



**City of Smithville, Missouri**  
**Board of Aldermen – Regular Session Agenda**  
**May 17, 2022**

**7:00 pm – City Hall Council Chambers and Via Videoconference**

Anyone who wishes to view the meeting may do so in real time as it will be streamed live on the city's FaceBook page through FaceBook Live.

For Public Comment via Zoom, please email your request to the City Clerk at [ldrummond@smithvillemo.org](mailto:ldrummond@smithvillemo.org) prior to the meeting to be sent the meeting Zoom link.

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Consent Agenda**
  - **Minutes**
    - May 3, 2022, Board of Alderman Work Session Minutes
    - May 3, 2022, Board of Alderman Regular Session Minutes
  - **Financial Reports**
    - Finance Report for April 2022
  - **Resolution 1062, Leak Adjustment – Gary Williams**

A Resolution approving a leak adjustment for of \$387.61 for residential utility billing customer, Greg Williams for his March 2022 utility bill.

Join Zoom Meeting  
<https://us02web.zoom.us/j/89563967455>

Meeting ID: 895 6396 7455  
Passcode: **260761**

**REPORTS FROM OFFICERS AND STANDING COMMITTEES**

4. **Committee Reports**
  - Planning and Zoning Commission
  - Finance Committee

**5. City Administrator's Report**

**ORDINANCES & RESOLUTIONS**

6. **Bill No. 2937-22, Marketplace TIF Revenue Bond – 2<sup>nd</sup> Reading**

An Ordinance approving the Issuance of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022. 2<sup>nd</sup> reading by title only.
7. **Bill No. 2938-22, Rezoning & Conceptual Plan – Fairview Crossing – 2<sup>nd</sup> Reading**

An Ordinance approving the rezoning to B-3P and R-3P and the Conceptual Plan for Fairview Crossing at the northeast corner of 169 Highway and 144th Street. 2<sup>nd</sup> reading by title only.
8. **Bill No. 2939-22, Conceptual Plan – McBee's Carwash – 2<sup>nd</sup> Reading**

An Ordinance approving the Conceptual Plan for the Overlay District at property located at the southeast corner of Highway 169 and Richardson Street to allow a new commercial subdivision to be called McBee's Coffee & Carwash. 2<sup>nd</sup> reading by title only.
9. **Bill No. 2940-22, Agreement with MoDOT for TAP Funding – 1<sup>st</sup> Reading**

An Ordinance authorizing and directing the Mayor to enter into an agreement with Missouri Highways and Transportation Commission for Commercial Street sidewalk. 1<sup>st</sup> reading by title only.

- 10. Bill No. 2941-22, Funding Agreement with 110 Smithville, LLC – 1<sup>st</sup> Reading**  
An Ordinance authorizing and directing the Mayor to enter into a funding agreement with 110 Smithville, LLC. relating the consideration of a tax increment financing plan for the property located on the southwest corner of West Main Street and North Mill Street. 1<sup>st</sup> reading by title only.
- 11. Bill No. 2942-22, Easement with Army Corp of Engineers – 1<sup>st</sup> Reading**  
An Ordinance approving an easement with the Army Corp of Engineers for the raw water pump station. 1<sup>st</sup> reading by title only.
- 12. Resolution 1063, Final Plat – McBee’s Carwash**  
A Resolution approving the final plat for McBee’s Carwash located at the southeast corner of Richardson Street and 169 Highway.
- 13. Resolution 1064, Adopting the Transportation Master Plan**  
A Resolution adopting the Transportation Master Plan.
- 14. Resolution 1065, Special Permit – Lake Festival**  
A Resolution approving a Special Event Permit to the Smithville Festival Committee (Chairman, Barbara Lamb) for Smithville Lake Festival to be held at Courtyard Park on June 16, 17 and 18, 2022.
- 15. Resolution 1066, Temporary Liquor License**  
A Resolution issuing a Temporary Liquor License to Barbara Lamb, doing business as Smithville Lake Festival Committee for Smithville Lake Festival on June 17 and 18, 2022 at Courtyard Park.
- 16. Resolution 1067, Sewer Main Repair**  
A Resolution authorizing Menke Excavation to complete sewer main repairs in the amount of \$11,147.50 on First Park Drive.
- 17. Resolution 1068, Waterline at Raw Water Pump Station**  
A Resolution authorizing Menke Excavating to install a water line to the Raw Water Pump Station in the amount of \$12,928.
- 18. Resolution 1069, Emergency Repairs to High-Service Pump**  
A Resolution acknowledging an emergency purchase with Mid-America Pump in the amount of \$13,999.11 to make repairs to High Service Pump No. 1.
- 19. Resolution 1070, Amending the Backfill Specifications**  
A Resolution amending the Backfill Specifications in the City for new subdivisions.
- 20. Resolution 1071, Renewing the Contract for Collections**  
A Resolution renewing the contract with I.C. System, Inc. for the continuation of collection services for an additional three years.

#### **OTHER MATTERS BEFORE THE BOARD**

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- 21. Public Comment**  
**Pursuant to the public comment policy, a request must be submitted to the City Clerk prior to the meeting. When recognized, please state your name, address and topic before speaking. Each speaker is limited to three (3) minutes.**
- 22. New Business From The Floor**  
Pursuant to the order of business policy, members of the Board of Aldermen may request a new business item appear on a future meeting agenda.
- 23. Adjourn**







## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:**

Administration/Finance/Public Works

**AGENDA ITEM:** Consent Agenda

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### REQUESTED BOARD ACTION:

The Board of Aldermen can review and approve by a single motion. Any item can be removed from the consent agenda by a motion. The following items are included for approval:

#### Minutes

- May 3, 2022, Board of Alderman Work Session Minutes
- May 3, 2022, Board of Alderman Regular Session Minutes

#### Financial Report

- Finance Report March and April 2022

Resolution 1063, Leak Adjustment – Gary Williams

### SUMMARY:

Voting to approve would approve the Board of Alderman minutes, finance reports and Resolutions.

### PREVIOUS ACTION:

N/A

### POLICY ISSUE:

N/A

### FINANCIAL CONSIDERATIONS:

N/A

### ATTACHMENTS:

- |  |   |
|--|---|
| <input type="checkbox"/> Ordinance                           | <input type="checkbox"/> Contract           |
| <input checked="" type="checkbox"/> Resolution               | <input type="checkbox"/> Plans              |
| <input type="checkbox"/> Staff Report                        | <input checked="" type="checkbox"/> Minutes |
| <input checked="" type="checkbox"/> Other: Financial Reports |   |

## SMITHVILLE BOARD OF ALDERMAN

### WORK SESSION

May 3, 2022, 6:00 p.m.

City Hall Council Chambers and Via Videoconference

#### 1. Call to Order

Mayor Boley, present, called the meeting to order at 5:58 p.m. A quorum of the Board was present: Kelly Kobylski, John Chevalier, Dan Ulledahl, Ronald Russell and Marv Atkins. Dan Hartman was present via Zoom.

Staff present: Cynthia Wagner, Anna Mitchell, Captain Tony Roetman, Chuck Soules, Linda Drummond, Stephan Larson and Jack Hendrix.

#### 2. Comprehensive Plan Implementation Progress Update

Jack Hendrix Development Director, gave a brief history of the process for the Comprehensive Plan. The Comprehensive Plan started after the auspices of a Strategic Plan in 2018 when the Board requested staff put together a bid for potential firms. The processes' main goal was community input. That process took a while and we received a lot of input from the community, that then led to a Strategic Plan with the five pillars and from there the Comprehensive Plan. The Comprehensive Plan was implemented when the previous Board adopted it as the policy of the City in November of 2020. We are now seventeen months into the implementation action under that Comprehensive Plan. Jack explained that he laid them out on the [Comprehensive Plan Update memo](#) in the packet including a dash board that shows the progress that has been made. In the plan it lays out the timeframe for the implementation and the priority levels. The progress reports show the priority the first three years of work. Jack noted that the City has been making progress on all of them, some slower than others. Jack explained that this will be one of the topics for the Board Retreat May 25 to get your further direction on how to proceed.

Cynthia noted that staff will also continue to add updates on the Comprehensive Plan on a quarterly basis.

#### 3. Transportation Master Plan Update

Chuck Soules, Public Works Director, explained that the [Transportation Master Plan](#) sets up the provision for Smithville for transportation for the next 10 to 20 years. It outlines community mobility, infrastructure and transportation. The Transportation Master Plan builds on some of the work that Jack mentioned with the Strategic Plan, the Comprehensive Plan and the Parks and Recreation Master Plan. The project scope included developing guidelines for complete streets, safe routes to schools, functional classification, north-south and east-west connectivity, access management, connectivity with trails. The plan has a prioritized project list.

Chuck noted that a steering committee was established with members from the Board, the public, the chamber, the school district and City staff. The Missouri

Department of Transportation (MoDOT) and Mid-America Regional Council (MARC) were also involved.

The project began in March 2021. The public involvement included a pop-up event in June at Price Chopper, we conducted an online survey that was open for three months. From June through September of 2021, 400 surveys were collected, and we reached 3,100 people on Facebook and Next Door.

A draft Transportation Master Plan was presented to the Board March 3. At that meeting the Board directed that the website remain open for residents to comment until March 31. During that time, the public provide an additional 23 comments on the draft plan.

*In summary, comments fell into the following categories:*

- *Concerns regarding Highway 169 (5 comments)*
  - *Concerns related to speeding, signalization and need for a bypass*
- *Comments expressing satisfaction with plan (5 comments)*
- *Comments noting the plan was missing an element (9 comments)*
  - *Meals on wheels not included*
  - *Fix existing streets / remove downtown bulb-outs*
  - *Signal at Highway 169 and 144<sup>th</sup>*
  - *Remove Metro Green Trail*
  - *3 comments about a N/S collector street East of Hills of Shannon*
  - *2 comments that indicated something was missing however those items were included within the plan (sidewalks on Second Creek and on HWY 92 and Liberty)*
- *General comments indication that the respondent does not like the plan (4 comments)*
  - *Bikes not important*
  - *Does not want a Mega City*

Chuck explained that with all the comments concerning 169, 92, KK or any state highways, staff will continue to work with MoDOT. As traffic warrants staff will look at signals, speed, access management and will continue to work with MoDOT on all of those issues.

One comment requested for removing the Metro Green Trail. Chuck explained that trail is a greater Kansas City MARC initiative and the draft Transportation Master Plan only notes that plan is out there it does not mean that we are going to proceed with that project.

Additional comments referred to a north-south collector east of Hills of Shannon. Chuck explained that this is a long-term plan and it is based on when the development happens. We need to be able to project to development where we need major roads. Chuck noted that the City would not just purchase property to start a maintenance plan is would only be driven by development. He explained the Transportation Plan was established based on the Comprehensive Plan and what development would be occurring in various areas.

Concerning the comments that indicated that items were missing – Chuck explained that they were in the plan staff just had to make sure people saw them. The Second Creek sidewalk, the sidewalk on 92 Highway and the

sidewalks on Liberty Road. Chuck noted that staff did add a connection across the dam based on a comment that was received.

Four comments from residents that did not like the plan, they did not like bikes and did they did not want Smithville to become a mega city.

Chuck explained that the current version of the Transportation Plan is posted on the City's Public Works web page and, pending Board discussion and direction, staff would recommend that this be brought back to the Board May 17 for adoption.

Mayor Boley noted that a mega city is a city of over ten million.

Alderman Chevalier asked Chuck to explain the timeline for this project, when it started, etc.

Chuck went over the timeline:

- *December 29, 2020: RFQ 21 -03 Qualification statements for professional services for a Transportation Master Plan were received and selected Toole and Design*
- *March 2, 2021: The Board approved Resolution 889 authorizing the contract and establishing a Steering Committee*
- *March 30, 2021: Steering Committee Kick Off Meeting*
- *June 22, 2021: Steering Committee Meeting*
- *June 26 2021: Pop-Up Event at Price Chopper to obtain public input*
- *June – September, 2021: online survey*
  - *401 surveys collected*
  - *Promoted on Facebook and Nextdoor*
  - *3,108 people reached*
- *September 9, 2021: Steering Committee Meeting*
- *September 2021 – February 2022: final plan development by consultant*
- *March 3, 2022 Draft Plan presented to Board of Aldermen*
- *March 4 – 31, 2022: website live for residents to access the plan and provide feedback*

Mayor Boley noted that it was first brought to the Board in 2017-2018 but was postponed until the Comprehensive Plan was completed.

Cynthia noted that we have been discussing the Transportation Master Plan for a number of years and knew that it needed to occur. We wanted to make sure we did the Community Strategic Plan to outline a bigger picture for the community and then the Comprehensive Plan update, so we knew what we were looking at as future expectations for what was wanted in the community.

The Transportation Master Plan was just the next piece to complete. Cynthia reminded the Board that this is a conceptual plan, the routes that are outlined are not the specific locations of where things will be. It is a plan to help us through the development process.

The Comprehensive Plan, the Transportation Master Plan the Parks and Recreation Master Plan all work together as new plans submitted to the City for development are reviewed, and we look at those expectations and how the



community will be shaped. If there is a parkland area that might be necessary on a tract of land, or a trail this plan is to help us with the expectations we have in the community for how the developments will fit.

Chuck explained that this is not the end of the public participation process, when a property starts developing, the first in input is going to be through the Planning and Zoning process. That is where the design gets laid out that is when those discussions will happen. The discuss of the transportation network will include items such as: the trails, sidewalks and roads in those areas.

Mayor Boley explained that this plan will help in holding developers accountable for putting in sidewalks and roads and to ensure they do not fall apart like they did in the Rock Creek subdivision, and we have already had to replace them. We want to ensure that this is something the developer has to pay.

Alderman Russell asked to clarify this would mean when a business or a developer comes, we are trying to get away from 169 Highway and toward a new east-west and north-south byway?

Chuck explained that when you think about the layout of communities you have to think of how people going to get around the developments. If an area develops and all you have are residential street and you do not have collector streets or arterial streets for people to get to so they can get to a main highway more effectively, everybody is cutting through the neighborhood just to get to the main highway. He explained that they try to lay the streets out not necessarily in a grid system but in a grid system where you have collector streets every half mile and arterial streets, which is similar to 169 highway, every mile, so that people can get around and have access. So, you are not just pulling traffic as a bypass from 169 Highway but so they can get around to the different areas such as; shopping areas, parks, your service areas, hospitals, city government, etc. Chuck noted that you do not want the traffic to have to cut through all the residential street where kids are playing, and you want traffic slow. You do not want the street your house is on to become the de facto collector street because there is not one available for them to get to easily.

Alderman Russell thanked Chuck and said he had done a great job putting this together.

Alderman Hartman thanked Chuck, the Aldermen and some folks from the community for the input on this. He noted that he read all the public comments and appreciates that we gather those, good, bad and indifferent because we do need to hear from the citizens. This plan gives a roadmap for developers who come to the City for the Planning and Zoning process. Alderman Hartman said that this is a good foundation to have for the future growth of our city.

#### **4. Animal Control – Friends of Megan’s Paws and Claws**

Dawn Adams and Lori Kissinger presented for the Friends of Megan’s Paws and Claws.

Dawn Adams thanked the Board for allowing them to present this. She noted that their goal is to meet the Board and make them aware of what their goals are and where they are wanting to partner with the City.

Friends of Megan's Paws and Claws, ("FOMPC"), is a 501(c)(3), not-for-profit organization founded in 2022 and is comprised entirely of volunteers. FOMPC's primary mission is to financially support Megan's Paws and Claws, the dog pound located in Smithville, Missouri, founded in honor of Megan Kitchen, an avid animal lover. In addition to financially supporting the dog pound, FOMPC promotes the adoption of shelter dogs and supports community outreach and education. Financing is provided through donations and fundraising events carried out by volunteers. FOMPC believes that our entire community benefits from compassion and humanity shown in caring for animals who are lost or discarded.

#### Positive Impact in Three Short Months

- ❖ Formed Board of Directors
- ❖ Actively forming Advisory Board, Fundraising Board
- ❖ Seeking a TNR Committee
- ❖ Acquired MO Business
- ❖ Submitted for 501©3
- ❖ Over 340 Face Members
- ❖ Raised over \$5,000 in donation

#### **Long-term Partnership with the City**

Consistent year-round fundraising benefiting Megan's Paws and Claws and the animals of Smithville

Advocate to prioritize/expand animal services in Smithville

Recruit Volunteers to fill gaps at the Pound

Partner to sell City Licenses at FOMAC events

#### **Pound Wish List**

Irrigational Turf System

Washer/Dryer

Meet and Greet fenced yard

Wood Rot repairs

Security System

Smart Smoke Detectors

Storage/Shelving

#### **Education/Welfare**

Host low-cost Vaccine and microchip clinics

Partner w/NAWS to provide discounted Spay/Neuter services

Establish a Medical Fund for Vet needs for Pound animals that fall out of City Budget

Advocating for a TNR Committee to be formed

Establish Volunteer Scanner groups to assist in reuniting found animals

Alderman Chevalier asked if this topic could be part of the discussion at the Board Retreat coming up and can talk about how we can see about adding an animal control officer in the budget?

Cynthia explained that was one of the reasons we wanted them to present this to the Board prior to the retreat to see if this was something the Board would like to discuss as part of the budget. Included in the retreat will be a number of areas looking at future needs, including staffing and we are going to be looking for Board priorities as well. Cynthia noted that on May 17, staff will bring an update on the FY22 budget and have budget presentation on the initial needs outlined. Staff will ask the Board to start thinking about those priorities that they have not necessarily seen in the staff recommendation based on staff properties and what we are looking at through development of the budget and all of our strategic planning so all of those can be discussed at the retreat. Cynthia noted that we may not have specific details of cost, but it will give us something to start talking about what those priorities look like and give us a work plan in developing the budget and moving forward.

Alderman Russell noted that the City's animal control is handled by our local Police Department so this would help take a load off the Police Department as well.

Dawn asked if there is a time or date that they could come back to get some answers to their questions as far as any plans?

Mayor Boley explained that the budget discussion starts this month, and we will have a first blush for that in probably July.

Cynthia explained the budget process. Staff will bring forward information from the current discussion on May 17, then the retreat May 25 and then staff will take the information from the retreat to build a budget that will be brought forward for the initial discussion by the Board in July. She explained that staff can be in communication with the Friends of Megan's Paws and Claws as to the direction we get from the retreat

Mayor Boley explained that the budget will be approved and adopted in October for FY2023 that starts November 1.

Dawn asked if there would be a possibility to know the status of the volunteer situation prior to that?

Cynthia explained that is internally staff driven, and we have reached out to Chief Lockridge to work with Melissa to come up with a recommended protocol

and SOP for that. She said that once we have that, staff will reach out as we have available.

Lori Kissinger commented that she really appreciated the Board taking time listen to them this evening. She said that this is very close to her heart, and she was elated when Dawn and several people came together keep the animal shelter going. She noted that as a city grows, the population grows and so does the animal population. She believes strongly that there is a strong force for revenue and if we all work together. She said it is going to take time, but they are dedicated and want to see this continue to grow and continue to serve the community.

**5. Adjourn**

Alderman Ulledahl moved to adjourn. Alderman Kobylski seconded the motion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared the Work Session adjourned at 6:28 p.m.

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Linda Drummond, City Clerk

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Damien Boley, Mayor



## SMITHVILLE BOARD OF ALDERMEN REGULAR SESSION

May 3, 2022, Following the 7:00 p.m.  
City Hall Council Chambers and Via Videoconference

### 1. Call to Order

Mayor Boley, present, called the meeting to order at 7:00 p.m.

A quorum of the Board was present: John Chevalier, Dan Ulledahl, Kelly Kobylski, Ronald Russell and Marv Atkins. Dan Hartman was present via Zoom.

Staff present: Cynthia Wagner, Captain Tony Roetman, Chuck Soules, Anna Mitchell, Jack Hendrix, Stephen Larson and Linda Drummond.

### 2. Pledge of Allegiance led by Mayor Boley

### 3. Proclamations

May is Older Americans Month



*Figure 2 Mayor Boley presented to Deb Dotson*

Professional Municipal Clerks Week May 1-7



*Figure 1 Mayor Boley presented to Linda Drummond*

Public Works Week May 15-21, 2022



*Figure 4 Mayor Boley presented to Chuck Soules*

National Police Week



*Figure 3 Mayor Boley presented to Captain Tony Roetman*

#### 4. Consent Agenda

- **Minutes**

- April 19, 2022, Board of Alderman Regular Session Minutes – 1<sup>st</sup> Meeting
- April 19, 2022, Board of Alderman Regular Session Minutes – 2<sup>nd</sup> Meeting
- April 19, 2022, Board of Alderman Work Session Minutes

- **Resolution 1052, Special Permit – Lake Fest**

A Resolution approving a Special Event Permit to the Smithville Festival Committee (Chairman, Barbara Lamb) for Smithville Lake Festival to be held at Courtyard Park on June 16, 17 and 18, 2022.

- **Resolution 1053, Temporary Liquor License**

A Resolution issuing a Temporary Liquor License to Barbara Lamb, doing business as Smithville Lake Festival Committee for Smithville Lake Festival on June 17 and 18, 2022 at Courtyard Park.

- **Resolution 1054, Engineering Agreement for Fourth Street and Fourth Terrace**

A Resolution authorizing the Mayor to sign an engineering services agreement with Veenstra & Kimm Inc. in the amount of \$87,290 for watermain improvements to Fourth Street and Fourth Terrace.

- **Resolution 1055, Award Bid No. 22-16, Sanitary Sewer Rehabilitation**

A Resolution awarding RFP 22-16 Sanitary Sewer Rehabilitation to SAK Construction, LLC in an amount not to exceed \$128,408.

- **Resolution 1056, Mower Purchase**

A Resolution approving the purchase of a John Deere zero turn mower with a 72-inch deck from Heritage Tractor as part of the John Deere's Sourcewell cooperative purchasing agreement in the amount of \$15,984.43.

- **Resolution 1057, Fireworks Event White Iron Ridge**

A Resolution approving a fireworks event at White Iron Ridge on May 31, 2022, 9:00 p.m. to last approximately five to eight minutes.

- **Resolution 1058, Fireworks Event White Iron Ridge**

A Resolution approving a fireworks event at White Iron Ridge on June 25, 2022, 9:30 p.m. to last approximately fifteen to twenty minutes.

Alderman Kobylski moved to amend the consent agenda to remove Resolutions 1052 and 1053 from the consent agenda and move it to later in the meeting. Alderman Ulledahl seconded the motion.

Alderman Ulledahl moved to approve the consent agenda as amended. Alderman Kobylski seconded the motion.

Ayes – 6, Noes – 0, motion carries. The Mayor declared the amended consent agenda approved.

## **REPORTS FROM OFFICERS AND STANDING COMMITTEES**

### **5. Committee Reports**

Alderman Atkins reported on the April 26, 2022, Economic Development Committee meeting.

The Chamber of Commerce reported that a first ribbon cutting was held for the Academy of Hair Design and Beauty, they also reported they have nine new members for the month.

