 11<sup>th</sup> (see attached, page 2). Phase I & II don't require any land acquisition/easements (see diagram below). Phase I is the reconstruction and berming up of the drainage channel South of McKinsey from Garfield. We have a 30' wide r/w through here. The proposed improvements to this area alone will more than make up for the added stormwater from the Harrison & Garfield project. The cost for Phase I is \$18,254.25.

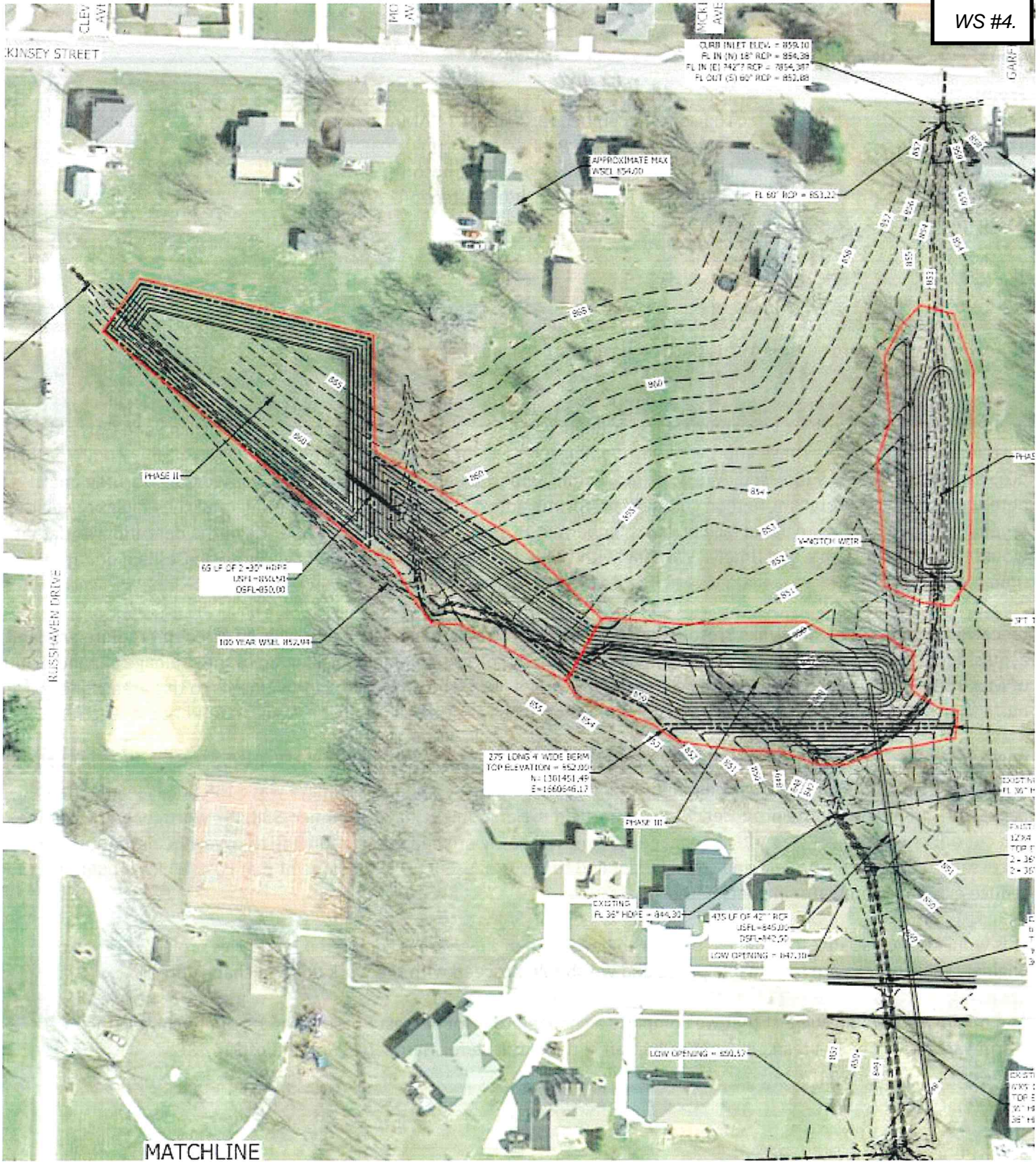
Phase II is the improvements to Fox Park, there is over 11,000 cubic yards of material excavation there. The price for Phase II is \$139,905. Both phases combined are \$158,159, and the engineers estimate was \$155,506 (see attached, page 3&4). In reviewing the proposed work on Garfield & Harrison, we have identified \$58,492 worth of work that we can cut out of the project (see attached, page 1). This will easily provide enough funding to cover the detention work necessary to off-set this project and could be applied towards phase II to offset some of that cost, which would further reduce existing stormwater impacts in the area.

This would leave \$99,667 for utilities to cover to have both of these areas completed under this project. Staff and Engineers think these are reasonable prices and we should proceed with the work under a change order.

At a minimum, I would suggest that we complete a change order for at least Phase I for \$18,254 to contain the stormwater which would result in a net reduction in the bid price for Harrison & Garfield of \$40,238.

Thanks,  
Tom









**WILLIS BROS., INC.**  
**30285 KIMBALL PLACE**  
**MACON, MISSOURI 63552**  
**660-385-3327/FAX 660-385-7110**

Proposal

November 5, 2019

City of Moberly  
tsanders@cityofmoberly.com  
101 West Reed  
Moberly, MO 65270

Re: Harrison Ave & Garfield Ave Project

Tom,

Here is our proposal to cut costs on the above referenced project.

Bid Item

~~13 Zero out the concrete driveways \$ 49,895.00~~

9, 29, 40, 52 Asphalt Paving deleted  
Reduce price 12.00 sq yd \$-31,632.00

10, 30, 41, 53 Concrete Street Repair  
Reduces sq yd by 15%  
from 2636 sq yds to 2240.60 sq yds  
Total reduction 395.40 sq yds x 68.00 \$- 26,860.00

Total Reduction ~~\$108,387.00~~

Sincerely,  
Tom Willis  
Willis Bros., Inc.