The school district report they had good feedback from the community forum, that feedback will help update their master building plan. The process has already begun for replacing Superintendent, Todd Schutz, who is stepping down. Ms. Denise Hardwood has been appointed the interim superintendent.

The Smithville Main Street is still looking for more volunteers for the upcoming events.

So far there are eighteen special events for scheduled downtown for 2022.

We have 47 residential permits so far this year which is up from 25 last year and no commercial permits yet for this year.

The sales tax revenue is up 10% and the usage tax revenue is up 20%. Business license renewals are at 625 for the year.

Anna Mitchell, Assistant City Administrator, attended a week-long Economic Development training seminar and reported on that.

Alicia Neth was re-elected as Chairman and Jason Hoyt is the new Vice Chairman.

Neighborhood Improvement District program was reviewed and discussed. They will make recommendations to the Board of Aldermen.

Mayor Boley added that the Chamber of Commerce requested a list of businesses licensed with the City to use that information to reach out to new businesses for possible new chamber members.

Alderman Hartman reported on the April 28, 2022, Parks and Recreation Committee meeting. Matt Denton, Parks Director updated the committee on Diamond Crest Park. Alderman Hartman noted that we are very excited about the new park. He drove by it last Friday and it is beautiful, he has also received several good comments on it.

The Parks and Recreation committee had a resignation from one of the committee members due to time constraints. They will be actively looking for a Park and Recreation committee member.

Mayor Boley added that we are accepting applications from residents that have knowledge about Parks and Recreation and live in city limits. Applications can be acquired at City Hall or filled out online.

## **6. City Administrator's Report**

Cynthia noted the report in the packet includes pictures of the new playground at the Diamond Crest park. There will be an official ribbon-cutting scheduled once all amenities are complete.

Cynthia noted that on Wednesdays after Board of Aldermen meetings, staff will post The Big Takeaway to the website and on social media. This will provide an overview of items that were approved in the agenda. This is a continued effort to try to provide information as follow up and communicating with the residents.

There is information in the packet with regard to a grant opportunity through Clay County of ARPA funds for tourism. Anna Mitchell is working with the Smithville Main Street group to develop an application for wayfinding signs. There is a quick turnaround on that submission so staff will submit it and let the Board know how that process goes. If approved, it will be included as part of budget discussion because there is a match associated with the grant.

In the packet are the results of the E-Waste and Shredding Event. This was our first annual event that was included as part of contract with GFI/WCA.

Later in the summer, the City website will have a fresh look, some color changes, different background and more. Staff is also working to ensure that we have updated information on a regular basis.

The mill and overlay project on Tillman Road was completed this weekend and we have received some compliments and appreciation for it.

Chuck had a progress meeting on the status of the raw water pump station in the Smith's Fork pump station project. The raw water pump station building is constructed. The original schedule was for that project to be completed in August but supply chain issues have delayed delivery of the pump. We cannot complete that project until we have it. The pump delivery is anticipated in August. The valve box cannot be constructed until the pumps are installed so that is going to slow down the progress. The months of August and September are heavy water demand months so we will not take that down during that high usage volume period. We anticipate completion of the project later in October or November.

The lift station is progressing, because of the rain and the location they are running into significant groundwater and have had to do significant dewatering to the hole. Chuck did provide pictures and they will be included in The Big Takeaway. The lift station is expected to be complete and in service in June except for backup generator which delivery is delayed until March of 2023. The lift station will be placed into service and the backup will be installed at a later date.



Pending unforeseen weather and other issues we do anticipate being able to open the campground back up to full use of all sites the July Fourth weekend. We will open up the campground for reservations depending on weather and other issues. She explained that we had done a rolling reservation to look at reservations open through Memorial Day. We are opening them up next week for reservations beginning June 1. Staff will continue to evaluate what sites are available as construction progresses. Matt Denton is also involved in those progress meetings, so he is monitoring that timeline.

Cynthia reminded the Board to make sure they have May 25 on their calendar for the all-day retreat or financial summit. The meeting will be held at 6889 North Oak Trafficway in Gladstone.

Alderman Russell asked if the campground is expected to be opened on July 4 or for the weekend of July 4?

Cynthia clarified that the weekend of July 4 is the goal, weather dependent.

Alderman Ulledahl asked if the construction was at the very back of Smith's Fork where one of the main turnarounds for the campgrounds is located?

Cynthia said that sewer pump station construction is located there and also at the front of the campground where they are working on the raw water pump station. The construction located in the back of Smith's Fork is the one that is impacted the campgrounds.

## **ORDINANCES & RESOLUTIONS**

### **7. Bill No. 2937-22, Marketplace TIF Revenue Bond – 1<sup>st</sup> Reading**

Alderman Ulledahl moved to approve Bill No. 2937-22, approving the Issuance of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022. 1<sup>st</sup> reading by title only. Alderman Chevalier seconded the motion.

Alderman Hartman noted that the economic and financial data provided with this bill was outstanding and it is clear that this will help the community for several years moving forward.

Megan Miller and Sid Douglas of Gilmore and Bell, the City's special economic development council and bond council we present. Megan noted that these are tax revenue bonds, these bonds will be issued by the City, but they are only secured by the revenue generated within the TIF and the CID. There are no City revenues backing this. The City is not going to be obligated to cover any shortfall if there is one. The TIF currently operates on a pay-as-you-go basis is what obviously allow for quicker repayment to the developer. However, with a pay-as-you-go TIF when the developer has costs that are certified per the redevelopment agreement that is between the developer and the city. The outstanding costs generate interest so currently under the redevelopment agreement the interest rate is prime rate as reported by The Wall Street Journal plus one up to a maximum of 6%. This issuance would allow us to have a fixed rate of interest. Megan noted that with this current interest rate market and after discussions with the City's financial advisor they think that we probably hit that

maximum interest rates pretty quickly and right now with what the preliminary numbers and with what the placement agent is showing we would have a lower interest rate that would save about a million dollars. That money would go back to the tax jurisdictions and be a savings to the taxpayers. Megan explained that within the Ordinance there are parameters that would provide for an interest rate of under 5%. They think that is probably the maximum interest rate or the bonds will not sell. She noted that they do expect that rate to be quite a bit lower. She said that they are showing a maximum of 4.254 Series A and then a maximum of 4.75 for the Series B, tax exempt bonds. This also provides a maximum principal rate amount. With that maximum rate the developer will only receive the cap them out that is under the redevelopment agreement and the CID agreement. They will not receive any more money than they are entitled to. Those project monies are completely certifiable, and everything is legal under the TIF Act and the CID Act and is within the cap set back in 2017. Megan also noted that based on the projections noted by PGAV Planners, LLC that did the revenue study and UMB, the annual revenues are expected to be 1.4 times the projected annual debt service. With those projected surpluses it will fund a business interruption fund which is essentially just cover for a shortfall if it were to occur. After that is filled, it will start redeeming bonds early and start paying things back. Based on all these documents the bonds are fully expected to be paid off in 2035. The pay-as-you-go basis would also be paid off in 2035 based on this predictions but with the interest rate savings there is that million-dollar difference.

Upon roll call vote:

Alderman Kobylski – Aye, Alderman Russell – Abstained, Alderman Atkins – Aye, Alderman Hartman – Aye, Alderman Ulledahl – Aye, Alderman Chevalier- Aye.

Ayes – 5, Noes – 0, Abstained – 1, motion carries. Mayor Boley declared Bill No. 2937-22 approved fist reading.

**8. Bill No. 2938-22, Rezoning & Conceptual Plan – Fairview Crossing - 1<sup>st</sup> Reading**

Alderman Ulledahl moved to approve Bill No. 2938-22, approving the rezoning to B-3P and R-3P and the Conceptual Plan for Fairview Crossing at the northeast corner of 169 Highway and 144<sup>th</sup> Street. 1<sup>st</sup> reading by title only. Alderman Chevalier seconded the motion.

Doug Orton, 1000 NE 145<sup>th</sup> Terrace, spoke to the Board about the possibility of 144<sup>th</sup> Street being paved with the project?

Jack Hendrix, Development Directed explained that the road that connects to this piece of property would have to be curbed and paved, but only the road that aligns with the piece of property.

Mr. Orton also has concerns with the stormwater runoff.

Jack explained that this is only the conceptual plan, and the stormwater and other concerns would be brought to the next Planning and Zoning Commission meeting for consideration.

Alderman Atkins – Aye, Alderman Chevalier – Aye, Alderman Ulledahl – Aye,  
Alderman Russell – Aye, Alderman Kobylski – Aye, Alderman Hartman - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 2938-22 approved first reading.

**9. Bill No. 2939-22, Conceptual Plan – McBee’s Carwash – 1<sup>st</sup> Reading**

Alderman Chevalier moved to approve Bill No. 2939-22, amending the FY22 operating budget to add revenue and expenditure authority to the newly created CID Fund. 1<sup>st</sup> reading by title only. Alderman Kobylski seconded the motion.

No discussion.

Alderman Ulledahl – Aye, Alderman Kobylski – Aye, Alderman Hartman – Aye,  
Alderman Chevalier – Aye, Alderman Atkins – Aye, Alderman Russell - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 2939-22 approved first reading.

**10. Resolution 1059, Special Request – Hot Summer Nights**

Alderman Chevalier moved to approve Resolution 1059, agreeing to sponsor Hot Summer Nights Events that will take place at the Courtyard on August 6, 20 and 27, 2022. Sponsorship of this event would waive event rental fees and deposits. Alderman Atkins seconded the motion.

Mayor Boley reiterated that this was a request for sponsorship to waive the fees. He asked if it would include Festiville?

Cynthia explained that this would only be for the dates of August 6, 20 and 27 and does not include Festiville.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Resolution 1059 approved.

**11. Resolution 1060, Award of 2022 Neighborhood Beautification Grants**

Alderman Ulledahl moved to approve Resolution 1060, awarding the 2022 Neighborhood Beautification Grants. Alderman Kobylski seconded the motion.

Alderman Chevalier recused himself from Resolution 1060 because he is on the board of his HOA which is receiving a grant.

Alderman Hartman noted .

Ayes – 5, Noes – 0, motion carries. Mayor Boley declared Resolution 1060 approved.

**12. Resolution 1061, Final Plat – Diamond Creek**

Alderman Ulledahl moved to approve Resolution 1061, approving the final plat for Diamond Creek that would create thirty-nine of the approved 58 lots on 20.36 acres east of Smithville Downs at Manzanola Lane and Sixth Street. Alderman Kobylski seconded the motion.

No discussion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Resolution 1061 approved.

### **13. Resolutions Moved from Consent Agenda**

- **Resolution 1052, Special Permit – Lake Fest**

A Resolution approving a Special Event Permit to the Smithville Festival Committee (Chairman, Barbara Lamb) for Smithville Lake Festival to be held at Courtyard Park on June 16, 17 and 18, 2022.

- **Resolution 1053, Temporary Liquor License**

A Resolution issuing a Temporary Liquor License to Barbara Lamb, doing business as Smithville Lake Festival Committee for Smithville Lake Festival on June 17 and 18, 2022 at Courtyard Park.

Alderman Russell moved to approve Resolution 1052 and 1053 pertaining to Lake Fest.

Alderman Ulledahl asked for more information from the applicant for the layout of the vendors, he noted that they needed to leave access to the alley way for deliveries for the businesses.

Mayor Boley agreed that the vendors layout should be included in the application and would like to have more information for the event.

Alderman Ulledahl moved to postpone the Resolution 1052 and 1053 to May 17 to give the applicant time to provide the information requested. Alderman Hartman seconded the motion.

No discussion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Resolutions 1052 and 1053 postponed to the May 17 Board of Alderman meeting.

### **OTHER MATTERS BEFORE THE BOARD**

#### **14. Public Comment**

None

#### **15. New Business from the Floor**

None

#### **16. Adjourn**

Alderman Ulledahl moved to adjourn to the regular session. Alderman Russell seconded the motion.

Ayes – 6, Noes – 0, motion carries via teleconference. Mayor Boley declared the regular session adjourned at 7:38 p.m.

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Linda Drummond, City Clerk

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Damien Boley, Mayor



# FY22 BUDGET - FINANCIAL UPDATE

3/31/22

REVENUES, BY FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
GENERAL FUND	5,421,730.13	4,918,619.60	2,566,900.22	4,918,619.60	52.19%
CAPITAL PROJECTS FUND	296,689.10	137,000.00	51,229.34	137,000.00	37.39%
CAPITAL IMPROVEMENT SALES TAX FUND	659,009.18	627,555.00	245,583.81	627,555.00	39.13%
DEBT SERVICE FUND	342,190.00	351,550.00	351,550.00	351,550.00	100.00%
TRANSPORTATION SALES TAX FUND	587,177.01	569,160.00	215,504.33	569,160.00	37.86%
COMBINED WATER/WASTEWATER SYSTEMS FUND	4,955,280.72	5,925,399.80	2,408,796.38	5,925,399.80	40.65%
SANITATION FUND	872,880.09	849,530.00	341,874.31	849,530.00	40.24%
SPECIAL ALLOCATION FUND	677,916.94	570,000.00	476,233.13	570,000.00	83.55%
PARK & STORMWATER SALES TAX FUND	614,189.73	627,555.00	255,099.52	627,555.00	40.65%
VEHICLE AND EQUIPMENT REPLACEMENT FUND	91,972.00	284,000.00	183,320.00	284,000.00	64.55%
CARES FUND	-	-	-	-	
AMERICAN RESCUE PLAN ACT FUND	1,089,137.62	1,089,161.00	10,495.07	1,089,161.00	
	<b>15,608,172.52</b>	<b>15,949,530.40</b>	<b>7,106,586.11</b>	<b>15,949,530.40</b>	44.56%

EXPENDITURES, BY FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
GENERAL FUND	5,259,004.24	5,905,850.00	2,278,714.07	5,905,850.00	38.58%
CAPITAL PROJECTS FUND	1,536,744.43	127,000.00	127,000.00	127,000.00	100.00%
CAPITAL IMPROVEMENT SALES TAX FUND	752,250.00	660,550.00	351,550.00	660,550.00	53.22%
DEBT SERVICE FUND	329,855.00	339,213.00	243,592.50	339,213.00	71.81%
TRANSPORTATION SALES TAX FUND	893,832.42	782,630.00	260,091.86	782,630.00	33.23%
COMBINED WATER/WASTEWATER SYSTEMS FUND	3,957,145.75	6,778,415.00	1,703,778.96	6,778,415.00	25.14%
SANITATION FUND	865,323.97	836,450.00	344,687.27	836,450.00	41.21%
SPECIAL ALLOCATION FUND	2,294.95	1,166,888.00	23,649.50	1,166,888.00	2.03%
PARK & STORMWATER SALES TAX FUND	176,872.09	485,000.00	118,095.48	485,000.00	24.35%
VEHICLE AND EQUIPMENT REPLACEMENT FUND	66,296.04	175,749.00	68,645.33	175,749.00	39.06%
CARES FUND	348,970.23	-	-	-	
AMERICAN RESCUE PLAN ACT FUND	-	2,178,300.00	-	2,178,300.00	
	<b>14,188,589.12</b>	<b>19,436,045.00</b>	<b>5,519,804.97</b>	<b>19,436,045.00</b>	28.40%

## GENERAL FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
PROPERTY TAXES	934,865.26	935,099.00	967,718.57	935,099.00	103.49%
SALES AND USE TAXES	1,933,487.01	1,882,351.00	789,373.80	1,882,351.00	41.94%
FRANCHISE TAXES	698,064.78	648,090.00	282,321.19	648,090.00	43.56%
OTHER TAXES	329,257.40	325,752.00	186,657.17	325,752.00	57.30%
LICENSES, FEES, AND PERMITS	446,474.04	414,507.60	187,446.56	414,507.60	45.22%
INTERGOVERNMENTAL REVENUES	42,444.26	49,280.00	31,692.56	49,280.00	64.31%
CHARGES FOR SERVICES	363,337.18	251,390.00	43,715.82	251,390.00	17.39%
FINES AND FORFEITS	138,949.00	111,500.00	46,716.50	111,500.00	41.90%
INTEREST	50,320.66	46,800.00	13,401.67	46,800.00	28.64%
DONATIONS	100.00	4,750.00	-	4,750.00	0.00%
OTHER REVENUE	33,667.24	760.00	17,716.38	760.00	2331.10%
DEBT ISSUED	241,583.30	3,000.00	-	3,000.00	
TRANSFERS IN	209,180.00	245,340.00	-	245,340.00	0.00%
	<b>5,421,730.13</b>	<b>4,918,619.60</b>	<b>2,566,760.22</b>	<b>4,918,619.60</b>	52.18%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
ADMINISTRATION	963,627.72	621,397.00	233,308.63	621,397.00	37.55%
STREET	857,425.06	1,436,855.00	583,941.96	1,436,855.00	40.64%
POLICE	1,953,680.94	2,135,525.00	820,742.62	2,135,525.00	38.43%
DEVELOPMENT	429,726.22	473,704.00	164,616.18	473,704.00	34.75%
FINANCE	320,012.10	409,091.00	174,041.87	409,091.00	42.54%
COURT	-	-	-	-	
PARKS & REC	678,785.48	741,338.00	264,289.67	741,338.00	35.65%
SENIOR CENTER	19,120.98	25,120.00	5,755.75	25,120.00	22.91%
ELECTED OFFICIALS	32,125.28	53,720.00	28,064.13	53,720.00	52.24%
ANIMAL SHELTER	4,500.46	9,100.00	3,953.26	9,100.00	43.44%
EMERGENCY	-	-	-	-	
	<b>5,259,004.24</b>	<b>5,905,850.00</b>	<b>2,278,714.07</b>	<b>5,905,850.00</b>	38.58%

# ADMINISTRATION

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
SALARIES & WAGES	299,917.92	283,726.00	108,171.84	283,726.00	38.13%
PART-TIME WAGES	40,157.89	30,000.00	9,352.35	30,000.00	31.17%
OVERTIME WAGES	17.70	-	-	-	
FICA EXPENSE	25,279.34	24,006.00	9,600.83	24,006.00	39.99%
EMPLOYEE BENEFITS	24,691.13	18,780.00	7,417.98	18,780.00	39.50%
WORKER'S COMPENSATION	509.55	558.00	-	558.00	0.00%
RETIREMENT EXPENSE	26,903.94	27,617.00	9,519.04	27,617.00	34.47%
UNEMPLOYMENT BENEFITS	-	-	3,728.56	-	372856.00%
<b>Personnel</b>	<b>417,477.47</b>	<b>384,687.00</b>	<b>147,790.60</b>	<b>384,687.00</b>	<b>38.42%</b>
REPAIRS & MAINTENANCE - BLDG	7,412.95	3,060.00	2,559.67	3,060.00	83.65%
REPAIRS & MAINTENANCE - EQUIP	7,484.68	7,560.00	1,454.09	7,560.00	19.23%
REPAIRS & MAINTENANCE - VHICLES	-	-	-	-	
REPAIRS & MAINTENANCE - SFTWRE	19,721.74	13,660.00	2,619.29	13,660.00	19.17%
ELECTRICITY	1,319.93	2,040.00	431.81	2,040.00	21.17%
TELEPHONE/INTERNET	4,819.85	2,800.00	1,682.47	2,800.00	60.09%
MOBILE COMMUNICATIONS	2,191.36	2,000.00	983.38	2,000.00	49.17%
CAPITAL EXPENDITURES - EQUIP	23,565.95	-	-	-	
CAPITAL EXPENDITURES - SOFTWARE	-	-	-	-	
capital expenditures - hardware	-	-	-	-	
TOOLS & SUPPLIES	948.79	390.00	198.29	390.00	50.84%
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
<b>Operation and Maintenance</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>
FUEL	-	-	-	-	
<b>Contractual Services</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
<b>Insurance</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
TRAINING & TRAVEL EXPENSE	9,599.92	7,560.00	6,429.11	7,560.00	85.04%
OFFICE SUPPLIES	8,700.14	4,800.00	4,358.09	4,800.00	90.79%
POSTAGE	2,250.00	3,000.00	951.42	3,000.00	31.71%
ADVERTISING	558.60	500.00	24.00	500.00	4.80%
<b>Office and Administrative</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>
city events	-	-	-	-	
<b>Capital Improvement Projects</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
<b>Other Expenses</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>
<b>Debt - Principal</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Debt - Interest</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Transfers Out</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>TOTAL GENERAL FUND</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>

## PUBLIC WORKS (STREET)

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
SALARIES & WAGES	419,882.56	451,320.00	163,918.46	451,320.00	36.32%
PART-TIME WAGES	20,675.20	20,550.00	7,813.72	20,550.00	38.02%
OVERTIME WAGES	4,531.56	8,000.00	5,894.21	8,000.00	73.68%
FICA EXPENSE	30,898.98	36,714.00	13,548.01	36,714.00	36.90%
EMPLOYEE BENEFITS	53,358.64	64,910.00	28,492.29	64,910.00	43.90%
WORKER'S COMPENSATION	23,009.04	31,777.00	-	31,777.00	0.00%
RETIREMENT EXPENSE	38,380.75	40,424.00	14,943.59	40,424.00	36.97%
UNIFORM EXPENSE	1,607.76	3,000.00	615.92	3,000.00	20.53%
<b>Personnel</b>	<b>592,344.49</b>	<b>656,695.00</b>	<b>235,226.20</b>	<b>656,695.00</b>	<b>35.82%</b>
REPAIRS & MAINTENANCE - BLDG	694.80	780.00	38.66	780.00	4.96%
REPAIRS & MAINTENANCE - EQUIP	464.32	1,240.00	1,191.81	1,240.00	96.11%
REPAIRS & MAINTENANCE - VEHICL	827.44	1,500.00	1,525.95	1,500.00	101.73%
REPAIRS & MAINTENANCE - SFWRE	3,299.32	111,570.00	949.42	111,570.00	0.85%
ELECTRICITY	84,682.62	94,290.00	34,745.61	94,290.00	36.85%
PROPANE	4,050.00	7,950.00	3,791.00	7,950.00	47.69%
TELEPHONE/INTERNET	6,064.94	6,450.00	3,370.41	6,450.00	52.25%
MOBILE COMMUNICATIONS	3,484.17	2,930.00	1,332.04	2,930.00	45.46%
CAPITAL EXPENDITURES - EQUIP	-	5,000.00	1,954.38	5,000.00	39.09%
CAPITAL EXPENDITURES - VEHICLE	-	-	-	-	-
TOOLS & SUPPLIES	532.70	1,500.00	273.67	1,500.00	18.24%
FUEL	-	-	83.00	-	8300.00%
<b>Operation and Maintenance</b>	<b>104,100.31</b>	<b>233,210.00</b>	<b>49,255.95</b>	<b>233,210.00</b>	<b>21.12%</b>
PROFESSIONAL SERVICES	89,607.93	365,480.00	142,289.48	365,480.00	38.93%
DEDUCTIBLES	-	1,000.00	-	1,000.00	0.00%
<b>Contractual Services</b>	<b>89,607.93</b>	<b>366,480.00</b>	<b>142,289.48</b>	<b>366,480.00</b>	<b>38.83%</b>
INSURANCE EXPENSE	18,789.11	19,170.00	-	19,170.00	0.00%
<b>Insurance</b>	<b>18,789.11</b>	<b>19,170.00</b>	<b>-</b>	<b>19,170.00</b>	<b>0.00%</b>
TRAINING & TRAVEL EXPENSE	1,036.28	3,000.00	849.85	3,000.00	28.33%
OFFICE SUPPLIES	1,810.69	2,500.00	218.26	2,500.00	8.73%
MEMBERSHIPS & SUBSCRIPTIONS	921.25	800.00	820.00	800.00	102.50%
<b>Office and Administrative</b>	<b>3,768.22</b>	<b>6,300.00</b>	<b>1,888.11</b>	<b>6,300.00</b>	<b>29.97%</b>
CAPITAL IMPROVEMENT PROJECTS	8,815.00	-	-	-	-
<b>Capital Improvement Projects</b>	<b>8,815.00</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
MISCELLANEOUS	-	-	-	-	-
<b>Other Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Debt - Principal</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Debt - Interest</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
TRANSFERS OUT	40,000.00	155,000.00	155,000.00	155,000.00	100.00%
<b>Transfers Out</b>	<b>40,000.00</b>	<b>155,000.00</b>	<b>155,000.00</b>	<b>155,000.00</b>	<b>100.00%</b>
<b>TOTAL GENERAL FUND</b>	<b>857,425.06</b>	<b>1,436,855.00</b>	<b>583,659.74</b>	<b>1,436,855.00</b>	<b>40.62%</b>

## POLICE

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
SALARIES & WAGES	980,844.45	1,140,988.00	389,263.57	1,140,988.00	34.12%
PART-TIME WAGES	15,253.16	19,300.00	5,866.60	19,300.00	30.40%
OVERTIME WAGES	73,238.31	42,000.00	43,807.46	42,000.00	104.30%
FICA EXPENSE	76,440.37	88,770.00	35,136.27	88,770.00	39.58%
EMPLOYEE BENEFITS	142,562.70	207,570.00	53,861.63	207,570.00	25.95%
WORKER'S COMPENSATION	36,846.31	49,275.00	-	49,275.00	0.00%
RETIREMENT EXPENSE	93,410.07	107,652.00	36,832.65	107,652.00	34.21%
UNIFORM EXPENSE	18,563.44	23,020.00	9,483.41	23,020.00	41.20%
<b>Personnel</b>	<b>1,437,158.81</b>	<b>1,678,575.00</b>	<b>574,251.59</b>	<b>1,678,575.00</b>	<b>34.21%</b>
REPAIRS & MAINT - BLDG	11,515.51	7,350.00	8,389.44	7,350.00	114.14%
REPAIRS & MAINTENANCE - EQUIP	8,862.09	6,620.00	934.27	6,620.00	14.11%
REPAIRS & MAINT - VEHICLES	31,805.78	18,970.00	17,287.94	18,970.00	91.13%
REPAIRS & MAINT - SOFTWARE	24,844.62	33,250.00	6,450.77	33,250.00	19.40%
ELECTRICITY	5,865.60	7,130.00	2,862.35	7,130.00	40.15%
TELEPHONE/INTERNET	7,724.70	8,440.00	3,082.63	8,440.00	36.52%
MOBILE COMMUNICATIONS	8,312.34	9,390.00	2,994.77	9,390.00	31.89%
CAPITAL EXPENDITURES - EQUIP	110,287.07	74,600.00	26,925.51	74,600.00	36.09%
CAPITAL EXPENDITURES - VEHICLE	-	-	-	-	-
CAPITAL EXPENDITURES - SFTWARE	73,263.48	19,000.00	18,315.87	19,000.00	96.40%
TOOLS & SUPPLIES	13,069.53	16,970.00	9,748.48	16,970.00	57.45%
FUEL	29,199.75	35,750.00	14,955.68	35,750.00	41.83%
ANIMAL CONTROL	-	500.00	-	500.00	0.00%
animal shelter	-	-	-	-	-
<b>Operation and Maintenance</b>	<b>324,750.47</b>	<b>237,970.00</b>	<b>111,947.71</b>	<b>237,970.00</b>	<b>47.04%</b>
PROFESSIONAL SERVICES	38,618.30	40,240.00	55,518.47	40,240.00	137.97%
DISPATCHING	67,927.20	72,560.00	47,198.66	72,560.00	65.05%
CONFINEMENT	936.00	6,000.00	1,212.36	6,000.00	20.21%
INSURANCE DEDUCTIBLES	-	1,000.00	-	1,000.00	0.00%
<b>Contractual Services</b>	<b>107,481.50</b>	<b>119,800.00</b>	<b>103,929.49</b>	<b>119,800.00</b>	<b>86.75%</b>
INSURANCE EXPENSE	49,269.40	53,300.00	-	53,300.00	0.00%
<b>Insurance</b>	<b>49,269.40</b>	<b>53,300.00</b>	<b>-</b>	<b>53,300.00</b>	<b>0.00%</b>
TRAINING & TRAVEL EXPENSE	21,680.41	27,000.00	19,662.39	27,000.00	72.82%
ACADEMY TRAINING	-	-	-	-	-
OFFICE SUPPLIES EXPENSE	3,268.32	2,000.00	852.21	2,000.00	42.61%
POSTAGE	864.55	1,000.00	250.00	1,000.00	25.00%
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
<b>Office and Administrative</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>
MEMBERSHIPS & SUBSCRIPTIONS	9,098.97	15,630.00	9,368.61	15,630.00	59.94%
<b>Capital Improvement Projects</b>	<b>9,098.97</b>	<b>15,630.00</b>	<b>9,368.61</b>	<b>15,630.00</b>	<b>59.94%</b>
CAPITAL IMPROVEMENT PROJECTS	-	-	-	-	-
<b>Other Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Debt - Principal</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Debt - Interest</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Transfers Out</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>TOTAL GENERAL FUND</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>	<b>#N/A</b>

## DEVELOPMENT

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
SALARIES & WAGES	267,737.01	291,972.00	109,649.10	291,972.00	37.55%
OVERTIME WAGES	759.71	500.00	112.13	500.00	22.43%
FICA EXPENSE	19,399.23	22,378.00	8,753.89	22,378.00	39.12%
EMPLOYEE BENEFITS	26,344.66	29,200.00	12,921.26	29,200.00	44.25%
WORKER'S COMPENSATION	7,356.52	10,058.00	-	10,058.00	0.00%
RETIREMENT EXPENSE	24,354.58	25,746.00	9,659.00	25,746.00	37.52%
UNIFORM EXPENSE	914.20	1,800.00	23.94	1,800.00	1.33%
<b>Personnel</b>	<b>346,865.91</b>	<b>381,654.00</b>	<b>141,119.32</b>	<b>381,654.00</b>	<b>36.98%</b>
REPAIRS & MAINTENANCE - BLDG	1,231.17	1,230.00	531.55	1,230.00	43.22%
REPAIRS & MAINTENANCE - EQUIP	1,212.57	1,240.00	278.61	1,240.00	22.47%
REPAIRS & MAINT - VEHICLES	1,078.50	1,390.00	736.55	1,390.00	52.99%
REPAIRS & MAINT - SFTWRE/MAPS	14,070.24	21,210.00	4,301.50	21,210.00	20.28%
ELECTRICITY	964.40	1,400.00	431.82	1,400.00	30.84%
TELEPHONE/INTERNET	2,335.50	2,030.00	956.41	2,030.00	47.11%
MOBILE COMMUNICATIONS	2,221.35	2,200.00	761.04	2,200.00	34.59%
CAPITAL EXPENDITURES - EQUIP	1,683.30	6,000.00	2,709.57	6,000.00	45.16%
CAPITAL EXPENDITURES - VEHICLE	-	-	-	-	
CAPITAL EXPENDITURES - HRDWARE	-	-	-	-	
TOOLS & SUPPLIES	706.70	1,020.00	45.52	1,020.00	4.46%
FUEL	3,415.26	5,500.00	1,333.49	5,500.00	24.25%
<b>Operation and Maintenance</b>	<b>28,918.99</b>	<b>43,220.00</b>	<b>12,086.06</b>	<b>43,220.00</b>	<b>27.96%</b>
PROFESSIONAL SERVICES	41,627.02	30,610.00	9,476.22	30,610.00	30.96%
<b>Contractual Services</b>	<b>41,627.02</b>	<b>30,610.00</b>	<b>9,476.22</b>	<b>30,610.00</b>	<b>30.96%</b>
INSURANCE EXPENSE	5,347.79	6,660.00	-	6,660.00	0.00%
<b>Insurance</b>	<b>5,347.79</b>	<b>6,660.00</b>	<b>-</b>	<b>6,660.00</b>	<b>0.00%</b>
TRAINING & TRAVEL EXPENSE	1,113.01	3,000.00	1,041.34	3,000.00	34.71%
OFFICE SUPPLIES EXPENSE	987.60	500.00	651.42	500.00	130.28%
POSTAGE	1,816.28	1,400.00	133.62	1,400.00	9.54%
ADVERTISING	2,661.62	5,300.00	68.20	5,300.00	1.29%
MEMBERSHIPS & SUBSCRIPTIONS	388.00	1,360.00	40.00	1,360.00	2.94%
<b>Office and Administrative</b>	<b>6,966.51</b>	<b>11,560.00</b>	<b>1,934.58</b>	<b>11,560.00</b>	<b>16.74%</b>
<b>Capital Improvement Projects</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
MISCELLANEOUS EXPENSE	-	-	-	-	
<b>Other Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Debt - Principal</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Debt - Interest</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Transfers Out</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>TOTAL GENERAL FUND</b>	<b>429,726.22</b>	<b>473,704.00</b>	<b>164,616.18</b>	<b>473,704.00</b>	<b>34.75%</b>

## FINANCE

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
SALARIES & WAGES	177,083.28	234,480.00	84,166.55	234,480.00	35.89%
PART-TIME WAGES	212.50	-	-	-	
OVERTIME WAGES	888.69	500.00	15.50	500.00	3.10%
FICA EXPENSE	13,247.87	17,983.00	6,794.05	17,983.00	37.78%
EMPLOYEE BENEFITS	17,955.17	30,380.00	18,052.74	30,380.00	59.42%
WORKER'S COMPENSATION	238.84	410.00	-	410.00	0.00%
RETIREMENT EXPENSE	9,443.92	20,678.00	6,761.72	20,678.00	32.70%
<b>Personnel</b>	<b>219,070.27</b>	<b>304,431.00</b>	<b>115,790.56</b>	<b>304,431.00</b>	<b>38.04%</b>
REPAIRS & MAINTENANCE - BLDG	967.62	820.00	386.55	820.00	47.14%
REPAIRS & MAINTENANCE - EQUIP	858.88	620.00	622.87	620.00	100.46%
REPAIRS & MAINTENANCE - SFTWRE	13,277.78	14,780.00	1,743.00	14,780.00	11.79%
ELECTRICITY	535.95	1,020.00	314.05	1,020.00	30.79%
TELEPHONE/INTERNET	1,478.78	1,480.00	651.21	1,480.00	44.00%
MOBILE COMMUNICATIONS	447.23	490.00	202.76	490.00	41.38%
CAPITAL EXPENDITURES - EQUIP	2,000.00	-	-	-	
TOOLS & SUPPLIES	291.60	1,160.00	302.71	1,160.00	26.10%
<b>Operation and Maintenance</b>	<b>19,857.84</b>	<b>20,370.00</b>	<b>4,223.15</b>	<b>20,370.00</b>	<b>20.73%</b>
PROFESSIONAL SERVICES	30,784.10	38,010.00	32,925.86	38,010.00	86.62%
<b>Contractual Services</b>	<b>30,784.10</b>	<b>38,010.00</b>	<b>32,925.86</b>	<b>38,010.00</b>	<b>86.62%</b>
INSURANCE EXPENSE	3,093.88	2,920.00	-	2,920.00	0.00%
<b>Insurance</b>	<b>3,093.88</b>	<b>2,920.00</b>	<b>-</b>	<b>2,920.00</b>	<b>0.00%</b>
TRAINING & TRAVEL EXPENSE	1,495.60	1,200.00	721.34	1,200.00	60.11%
OFFICE SUPPLIES	664.20	500.00	438.95	500.00	87.79%
ADVERTISING	359.65	260.00	-	260.00	0.00%
BANK CHARGES	44,096.56	40,880.00	19,597.01	40,880.00	47.94%
MEMBERSHIPS & SUBSCRIPTIONS	590.00	520.00	345.00	520.00	66.35%
<b>Office and Administrative</b>	<b>47,206.01</b>	<b>43,360.00</b>	<b>21,102.30</b>	<b>43,360.00</b>	<b>48.67%</b>
<b>Capital Improvement Projects</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Other Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Debt - Principal</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Debt - Interest</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Transfers Out</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>TOTAL GENERAL FUND</b>	<b>320,012.10</b>	<b>409,091.00</b>	<b>174,041.87</b>	<b>409,091.00</b>	<b>42.54%</b>

# MUNICIPAL COURT

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
salaries & wages	-	-	-	-	
part-time wages	-	-	-	-	
overtime wages	-	-	-	-	
fica expense	-	-	-	-	
employee benefits	-	-	-	-	
WORKER'S COMPENSATION	-	-	-	-	
retirement expense	-	-	-	-	
<b>Personnel</b>	-	-	-	-	
repairs & maintenance - bldg	-	-	-	-	
repairs & maintenance - equip	-	-	-	-	
repairs & maintenance - sftwre	-	-	-	-	
ELECTRICITY	-	-	-	-	
TELEPHONE/INTERNET	-	-	-	-	
capital expenditures - hrdwre	-	-	-	-	
tools & supplies	-	-	-	-	
<b>Operation and Maintenance</b>	-	-	-	-	
professional services	-	-	-	-	
<b>Contractual Services</b>	-	-	-	-	
insurance expense	-	-	-	-	
<b>Insurance</b>	-	-	-	-	
training & travel	-	-	-	-	
office supplies expense	-	-	-	-	
postage	-	-	-	-	
bank charges	-	-	-	-	
<b>Office and Administrative</b>	-	-	-	-	
<b>Capital Improvement Projects</b>	-	-	-	-	
<b>Other Expenses</b>	-	-	-	-	
<b>Debt - Principal</b>	-	-	-	-	
<b>Debt - Interest</b>	-	-	-	-	
<b>Transfers Out</b>	-	-	-	-	
<b>TOTAL GENERAL FUND</b>	-	-	-	-	



PARKS & RECREATION					3/31/2022
GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
SALARIES & WAGES	266,044.07	277,309.00	95,446.08	277,309.00	34.42%
PART-TIME WAGES	6,381.39	21,840.00	578.55	21,840.00	2.65%
PART-TIME RECREATION WAGES	4,223.79	9,430.00	1,494.46	9,430.00	15.85%
OVERTIME WAGES	1,644.65	2,000.00	477.10	2,000.00	23.86%
FICA EXPENSE	20,623.07	23,759.00	7,905.58	23,759.00	33.27%
EMPLOYEE BENEFITS	29,951.76	32,270.00	17,169.84	32,270.00	53.21%
WORKER'S COMPENSATION	8,574.65	11,607.00	-	11,607.00	0.00%
RETIREMENT EXPENSE	23,778.23	24,583.00	7,373.28	24,583.00	29.99%
UNIFORM EXPENSE	1,302.75	3,250.00	989.22	3,250.00	30.44%
Personnel	362,524.36	406,048.00	131,434.11	406,048.00	32.37%
REPAIRS & MAINTENANCE - BLDG	168.47	1,000.00	170.22	1,000.00	17.02%
REPAIRS & MAINTENANCE - EQUIP	14,340.84	8,500.00	2,250.34	8,500.00	26.47%
REPAIRS & MAINTENACE - VEHICLE	267.57	750.00	41.00	750.00	5.47%
REPAIRS & MAINT - INFRASTRUCTR	20,969.35	18,000.00	598.58	18,000.00	3.33%
REPAIRS & MAINT - PARKS	15,480.52	-	851.86	-	85186.00%
REPAIRS & MAINT - SOFTWARE	13,815.42	6,540.00	6,574.67	6,540.00	100.53%
REPAIRS & MAINT - SMITH'S FORK	49,795.93	82,500.00	72,878.46	82,500.00	88.34%
ELECTRICITY	27,472.89	25,500.00	7,751.31	25,500.00	30.40%
PROPANE	4,267.00	7,160.00	3,621.00	7,160.00	50.57%
TELEPHONE/INTERNET	5,427.39	8,050.00	3,778.17	8,050.00	46.93%
MOBILE COMMUNICATIONS	3,082.75	3,120.00	1,299.91	3,120.00	41.66%
CAPITAL EXPENDITURES - EQUIP	-	-	-	-	
CAPITAL EXPENDITURES - VEHICLE	-	-	-	-	
CAPITAL EXPENDITURES - HRDWARE	-	-	-	-	
CAPITAL EXPENDITURES - BLDG	-	-	-	-	
TOOLS & SUPPLIES	5,878.37	5,000.00	3,543.79	5,000.00	70.88%
FUEL	10,017.08	8,250.00	2,139.49	8,250.00	25.93%
recreation	-	-	-	-	
YOUTH REC LEAGUE UNIFORMS	12,051.32	16,880.00	6,680.10	16,880.00	39.57%
YOUTH REC LEAGUE UMPIRES	7,874.00	11,420.00	9,925.55	11,420.00	86.91%
ADULT REC LEAGUE UNIFORMS	-	-	-	-	
ADULT REC LEAGUE OFFICIALS	611.00	1,000.00	-	1,000.00	0.00%
REC LEAGUE BACKGROUND CHECKS	472.88	720.00	200.21	720.00	27.81%
REC LEAGUE SUPPLIES/AWARDS	18,047.02	27,010.00	1,825.83	27,010.00	6.76%
REC LEAGUE ADVERTISING	279.75	1,000.00	661.60	1,000.00	66.16%
Operation and Maintenance	210,319.55	232,400.00	124,792.09	232,400.00	53.70%
BIKE RACE	13,600.16	5,000.00	920.95	5,000.00	18.42%
PROFESSIONAL SERVICES	5,442.35	3,730.00	4,914.62	3,730.00	131.76%
LEASE EXPENSE	36,853.29	38,710.00	-	38,710.00	0.00%
CAMP HOST SERVICES	17,500.00	17,500.00	-	17,500.00	0.00%
FIREWORKS DISPLAY	12,000.00	12,000.00	-	12,000.00	0.00%
Contractual Services	85,395.80	76,940.00	5,835.57	76,940.00	7.58%
MOVIE NIGHTS	1,925.83	2,400.00	-	2,400.00	0.00%
Insurance	1,925.83	2,400.00	-	2,400.00	0.00%
INSURANCE EXPENSE	14,747.12	15,240.00	-	15,240.00	0.00%
TRAINING & TRAVEL EXPENSE	1,944.78	6,640.00	1,192.83	6,640.00	17.96%
OFFICE SUPPLIES	505.77	500.00	133.29	500.00	26.66%
POSTAGE	-	-	-	-	
ADVERTISING	393.17	500.00	576.78	500.00	115.36%
MEMBERSHIPS	1,025.00	670.00	325.00	670.00	48.51%
Office and Administrative	18,615.84	23,550.00	2,227.90	23,550.00	9.46%
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
Capital Improvement Projects	#N/A	#N/A	#N/A	#N/A	#N/A
CAPITAL IMPROVEMENT PROJECTS	-	-	-	-	
Other Expenses	-	-	-	-	
Debt - Principal	-	-	-	-	
Debt - Interest	-	-	-	-	
Transfers Out	-	-	-	-	
TOTAL GENERAL FUND	#N/A	#N/A	#N/A	#N/A	#N/A

## SENIOR CENTER

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
<b>Personnel</b>	-	-	-	-	
REPAIRS & MAINTENANCE - BLDG	2,562.84	2,890.00	1,182.30	2,890.00	40.91%
ELECTRICITY	1,574.45	1,500.00	487.14	1,500.00	32.48%
NATURAL GAS	684.51	1,440.00	607.73	1,440.00	42.20%
TELEPHONE/INTERNET	2,904.89	2,400.00	642.23	2,400.00	26.76%
TOOLS & SUPPLIES	-	500.00	99.85	500.00	19.97%
<b>Operation and Maintenance</b>	<b>7,726.69</b>	<b>8,730.00</b>	<b>3,019.25</b>	<b>8,730.00</b>	<b>34.58%</b>
PROFESSIONAL SERVICES	8,062.46	13,270.00	2,736.50	13,270.00	20.62%
<b>Contractual Services</b>	<b>8,062.46</b>	<b>13,270.00</b>	<b>2,736.50</b>	<b>13,270.00</b>	<b>20.62%</b>
INSURANCE	3,331.83	3,120.00	-	3,120.00	0.00%
<b>Insurance</b>	<b>3,331.83</b>	<b>3,120.00</b>	<b>-</b>	<b>3,120.00</b>	<b>0.00%</b>
<b>Office and Administrative</b>	-	-	-	-	
CAPITAL IMPROVEMENT PROJECTS	-	-	-	-	
<b>Capital Improvement Projects</b>	-	-	-	-	
<b>Other Expenses</b>	-	-	-	-	
<b>Debt - Principal</b>	-	-	-	-	
<b>Debt - Interest</b>	-	-	-	-	
<b>Transfers Out</b>	-	-	-	-	
<b>TOTAL GENERAL FUND</b>	<b>19,120.98</b>	<b>25,120.00</b>	<b>5,755.75</b>	<b>25,120.00</b>	<b>22.91%</b>

# ELECTED OFFICIALS

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
PART-TIME WAGES	14,700.00	15,150.00	6,000.00	15,150.00	39.60%
FICA EXPENSE	1,124.92	1,160.00	459.15	1,160.00	39.58%
WORKER'S COMPENSATION	23.70	30.00	-	30.00	0.00%
<b>Personnel</b>	<b>15,848.62</b>	<b>16,340.00</b>	<b>6,459.15</b>	<b>16,340.00</b>	<b>39.53%</b>
WORKER'S COMPENSATION	-	-	-	-	
REPAIRS & MAINTENANCE - BLDG	1,119.18	960.00	483.20	960.00	50.33%
REPAIRS & MAINT - SOFTWARE	659.05	1,130.00	376.60	1,130.00	33.33%
ELECTRICITY	959.33	1,150.00	549.60	1,150.00	47.79%
TELEPHONE/INTERNET	1,808.40	960.00	753.50	960.00	78.49%
MOBILE COMMUNICATIONS	-	-	-	-	
TOOLS & SUPPLIES	25.00	220.00	-	220.00	0.00%
<b>Operation and Maintenance</b>	<b>4,570.96</b>	<b>4,420.00</b>	<b>2,162.90</b>	<b>4,420.00</b>	<b>48.93%</b>
COMMUNITY RELATIONS ALLOWANCE	-	-	-	-	
<b>Contractual Services</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
PROFESSIONAL SERVICES	3,862.02	20,710.00	14,112.30	20,710.00	68.14%
<b>Insurance</b>	<b>3,862.02</b>	<b>20,710.00</b>	<b>14,112.30</b>	<b>20,710.00</b>	<b>68.14%</b>
INSURANCE	1,317.76	1,660.00	-	1,660.00	0.00%
TRAINING & TRAVEL EXPENSE	893.04	2,880.00	768.05	2,880.00	26.67%
OFFICE SUPPLIES	888.44	1,000.00	188.29	1,000.00	18.83%
ADVERTISING	3,894.44	4,000.00	4,373.44	4,000.00	109.34%
MEMBERSHIPS & SUBSCRIPTIONS	850.00	2,710.00	-	2,710.00	0.00%
<b>Office and Administrative</b>	<b>7,843.68</b>	<b>12,250.00</b>	<b>5,329.78</b>	<b>12,250.00</b>	<b>43.51%</b>
<b>Capital Improvement Projects</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Other Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Debt - Principal</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Debt - Interest</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Transfers Out</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>TOTAL GENERAL FUND</b>	<b>32,125.28</b>	<b>53,720.00</b>	<b>28,064.13</b>	<b>53,720.00</b>	<b>52.24%</b>