**- \$58,492**

**Bid**

**Willis Bros., Inc.**

Change Order #1~Harrison Ave & Garfield Ave Street Project

12/11/2019

ENG. EST

FOX RUN - PHASE I					
Item	Description	Unit	Quantity	Unit Price	Total Price
1	Mobilization	%	5%	\$ 17,385.00	\$ 869.25
2	Removals, Clearing & Grubbing	AC	0.2	\$ 20,000.00	\$ 4,000.00
3	Contractor Furnished Surveying	LS	1	\$ 1,000.00	\$ 1,000.00
4	Class A Excavation	CY	479	\$ 12.00	\$ 5,748.00
5	Compacting Embankment ( Dam)	CY	200	\$ 5.00	\$ 1,000.00
6	Excessive Fill Placement on-site	CY	279	\$ 3.00	\$ 837.00
15	Erosion Control	LS	1	\$ 800.00	\$ 800.00
16	Cleanup, Final Grading, Seed, Mulch & Fertilizer	AC	0.2	\$ 6,000.00	\$ 1,200.00
17	V-Notch Weir Concrete	LS	1	\$ 2,000.00	\$ 2,000.00
18	Rip Rap Ditch Liner	TN	20	\$ 40.00	\$ 800.00
					<b>\$ 18,254.25</b>

#23,361

FOX RUN - PHASE II					
Item	Description	Unit	Quantity	Unit Price	Total Price
1	Mobilization	%	5%	\$ 122,005.00	\$ 6,100.25
2	Removals, Clearing & Grubbing	AC	1.13	\$ 6,000.00	\$ 6,780.00
3	Contractor Furnished Surveying	LS	1	\$ 2,000.00	\$ 2,000.00
4	Class A Excavation	CY	11000	\$ 6.00	\$ 66,000.00
5	Compacting Embankment ( Dam)	CY	200	\$ 10.00	\$ 2,000.00
6	Excessive Fill Placement on-site	CY	10800	\$ 4.00	\$ 43,200.00
12	30" HDPE Storm Pipe	LF	130	\$ 48.00	\$ 6,240.00
15	Erosion Control	LS	1	\$ 2,500.00	\$ 2,500.00
16	Cleanup, Final Grading, Seed, Mulch & Fertilizer	AC	1.13	\$ 4,500.00	\$ 5,085.00
					<b>\$ 139,905.25</b>

#132,145

FOX RUN - PHASE III					
Item	Description	Unit	Quantity	Unit Price	Total Price
1	Mobilization	%	5%	\$ 82,915.00	\$ 4,145.75
2	Removals, Clearing & Grubbing	AC	0.71	\$ 8,000.00	\$ 5,680.00
3	Contractor Furnished Surveying	LS	1	\$ 3,000.00	\$ 3,000.00
4	Class A Excavation	CY	2500	\$ 8.00	\$ 20,000.00
5	Compacting Embankment ( Dam)	CY	1000	\$ 8.00	\$ 8,000.00
6	Excessive Fill Placement on-site	CY	1500	\$ 4.00	\$ 6,000.00
14	42" HDPE Storm Pipe	LF	435	\$ 90.00	\$ 39,150.00
15	Erosion Control	LS	1	\$ 3,500.00	\$ 3,500.00
16	Cleanup, Final Grading, Seed, Mulch & Fertilizer	AC	0.71	\$ 6,000.00	\$ 4,260.00
17	Street Repair	SY	16	\$ 95.00	\$ 1,520.00
					<b>\$ 95,255.75</b>

PHASE I & II TOTALS **\$158,159**

#155,506

**Preliminary Engineer's Estimate**



**Date:** December 3, 2019  
**Project No.:** 19254.022

<b>Fox Run - Phase I</b>					
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	EXTENSION
1	Mobilization	%	5.0%	\$961.00	\$961.00
2	Removals, Clearing and Grubbing	AC	0.20	\$2,500.00	\$500.00
3	Contractor Furnished Surveying	LS	1	\$5,000.00	\$5,000.00
4	Class A Excavation	CY	479	\$4.50	\$2,155.50
5	Compacting Embankment (dam)	CY	200	\$5.00	\$1,000.00
6	Excessive Fill Placement on-site	CY	279	\$2.00	\$558.00
7	Replacement of Stockpiled Topsoil	CY	0	\$1.00	\$0.00
8	14' x 7' Riser Structure	VF	0	\$2,000.00	\$0.00
8	15" HP Storm Pipe	LF	0	\$74.00	\$0.00
9	18" HP Storm Pipe	LF	0	\$83.00	\$0.00
10	21" HP Storm Pipe	LF	0	\$92.00	\$0.00
11	24" HP Storm Pipe	LF	0	\$93.00	\$0.00
12	30" HP Storm Pipe	LF	0	\$110.00	\$0.00
13	36" HP Storm Pipe	LF	0	\$120.00	\$0.00
14	42" HP Storm Pipe	LF	0	\$130.00	\$0.00
15	Erosion Control	LS	1	\$10,000.00	\$10,000.00
16	Cleanup, Final Grading, Seed, Mulch & Fertilize	AC		\$2,800.00	\$0.00
				<b>Subtotal</b>	<b>\$21,237.00</b>
	Contingency			10%	\$2,124.00
				<b>Construction Cost :</b>	<b>\$23,361.00</b>