## ANIMAL SHELTER

3/31/2022

GENERAL FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
Personnel	-	-	-	-	
REPAIRS & MAINT - BLDG	599.97	600.00	548.92	600.00	91.49%
TOOLS & SUPPLIES	780.41	1,500.00	345.25	1,500.00	23.02%
Operation and Maintenance	1,380.38	2,100.00	894.17	2,100.00	42.58%
PROFESSIONAL SERVICES	3,120.08	6,000.00	3,059.09	6,000.00	50.98%
Contractual Services	3,120.08	6,000.00	3,059.09	6,000.00	50.98%
Insurance	-	-	-	-	
ADVERTISING	-	-	-	-	
Office and Administrative	-	-	-	-	
TRAINING & TRAVEL	-	1,000.00	-	1,000.00	0.00%
Capital Improvement Projects	-	1,000.00	-	1,000.00	0.00%
Other Expenses	-	-	-	-	
Debt - Principal	-	-	-	-	
Debt - Interest	-	-	-	-	
Transfers Out	-	-	-	-	
TOTAL GENERAL FUND	4,500.46	9,100.00	3,953.26	9,100.00	43.44%

SPECIAL ALLOCATION FUND	3/31/22
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REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
PROPERTY TAXES	19,537.38	20,000.00	188,483.32	20,000.00	942.42%
SALES AND USE TAXES	658,379.56	550,000.00	287,749.81	550,000.00	52.32%
	677,916.94	570,000.00	476,233.13	570,000.00	83.55%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
ADMINISTRATION	2,294.95	1,166,888.00	23,649.50	1,166,888.00	2.03%
	2,294.95	1,166,888.00	23,649.50	1,166,888.00	2.03%

## SPECIAL ALLOCATION FUND

3/31/22

SPECIAL ALLOCATION FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
Personnel	-	-	-	-	
Operation and Maintenance	-	-	-	-	
transfers out	-	-	-	-	
PROFESSIONAL SERVICES	-	-	23,649.50	-	2364950.00%
Contractual Services	-	-	23,649.50	-	2364950.00%
Insurance	-	-	-	-	
Office and Administrative	-	-	-	-	
Capital Improvement Projects	-	-	-	-	
Other Expenses	-	-	-	-	
Debt - Principal	-	-	-	-	
Debt - Interest	-	-	-	-	
TIF PAYMENTS TO DEVELOPER	-	1,158,888.00	-	1,158,888.00	0.00%
Transfers Out	-	1,158,888.00	-	1,158,888.00	0.00%
TOTAL SPECIAL ALLOCATION FUND	-	1,158,888.00	23,649.50	1,158,888.00	2.04%

## CAPITAL PROJECTS FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
INTERGOVERNMENTAL REVENUES	290,439.10	-	-	-	
DEBT ISSUED	-	-	-	-	
TRANSFERS IN	-	127,000.00	-	127,000.00	0.00%
PARK IMPROVEMENT REVENUE	6,250.00	10,000.00	51,229.34	10,000.00	
	290,439.10	127,000.00	51,229.34	127,000.00	40.34%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
STREET	1,536,744.43	127,000.00	127,000.00	127,000.00	100.00%
	1,536,744.43	127,000.00	127,000.00	127,000.00	100.00%

## CAPITAL PROJECTS FUND

3/31/22

CAPITAL PROJECTS FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
Personnel	-	-	-	-	
Operation and Maintenance	-	-	-	-	
PROFESSIONAL SERVICES	-	182,000.00	-	182,000.00	0.00%
Contractual Services	-	182,000.00	-	182,000.00	0.00%
Insurance	-	-	-	-	
Office and Administrative	-	-	-	-	
CAPITAL IMPROVEMENT PROJECTS	1,468,176.56	127,000.00	127,000.00	127,000.00	100.00%
PARK IMPROVEMENT EXPENSE	25,000.00	-	-	-	
Capital Improvement Projects	1,468,176.56	127,000.00	127,000.00	127,000.00	100.00%
Other Expenses	-	-	-	-	
Debt - Principal	-	-	-	-	
Debt - Interest	-	-	-	-	
TRANSFERS OUT	342,190.00	478,550.00	351,550.00	478,550.00	73.46%
Transfers Out	342,190.00	478,550.00	351,550.00	478,550.00	73.46%
TOTAL CAPITAL PROJECTS FUND	1,810,366.56	787,550.00	478,550.00	787,550.00	60.76%



# TRANSPORTATION SALES TAX FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
SALES AND USE TAXES	587,177.01	569,160.00	215,504.33	569,160.00	37.86%
PROCEEDS FROM DEBT ISSUED	-	-	-	-	
TRANSFERS IN	-	-	-	-	
	<b>587,177.01</b>	<b>569,160.00</b>	<b>215,504.33</b>	<b>569,160.00</b>	37.86%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
STREET	893,832.42	782,630.00	260,091.86	782,630.00	33.23%
	<b>893,832.42</b>	<b>782,630.00</b>	<b>260,091.86</b>	<b>782,630.00</b>	33.23%

## TRANSPORTATION SALES TAX FUND

3/31/22

TRANSPORTATION SALES TAX FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
<b>Personnel</b>	-	-	-	-	
REPAIRS & MAINTENANCE - BLDG	11.98	1,000.00	11.40	1,000.00	1.14%
REPAIRS & MAINTENANCE - EQUIP	21,313.52	10,000.00	7,424.61	10,000.00	74.25%
REPAIRS & MAINTENANCE - STREET	688,447.60	100,000.00	44,588.61	100,000.00	44.59%
CAPITAL EXPENDITURES - EQUIP	15,194.35	21,960.00	-	21,960.00	0.00%
SUPPLIES - STREET SIGNS	-	-	-	-	
FUEL	16,363.33	12,380.00	5,568.57	12,380.00	44.98%
<b>Operation and Maintenance</b>	<b>741,330.78</b>	<b>145,340.00</b>	<b>57,593.19</b>	<b>145,340.00</b>	<b>39.63%</b>
PROFESSIONAL SERVICES	100,239.50	-	244.47	-	24447.00%
<b>Contractual Services</b>	<b>100,239.50</b>	<b>-</b>	<b>244.47</b>	<b>-</b>	<b>24447.00%</b>
INSURANCE EXPENSE	-	-	-	-	
<b>Insurance</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
TOOLS & SUPPLIES	7,026.86	30,000.00	1,851.07	30,000.00	6.17%
<b>Office and Administrative</b>	<b>7,026.86</b>	<b>30,000.00</b>	<b>1,851.07</b>	<b>30,000.00</b>	<b>6.17%</b>
<b>Capital Improvement Projects</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>Other Expenses</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
LEASE EXPENSE	38,969.28	33,480.00	32,010.00	33,480.00	95.61%
<b>Debt - Principal</b>	<b>38,969.28</b>	<b>33,480.00</b>	<b>32,010.00</b>	<b>33,480.00</b>	<b>95.61%</b>
INTEREST EXPENSE	6,266.00	4,810.00	6,266.00	4,810.00	130.27%
<b>Debt - Interest</b>	<b>6,266.00</b>	<b>4,810.00</b>	<b>6,266.00</b>	<b>4,810.00</b>	<b>130.27%</b>
<b>Transfers Out</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>TRANSPORTATION SALES TAX FUND</b>	<b>893,832.42</b>	<b>213,630.00</b>	<b>97,964.73</b>	<b>213,630.00</b>	<b>45.86%</b>

## CAPITAL IMPROVEMENT SALES TAX FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
SALES AND USE TAXES	659,009.18	627,555.00	245,583.81	627,555.00	39.13%
TRANSFERS IN	-	-	-	-	
	659,009.18	627,555.00	245,583.81	627,555.00	39.13%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
STREET	752,250.00	660,550.00	351,550.00	660,550.00	53.22%
	752,250.00	660,550.00	351,550.00	660,550.00	53.22%

## CAPITAL IMPROVEMENT SALES TAX FUND

3/31/22

CAP. IMP. SALES TAX FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
Personnel	-	-	-	-	
Operation and Maintenance	-	-	-	-	
Contractual Services	-	-	-	-	
Insurance	-	-	-	-	
Office and Administrative	-	-	-	-	
CAPITAL IMPROVEMENT PROJECTS	410,060.00	-	-	-	
Capital Improvement Projects	410,060.00	-	-	-	
Other Expenses	-	-	-	-	
Debt - Principal	-	-	-	-	
Debt - Interest	-	-	-	-	
TRANSFERS OUT	342,190.00	478,550.00	351,550.00	478,550.00	73.46%
Transfers Out	342,190.00	478,550.00	351,550.00	478,550.00	73.46%
TOTAL CAP. IMP. SALES TAX FUND	752,250.00	478,550.00	351,550.00	478,550.00	73.46%

# DEBT SERVICE FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
PROPERTY TAXES	-	-	-	-	
TRANSFERS IN	342,190.00	351,550.00	351,550.00	351,550.00	100.00%
	342,190.00	351,550.00	351,550.00	351,550.00	100.00%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
STREET	329,855.00	339,213.00	243,592.50	339,213.00	71.81%
	329,855.00	339,213.00	243,592.50	339,213.00	71.81%

DEBT SERVICE FUND					3/31/22
DEBT SERVICE FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
Personnel	-	-	-	-	
Operation and Maintenance	-	-	-	-	
Contractual Services	-	-	-	-	
Insurance	-	-	-	-	
Office and Administrative	-	-	-	-	
Capital Improvement Projects	-	-	-	-	
Other Expenses	-	-	-	-	
LEASE PAYMENTS	130,000.00	145,000.00	145,000.00	145,000.00	100.00%
Debt - Principal	130,000.00	145,000.00	145,000.00	145,000.00	100.00%
INTEREST	199,855.00	194,213.00	98,592.50	194,213.00	50.77%
Debt - Interest	199,855.00	194,213.00	98,592.50	194,213.00	50.77%
Transfers Out	-	-	-	-	
TOTAL DEBT SERVICE FUND	329,855.00	339,213.00	243,592.50	339,213.00	71.81%

# WATER & WASTEWATER SYSTEMS FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
LICENSES, FEES, AND PERMITS	-	-	-	-	
CHARGES FOR SERVICES	4,598,338.65	5,519,679.80	2,214,526.36	5,519,679.80	40.12%
IMPACT FEES	292,296.00	375,000.00	156,874.00	375,000.00	41.83%
OTHER REVENUE	17,865.42	-	14,085.03	-	
DEBT ISSUED	46,780.65	30,720.00	23,310.99	30,720.00	75.88%
TRANSFERS IN	-	-	-	-	
	<b>4,955,280.72</b>	<b>5,925,399.80</b>	<b>2,408,796.38</b>	<b>5,925,399.80</b>	40.65%
EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
UTILITIES	3,957,145.75	6,778,415.00	1,703,778.96	6,778,415.00	25.14%
	<b>3,957,145.75</b>	<b>6,778,415.00</b>	<b>1,703,778.96</b>	<b>6,778,415.00</b>	25.14%

PUBLIC WORKS (UTILITIES)					3/31/22
CWWS FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
SALARIES & WAGES	761,552.60	806,730.00	288,136.89	806,730.00	35.72%
OVERTIME WAGES	16,754.95	18,000.00	10,777.86	18,000.00	59.88%
FICA EXPENSE	57,441.43	63,230.00	24,345.18	63,230.00	38.50%
EMPLOYEE BENEFITS	74,230.58	87,720.00	38,425.11	87,720.00	43.80%
WORKER'S COMPENSATION	25,867.25	35,273.00	-	35,273.00	0.00%
RETIREMENT EXPENSE	71,491.15	72,697.00	25,566.91	72,697.00	35.17%
UNIFORM EXPENSE	7,198.02	8,400.00	2,749.92	8,400.00	32.74%
Personnel	1,014,535.98	1,092,050.00	390,001.87	1,092,050.00	35.71%
REPAIRS & MAINTENANCE - EQUIP	5,811.72	6,990.00	1,847.29	6,990.00	26.43%
REPAIRS & MAINTENCE- VEHICLES	1,182.87	3,000.00	2,777.68	3,000.00	92.59%
REPAIRS & MAINT - WATER LINES	63,989.66	104,740.00	24,434.72	104,740.00	23.33%
REPAIRS & MAINT - SEWER LINES	71,399.65	150,000.00	11,322.80	150,000.00	7.55%
REPAIRS & MAINT - WATER PLANT	85,214.78	245,000.00	9,283.94	245,000.00	3.79%
REPAIRS & MAINT - WW PLANT	36,451.01	670,000.00	44,951.55	670,000.00	6.71%
REPAIRS & MAINT - SOFTWARE	16,142.43	18,830.00	1,399.47	18,830.00	7.43%
REPAIRS & MAINT - WATER TOWERS	108,691.80	123,350.00	55,147.42	123,350.00	44.71%
ELECTRICITY	225,508.22	299,650.00	91,056.34	299,650.00	30.39%
PROPANE	3,931.25	15,900.00	4,420.00	15,900.00	27.80%
TELEPHONE/INTERNET	15,163.28	15,520.00	8,558.50	15,520.00	55.14%
MOBILE COMMUNICATIONS	8,775.27	9,630.00	4,588.76	9,630.00	47.65%
CAPITAL EXPENDITURES - EQUIP	-	24,000.00	3,908.75	24,000.00	16.29%
CAPITAL EXPENDITURES - VEHICLE	-	-	-	-	
CAPITAL EXPENDITURES - SOFTWARE	-	100,000.00	22,500.00	100,000.00	22.50%
CAPITAL EXPENDITURES - HRDWRE	-	-	-	-	
CAPTIAL EXPENDITURES - TOWERS	-	-	-	-	
CAPITAL EXPENDITURES - BLDG	-	20,000.00	-	20,000.00	0.00%
CAPITAL EXPENDITURES - WATER P	-	-	-	-	
CAPITAL EXPENDITURES - WW PLAN	-	-	-	-	
CAPITAL EXPENDITURES - LINES	-	-	-	-	
TOOLS & SUPPLIES	24,667.70	25,000.00	7,565.16	25,000.00	30.26%
SUPPLIES - CONNECTIONS	52,461.02	75,000.00	25,262.03	75,000.00	33.68%
SUPPLIES - LAB	24,354.74	27,500.00	8,463.81	27,500.00	30.78%
SUPPLIES - CHEMICALS	117,504.57	130,000.00	42,574.30	130,000.00	32.75%
SUPPLIES - WW CHEMICALS	8,280.33	13,500.00	3,530.08	13,500.00	26.15%
FUEL	12,207.02	24,500.00	4,866.64	24,500.00	19.86%
Operation and Maintenance	881,737.32	2,102,110.00	378,459.24	2,102,110.00	18.00%
PROFESSIONAL SERVICES	502,948.81	826,190.00	218,665.94	826,190.00	26.47%
DEBT PRINCIPAL PAYMENTS	340,889.81	363,946.00	61,217.12	363,946.00	16.82%
WASTEWATER TREATMENT SERVICE	119,940.80	128,620.00	51,441.00	128,620.00	39.99%
Contractual Services	963,779.42	1,318,756.00	331,324.06	1,318,756.00	25.12%
INSURANCE EXPENSE	69,637.80	71,720.00	-	71,720.00	0.00%
Insurance	69,637.80	71,720.00	-	71,720.00	0.00%
TRAINING & TRAVEL EXPENSE	3,103.26	5,000.00	1,136.34	5,000.00	22.73%
OFFICE SUPPLIES	2,942.24	4,500.00	645.83	4,500.00	14.35%
POSTAGE	1,256.83	1,500.00	522.55	1,500.00	34.84%
ADVERTISING	146.11	-	-	-	
BANK CHARGES	1,330.66	2,000.00	1,855.00	2,000.00	92.75%
MEMBERSHIPS & SUBSCRIPTIONS	-	380.00	40.00	380.00	10.53%
Office and Administrative	8,779.10	13,380.00	4,199.72	13,380.00	31.39%
CAPITAL IMPROVEMENT PROJECTS	249,003.15	1,440,000.00	437,619.47	1,440,000.00	30.39%
WATER IMPACT PROJECTS	205,662.95	150,000.00	-	150,000.00	0.00%
WASTEWATER IMPACT PROJECTS	-	-	-	-	
Capital Improvement Projects	454,666.10	1,590,000.00	437,619.47	1,590,000.00	27.52%
AMORTIZATION EXPENSE	-	-	-	-	
DEPRECIATION EXPENSE	-	-	-	-	
MISCELLANEOUS EXPENSE	-	-	-	-	
Other Expenses	-	-	-	-	
Debt - Principal	-	-	-	-	
DEBT INTEREST PAYMENTS	354,830.03	345,059.00	142,174.60	345,059.00	41.20%
Debt - Interest	354,830.03	345,059.00	142,174.60	345,059.00	41.20%
TRANSFERS OUT	209,180.00	245,340.00	20,000.00	245,340.00	8.15%
Transfers Out	209,180.00	245,340.00	20,000.00	245,340.00	8.15%
TOTAL CWWS FUND	3,957,145.75	6,778,415.00	1,703,778.96	6,778,415.00	25.14%



# SANITATION FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
CHARGES FOR SERVICES	872,880.09	849,530.00	341,874.31	849,530.00	40.24%
TRANSFERS IN	-	-	-	-	
	872,880.09	849,530.00	341,874.31	849,530.00	40.24%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
ADMIN	865,323.97	836,450.00	344,687.27	836,450.00	41.21%
	865,323.97	836,450.00	344,687.27	836,450.00	41.21%

# SANITATION FUND

3/31/22

SANITATION FUND	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	Percent Spent
Personnel	-	-	-	-	
#N/A	#N/A	#N/A	#N/A	#N/A	#N/A
SOLID WASTE SERVICES	853,526.27	823,820.00	333,344.73	823,820.00	40.46%
recycling services	-	-	-	-	
HOUSEHOLD HAZARDOUS WASTE	11,797.70	12,630.00	11,342.54	12,630.00	89.81%
yard waste	-	-	-	-	
Operation and Maintenance	#N/A	#N/A	#N/A	#N/A	#N/A
Contractual Services	-	-	-	-	
Insurance	-	-	-	-	
Office and Administrative	-	-	-	-	
Capital Improvement Projects	-	-	-	-	
Other Expenses	-	-	-	-	
Debt - Principal	-	-	-	-	
Debt - Interest	-	-	-	-	
HOUSEHOLD HAZARDOUS WASTE	11,797.70	12,630.00	11,342.54	12,630.00	89.81%
Transfers Out	11,797.70	12,630.00	11,342.54	12,630.00	89.81%
TOTAL SANITATION FUND	#N/A	#N/A	#N/A	#N/A	#N/A

# PARK AND STORMWATER SALES TAX FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
PARK & STRMWTR SALES TAX	614,189.73	627,555.00	244,099.52	627,555.00	38.90%
MISCELLANEOUS REVENUE	-	-	11,000.00	-	
	<b>614,189.73</b>	<b>627,555.00</b>	<b>255,099.52</b>	<b>627,555.00</b>	40.65%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
PARKS & RECREATION	74,537.09	275,000.00	118,095.48	275,000.00	
UTILITIES	102,335.00	210,000.00	-	210,000.00	0.00%
	<b>102,335.00</b>	<b>485,000.00</b>	<b>-</b>	<b>210,000.00</b>	0.00%

# VEHICLE AND EQUIPMENT REPLACE FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
SALE OF PERSONAL PROPERTY	51,972.00	244,000.00	8,320.00	244,000.00	3.41%
TRANSFERS IN	51,972.00	40,000.00	175,000.00	40,000.00	437.50%
	<b>103,944.00</b>	<b>284,000.00</b>	<b>183,320.00</b>	<b>284,000.00</b>	

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
ADMINISTRATION	66,296.04	175,749.00	68,645.33	175,749.00	39.06%
	<b>66,296.04</b>	<b>175,749.00</b>	<b>68,645.33</b>	<b>175,749.00</b>	39.06%

# AMERICAN RESCUE PLAN ACT FUND

3/31/22

REVENUES, BY SOURCE	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
INTERGOVERNMENTAL REVENUES	1,089,137.62	1,089,161.50	10,495.07	1,089,161.50	0.96%
INTEREST INCOME	-	-	-	-	
	<b>1,089,137.62</b>	<b>1,089,161.50</b>	<b>10,495.07</b>	<b>1,089,161.50</b>	0.96%

EXPENDITURES, BY DEPARTMENT	FY21 Actual	FY22 Budget	FY22 YTD	FY22 Projection	
ADMINISTRATION		2,178,300.00	-	2,178,300.00	0.00%
	-	<b>2,178,300.00</b>	-	<b>2,178,300.00</b>	0.00%



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Finance

**AGENDA ITEM:** Resolution 1062, A Resolution Approving A Water Leak Adjustment Request

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**REQUESTED BOARD ACTION:**

Motion to approve Resolution 1062, approving a water and wastewater leak adjustment request.

**SUMMARY:**

The City has received notice from Gary Williams, a residential utility billing customer, of a repaired water leak and his request for a water leak adjustment. All requirements set forth in Ordinance 2989-18 have been met.

Following the month of the March billing cycle, Gary Williams had started the cycle with a read of 3,426 and finished the March cycle with a read of 3,851, which resulted in consumption of 42,500 gallons. This amount was more than twice the established monthly average. As required by Ordinance 2989-18, Gary Williams has provided proof of repair/maintenance of the outdoor pipe leak which caused the high usage during the March billing cycle.

Following the month of the April billing cycle, Gary Williams had started the cycle with a read of 3,851 and finished the April cycle with a read of 4,677, which resulted in consumption of 82,600 gallons. This amount was more than twice the established monthly average. As required by Ordinance 2989-18, Gary Williams has provided proof of repair/maintenance of the outdoor pipe leak which caused the high usage during the April billing cycle.

If approved, the leak adjustment would issue a credit of \$387.61 to Gary Williams' utility account.

**PREVIOUS ACTION:**

The Board has approved previous leak adjustments in this fiscal year when conditions have been met.

**POLICY OBJECTIVE:**

[Click or tap here to enter text.](#)

**FINANCIAL CONSIDERATIONS:**

Reduce utility revenues by \$387.61.

**ATTACHMENTS:**

☐ Ordinance

☐ Contract

- ☒ Resolution
- ☒ Staff Report
- ☒ Other: Repair Documentation

- ☐ Plans
- ☐ Minutes

## **RESOLUTION 1062**

### **A RESOLUTION APPROVING A WATER AND WASTEWATER LEAK ADJUSTMENT REQUEST.**

**WHEREAS**, the City approved Ordinance No. 2989-18 amending Section 705.110 of the Code of Ordinances on February 6, 2018; and,

**WHEREAS**, Gary Williams, a residential utility billing customer with account 02-003928-03, has notified the City of a water leak and is requesting a leak adjustment; and,

**WHEREAS**, the conditions set forth in Section 705.110 of the Code of Ordinances as amended have been met; and,

**WHEREAS**, the adjustment calculation set forth in 705.110 of the Code of Ordinances as amended has been determined to be \$387.61;

### **NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

A water and wastewater leak adjustment in the amount of \$387.61 shall be credited to account 02-003928-03 of residential utility billing customer Gary Williams.

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17<sup>th</sup> day of May, 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk





Water and Wastewater Leak Adjustment Request

Utility Customer Name: Gary Williams

Utility Service Address: 106 Prairie Rose Circle

Utility Account Number: 02-003928-03

The residential utility billing customer referenced above has notified City staff of a water leak and is requesting a leak adjustment. City staff has verified the water consumption of the month(s) in question is more than two (2) times the monthly average for this property, no other leak adjustment has occurred in the previous thirty-six (36) month period, covers a single event and repair receipts have been provided.

In accordance with the Leak Adjustment Ordinance No. 705.110, the Board of Alderman may consider a leak adjustment calculated to be \$387.61 at the Board of Alderman meeting on 5/17/22.

I, Gary Williams, agree to attend the Board of Alderman meeting referenced above, and understand that my failure to be present is cause for the Board of Alderman to deny my request.

Upon resolution by the Board of Alderman, I, Gary Williams, shall make payment in full or make formal payment arrangements with City staff no later than ten days (10) following the Board of Alderman consideration. I understand that failure to do so will result in imposition of late fees and/or disconnection of service.

Gary Williams  
Customer's Signature

5-2-22  
Date



## Water and Wastewater Leak Adjustment Calculation

Utility Customer Name: **Gary Williams**

Utility Service Address: **106 Prairie Rose Circle**

Utility Account Number: **02-003928-03**

### Breaking down key figures in Ordinance 2989-18(C), Adjustment Calculations

1. The adjusted bill(s) shall charge the City's normal water rate on all water volume used up to two (2) times the average monthly water use for this property.

City's normal water rate (per 1,000 gallons): **\$8.33**  
 Average monthly water usage for this property: **2,350** gallons

2. Adjusted bill(s) shall also charge the City's wholesale water rate on all water volume used greater than two (2) times the average monthly water use for this property.

City's wholesale water rate (per 1,000 gallons): **\$4.98**

3. If the leak is inside the home, the wastewater bill(s) shall not be adjusted because the water volume used will have drained into the sanitary system of the home.

If the leak is outside the home, the wastewater bill(s) will be adjusted to reflect the average monthly wastewater usage for this property.

City's normal wastewater rate (per 1,000 gallons): **\$6.68**  
 Average monthly wastewater usage for this property: **4,800** gallons  
 Was the leak inside or outside the home: **outside**  
 Was the wastewater billed winter average or actual usage: **winter average**

### Calculating the adjustment amount using Ordinance 705.110(C), Adjustment Calculations

MONTH 1	
Original Water Bill Amount	
<b>42,500</b> gallons @ 8.33 per 1,000 gallons =	354.03
Adjusted Water Bill Amount	
4,700 gallons @ 8.33 per 1,000 gallons =	39.15
+ 37,800 gallons @ 4.98 per 1,000 gallons =	188.24
	227.39
Water Discount =	
	126.64
Original Wastewater Bill Amount	
4,800 gallons @ 6.68 per 1,000 gallons =	32.06
Adjusted Wastewater Bill Amount	
4,800 gallons @ 6.68 per 1,000 gallons =	32.06
Wastewater Discount =	
	0.00

MONTH 2 (if applicable)	
Original Water Bill Amount	
<b>82,600</b> gallons @ 8.33 per 1,000 gallons =	688.06
Adjusted Water Bill Amount	
4,700 gallons @ 8.33 per 1,000 gallons =	39.15
+ 77,900 gallons @ 4.98 per 1,000 gallons =	387.94
	427.09
Water Discount =	
	260.97
Original Wastewater Bill Amount	
4,800 gallons @ 6.68 per 1,000 gallons =	32.06
Adjusted Wastewater Bill Amount	
4,800 gallons @ 6.68 per 1,000 gallons =	32.06
Wastewater Discount =	
	0.00

**Total Discount = 387.61**





## **City Administrator's Report**

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May 12, 2022

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### **110 Smithville, LLC Plan Submission**

The development group for the downtown project at the former Spelman Hospital has submitted a draft Tax Increment Financing Plan to city special economic development counsel Gilmore & Bell. Following their review of the draft submission, it was forwarded to staff for initial review and comment. The comments from review have been compiled and forwarded to counsel for the developer to inform the next steps in the process.

The statutorily outlined process for review of economic development plans outlines public hearing processes and notification of other taxing jurisdictions. This process is approximately three months from start to finish. As staff, attorneys and the developer continue discussion on the draft plan, updates will be provided to the Board as to the proscribed process and where we currently are within that process.

### **Smithville Commons TIF Five Year Public Hearing**

State statute requires periodic reporting on the status of approved economic development plans. Annually, status reports are filed with the state Department of Revenue. The Smithville Commons TIF was approved in 2017. Statute requires a public hearing be held every five years. The initial five-year hearing is scheduled for the Board of Aldermen Meeting on June 7. The attached Notice of Public Hearing has been provided to the Courier Tribune for publication on May 12, 19, 26 and June 2.

### **ARPA Tourism Grant**

The City is partnering with the Smithville Main Street District to apply for grant funds through the Clay County ARPA Tourism Marketing Matching Grant. Applications are due May 15. The maximum grant amount available is \$25,000, requiring a 50% match. The program goals are to increase traveler spending and economic benefit for Clay County, Missouri through effective marketing and promotion, leverage funds to maximize marketing impact, and support industry collaboration and align industry marketing efforts to enhance Clay County's competitiveness in the tourism market. The grant submitted to the program is for consulting services to create a Smithville Wayfinding and Signage Design Guide. The primary objective of obtaining a wayfinding and sign design guide is to create a cohesive plan for signage in the downtown Smithville area. Using the guide, signage will be created to promote a sense of place and celebrate

what is unique about Smithville. The wayfinding signage created from the guidelines will better promote the Smithville brand and to enhance the experience of residents and visitors alike. It is also a planning tool to be used as funding becomes available for improvements to existing and future signage. Once fully implemented, the guide will raise the sense of arrival, increase aesthetics, and simplify vehicular and pedestrian movement throughout downtown and Smithville as a whole.

### **Employee Wellness Newsletter**

Attached is this month's employee wellness newsletter.

### **Public Works Week Lunch**

In recognition of Public Works and Public Safety weeks, the Public Works Department is hosting a picnic for all employees at Heritage Park on Thursday, May 19 from 11:30 a.m. to 1:00 p.m.

### **Board Retreat**

A reminder that the Board of Aldermen/Staff Retreat is planned for Wednesday, May 25. The meeting will begin at 8:30 at the Northwest campus location at 6889 North Oak Trafficway in Gladstone. Access to the building is from the parking lot off 68<sup>th</sup> Street. The campus location on the fourth-floor room 424B.

### **Spring Bulky Item Pick-up**

Spring Bulky Item Pick-Up has been scheduled for the week of June 6-10. Residents may discard up to five bulky items with their scheduled trash pick-up day.

**CITY OF SMITHVILLE, MISSOURI  
NOTICE OF PUBLIC HEARING**

Before the Board of Aldermen of the City of Smithville, Missouri

**June 7, 2022**

**7:00 p.m.**

In accordance with Section 99.865 of the Missouri Revised Statutes, the Board of Aldermen of the City of Smithville, Missouri, will hold a public hearing in Smithville City Hall Council Chambers 107 West Main Street, Smithville, Missouri 64089, at 7:00 p.m., Tuesday, June 7, 2022, or as soon thereafter as possible, to determine if the following tax increment financing plan and the redevelopment project associated with such plan is making satisfactory progress under the proposed time schedules contained within the approved plan for completion of the projects:

- Smithville Commons TIF Plan

Linda Drummond, City Clerk  
City of Smithville, Missouri

Published on:

**May 12, 2022**

**May 19, 2022**

**May 26, 2022**

**June 2, 2022**

# Wellness Program

CITY OF SMITHVILLE



May 2022 Newsletter



## Introduction

In January 2022, the City created a new Employee Wellness Committee to develop a program and challenges for staff.

As part of the program, you will start to see quarterly Newsletters that provide educational materials and healthy tips. The information included in this newsletter is for informational purposes only and does not intend to substitute professional medical advice.

Stay tuned for details about the first Wellness Challenge during the month of June!

**If you have any ideas for future newsletter topics or wellness challenges please use this [survey link](#). All ideas are greatly appreciated!**



## Content

[Biometric Screening Results](#)

[Diabetes 101](#)

[Insurance Resources](#)

[How To Stay Healthy At Work](#)

[Mental Health Awareness](#)

[Feel Good Workouts](#)

[Anyone Can Do](#)

## Get Involved!

We are still looking for additional committee members from each department.

If you would like to join the committee please contact [Anna Mitchell](#).



# Biometric Screening Results

In March, the Wellness committee organized a **Biometric Screening Event** at City Hall where 25 employees participated. The wellness committee will use these results to develop future newsletters and educational sessions.

## Biometric Assessment Results:

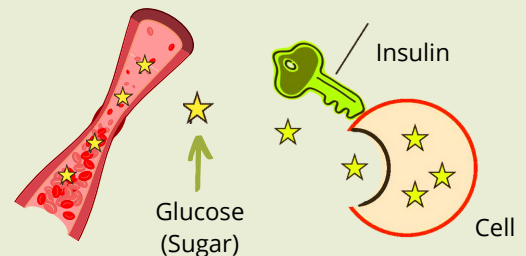
61% of employees: Elevated Risk of Diabetes  
42% of employees: Elevated BMI  
35% of employees: Elevated Blood Pressure  
20% of employees: High Cholesterol



## Diabetes 101

Diabetes is a condition in which blood glucose is too high. Diabetes can be classified in two types: Type 1 & 2.

In **type 1 diabetes**, the body does not produce insulin. When a cell needs energy, insulin acts as a key to unlock a cell. This opens the cell so sugar can enter and be used for energy. This condition can be managed with **insulin therapy** and a healthy lifestyle (exercise and proper diet).



**Type 2 diabetes** is the most common. The body produces insulin but is not used efficiently. Some people can control their blood sugar levels with **healthy eating and exercise**, other may need medication or insulin to help manage it. **The good news is that this condition can be prevented!! About 9 in 10 cases in the U.S. can be avoided by making lifestyle changes.**

## HOW TO PREVENT?



HEALTHY &  
BALANCED EATING



APPROPRIATE BODY  
WEIGHT



MODERATE PHYSICAL  
EXERCISE

What if I already have diabetes?

**Guidelines for prevention are also appropriate if you have a diabetes diagnosis.** (If you are taking insulin medication, you may need more or less carbohydrate at a meal. **For specific guidance refer to your diabetes care team).**

## Tune up your diet

- ✓ Choose whole grains over refined grains or other highly processed carbohydrates.
- ✓ Skip sugary drinks.
- ✓ Choose healthy fats.
- ✓ Limit red meat and avoid processed meat. Choose nuts, beans, or fish instead.
- ! Don't smoke. It increases (in 50%) your chances to develop diabetes.

Source: American Diabetes Association, 2022 ([Diabetes Symptoms, Causes, & Treatment](#) | [ADA](#)).

## Medical Advice Disclaimer

The information included in this newsletter is for informational purposes only and does not intend to substitute professional medical advice.



# Resources Included With City Insurance



## United Healthcare's RALLY Program

Download the free RALLY app OR visit Rally rewards website

<https://accounts.werally.com/login>



Create an account with your email.



## Physical Activity Reward:

Check in on the app 12 days per month to confirm you worked out (workouts could be house chores/yard work, playing with kids, etc).

**Each month you check in at least 12 times you will receive \$20** direct deposited into your account.



## Rally Rewards:

- Complete other wellness tasks to earn points. Tasks include biometric screenings, weight loss challenges, cessation programs, etc.
- Lots of free wellness programs & challenges to participate in.
- Use points to enter into raffles or receive discounts on wellness items.

## United Healthcare Fitness Perks:

Discounted subscriptions to Peloton and Apple Fitness.



# RALLY

**Questions?** Please contact <https://www.rallyhealth.com/contact-us>

# How To Stay Healthy At Work

- Stand up when you can.
- Eat elsewhere (not at your desk).
- Clean your snack shelf.
- Set a walking meeting.
- Bring lunch from home, rather than eating out.
- Set a timer for a stretch break.

To see the full article visit:  
<https://content.werally.com/article/178577>



## Easy, Fast, Healthy Food Options

### Skinny Taco Salad



#### Ingredients

Flour tortillas  
Spices (Salt, pepper, chili powder, cumin, garlic)  
Ground Turkey  
Romain Lettuce  
Black Beans  
Corn & tomatoes  
Avocado  
Cilantro + green onions  
Cheddar cheese  
Greek yogurt + salsa  
Optional: Paprika, onion powder, hot sauce

### 10 Snack ideas



- Nuts and seeds (Loaded with good fats!)
- Fresh fruit and vegetables
- Greek yogurt (Try adding fruits & nuts)
- Low fat cottage cheese (You can also add fruit)
- String Cheese
- Hard boiled eggs (Excellent source of lean protein)
- Air popped and lightly seasoned Popcorn (It's a whole grain! Who knew?!)
- Rice cakes and whole grain crackers
- Fruit and veggie smoothie
- Whole grain crackers with canned tuna or salmon

# Mental Health Awareness Month

Each year millions of Americans face the reality of living with a mental illness. During the month of May, there is a national movement to raise awareness about mental health and help reduce the stigma. Mental health is an incredibly important part of your overall health.

- ✓ Engage in meditation and/or mindfulness.
- ✓ Avoid heavy substance use.
- ✓ Get help from a licensed mental health professional when and if you need it.
- ✓ Practice self-care and make yourself a priority.
- ✓ Disconnect from electronics and social media.
- ✓ Engage in activities that provide meaning.
- ✓ Volunteer.



Source: [National Alliance on Mental Illness, 2022](#)



## Feel-Good Workouts Anyone Can Do

**Working out can help you feel better in so many ways.** It can boost your energy and mood, improve sleep, and make you feel stronger and healthier. And yes, along with a healthy diet, exercise can help with weight loss. A high-intensity workout can help burn fat in minutes, but even lower intensity workouts pack major mojo. One study looked at how well different types of exercises promote weight loss, and you might be surprised how easy some are. **Time to get moving!**

## Got 15 Minutes?

Try this [HIIT Workout](#) ⚡



Try this [Beginners Workout](#) ⚡







**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Administration

**AGENDA ITEM:** Bill No. 2937-22, Approval of the Issuance of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 - second reading

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**REQUESTED BOARD ACTION:**

A motion for approval of Bill No. 2937-22, Approval of the Issuance of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 - second reading by title only.

**SUMMARY:**

In October of 2021, the developers of the Marketplace TIF (the "TIF") approached the City's special counsel with a request to determine the City's interest in issuing tax increment revenue bonds (the "TIF Bonds") to make payment of reimbursable project costs to the Developer relating to the Marketplace TIF and the Smithville Commons Community Improvement District (the "CID"). Staff has met with special counsel Gilmore and Bell as well as financial advisors Piper Sandler to understand the overall process and steps that are expected of the City.

Issuance of TIF Bonds would be completed by the City, with all costs related to the financing to be paid from the proceeds of the TIF Bonds and the Developer. The TIF bonds would be secured and payable solely by TIF revenues and CID revenues generated by the project available after all distributions are made to the City and other taxing districts. No City obligation would exist to cover any revenue shortfall.

To complete the process of issuing TIF Bonds, a Funding Agreement was drafted to ensure certain costs were paid by the Developer and not provided by the City, and was approved by the Board on January 18, 2022.

Prior to the issuance of the TIF Bonds, a Bond Revenue Study (the "Revenue Study") was required to project the revenue generation of the TIF and the CID to determine if the revenues would be sufficient to make debt service payments on the TIF Bonds. The authorization of this study required the City to release a Request for Proposal. RFP #22-10 was released on January 26, 2022 and closed on February 7, 2022 at 10:00 AM. The Board approved a contract with PGAV Planners, LLC to complete the attached Revenue Study on February 15, 2022.

The Revenue Study projects both future retail sales, along with the resulting Economic Activity Taxes ("EATs") and CID revenues, and real property assessed valuations, along with projected Payments In Lieu of Taxes ("PILOTs"). Over the remaining life of the TIF (the TIF expiration date is 10/2/2040), the projected revenue equals \$25,318,544.

Based on preliminary debt service schedules provided by UMB Bank, n.a. ("UMB"), as placement agent (attached to this RFA), the annual revenue is expected to be 1.4 times the projected annual debt service on the bonds. The expected annual surpluses (revenues over debt service) will initially fund a separate business interruption fund and then to begin redeeming bonds prior to their stated maturity. Based on the Revenue Study and the preliminary debt service estimates, it is expected that the TIF Bonds could be fully repaid by the year 2035.

The impact on the City of issuing the TIF Bonds will be minimal. There is no impact on the City's capacity to issue any debt for its own purposes. Further, there is no pledge of any City revenue to cover the debt service on the TIF Bonds. The only potential impact on the City is its ability to issue additional debt this calendar year. UMB is contemplating simultaneously issuing the TIF Bonds in two series, one being bank-qualified. An issuer is only able to issue bonds as bank-qualified if they do not expect to issue more than \$10 million in a calendar year. By issuing a series of TIF Bonds bank-qualified, the City will have little to no capacity to issue additional debt this calendar year. However, City staff does not currently anticipate the need to issue additional debt this year.

Attached to this Ordinance are the following documents:

- (1) Trust Indenture between the City and UMB, as Trustee. This document provides for the issuance of the TIF Bonds and pledges the TIF revenues and CID revenues for the payment of principal and interest on the TIF Bonds, after required payments are made to or for the benefit of the City and certain taxing districts.
- (2) Financing Agreement between the City and the CID. This document provides that the District will appropriate its revenues for the payment of debt service on the TIF Bonds, after required payments are made to or for the benefit of the City and the CID.
- (3) Private Placement Agreement among the City, the Developer and UMB, as Placement Agent. This document provides that the City will sell the TIF Bonds to the purchasers specified by the Placement Agent upon the terms and conditions set forth in the Private Placement Agreement, so long as they are within the parameters provided for in the Ordinance.
- (4) Tax Compliance Agreement among the City, UMB as Trustee and the CID. This document sets forth certain terms and conditions relating to the use and investment of the proceeds of the TIF Bonds and to establish and maintain the tax-exempt status of the TIF Bond the interest on which is excluded from gross income for federal income tax purposes.
- (5) Preliminary Private Placement Memorandum. This document provides information related to the issuance of the TIF Bonds, including the Bond Revenue Study, information on the development, the TIF and the CID. It will be distributed by the Placement Agent in connection with the offering of the TIF Bonds. The Bond

Revenue Study included in the Preliminary Private Placement Memorandum provides an analysis by an independent firm of projections of revenue expected to be generated for payment of debt service by the TIF and the CID. It details the Projected PILOTs, EATs and CID sales tax revenues over the life of the TIF.

**PREVIOUS ACTION:**

August 1, 2017 – Approval of the Smithville Commons Tax Increment Financing Plan  
August 1, 2017 – Approval of a Reimbursement Agreement with the Smithville Area Fire Protection District  
August 1, 2017 – Approval of a Reimbursement Agreement with the Northland Regional Ambulance District  
October 3, 2017 – Approval and designation of a Redevelopment Project and adopted tax increment financing for that Redevelopment Project  
November 21, 2017 – Approval of the First Amendment to the Smithville Commons Tax Increment Financing Development Plan  
November 21, 2017 – Approval of the Original Redevelopment Agreement  
January 18, 2022 – Approval of the Funding Agreement Relating to Bond Issuance for Marketplace TIF  
February 15, 2022 – Award of RFP #22-10 Revenue Bond Study to PGAV Planners, LLC

**POLICY OBJECTIVE:**

Click or tap here to enter text.

**FINANCIAL CONSIDERATIONS:**

Click or tap here to enter text.

**ATTACHMENTS:**

☒ Ordinance

☐ Resolution

☐ Staff Report

☒ Other:

Preliminary Debt Service Schedule

Bond Revenue Study

Trust Indenture between the City and UMB Bank, n.a., as Trustee

Financing Agreement between the City and the CID

Private Placement Agreement

Tax Compliance Agreement

Preliminary Private Placement Memorandum

☒ Contract

☐ Plans

☐ Minutes

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAX INCREMENT REVENUE BONDS (SMITHVILLE COMMONS PROJECT), SERIES 2022 OF THE CITY OF SMITHVILLE, MISSOURI, AND AUTHORIZING CERTAIN OTHER ACTIONS AND DOCUMENTS RELATED TO THE BONDS.**

1. The City of Smithville, Missouri (the "City") is authorized and empowered under the Revised Statutes of Missouri, as amended, to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects.

2. A plan for redevelopment known as the "Smithville Commons Tax Increment Financing Plan" (the "Original Redevelopment Plan"), as amended by the First Amendment to the Smithville Commons Tax Increment Financing Plan (the "First Amended Plan," together with the Original Redevelopment Plan, the "Redevelopment Plan") for an area designated therein as the redevelopment area (the "Redevelopment Area"), as legally described in the Redevelopment Plan, has been prepared and reviewed by the Tax Increment Financing Commission of the City of Smithville, Missouri (the "Commission") and the City, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "TIF Act").

3. On August 1, 2017, the Board of Aldermen adopted (a) Ordinance No. 2969-17 (i) approving the Redevelopment Plan and finding the Redevelopment Area to be a "blighted area" within the meaning of the TIF Act and (ii) designating Development Associates Smithville, LLC, a Missouri limited liability company (the "Developer"), as the developer to implement the Redevelopment Projects of the Redevelopment Plan (as therein defined), (b) Ordinance No. 2971-17, authorizing the execution and delivery of a contract (the "Redevelopment Agreement") between the City and the Developer, and (c) Ordinance No. 2972-17 authorizing the execution and delivery of a Reimbursement Agreement with the Northland Regional Ambulance District and a Reimbursement Agreement with the Smithville Area Fire Protection District to provide for the reimbursement of revenues to the respective taxing jurisdiction (the "Reimbursement Agreements").