**Preliminary Engineer's Estimate**



Date: December 3, 2019  
Project No.: 19254.022

Fox Run - Phase II					
ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	EXTENSION
1	Mobilization	%	5.0%	\$5,435.00	\$5,435.00
2	Removals, Clearing and Grubbing	AC	1.13	\$2,500.00	\$2,825.00
3	Contractor Furnished Surveying	LS	1	\$5,000.00	\$5,000.00
4	Class A Excavation	CY	11,000	\$4.50	\$49,500.00
5	Compacting Embankment (dam)	CY	200	\$5.00	\$1,000.00
6	Excessive Fill Placement on-site	CY	10,800	\$2.00	\$21,600.00
7	Replacement of Stockpiled Topsoil	CY	0	\$1.00	\$0.00
8	14' x 7' Riser Structure	VF	0	\$2,000.00	\$0.00
8	15" HP Storm Pipe	LF	0	\$74.00	\$0.00
9	18" HP Storm Pipe	LF	0	\$83.00	\$0.00
10	21" HP Storm Pipe	LF	0	\$92.00	\$0.00
11	24" HP Storm Pipe	LF	0	\$93.00	\$0.00
12	30" HP Storm Pipe	LF	0	\$110.00	\$0.00
13	36" HP Storm Pipe	LF	130	\$120.00	\$15,600.00
14	42" HP Storm Pipe	LF	0	\$130.00	\$0.00
15	Erosion Control	LS	1	\$10,000.00	\$10,000.00
16	Cleanup, Final Grading, Seed, Mulch & Fertilize	AC	1.13	\$2,800.00	\$3,164.00
				Subtotal	\$120,131.00
	Contingency			10%	\$12,014.00
				<b>Construction Cost :</b>	<b>\$132,145.00</b>

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
 Department: Public Utilities  
 Date: December 16, 2019

WS #5.

**Agenda Item:** Discussion Regarding Retaining KIMHEC for Services Related to Pretreatment Program Assistance

**Summary:** The Pretreatment Coordinator at the Wastewater Treatment Facility is retiring this month. The work associate with this position has increased substantially in the last year due to DNR and EPA reviews associated with the renewal of our wastewater permit. The City will have to update our sewer user ordinance and enforcement response plan, as well as the permits and permitting process for industries that are required to have a pretreatment permit issued by the City of Moberly. In order to assure that this work is completed according to regulatory requirements and in a timely manner, staff reached out to Kim Cole, who manages the pretreatment program for a number of communities including the City of Hannibal. Her services will be utilized in assessing the semi-annual reports submitted by industries in January, development of the annual pretreatment report to DNR, as well as a review of pretreatment permits that have been issued, recent inspections, the industrial user questionnaire, and assistance with updating our ordinances. Her staff includes a person with a juris doctorate who has worked with 6 communities and DNR to facilitate the update to the ordinances. Until the City is able to hire a person to fill this position, we do not have sufficient staff to cover these activities.

**Recommended Action:** Direct staff to develop a resolution authorizing the contract at the next regular meeting.

**Fund Name:** Wastewater Professional Services

**Account Number:** 301.114.5415

**Available Budget \$:** 0

ATTACHMENTS:	Roll Call	Aye	Nay
<input type="checkbox"/> Memo			
<input type="checkbox"/> Staff Report			
<input type="checkbox"/> Correspondence			
<input 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 checked="" type="checkbox"/> Contract			
<input type="checkbox"/> Budget Amendment			
<input type="checkbox"/> Legal Notice			
<input type="checkbox"/> Other _____			
	<b>Mayor</b>		
	M___ S___ <b>Jeffrey</b>	___	___
	<b>Council Member</b>		
	M___ S___ <b>Brubaker</b>	___	___
	M___ S___ <b>Kimmons</b>	___	___
	M___ S___ <b>Davis</b>	___	___
	M___ S___ <b>Kyser</b>	___	___
		Passed	Failed



# 2019 KimHEC TERMS AND CONDITIONS

WS #5.

## 1. DEFINITIONS

- 1.1. "Additional Services" - the services to be performed for or furnished to the Client by the Consultant in accordance with any mutually agreed upon written Amendment to the Agreement.
- 1.2. "Agreement" - the scope of services and responsibilities for each party of the Agreement; these terms and conditions are hereby made a part of the Agreement and does not include previous or contemporaneous agreements, representations, promises, or conditions pertaining to the Consultant's services for this project and are hereby superseded. The Agreement includes the terms and conditions herein, the Agreement, and any Amendments mutually signed.
- 1.3. "Basic Services" - the services to be performed for or furnished to Client by Consultant in accordance with the Agreement.
- 1.4. "Client" - the entity with which the Consultant has entered into this Agreement and for which the Consultant's services are to be performed.
- 1.5. "Consultant" - the person, firm or company performing the Basic Services.
- 1.6. "Designated Representatives" are the specific individual designated by each Party who shall act as a with respect to the Services to be performed or furnished by the Consultant and the responsibilities of the Client under these Basic Services. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Basic Services or Additional Services on behalf of each respective party.
- 1.7. "Industry" - any industry, commercial facility, or manufacturing facility identified in the Agreement which may be integral to the Services being performed for the Client. The Industry is not a party of the Agreement; however information provided by the Industry may be integral to the Services being provided. The Services being performed may require site visits to the Industry, information and data from the Industry, as well as additional information.
- 1.8. "Site" - the Client's Wastewater Treatment Plant, an Industry location, a Commercial location or other location of interest in performing the Services associated with the Agreement herein.

## 2. COMPENSATION

- 2.1. Consultant shall prepare invoices in accordance with its standard invoicing practices and the terms of the Agreement. Consultant shall submit its invoices to the Client on a monthly basis.
- 2.2. Invoices are due and payable within thirty (30) days of receipt unless otherwise stipulated in the Agreement.
- 2.3. Payment will be credited first to any interest owed to Consultant and then to principal.
- 2.4. If Client fails to make any payment due Consultant for Services within 30 days after receipt of Consultant's invoice, then:
  - 2.4.1. Amounts due Consultant will be increased at the rate of 1% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day and
  - 2.4.2. Consultant may, after given seven days written notice to Client, suspend services as defined herein until Client has paid in full all amounts due for services and other related charges. Client waives any and all claims against Consultant for any such suspension.
- 2.5. If any amount of an invoice is disputed then the Client shall inform the Consultant in writing of the grounds for such dispute within fifteen (15) days of receipt of the invoice and shall pay to the Consultant the value of the invoice less the disputed amount in accordance with these payment terms. Once settlement of the dispute has been agreed, any sum then outstanding shall also be payable in accordance with these payment terms.

## 3. TIMETABLE

- 3.1. The Consultant shall complete its obligations within a reasonable time. Specific periods of time for rendering services or specific dates by which services are to be completed are provided in the Agreement.
- 3.2. If, through no fault of the Consultant, the periods of time or dates referenced in Section 3.1 are changed, or the orderly and continuous progress of Consultant's services is impaired, or Consultant's services are delayed or suspended, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.
- 3.3. If Client authorizes changes in scope, extent, or character of the Basic Services, then the time for completion of Consultant's Additional Services and the rates and amounts of Consultant's compensation, shall be adjusted accordingly.

# TERMS AND CONDITIONS, CONTINUED

- 3.4. The Client shall make decisions and carry out its other responsibilities herein in a timely manner so as not to impact Consultant's performance of its Services.

WS #5.

## 4. TERMINATION

- 4.1. Services may be terminated by the Client or Consultant by seven (7) days written notice in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If so terminated, Client shall pay Consultant all amounts due for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by the Consultant as a result of terminating the Services.
- 4.2. Services may be terminated by the Client or Consultant for convenience by providing fifteen (15) days written notice. If Client so terminates the Services, Consultant is entitled to all amounts due for all services properly performed plus Consultant's costs as a result of the termination for convenience. If Consultant terminates its Services for convenience, it shall be paid for all Services performed as of the effective date of the termination.

## 5. DELIVERY USAGE OF THE SERVICES OR MATERIALS

- 5.1. The majority of Services supplied by the Consultant is dispatched electronically by email and shall be deemed delivered upon receipt of the email by the Client.
- 5.2. Once delivered to the Client, it is the Client's responsibility to ensure the documents are transferred to the appropriate regulatory agency or other intended recipient.
- 5.3. Documents submitted to State or Federal Agencies and approved shall not be altered by the Client following such approval.
- 5.4. Client shall not make, or permit to be made, any modifications to any documents, including drawings and specifications, furnished by Consultant pursuant to this Agreement, without the prior written authorization of Consultant.

## 6. CONFIDENTIALITY

- 6.1. Both parties shall maintain strict confidence and shall not disclose to any third party any information or material relating to the other or the other's business which comes into that party's possession and shall not use such information and material without written permission by the other party. This provision shall not, however, apply to information or material which is, or becomes, public knowledge by means other than by breach of this clause by a party to this Agreement.

## 7. INDEMNIFICATION AND MUTUAL WAIVER

- 7.1. Indemnification by Consultant: To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Client, and Client's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by Section 8.1 hereof.
- 7.2. Indemnification by Client: Client shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and Consultants as required by applicable Laws and Regulations.
- 7.3. Percentage Share of Negligence: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Client, Consultant, and all other negligent entities and individuals.
- 7.4. Mutual Waiver: To the fullest extent permitted by law, Client and Consultant waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Services.

# TERMS AND CONDITIONS, CONTINUED

WS #5.

## 8. LIMITATION OF LIABILITY

- 8.1. In recognition of the relative risks and benefits of the project to both the Client and the Consultant, the risks allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Consultant to the Client 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 to the Client shall not exceed the general and professional liability insurance coverage defined in 8.2. It is intended that this limitation apply to any and all liability or cause of action unless prohibited by law.
- 8.2. Consultant will maintain general liability with not less than \$1,000,000 per occurrence with a \$2,000,000 annual aggregate limit and professional liability insurance with not less than \$1,000,000 per occurrence with a \$1,000,000 annual aggregate limit and will name the Client as an additional insured.

## 9. DISPUTE RESOLUTION

- 9.1. The Client and Consultant agree that all disputes between them arising out of the Consultant's Services provided or related to the Services in the Agreement, shall be submitted to non-binding mediation (unless the parties mutually agree otherwise), thereby providing for mediation as the primary method for dispute resolution between Client and Consultant. Any such mediation shall take place in St. Louis, Missouri before a mediator of the parties choice.

## 10. GENERAL CONSIDERATIONS

- 10.1. Standards of Care: The standard of care for all professional engineering and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied under this agreement or otherwise in connection with Consultant's services.
- 10.2. Consultant shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Client-furnished information.
- 10.3. The Basic Services defined herein may be amended, in writing, by mutual agreement between the Consultant and Client. The Amendment may amend the scope (Additional Services), schedule, or compensation for the Services associated with the Agreement.
- 10.4. Consultant and Client shall comply with applicable Laws and Regulations
- 10.4.1. Prior to the Effective Date, Client provided to Consultant in writing any and all policies and procedures of Client applicable to Consultant's performance of services under this Agreement. Consultant shall comply with such policies and procedures, subject to the standard of care set forth in Section 10.1, and to the extent compliance is not inconsistent with professional practice requirements.
- 10.4.2. This Agreement is based on applicable Laws and Regulations and Client-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Client-provided written policies and procedures, may be the basis for modifications to Client's responsibilities or to Consultant's scope of services, times of performance, or compensation.
- 10.4.3. Consultant shall not be required to sign any documents, no matter by whom requested, that would result in the Consultant having to certify, guarantee, or warrant the existence of conditions whose existence the Consultant cannot ascertain. Client 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 signing any such documents.
- 10.4.4. Consultant shall not be responsible for the acts or omissions of the Client or for the information provided to the Client by the Industry or of any of its agents or employees or of any other persons (except Consultant's own agents, employees, and Consultants) or otherwise furnishing or providing information, other than those made by Consultant.
- 10.4.5. While at the Site, Consultant's employees and representatives shall comply with the specific applicable requirements of the Site's and Client's safety programs of which Consultant has been informed in writing.



## Agreement for Professional Services

This is an agreement effective as of

\_\_\_\_\_ **[Client to Enter Effective Date in Line Above]**

between **The City of Moberly** (herein after called "Client") and **KimHEC** (herein after called "Consultant"). Client's Project, of which Consultant's services under this Agreement are part, is generally defined as follows: **Pretreatment Program Assistance**. Consultant's services under this Agreement are generally defined as providing assistance in implementing the City's Pretreatment Program.