4. On October 3, 2017, the Board of Aldermen adopted Ordinance No. 2970-17 which approved and designated an area (the "Redevelopment Project") within the Redevelopment Area for redevelopment contemplated as a commercial and retail development and adopted tax increment financing for the Redevelopment Project.

5. On November 21, 2017, the Board of Aldermen adopted Ordinance No. 2986-17 which approved the First Amended Plan and the First Amendment to the Redevelopment Agreement, which provided for an amended capital contribution to the Smithville School District.

6. The Smithville Commons Community Improvement District (the "District") is authorized and empowered under the Missouri Community Improvement District Act, Sections 67.1401 through 67.1571 of the Revised Statutes of Missouri, as amended (the "CID Act"), to fund, promote, plan, design, construct, improve, maintain, and operate certain improvements, or to assist in any such activity. Pursuant to the CID Act, on August 1, 2017, Ordinance No. 2974-17

was approved by the Board of Aldermen creating the District for the purpose of funding certain improvements and services within the Redevelopment Area (the "CID Project"). The voters of the District have approved the imposition of a sales tax at the rate of 1.0% for the purpose of paying the cost of the CID Project and financing the costs of formation and operation of the District.

5. In order to provide financing for reimbursable project costs as provided in the Redevelopment Plan and the Redevelopment Agreement, the City has determined that it is in the best interest of the City (a) to issue its Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 (the "Bonds") for the purpose of (i) financing reimbursable project costs described under the Redevelopment Agreement (the "Project"), (ii) funding a debt service reserve for the Bonds, and (iii) paying the costs of issuance of the Bonds.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMAN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

**Section 1. Approval of Execution and Delivery of the Bonds.** The City hereby approves the execution, delivery and sale by the City of the Bonds for the purpose of (a) financing costs of the Project, (b) funding a debt service reserve for the Bonds, and (c) paying the costs of issuance of the Bonds. The Bonds shall be secured as provided in the herein approved Indenture. The Bonds may be issued in one or multiple series, including on a taxable basis, and shall be sold on the terms as provided in the herein approved Private Placement Agreement among the City, the Developer and UMB Bank, N.A., as placement agent (the "Placement Agent"); provided that (1) a series of taxable Bonds may be issued in a principal amount not to exceed \$3,000,000, shall bear interest at various interest rates not to exceed a true interest cost of 4.25% per annum, shall have a final maturity not later than 2031 and shall not be subject to optional redemption prior to maturity, (2) a series of tax-exempt Bonds shall be issued in a principal amount not to exceed \$13,000,000, shall bear interest at various interest rates not to exceed a true interest cost of 5.00% per annum, shall have a final maturity not later than 2039, and shall be subject to optional redemption prior to maturity no later than 2031.

**Section 2. Authorization of Documents.** The City is hereby authorized to enter into the following documents (the "City Documents"), in substantially the forms on file in the office of the City Clerk, with such changes therein as shall be approved by the officers of the City executing such documents, such officers' signatures thereon being conclusive evidence of their approval thereof:

- (a) Trust Indenture (the "Indenture"), between the City and UMB Bank, N.A., as Trustee (the "Trustee"), pursuant to which the Bonds shall be issued;
- (b) Financing Agreement (the "Financing Agreement"), between the City and the District, relating to the transfer of certain moneys to the City and the Trustee for the payment of a portion of the debt service on the Bonds;
- (c) Private Placement Agreement (the "Private Placement Agreement") by and among the City, the Developer and the Placement Agent pursuant to which the City will sell the Bonds to the purchasers specified by the Placement Agent upon the terms and conditions as set forth in the Private Placement Agreement; and



- (d) Tax Compliance Agreement among the City, the Trustee and the District entered into in order to set forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Bonds, to establish and maintain the exclusion of interest on the portion of the Bonds expected to have interest excluded from gross income for federal income tax purposes, and to provide guidance for complying with applicable arbitrage rebate provisions of Code § 148(f) as set forth in the Tax Compliance Agreement.

**Section 3. Preliminary and Final Private Placement Memorandum.** The information related to the City contained in the Preliminary Private Placement Memorandum, in the form filed in the records of the City, is hereby approved, and the information related to the City contained in the final Private Placement Memorandum is hereby authorized and approved by supplementing, amending and completing the Preliminary Private Placement Memorandum, with such changes and additions thereto as are necessary to conform to and describe the transactions related to the Bonds. The use and public distribution of the Private Placement Memorandum by the Placement Agent in connection with the reoffering of the Bonds is hereby authorized. The proper officials of the City are hereby authorized to execute and deliver a certificate pertaining to information related to the City contained in such Private Placement Memorandum as prescribed therein, dated as of the date of payment for and delivery of the Bonds.

**Section 4. Execution of Documents.** The City is hereby authorized to enter into and the Mayor, the City Administrator, the City Clerk and other officials and officers of the City are hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 5. Severability.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be severable. In the event that any such section, paragraph, sentence, clause or phrase 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 the Ordinance are so essential to and inseparably connected with and dependent upon the void portion that it cannot be presumed that the City Council has enacted the valid portions without the void 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 6. Effective Date.** This Ordinance shall take effect and be in full force from and after the date of its passage by the City Council and approval by the Mayor.

*[remainder of page intentionally left blank]*

**PASSED** by the Board of Aldermen, and **APPROVED** by the Mayor, of the City of Smithville, Missouri, this \_\_\_\_ day of \_\_\_\_\_ 2022.

(SEAL)

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

First Reading: 5/3/2022

Second Reading: 5/17/2022

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable)

## Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	Dollar Price
12/01/2022	Serial Coupon	3.150%	3.150%	465,000.00	100.000%	465,000.00
12/01/2023	Serial Coupon	3.350%	3.350%	250,000.00	100.000%	250,000.00
12/01/2024	Serial Coupon	3.500%	3.500%	285,000.00	100.000%	285,000.00
12/01/2025	Serial Coupon	3.650%	3.650%	335,000.00	100.000%	335,000.00
12/01/2026	Serial Coupon	3.800%	3.800%	375,000.00	100.000%	375,000.00
12/01/2027	Serial Coupon	3.950%	3.950%	415,000.00	100.000%	415,000.00
12/01/2028	Serial Coupon	4.100%	4.100%	445,000.00	100.000%	445,000.00
12/01/2029	Serial Coupon	4.250%	4.250%	150,000.00	100.000%	150,000.00
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$2,720,000.00</b>	<b>-</b>	<b>\$2,720,000.00</b>

### Bid Information

Par Amount of Bonds	\$2,720,000.00
Gross Production	\$2,720,000.00
Bid (100.000%)	2,720,000.00
Total Purchase Price	\$2,720,000.00
Bond Year Dollars	\$10,570.67
Average Life	3.886 Years
Average Coupon	3.8943460%
Net Interest Cost (NIC)	3.8943460%
True Interest Cost (TIC)	3.8854864%

## City of Smithville, MO

Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022B (tax-exempt, BQ)

### Pricing Summary

Maturity	Type of Bond	Coupon	Yield	Maturity Value	Price	Dollar Price
12/01/2029	Serial Coupon	3.550%	3.550%	335,000.00	100.000%	335,000.00
12/01/2030	Serial Coupon	3.750%	3.750%	520,000.00	100.000%	520,000.00
12/01/2031	Serial Coupon	3.950%	3.950%	560,000.00	100.000%	560,000.00
12/01/2032	Serial Coupon	4.100%	4.100%	600,000.00	100.000%	600,000.00
12/01/2033	Serial Coupon	4.200%	4.200%	645,000.00	100.000%	645,000.00
12/01/2034	Serial Coupon	4.300%	4.300%	690,000.00	100.000%	690,000.00
12/01/2035	Serial Coupon	4.400%	4.400%	740,000.00	100.000%	740,000.00
12/01/2036	Serial Coupon	4.500%	4.500%	790,000.00	100.000%	790,000.00
12/01/2037	Serial Coupon	4.600%	4.600%	850,000.00	100.000%	850,000.00
12/01/2039	Term 1 Coupon	4.750%	4.750%	4,265,000.00	100.000%	4,265,000.00
<b>Total</b>	-	-	-	<b>\$9,995,000.00</b>	-	<b>\$9,995,000.00</b>

### Bid Information

Par Amount of Bonds	\$9,995,000.00
Gross Production	\$9,995,000.00
Bid (100.000%)	9,995,000.00
Total Purchase Price	\$9,995,000.00
Bond Year Dollars	\$143,280.67
Average Life	14.335 Years
Average Coupon	4.5253801%
Net Interest Cost (NIC)	4.5253801%
True Interest Cost (TIC)	4.5073137%

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
12/01/2022	465,000.00	3.150%	290,750.66	755,750.66
12/01/2023	250,000.00	3.350%	530,510.00	780,510.00
12/01/2024	285,000.00	3.500%	522,135.00	807,135.00
12/01/2025	335,000.00	3.650%	512,160.00	847,160.00
12/01/2026	375,000.00	3.800%	499,932.50	874,932.50
12/01/2027	415,000.00	3.950%	485,682.50	900,682.50
12/01/2028	445,000.00	4.100%	469,290.00	914,290.00
12/01/2029	485,000.00	3.766%	451,045.00	936,045.00
12/01/2030	520,000.00	3.750%	432,777.50	952,777.50
12/01/2031	560,000.00	3.950%	413,277.50	973,277.50
12/01/2032	600,000.00	4.100%	391,157.50	991,157.50
12/01/2033	645,000.00	4.200%	366,557.50	1,011,557.50
12/01/2034	690,000.00	4.300%	339,467.50	1,029,467.50
12/01/2035	740,000.00	4.400%	309,797.50	1,049,797.50
12/01/2036	790,000.00	4.500%	277,237.50	1,067,237.50
12/01/2037	850,000.00	4.600%	241,687.50	1,091,687.50
12/01/2038	905,000.00	4.750%	202,587.50	1,107,587.50
12/01/2039	3,360,000.00	4.750%	159,600.00	3,519,600.00
<b>Total</b>	<b>\$12,715,000.00</b>	<b>-</b>	<b>\$6,895,653.16</b>	<b>\$19,610,653.16</b>

### Yield Statistics

Bond Year Dollars	\$153,851.33
Average Life	12.100 Years
Average Coupon	4.4820237%
Net Interest Cost (NIC)	4.4820237%
True Interest Cost (TIC)	4.4559717%
Bond Yield for Arbitrage Purposes	4.4559717%
All Inclusive Cost (AIC)	4.8350267%

### IRS Form 8038

Net Interest Cost	4.4820237%
Weighted Average Maturity	12.100 Years

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Total Issue Sources And Uses

Dated 05/19/2022 | Delivered 05/19/2022

	Series 2022A (taxable)	Series 2022B (tax-exempt)	Issue Summary
<b>Sources Of Funds</b>			
Par Amount of Bonds	\$2,720,000.00	\$9,995,000.00	\$12,715,000.00
<b>Total Sources</b>	<b>\$2,720,000.00</b>	<b>\$9,995,000.00</b>	<b>\$12,715,000.00</b>
<b>Uses Of Funds</b>			
Costs of Issuance	90,092.65	331,057.35	421,150.00
Deposit to Debt Service Reserve Fund (DSRF)	236,935.75	870,651.75	1,107,587.50
Deposit to Project Construction Fund	2,390,975.00	8,792,000.00	11,182,975.00
Rounding Amount	1,996.60	1,290.90	3,287.50
<b>Total Uses</b>	<b>\$2,720,000.00</b>	<b>\$9,995,000.00</b>	<b>\$12,715,000.00</b>

## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Detail Costs Of Issuance

Dated 05/19/2022 | Delivered 05/19/2022

### COSTS OF ISSUANCE DETAIL

Financial Advisor	\$63,575.00
Bond Counsel	\$95,000.00
Underwriter's Counsel	\$30,000.00
Trustee & Counsel Fees	\$3,000.00
Trustee Origination	\$2,500.00
DTC	\$800.00
CUSIP	\$550.00
Placement Agent fee	\$190,725.00
Developer Counsel Fees	\$20,000.00
Revenue Study Consultant	\$15,000.00
<b>TOTAL</b>	<b>\$421,150.00</b>



## City of Smithville, MO

Tax Increment Revenue Bonds

(Smithville Commons Project)

Series 2022A (taxable) and Series 2022B (tax-exempt, BQ)

## Coverage Ratio

Date	Total Revenues	Total D/S	Coverage
12/01/2022	1,051,952.00	757,001.33	1.3896303x
12/01/2023	1,092,293.00	782,855.00	1.3952686x
12/01/2024	1,127,048.00	809,480.00	1.3923111x
12/01/2025	1,187,072.00	849,505.00	1.3973691x
12/01/2026	1,223,397.00	877,277.50	1.3945382x
12/01/2027	1,260,167.00	903,027.50	1.3954913x
12/01/2028	1,280,799.00	916,635.00	1.3972835x
12/01/2029	1,308,768.00	938,390.00	1.3946952x
12/01/2030	1,330,234.00	952,777.50	1.3961644x
12/01/2031	1,359,260.00	973,277.50	1.3965801x
12/01/2032	1,381,594.00	991,157.50	1.3939197x
12/01/2033	1,411,719.00	1,011,557.50	1.3955895x
12/01/2034	1,434,955.00	1,029,467.50	1.3938808x
12/01/2035	1,466,220.00	1,049,797.50	1.3966694x
12/01/2036	1,490,395.00	1,067,237.50	1.3964980x
12/01/2037	1,522,845.00	1,091,687.50	1.3949459x
12/01/2038	1,547,996.00	1,107,587.50	1.3976286x
12/01/2039	3,796,851.00	3,519,600.00	1.0787734x
12/01/2040	1,260,155.00	-	-
<b>Total</b>	<b>\$27,533,720.00</b>	<b>\$19,628,318.83</b>	<b>-</b>

# SMITHVILLE COMMONS PROJECT BOND REVENUE STUDY

Prepared for:  
City of Smithville, MO

April 25, 2022

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**PCAV**PLANNERS  
ST. LOUIS, MISSOURI

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## SECTION 1 - INTRODUCTION

### NATURE OF THE ASSIGNMENT AND PURPOSE OF THE REPORT

On August 1, 2017, the City of Smithville, Missouri (the "City") adopted Ordinance number 2969-17 approving the Smithville Commons Tax Increment Financing Redevelopment Plan ("the Original Plan"), establishing the Smithville Commons Redevelopment Area (the "Redevelopment Area" or "Area"). On November 21, 2017, the City approved Ordinance No. 2986-17, the First Amendment to the Smithville Commons Tax Increment Financing Redevelopment Plan (the First Amendment together with the Original Plan, hereinafter referred to as "the Plan"). This study addresses the Smithville Commons retail development project (the "Redevelopment Project" or "Project") under development within the Area. The map below shows the boundary of the Redevelopment Area.

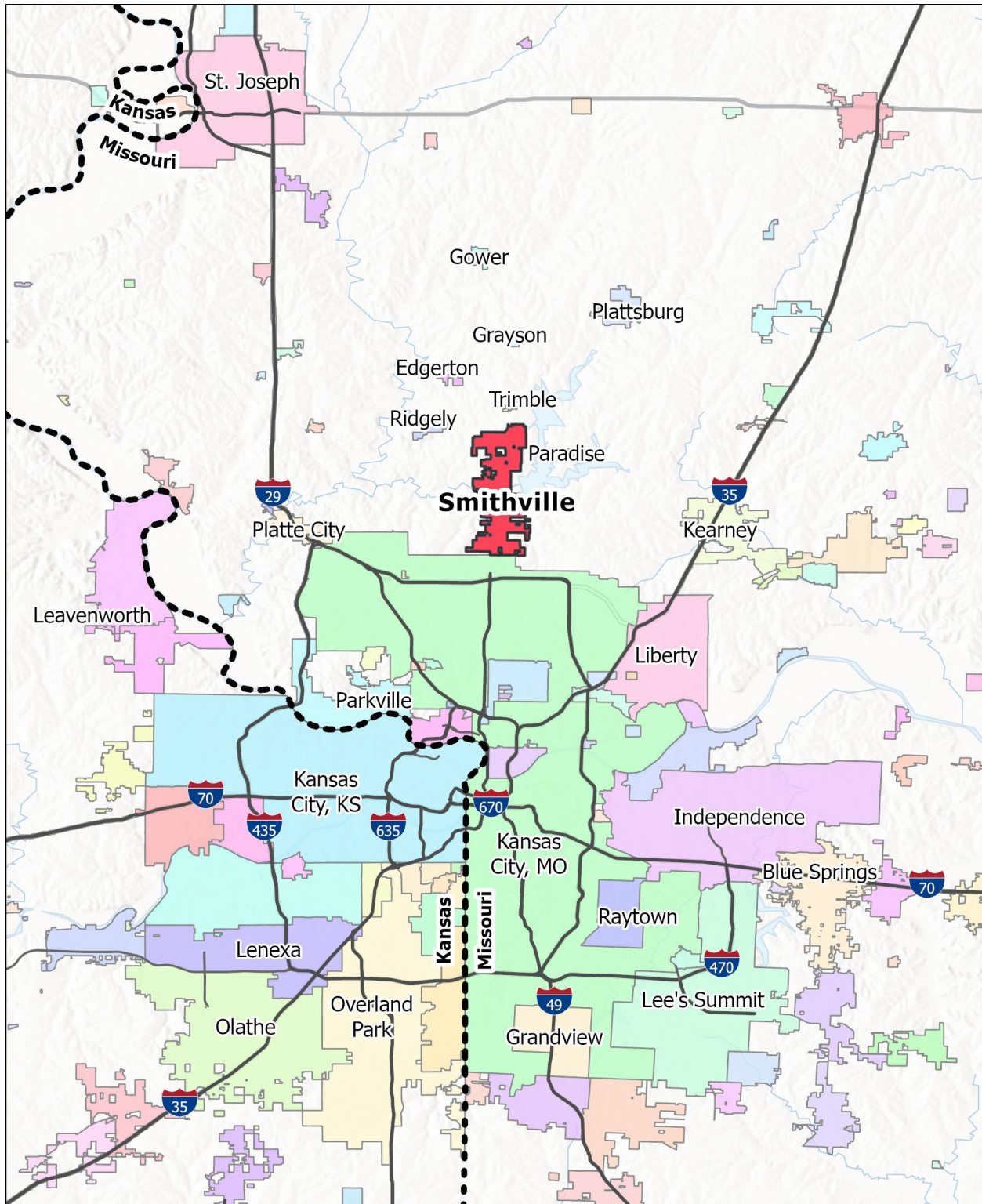
Figure 1 – Smithville Commons Redevelopment Area



PGAV Planners, LLC ("PGAV") has developed an independent analysis of the taxable sales, sales tax revenue generation, and property tax revenue generation potential of economic activity within the Area. The revenues will be used to make payments on bonds (the "Bonds").

PGAV, headquartered in St. Louis, Missouri, is a nationally recognized firm with expertise in the preparation of bond feasibility studies. PGAV has performed analyses of historic trends and projections of real property taxes, sales taxes and taxes associated with various types of tax increment financing districts and other special taxing districts in support of bond financings and refundings. Recent locations where PGAV has been involved with financial feasibility analyses include St. Louis, Missouri; Columbus, Ohio; Chicago, Illinois; Bristol, Virginia; New Orleans, Louisiana; and Fountain, Colorado. PGAV has personnel who are members of the National Federation of Municipal Analysts ("NFMA"). PGAV Planners is a member of the Council of Development Finance Agencies ("CDFA").





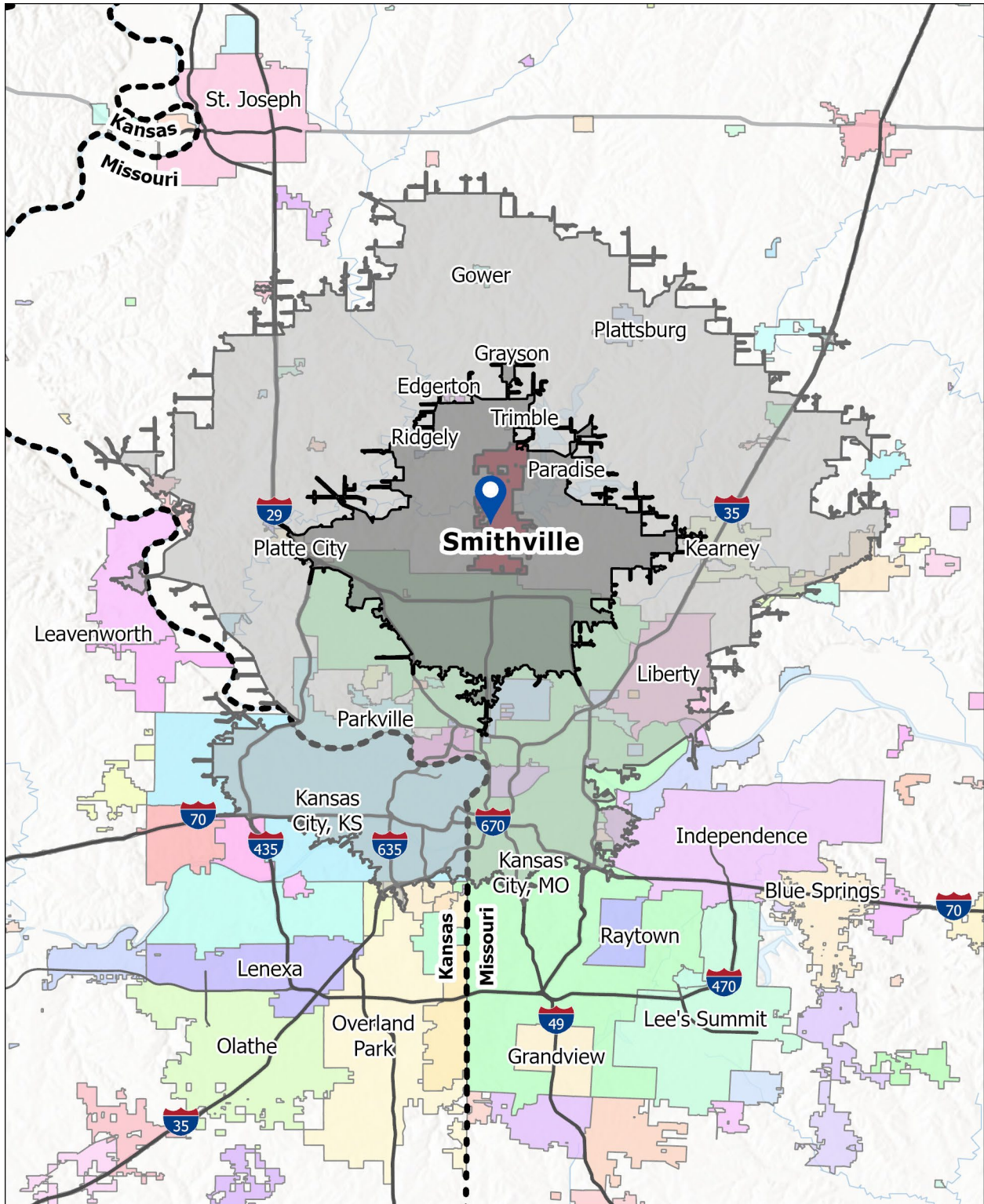
## Regional Location Overview

Smithville Commons  
Smithville, Missouri



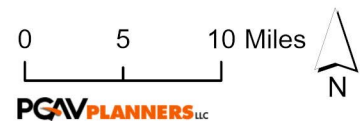
## TRADE AREA OVERVIEW

Two trade areas are defined as drivetime buffers based on visitor data which is further discussed later in this report. The Primary Trade Area ("PTA") is defined as the area within a fifteen-minute drive of the Project. The PTA primarily encompasses Smithville, Ridgely, Edgerton, Grayson, Trimble, Paradise, Platte City, and portions of northern Kansas City, MO. The Secondary Trade Area ("STA") is defined as the area within a thirty-minute drive of the Area. The Project's connectivity to major transportation corridors by way of its proximity to Interstate 435 results in a relatively large STA. The STA extends south of the Missouri River into downtown Kansas City, Missouri and Kansas, Wyandotte, KS, Independence, MO, beyond Kearney, MO to the east, beyond Gower, MO to the north, and as far west as Leavenworth, KS. Due to Smithville's location at the northern edge of the metro's urbanized area, nearer to more rural suburbs, it is likely that the Project will attract more of its STA customers from areas within the STA located north of the Missouri River. These trade areas are shown on the map on the following page.