### Section A, Basic Services

Specifically, the Consultant agrees to perform duties related to assisting in the implementation of the Client's Pretreatment Program including:

- a. Develop a schedule and plan to correct the deficiencies documented in the December 2019 Pretreatment Inspection performed by MDNR.
- b. Assist in compliance determinations, enforcement actions, and annual pretreatment report based on the MDNR inspection report and a review of records for the 2019 reporting periods.
- c. Assist in Program Updates including an updated Sewer Use Ordinance and Enforcement Response Plan which incorporates the local limits (local limit calculations shall performed by others and peer-reviewed by the Consultant).

Pretreatment Program Assistance may also include (with appropriate authorization) the following tasks including but not limited to:

- a. Perform and document annual inspections including follow-up required
- b. Review and update of pretreatment components as necessary (e.g., hexavalent chromium local limit, copper local limit, and ERP plan)
- c. Form Development (permits, inspection forms, fact sheet, application)
- d. Legal Authority Updates and/or ERP Revisions
- e. Perform Inspections - including preparation, inspection, and summary
- f. Permit Issuance - including application review, fact sheet, permit, self-monitoring report templates
- g. Monitoring Report Reviews
- h. Violation Assistance



- i. Sample Plan Development
- j. Data Evaluation and Tracking (industry, WWTP, and/or biosolids)
- k. Training for the Client's staff and/or industries
- l. Assistance during regulatory inspections
- m. Dental Rule implementation

*Section B, Client's Responsibilities:*

- a. Provide copies of relevant historical reports, analytical results, and inspections related to the industries.
- b. Provide the labor and analytical fees associated with any and all analytical work (influent, effluent, industry, biosolids) associated with this Project.
- c. Client is responsible for printing, postage, and mailing of all hard copy communications (Industrial Waste Surveys, communications, reports, etc.) as applicable.
- d. Client shall assist the Consultant during all site visits and in getting the information necessary to appropriately implement the Pretreatment Program such as permit applications and industrial inspection reports.

*Section C, Schedule for Rendering Services:*

Upon this agreement becoming effective, Consultant is authorized to begin services as set forth in Section A, Basic Services, and shall continue to render services until the time for rendering services is complete, until the corresponding tasks are complete, or until the not-to-exceed amount has been billed or otherwise authorized for additional work.

*Section D, Payments to Consultant*

Client shall pay Consultant for services rendered under this Agreement as follows:

- a. A not-to-exceed amount of \$30,000.
- b. Each invoice amount shall include a description of tasks performed and associated labor hours for the Consulting Services defined herein.
- c. The hourly rate for tasks performed will be billed at \$150 per hour or at a reduced rate depending on the task.
- d. If Services beyond the allocated not-to-exceed amount set forth in this Section is required, the Client shall authorize any such work via e-mail or other written documentation. Consultant will be paid at an hourly rate of \$150 per hour for any such Services related to the management of the City's Pretreatment Program or permitting process or other associated tasks beyond the allocated budget herein.



Section E, Total Agreement

This Agreement with the Terms and Conditions attached and Addendum noted above constitutes the entire Agreement between Client and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written instrument.

In Witness Whereof, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

**Client Acceptance:**

\_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name, Title

\_\_\_\_\_

Address

\_\_\_\_\_

City, State, Zip

\_\_\_\_\_

Date of Acceptance

**Address for Giving Notices:**

[Empty box for Client address for giving notices]

**Designated Representative:**

**Name:**  
**Title:**  
**Phone:**  
**Email:**

**Consultant Agreement:**

*Kimberly A. Cole*  
\_\_\_\_\_

Signature

**Kim Cole, P.E., Principal**

\_\_\_\_\_

Printed Name, Title

**5326 Southwest Avenue**

\_\_\_\_\_

Address

**St. Louis, Missouri 63139**

\_\_\_\_\_

City, State, Zip

**December 10, 2019**

\_\_\_\_\_

Date of Agreement

**Address for Giving Notices:**

Kim Cole, P.E.  
KimHEC  
123 Oak Tree Drive  
St. Louis, MO 63119

**Designated Representative:**

**Name:** Kim Cole, P.E.  
**Title:** Principal  
**Phone:** 314-276-9575  
**Email:** kim.cole@kimhec.com

# City of Moberly City Council Agenda Summary

Agenda Number: \_\_\_\_\_  
 Department: City Manager  
 Date: December 16, 2019

WS #6.

**Agenda Item:** Review of an agreement with Howe Company LLC for professional services at Moberly Industrial Park Subdivision.

**Summary:** This agreement will provide plating for the Moberly Industrial Park

**Recommended Action:** Direct staff to bring to the January 6<sup>th</sup>, 2020 Council meeting for final approval

**Fund Name:** N/A

**Account Number:** N/A

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

ATTACHMENTS:	Roll Call	Aye	Nay
<input type="checkbox"/> Memo			
<input type="checkbox"/> Staff Report			
<input checked="" type="checkbox"/> Correspondence			
<input 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 checked="" type="checkbox"/> Other _____			
	<b>Mayor</b>		
	M___ S___ <b>Jeffrey</b>	___	___
	<b>Council Member</b>		
	M___ S___ <b>Brubaker</b>	___	___
	M___ S___ <b>Kimmons</b>	___	___
	M___ S___ <b>Davis</b>	___	___
	M___ S___ <b>Kyser</b>	___	___
		Passed	Failed

December 13, 2019

Brian Crane, City Manager  
City of Moberly  
101 West Reed Street  
Moberly, MO 65270

Re: Moberly Industrial Park Subdivision  
Agreement for Professional Services

Dear Mr. Crane,

Thank you for considering Howe Company (HoweCo) to provide professional services in conjunction with the preparation of a subdivision plat and detention pond design for the Moberly Industrial Park, hereafter called the "Project". A detailed description of our proposed services on the project is provided in the attached Basic Services Summary.

Our compensation for completing the services listed in the Basic Services Summary will be a lump sum fee of \$29,000.00, which includes the cost of reimbursable expenses for HoweCo vehicle mileage and internal copies. Reimbursable expenses (out-of-pocket expenses such as external copies and printing, delivery charges, filing fees, or application fees, etc.) are extra and will be invoiced at actual cost, plus ten percent (10%) to cover administrative overhead.

You will be invoiced monthly, based on the project progress that has occurred. All invoices are due and payable on receipt and will be considered past due if payment is not received within 21 days. Once project invoices are past due, an interest charge will accrue to your account at the rate of one-and-one-half percent (1½%) per month, and we will retain the right to cease work on the project until satisfactory arrangements are made to settle the account.

We expect to begin our services promptly, after receipt of your acceptance of this proposal, and complete our work, with all due diligence and in a timely manner. If there are protracted delays, for any reason, we will notify you immediately. You agree to provide all necessary information for the performance of our services within a reasonable time after it is requested and that HoweCo will be given timely access to the project site, as necessary, to complete the proposed professional services.



Brian Crane  
City Manager  
City of Moberly  
December 13, 2019  
Page 2



The following individuals are designated as primary project representatives for City of Moberly and HoweCo. These individuals shall be the primary point of contact and shall receive all correspondence or notices.

**Howe Company, LLC**  
Shannon J. Howe, P.E., S.E.  
804 E. Patton Street  
Macon, Missouri 63552  
Phone: 660-395-4693  
Fax: 660-395-4694  
E-mail: shannon@howecompany.com

**City of Moberly**  
Brian Crane  
101 West Reed Street  
Moberly, MO 65270  
Phone: 660-269-8705  
Fax: 660-269-8171  
E-mail: bcrane@cityofmoberly.com

This letter agreement, along with the attached Basic Services Summary and Terms and Conditions (3 pages), represent the entire understanding between us in respect to this project. The Terms and Conditions detail many provisions affecting this agreement, including some which limit HoweCo's liability regarding the project. The Terms and Conditions should be read and understood before entering into this agreement. If these documents satisfactorily set forth your understanding of our agreement, please sign the enclosed copy of this letter agreement in the space provided below and return it to us. This proposal is open for 60 calendar days from the date on the cover page.

We appreciate this opportunity to provide you this proposal for our services and look forward to working with you on this project. If questions should arise after you review this proposal, please call the number listed above.

**HOWE COMPANY, LLC**

By:   
Shannon J. Howe, P.E., S.E.

By: \_\_\_\_\_  
(Name & Title of Additional Contact)

**City of Moberly**

By: \_\_\_\_\_  
Brian Crane

Accepted Date: \_\_\_\_\_

Title: City Manager



### **BACKGROUND INFORMATION**

The following understanding serves as the basis for the development of the Scope of Services and Fees;

- The City of Moberly desires to subdivide the rest of the Industrial Park and provide a detention pond to receive stormwater from future development.

### **BASIC SERVICES SUMMARY**

Attached to and made a part of the Agreement for Professional Services dated December 13, 2019, by and between City of Moberly and Howe Company, LLC, (HoweCo) in respect to the preparation of a subdivision plat and detention pond design for the Moberly Industrial Park, the “Project” described therein.

### **SCOPE OF BASIC SERVICES**

For the compensation outlined in the Agreement, Howe Company, LLC will perform the following professional services. Services not detailed within the Scope of Basic Services are specifically excluded from the scope of HoweCo’s work and HoweCo assumes no responsibility to perform any services not specifically listed.

HoweCo will:

- 1) Meet with City of Moberly to discuss the generally plan view layout of the proposed lots, streets and centralized stormwater management plan that would accommodate future utility and storm sewer improvements at the Moberly Industrial Park, see attached Exhibit “A”. The existing MFA facility and the proposed Emerald 40-acre project area is excluded, except the property lines we be shown including name of owner.
- 2) Meet with City of Moberly to review the preliminary plat of the proposed lots, streets and centralized stormwater management plan, including the following.
  - Locate existing property boundary pins
  - Verify utility information provided by the City of Moberly
  - Provide plan and profile of proposed streets for review to accommodate future utility and storm sewer improvements.
  - Review the design parameters to convert the existing pond structure located west of the MFA Facility to a detention pond, see location in Exhibit “A”.
  - Review the location of the future detention pond to be potentially located downstream of the existing pond structure. Provide a plan view and two cross-sections of the existing ground for the proposed detention pond.



- 3) Design to convert the existing pond structure to a detention pond, including the following:
- Provide a topographic survey of the existing pond structure including the pond area under the water surface.
  - Provide a detention pond design that will meet the City of Moberly's "Post Construction Stormwater Manual"
  - Detention pond to serve the current drainage area, MFA Facility and the proposed Emerald Project. Design to include an option to provide stormwater detention of the proposed drainage fully developed as an industrial park, using a hydrologic soil group "C" and curve number 91 for urban districts-Industrial.
  - Design to make an attempt to try to utilize the existing discharge structure in the existing pond which consists of a 24" riser, 18" barrel and stop gate valve at the outfall.
  - Provide a drainage easement from the location where the drainageway crosses the west property line of the MFA Facility to the detention pond
  - Review design calculations with the City of Moberly.
  - Provide final report of design calculations and construction plans for the detention pond.
- 4) Provide final plat to include the following:
- Scale and size of plat, one inch to 100 feet or larger, on 24 by 36 inch sheets. If more than one sheet is required to cover the entire development, an index map of the same dimensions shall be filed showing the entire development at a smaller scale.
  - The proposed name of the subdivision.
  - Location of the proposed subdivision in relation to section, township, range, county and state; and a legal description of the boundary with acreage of the proposed subdivision. Final plat to meet current Minimum Standards for Property Boundary Surveys.
  - The location of existing monuments to be shown and described on the final plat.
  - The location of lots, streets, public highways, alleys, parks and other features, with accurate dimensions in feet and decimals of feet with the length of radii on all curves, and other information necessary to reproduce the plat on the ground.
  - Lots shall be numbered clearly.
  - The locations, widths and names of proposed streets.
  - All building setback lines with dimensions.
  - The location of floodplain located within the final plat. Statement regarding compliance with the city's adopted floodplain regulations.
  - Name, signature and seal of the licensed land surveyor preparing the plat.
  - Date of preparation and north point.
  - Statement dedicating easements, streets, alleys, and all other public areas not previously dedicated.
  - Provide 5 original signatures of final plat





- Record final plat
- 1) The following to be provided by the City of Moberly.
- City of Moberly to provide AutoCAD file with surface of existing contours and existing improvements that includes adjacent roads and utilities information (sanitary sewer, water, electric, gas, phone), except as noted for detention pond design
  - City of Moberly to provide for any applicable permit fees
  - City of Moberly to provide current deeds and boundary surveys of properties.