## Trade Area Overview

Smithville Commons  
Smithville, Missouri





## SECTION 2 - DEMOGRAPHICS ANALYSIS

### POPULATION AND HOUSEHOLDS

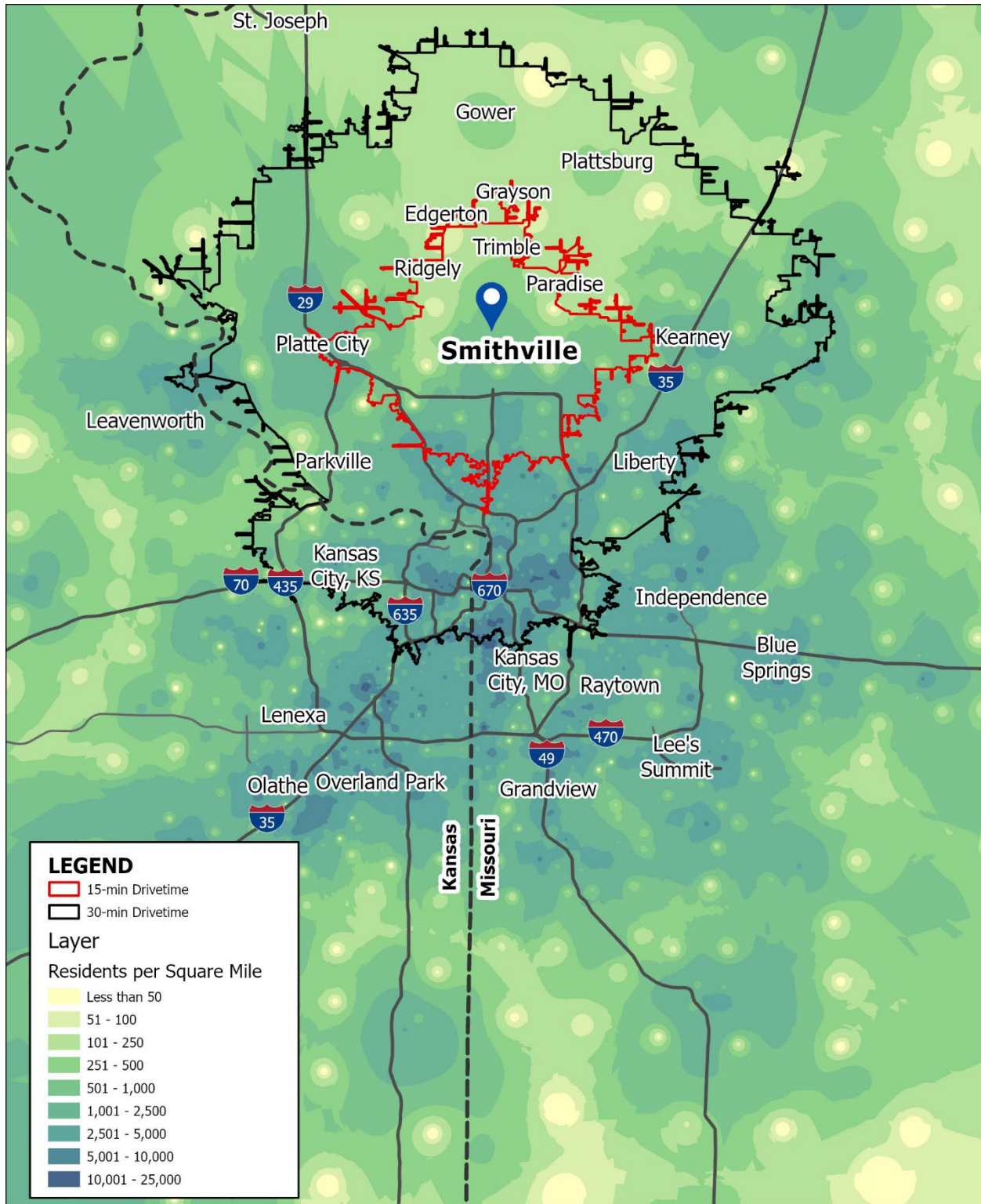
Approximately 35 percent of Missouri's population lives in the Kansas City, MO-KS MSA. In 2021, the MSA was home to more than 2 million residents and had grown in population by 20 percent since 2000. Clay County is home to approximately 12 percent of the MSA's population and has grown at an annualized rate 1.8 percent since 2000, faster than growth in the MSA (1.1%) and Missouri (0.6%) during the same period. In 2021, Smithville was home to 10,299 residents and has grown in population at an annualized rate of 3.3 percent since 2000; nearly doubling in population and growing faster than the county, MSA, and the State. Smithville's population is projected to grow at an annualized rate 1.5 percent through 2026, faster than the projected growth in the Kansas City MSA, when the city's population is estimated to reach 11,113 residents.

In 2021, there were an estimated 80,788 residents living in the PTA. The PTA has grown at annualized rate 3.2 percent since 2000, nearly doubling its population from 2000. The PTA's population is estimated to grow at a rate of 1.6 percent, faster than all geographies study for the analysis, through 2026 when the PTA's population is estimated to reach 87,319 residents. Based on the PTA's current average household size of 2.58 and projected population growth, new residents are expected to create demand for 2,561 new housing units within a 15-minute drive time of the Project. While most of the metropolitan area's existing population lives inside of the I-435 and I-470 rings, outer ring cities have experienced the greatest growth in population in recent years. It is estimated that this trend will continue through 2026, with the Northlands projected to continue growing in population while areas in the urban core projected to decline. The table below and maps on the following pages show population trends within the PTA and STA.

Table 1 – Population and Households

<b>Population</b>						
	<b>Primary Market Area 15-minute Drive Time Area</b>	<b>Secondary Market Area 30-minute Drive Time Area</b>	<b>City of Smithville</b>	<b>Clay County</b>	<b>Kansas City, MO-KS MSA</b>	<b>State of Missouri</b>
<b>Population Totals</b>						
2000 Population	46,164	526,939	5,757	184,006	1,811,254	5,595,211
2010 Population	67,219	565,419	8,434	221,939	2,009,342	5,988,927
2021 Population	80,788	629,973	10,299	252,741	2,188,599	6,249,983
2026 Population (Est.)	87,319	662,656	11,113	267,621	2,281,512	6,382,827
<b>Population Change</b>						
Annual Pop Growth Rate 2000 - 2021	3.2%	1.0%	3.3%	1.8%	1.1%	0.6%
Annual Pop Growth Rate (Est.) 2021 - 2026	1.6%	1.0%	1.5%	1.2%	0.8%	0.4%
<b>Household Size</b>						
2020 Household Size	2.55	2.46	2.68	2.50	2.50	2.43
Households with Children	37%	33%	38%	35%	34%	31%
<b>Housing Units Needed</b>						
Est. Additional Residents by 2025	6,531	32,683	814	14,880	92,913	132,844
Housing Units Needed	2,561	13,286	304	5,952	37,165	54,668

Source: U.S. Census, ESRI (2021)



## 2021 Population Density

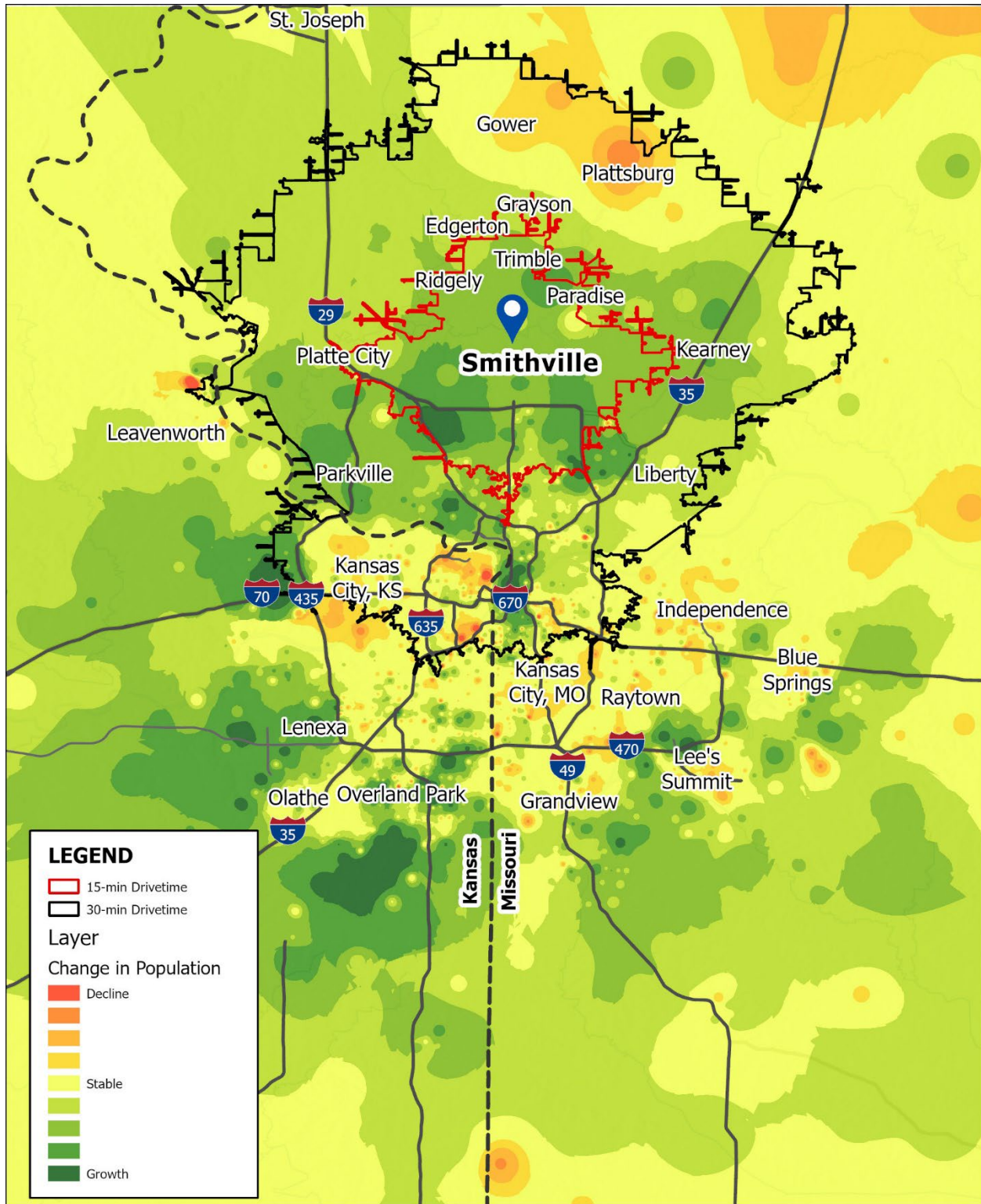
Smithville Commons  
Smithville, Missouri

0 4.95 9.9 Miles

PGAV PLANNERS<sup>uc</sup>





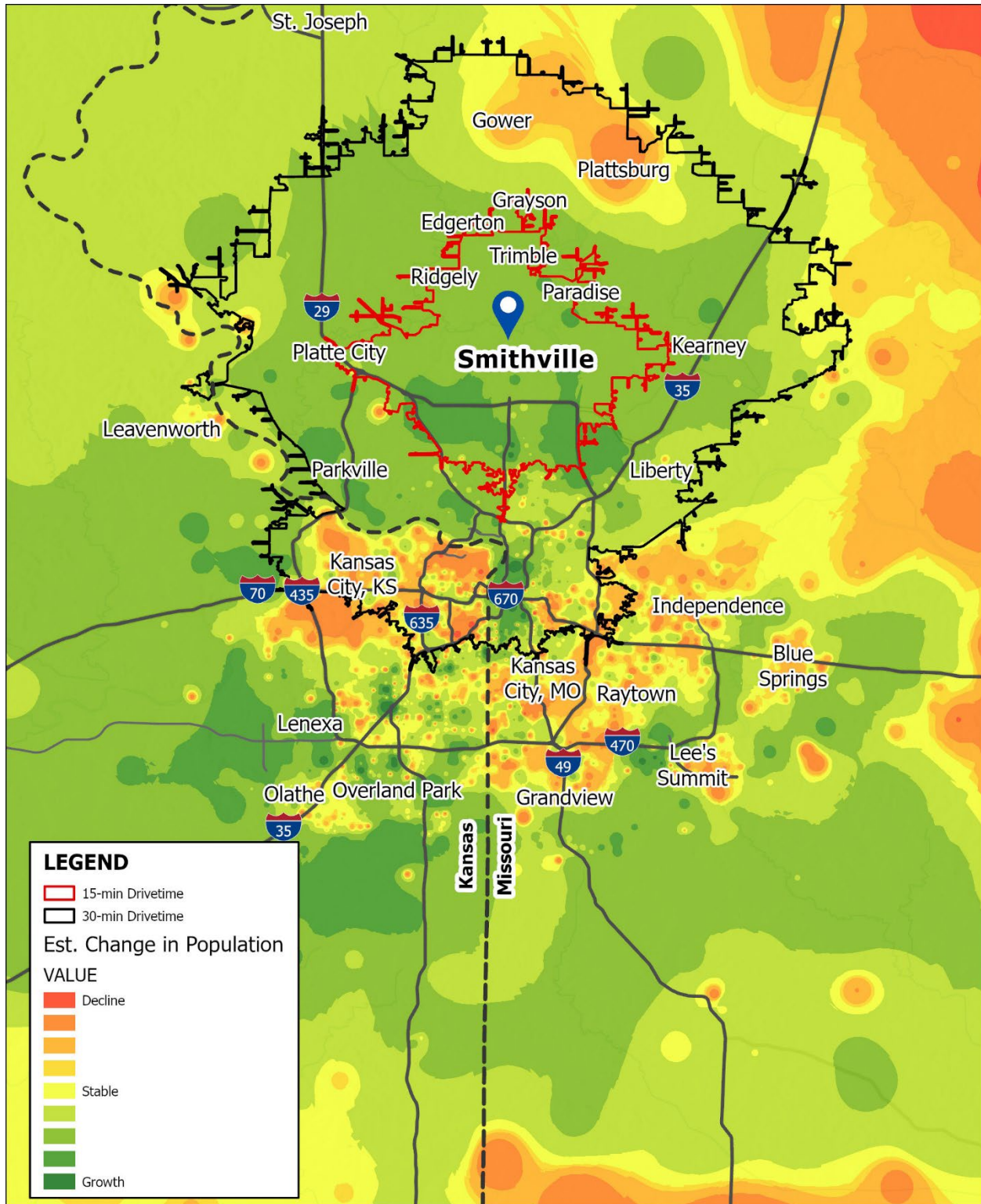


## Change in Population 2010 - 2021

Smithville Commons  
Smithville, Missouri

0 5 10 Miles  
PGAV PLANNERS<sup>uc</sup>





## Projected Change in Population 2021 - 2026

Smithville Commons  
Smithville, Missouri

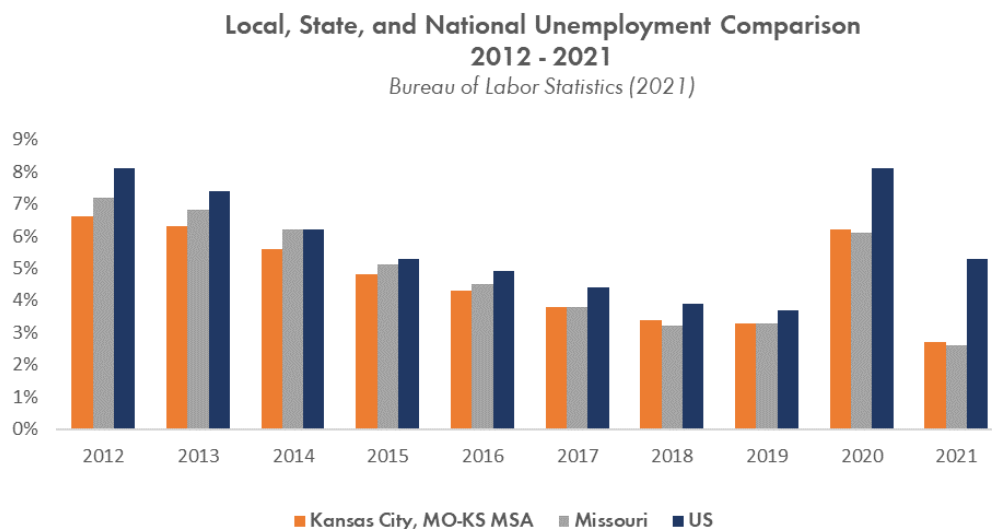
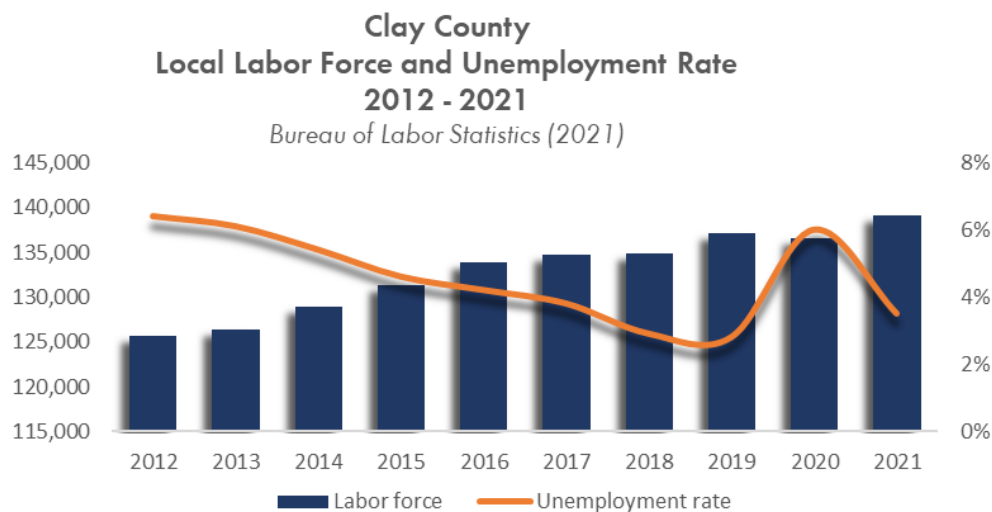
0 5 10 Miles  
PGAV PLANNERS<sup>uc</sup>

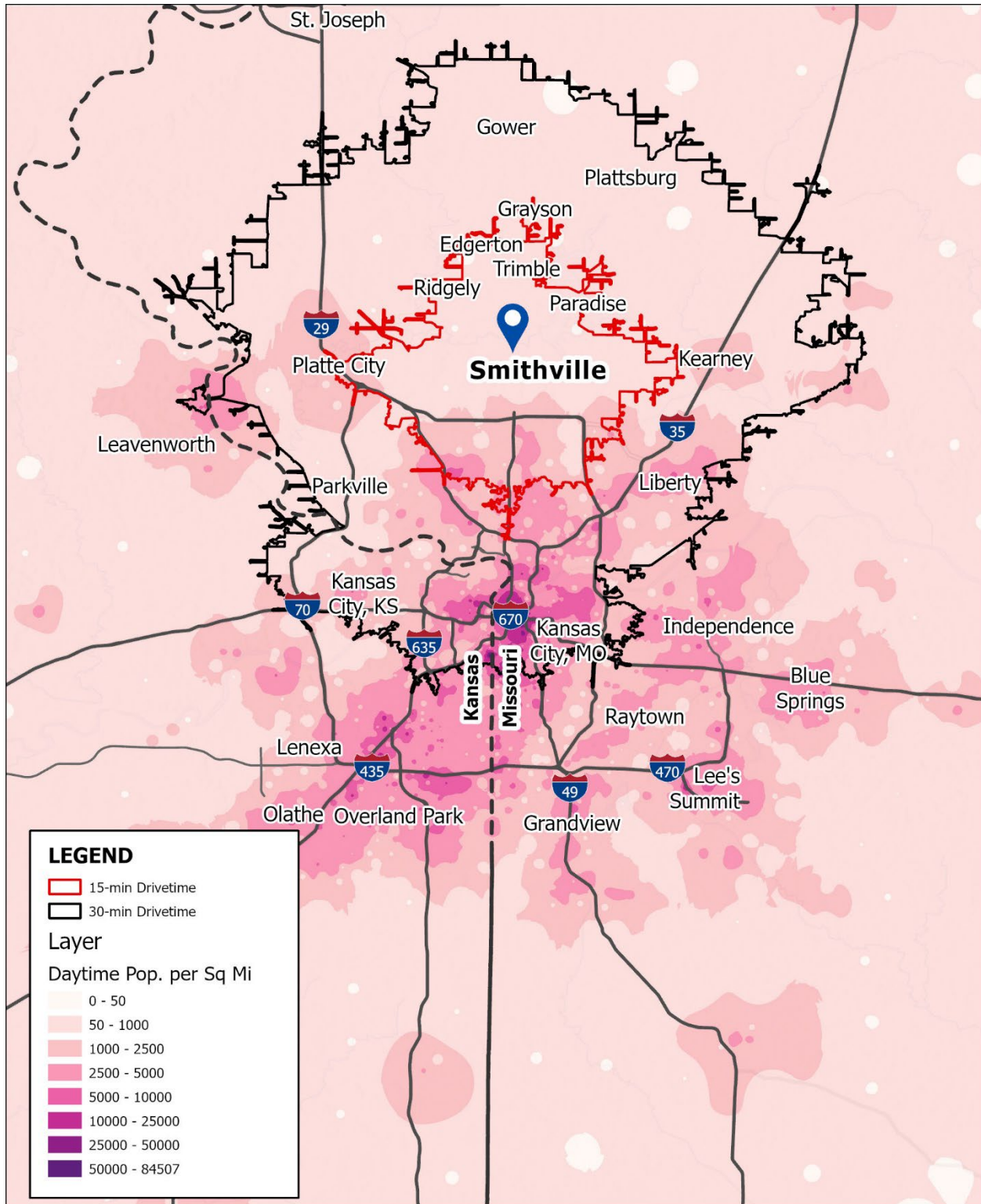




## EMPLOYMENT

The Kansas City, MO-KS MSA has a diverse economy anchored by government, services (education, health, leisure/hospitality, professional), retail trade, manufacturing, and transportation/warehousing/logistics sectors. Ford Motor Co., Honeywell, Hallmark Cards, and North Kansas City-based Cerner Corporation (Fortune 500) are among the region's largest employers. Over the past ten years, unemployment in Missouri and the Kansas City, MO-KS MSA has been lower than the national average, even during 2020 and 2021 when effects from the Covid-19 pandemic increased unemployment nationwide. The labor force in the MSA has grown since by 9.1 percent since 2012, and unemployment has declined from a high of 6.6 percent in 2012 to 2.9 percent in 2021. Unemployment in the MSA had doubled to 6.1 percent from 2019 to 2020, which is consistent with nationwide increases in unemployment associated with the Covid-19 pandemic. In 2021, unemployment in the MSA returned to the pre-COVID low of 2.9 percent. The map on the following page provides an overview of daytime population density, which identifies major employment concentrations within the Kansas City metro area.