### **ADDITIONAL SERVICES**

If agreed to by the client and HoweCo, we will provide Additional Services related to the Project. Additional Services are those not included as part of the Basic Scope of Services and shall be paid for by the Client in addition to payment for Basic Services, in accordance with HoweCo's prevailing fee schedule, in effect at the time that such services are rendered, or as otherwise agreed to by the client and HoweCo.

The following services are excluded from the Scope of Basic Services but may be added to the contract by a change order for additional fees;

- Design and preparation of construction documents for utilities & stormwater facilities beyond the detention pond.



### EXCLUDED SERVICES

The following services are not included in the scope of services and are specifically excluded from the Scope of Services. If these services are required, then a supplemental agreement is required to add the scope and additional fee:

- 1) Sketch plan, Preliminary and final plat to meet the City of Moberly Chapter 38 – Subdivision requirements.
- 2) Design of streets and all utilities (sanitary sewer, watermain, lift station, storm sewer, lighting, electrical and gas).
- 3) Boundary and topographic survey(s), except as noted for detention pond design
- 4) Storm water management, inspections, maintenance and installation.
- 5) Testing of compaction & moisture for embankment, base, and pavement during earthwork for pavement subgrade.
- 6) Permit fees
- 7) Studies, delineations, evaluations, of potential wetlands in the project area.
- 8) The design, development, coordination of wetland mitigation plans, reports, etc.



## STANDARD TERMS & CONDITIONS

**Item 1. Scope of Work.** Howe Company (HoweCo) shall perform services in accordance with an "agreement" made with the "client". The agreement consists of HoweCo proposal, Hourly Rate Schedule, and these Terms & Conditions. The "client" is defined as the person or entity requesting and/or authorizing the work, and in doing so, client represents and warrants that he is duly authorized in this role, even if performed on behalf of another party or entity, in which case the other party or entity is also considered as the client. The acceptance of HoweCo proposal signifies the acceptance of the terms of this agreement.

The fees for services rendered will be billed in accordance with the accompanying Hourly Rate Schedule. Unit rates for services not covered in the fee schedule or elsewhere in the agreement can be provided. The standard prices proposed for the work are predicated upon the client's acceptance of the conditions and allocations of risks and obligations described in the agreement. The client shall impart the terms of this agreement to any third party to whom the client releases any part of work.

HoweCo shall have no obligations to any party other than those expressed by agreement.

**Item 2. Site Access/Background Data.** The client will provide for the right-of-way access to the work site. In the event the work site is not owned by the client, client represents to HoweCo that all necessary permissions for HoweCo to enter the site and conduct the work have been obtained. While HoweCo shall exercise reasonable care to minimize damage to the property, the client understands that some damage may occur during the normal course of the work, that HoweCo has not included in its fee the cost of restoration of damage, and that the client will pay for such restoration costs. Client shall provide the appropriate land title and/or background information to HoweCo required for the performance of our work. HoweCo will not be required to perform an independent search for easements, encumbrances, title evidence and ownership data as HoweCo will rely upon the materials and representations that client supplies to HoweCo.

**Item 3. Utilities.** In the performance of its work, HoweCo will take all reasonable precautions to avoid damage to underground structures or utilities, and will rely on the utility or locator services to correctly identify their buried facilities and service lines, and on plans, drawings or sketches made available and provided by the client. The client agrees to hold HoweCo harmless and indemnify HoweCo from any claims, expenses, or other liabilities, including reasonable attorney fees, incurred by HoweCo for any damages to underground structures and utilities which were not correctly and clearly shown on the plans provided to HoweCo or otherwise disclosed by the client, utility, or locator service. HoweCo will be responsible for ordering the utility locator or exploratory excavation services only if expressly set forth in the scope of the proposal.

**Item 4. Hazardous Materials and Site Conditions.** Prior to the start of services, or at the earliest time such information is learned, it shall be the duty of the client, or other involved or contacted parties, to advise HoweCo of any known or suspected undocumented fills, hazardous materials, by-products, or constituents, and any known environmental, hydrologic, geologic, and geotechnical conditions, which exist on or near any premises upon which work is to be performed by HoweCo employees or subcontractors or which in any other way may be pertinent to HoweCo's proposed services.

**Item 5. Confidentiality.** HoweCo shall hold confidential the business and technical information obtained or generated in performance of services under this agreement and identified in writing by the client as "confidential". HoweCo shall not disclose such "confidential" information except if such disclosure is required by governmental statute, ordinance, or regulation; for compliance with professional standards of conduct for public safety, health, and welfare concerns; or for protection of HoweCo against claims or liabilities arising from performance of its services. The technical and pricing information contained in any report or proposal submitted by HoweCo is to be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of HoweCo. Client now has no contract with any other professional engineer/surveyor/planner for the performance of the specific services outlined in the agreement and any previous contracts are terminated and copies of all previous work will be provided to HoweCo for use in this current project.

**Item 6. Standard of Care.** HoweCo will perform the services under this agreement in accordance with generally accepted practice, in a manner consistent with the level of care and skill ordinarily exercised by members of this profession under similar circumstances in this locality. No other warranties implied or expressed, in fact or by law, are made or intended.

**Item 7. Technical Methodology and Protocol.** HoweCo will select generally accepted methods and procedures it considers appropriate to accomplish the intended and understood purpose of its services within the scope of this agreement, and the client signifies concurrence with these methods and procedures by acceptance of this agreement. In the event other special methods or procedures are preferred by the client or are considered more appropriate, a written description or designation of these must be provided to HoweCo prior to execution of this agreement.

**Item 8. Limitations of Liability.** In recognition of the relative risks and benefits of the project to both the Client and HoweCo, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of HoweCo and his or her subconsultants to the client on the project for any and all claims, losses, costs, damages





## STANDARD TERMS & CONDITIONS continued

of any nature whatsoever, or claims expenses from any cause or causes, so that the total aggregate liability of HoweCo and his or her subconsultants to all those named shall not exceed HoweCo's total fee for services rendered, or \$50,000, whichever is less, on this project. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

**Item 9. Consequential Damages.** Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the client or HoweCo, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use, loss of income, loss of profit, loss of business, and/or loss of reputation.

**Item 10. Insurance and Indemnity.** HoweCo represents that it maintains general liability, property damage, and professional liability insurance, and that HoweCo's employees are covered by Workman's Compensation Insurance. Certificates of Insurance can be provided to the client upon request.

HoweCo shall not be responsible for any loss, damage, or liability beyond these insurance limits and conditions. HoweCo agrees to indemnify the client from and save client harmless against any loss, damage, or liability stemming from acts of gross negligence by HoweCo. Except as expressly set forth in Items Nos. 8 and 9, the client agrees to hold HoweCo, its officers, directors, agents, and employees, harmless from any claims, suits, or liability including but not limited to attorney fees, costs of settlement, and other incidental costs, for personal injury, death, illness, property damage or any other loss, allegedly arising from or related to HoweCo's work.

**Item 11. Modifications.** This agreement and all its attachments represent the entire understanding between the parties, and neither the client nor HoweCo may amend or modify any aspect of this contract unless such alterations are reduced to writing and properly executed by the parties hereto. These items and conditions shall supersede all prior or contemporaneous communications, representations, or agreements, and any provisions expressed or implied in requests for proposal, purchase order, authorization to proceed, or other contradictory provisions, whether written or oral.

**Item 12. Reuse of Documents.** All documents including drawings, specifications, and electronic media furnished by HoweCo pursuant to this Agreement are instruments of its services. They are not intended or represented to be suitable for reuse by client or others on extensions of this project, or on any other project. Any reuse without specific written verification or adaptation by HoweCo will be at client's sole risk, and without liability of HoweCo, and client shall indemnify and hold harmless HoweCo from all claims, damages, losses and expenses including court costs and attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle HoweCo to further compensation at rates to be agreed upon by client and HoweCo.

**Item 13. Payment.** Invoices for performed work will be submitted monthly for services rendered the prior month, payable within 21 days of invoice date. The fees quoted are based upon an expected timely payment. Late payment charges of 1.5% per month will be added to delinquent charges. Client shall be further obligated to pay HoweCo's cost of collection, including, but not limited to, court costs and attorney's fees, in the event of default in payment under this paragraph. This agreement is entered into in Macon County, Missouri and the Laws of Missouri are to apply to the agreement. If legal action is required by HoweCo, to collect fees or expenses advanced or to resolve disputes, then the parties agree that Macon County shall be the proper venue for that legal action. HoweCo, at its option, may terminate its services due to client's failure to pay when due. In the event of termination of services prior to completion, client shall compensate HoweCo for all services performed to and for such termination. If the Client fails to make payments when due or otherwise is in breach of this Agreement, HoweCo may suspend performance of services upon five (5) calendar days written or electronic notice to the Client. HoweCo shall have no liability whatsoever to the Client for any costs or damages as a result of suspension caused by any breach of the Agreement by the Client.

**Item 14. Opinions of Cost.** Since HoweCo has no control over the cost of labor, materials or equipment or over a Contractor's method of determining prices, or over competitive bidding or market conditions, its opinions of probable project cost or construction cost for this project will be based upon its own experience with construction, but HoweCo cannot and does not guarantee that proposals, bids or the construction cost will not vary from its opinions of probable costs. If the client wishes greater assurance as to the construction cost, they shall employ an independent cost estimator.

**Item 15. Shop Drawing Review.** Client agrees that HoweCo's review of shop drawings, when such review is included in the scope of services, shall be solely for their conformance with HoweCo's design intent and conformance with information given in the construction documents. HoweCo shall not be responsible for any aspects of a shop drawing submission that affect or are affected by the means, methods, techniques, sequences and operations of construction, safety precautions and programs incidental thereto, all of which are the contractor's responsibility. The contractor will be responsible for lengths, dimensions, elevations, quantities and coordination of the work with other trades. Client warrants that the contractor shall be made aware of his responsibilities to review shop drawings and approve them in these respects before submitting them to HoweCo.

**Item 16. Mediation.** In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Client and HoweCo agree that all disputes between them arising out of, or





**STANDARD TERMS & CONDITIONS continued**

related to this Agreement, shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise. In the event the parties agree to resolve conflicts that arise during the design or construction of the project or following the completion of the project by methods other than nonbinding mediation, then all such agreements must be set forth in writing, and must be signed by representatives of both the Client and HoweCo to be effective. It is further agreed by the Client and HoweCo that supplemental agreements to resolve conflicts that arise during the design or construction of the project, or following the completion of the project, must not only be signed by representatives of both the Client and HoweCo; but must specify, in writing, the method of dispute resolution which has been selected to replace nonbinding mediation.

**Item 17. Assignment.** Neither party of this Agreement shall transfer, sublet or assign any rights 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 to the other party. Subcontracting to subconsultants normally contemplated by HoweCo shall not be considered an assignment for purposes of this Agreement.

**Item 18. Betterment.** If a required item or component of the project should be omitted from construction documents, HoweCo shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will HoweCo be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the project.

**Item 19. Construction Contingency.** Client recognizes and expects that certain change orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in the Drawings, Specifications, and other design documentation furnished by the E/A/S or in the other professional services performed or furnished by the E/A/S under this Agreement ("Covered Change Orders"). Accordingly, Client agrees to budget a minimum of five percent (5%) of the total client's construction contractor's bid amount(s) for contingencies

Terms and Conditions effective February 2019