## 2021 Daytime Population Density

Smithville Commons  
Smithville, Missouri

0 5 10 Miles

PGAV PLANNERS<sub>UC</sub>



## INCOME

Smithville's median household income of \$74,878 is higher than the median household income in Clay County and the Kansas City MSA. Median household income in Smithville is estimated to grow at an annualized rate of 2 percent through 2026, when median household income is estimated to reach \$82,621. The PTA's median household income of \$82,071 is highest among all geographies studied for this analysis and is estimated to grow at an annualized rate of 2.2 percent through 2026 when median household income is estimated to reach \$90,714. Estimated annualized growth in median household income, an average of 2.1 percent, compares favorably across all geographies studied for this analysis. A comparison of household and per capita income is shown in the table below.

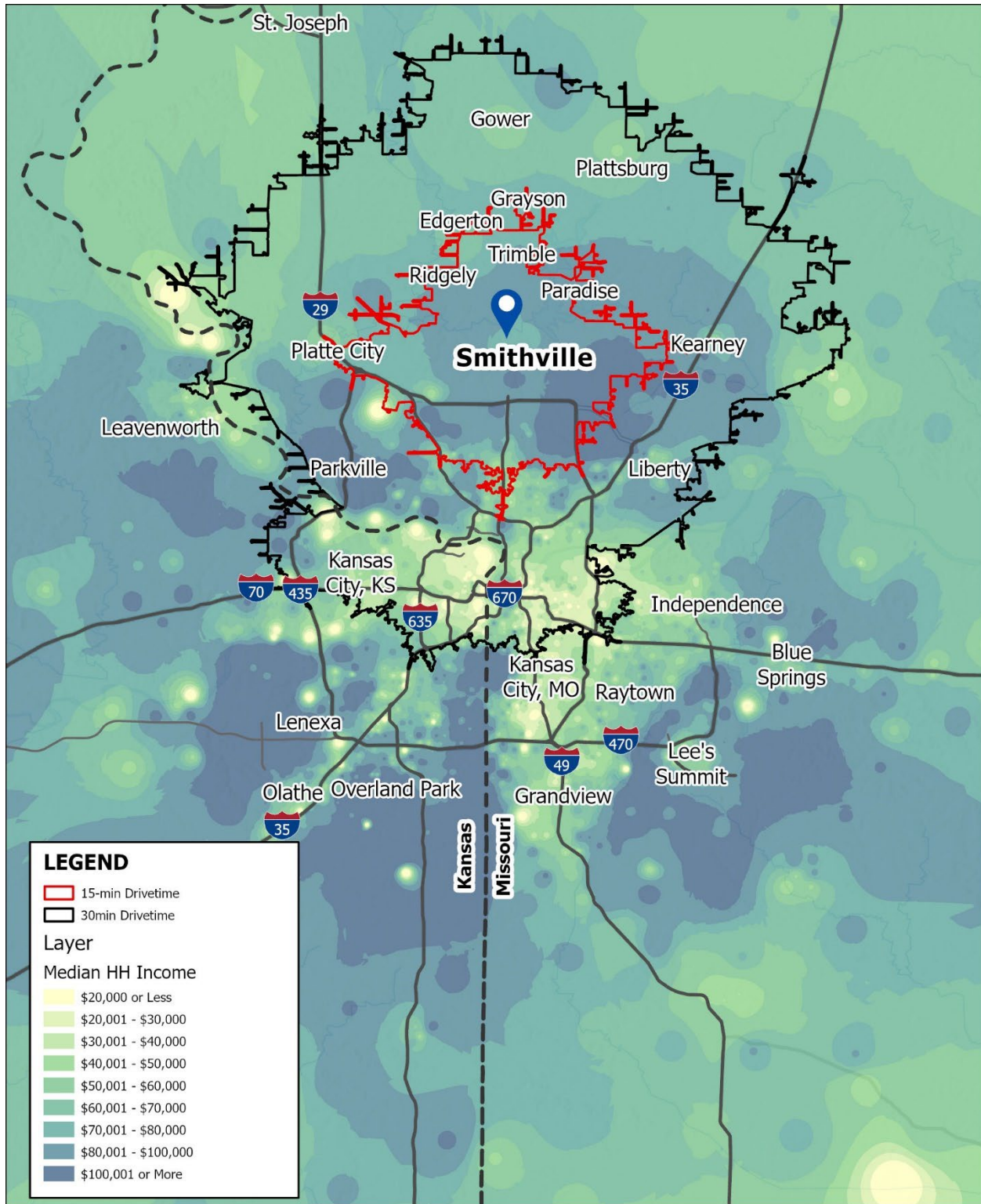
Table 2 – Household Income

Household Income	Primary Market Area 15-minute Drive Time Area	Secondary Market Area 30-minute Drive Time Area	City of Smithville	Clay County	Kansas City, MO-KS MSA	State of Missouri
<i>Income by Range</i>						
Less than \$25,000	9%	21%	13%	12%	16%	21%
\$25,000 to \$49,999	19%	24%	20%	23%	19%	23%
\$50,000 to \$74,999	17%	18%	18%	19%	18%	19%
\$75,000 to \$99,999	14%	12%	14%	14%	15%	13%
\$100,000 to \$149,999	25%	16%	23%	20%	18%	14%
\$150,000 or more	16%	10%	13%	12%	15%	11%
<i>Median Household Income</i>						
2021 Per Capita Income	\$38,139	\$30,635	\$32,565	\$33,854	\$36,452	\$31,398
2021 Median Household Income	\$82,071	\$56,382	\$74,878	\$68,149	\$70,082	\$56,668
<i>Household Income Trends</i>						
2026 Median Household Income (Est.)	\$90,714	\$62,755	\$82,621	\$76,083	\$77,639	\$62,175
2010 - 2026 Estimated Annual Increase	2.0%	2.2%	2.0%	2.2%	2.1%	1.9%

Source: U.S. Census, ESRI (2021)

The map on the following page shows median household income within the PTA and STA. The highest concentrations of the MSA's high income households are primarily located outside to the I-435 and I-470 rings, in the Northlands between the Missouri River and I-435, and along the I-35 corridor.





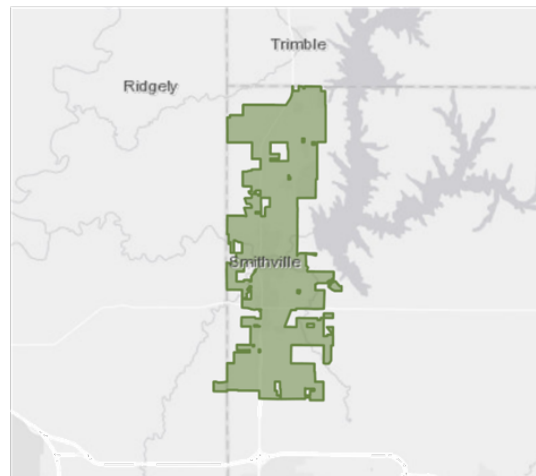
## 2021 Median Household Income

Smithville Commons  
Smithville, Missouri





## AREA OVERVIEW

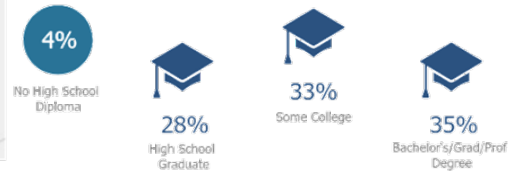


## POPULATION TRENDS AND KEY INDICATORS

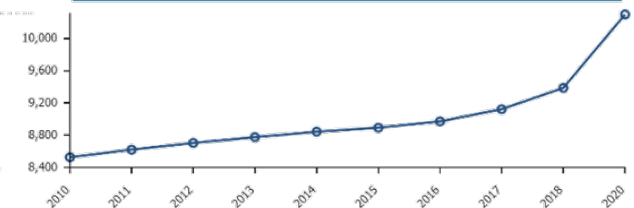
Smithville City, MO

<b>10,299</b>	<b>3,811</b>	<b>2.68</b>	<b>\$243,304</b>	<b>\$12,334</b>	<b>\$630</b>	<b>109</b>	<b>194</b>	<b>17</b>
Population	Households	Avg Size Household	Median Home Value	Average Spent on Mortgage & Basics	Median Contract Rent	Wealth Index	Housing Affordability	Diversity Index

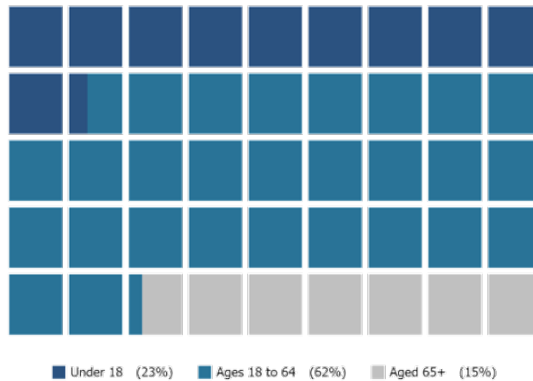
## EDUCATION



## Historical Trends: Population



## POPULATION BY AGE



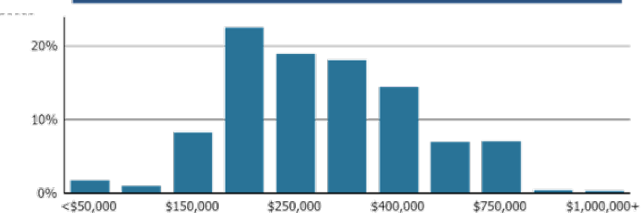
## BUSINESS



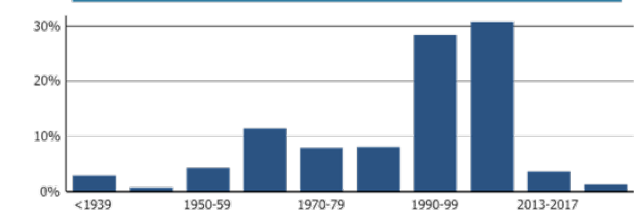
## INCOME



## Home Value



## Housing: Year Built

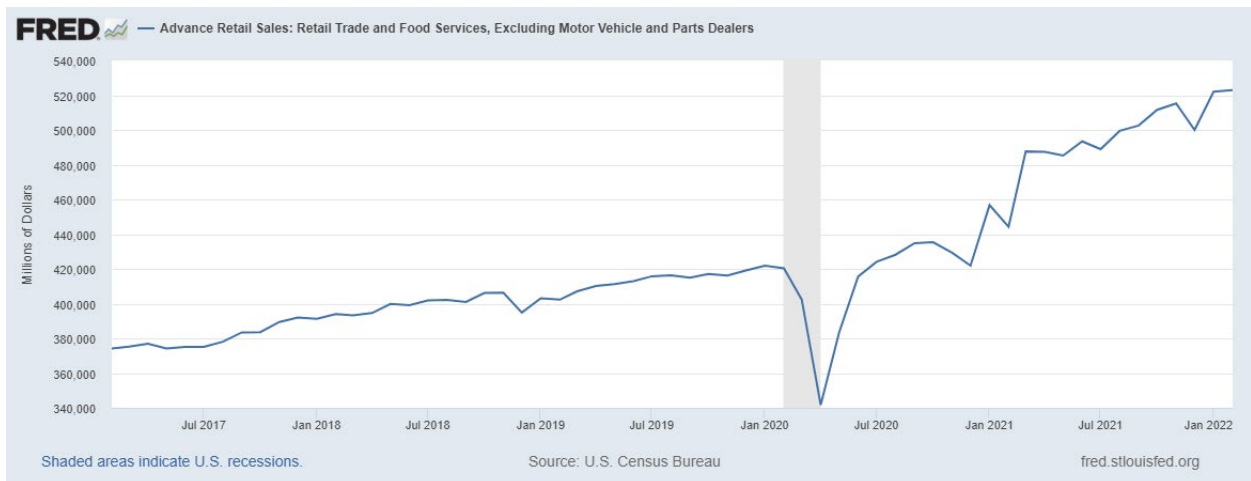


## NATIONAL ECONOMIC OUTLOOK

The Bureau of Economic Analysis' February 24, 2022 estimate of Gross Domestic Product ("GDP") stated that, in the fourth quarter of 2021, real GDP increased 7% compared to the same quarter in the prior year. This acceleration was led by an increase in exports and accelerations in inventory investment and customer spending.<sup>1</sup> A survey of forecasters by the Federal Reserve Bank of Philadelphia predicts real GDP will increase 3.9% in the first quarter of 2022.<sup>2</sup>

Figure 1, below, shows monthly nationwide retail sales (seasonally adjusted and excluding vehicles and parts dealers' sales). The source information for this figure is the U.S. Department of Commerce and the Census Bureau's monthly "Advance Monthly Sales for Retail and Food Services" release.<sup>3</sup>

*Figure 1 - Nationwide Retail Sales and Food Services Excluding Motor Vehicles and Parts Dealers*



<sup>1</sup>Bureau of Economic Analysis, "National Income and Product Accounts Gross Domestic Product"; <http://www.bea.gov/newsreleases/national/gdp/gdpnewsrelease.htm>

<sup>2</sup>Federal Reserve Bank of Philadelphia: Survey of Professional Forecasters

<sup>3</sup>The advance estimates are based on a subsample of the Census Bureau's full retail and food services sample. A stratified random sampling method is used to select approximately 5,000 retail and food services firms whose sales are then weighted and benchmarked to represent the complete universe of over three million retail and food services firms. Responding firms account for approximately 65% of the dollar volume estimate. For an explanation of the measures of sampling variability included in this report, please see: [http://www.census.gov/retail/marts/how\\_surveys\\_are\\_collected.html](http://www.census.gov/retail/marts/how_surveys_are_collected.html)

## SECTION 3 – REVENUE PROJECTIONS

### OVERVIEW OF AVAILABLE REVENUE SOURCES

There are three sources of revenue available to support the repayment of the Bonds. These sources of revenue are described in the Redevelopment Agreement entered into by and between the City and Development Associates Smithville, LLC (the “Developer”). These sources of revenue are as follows:

1. Payments In Lieu Of Taxes (“PILOTs”), as defined by the TIF Act, are one hundred percent (100%) of the incremental real property taxes generated within the Area (excluding certain taxes not captured by TIF). The change in assessed valuation is determined by subtracting a certified base assessed valuation for the Area from the equalized assessed valuation for the Area for current and future tax years. The incremental revenue is determined by multiplying the change in assessed valuation by the applicable tax levy, divided by one hundred. These revenues are deposited into the PILOTs Account of the Special Allocation Fund maintained by the County.
2. Economic Activity Taxes (“EATs”), as defined by the TIF Act, are the total additional revenue from taxes which are imposed by a municipality and other taxing districts (including the Smithville Commons Community Improvement Development District (the “District”) and excluding certain taxes not captured by TIF), and which are generated by economic activities within the Area over the amount of such taxes generated by economic activities within such Area in the calendar year prior to the adoption of the ordinance designating the Area, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments. The TIF Act definition of EATs also includes utility taxes; however, the Developer has waived all rights to any utility tax revenues and no utility tax revenues will be available for repayment of the Bonds.
3. Community Improvement District Sales Tax Revenues (“CID Sales Tax”) means an additional one-cent (1%) sales tax imposed on retail sales within Area. During the tax increment finance term, which is to say through October 2, 2040, half of CID Sales Tax revenues will be captured as EATs.

## BASIS OF REVENUE GENERATION – THE REDEVELOPMENT PROJECT

The Area's basis of revenue generation is the development of a retail shopping center anchored by a Price Chopper and also including a Domino's Pizza, Taco Bell, Burger King, Scooter's Coffee, Porter's Ace Hardware, and an additional retail space of approximately 7,800 square feet in size which is yet to be leased. Table 3, below, shows estimated sales associated with the existing and planned retail businesses within Smithville Commons. A more detailed analysis of trends and estimated performance of the Price Chopper store is provided in the following section of this report.

Table 3 – Smithville Commons Taxable Sales Estimates

Project Component	Status	Size	Units	Estimated Sales per Unit	2021	2022	2023	2024	2025	2026	2027
Price Chopper	Opened October 2020	61,613	Sq.Ft.	\$ 467	\$ 28,800,000	\$ 29,664,000	\$ 30,553,920	\$ 31,470,538	\$ 32,414,654	\$ 33,387,093	\$ 34,388,706
Porter's Ace Hardware	Opened October 2020	14,498	Sq.Ft.	\$ 155	\$ 2,250,000	\$ 2,317,500	\$ 2,387,025	\$ 2,458,636	\$ 2,532,395	\$ 2,608,367	\$ 2,686,618
Scooter's Coffeehouse	Opened July 2019	495	Sq.Ft.	\$ 1,414	\$ 700,000	\$ 721,000	\$ 742,630	\$ 764,909	\$ 787,856	\$ 811,492	\$ 835,837
Taco Bell	Opened December 2019	2,045	Sq.Ft.	\$ 645	\$ 1,320,000	\$ 1,320,000	\$ 1,359,600	\$ 1,400,388	\$ 1,442,400	\$ 1,485,672	\$ 1,530,242
Burger King	Opened December 2021	3,000	Sq.Ft.	\$ 33	\$ 100,000	\$ 1,120,000	\$ 1,153,600	\$ 1,188,208	\$ 1,223,854	\$ 1,260,570	\$ 1,298,387
Domino's Pizza	Opened Summer 2021	1,200	Sq.Ft.	\$ 442	\$ 530,000	\$ 1,060,000	\$ 1,091,800	\$ 1,124,554	\$ 1,158,291	\$ 1,193,039	\$ 1,228,831
Retail	In Lease Up	7,800	Sq.Ft.	\$ 350		\$ 390,000	\$ 780,000	\$ 1,170,000	\$ 2,340,000	\$ 2,730,000	\$ 2,811,900
Totals					\$ 33,700,000	\$ 36,592,500	\$ 38,068,575	\$ 39,577,232	\$ 41,899,449	\$ 43,476,233	\$ 44,780,520

### Price Chopper

Price Chopper is a Kansas City area-based, family-owned grocery chain. Founded as a single fruit stand in 1948, the chain now operates fifty-two (52) stores throughout the Kansas City metro area and has become regarded among the best regional community grocers in the U.S. In 2020, a new Price Chopper located within the District.

### Principal Competitors

There are currently nine Price Chopper stores operating within the STA. The nearest store to the Smithville location in Platte City, a 15- to 20-minute drive west. Price Chopper operates large-format grocery stores ranging from approximately 50,000 square feet to 80,000 square feet. Competitors in the Northlands area include: Walmart, Aldi, Hy-Vee, and Sprouts Farmer's Market. Walmart and Aldi may be considered Price Chopper's principal competitors in terms of product lines and "low-cost" price structures for broad consumer appeal. Whereas, Hy-Vee and Sprouts Farmers Market specialize in natural and organic foods in the *Specialty Food Stores* (NAICS 72223) market.

### Market Potential and Absorption

PGAV analyzed consumer spending, retail demand, and visitation data to estimate the market potential and absorption for Price Chopper.

The Spending Potential Index (SPI) is a measure of consumer spending patterns and represents household spending on products and services relative to a national average of 100. As an example, an SPI of 120 means that households within the trade area spend 20 percent more than the average U.S. household in that category. This index is helpful for understanding retail potential in that it identifies the types of retail and service categories

in which consumers within each trade area tend to spend more money, and those categories in which new businesses may be supported by these spending patterns. In 2021, households in the PTA had an SPI of 104. This indicates that households in the PTA were 4 percent more likely than the average U.S. household to spend money on food at home (groceries), spending \$5,686 on average per household.

The PTA's the *Food Services & Drinking Places* (NAICS 722) industry, which includes traditional grocery stores, has a retail leakage/surplus factor of 16.6. This represents a condition where demand exceeds supply, indicating that some retail potential within the PTA is lost to outside areas, and that retailers may be better suited for retailers to capture more local demand. The PTA's retail gap totals \$33.1 million or \$1,051 per household of additional spending that may be captured by establishments in the *Food Services & Drinking Places* industry. The *Food Services & Drinking Places* (NAICS 722) industry accounts for approximately 10 percent of retail demand within the PTA, with an additional \$3.3 million in total or \$105 per household in retail spending may be captured by grocery stores in the PTA.

A review of visitor demographics for three Price Chopper locations in the Northland area (Platte City, Parkville, and Liberty) reveals that the typical Price Chopper customer has an average household income ranging from \$86,400 to \$116,000, or \$97,933 on average. Applying these customer demographics to households within the PTA, it is estimated that 39 percent of households (12,279 households) within the PTA may be potential Price Chopper customers.

Based upon these consumer spending, retail demand, visitation trends, it is estimated that Price Choppers' potential customer households may spend approximately \$5,791, on average, for food at home (groceries). This equates to a total spending potential of \$71.1 million which may be captured by grocery stores in the PTA. PGAV estimates that, on average Price Chopper may capture approximately 44 percent (\$31 million) of consumer spending on food at home.

#### Estimated Annual Sales

Based on a study of economic and demographic data, as well as PGAV's institutional knowledge of grocery store financial performance in the region, PGAV conservatively estimates that this Price Chopper location will reach stabilization in 2022 and may generate \$467 PSF on an annual basis over the remaining life of the District. This estimate is substantially consistent with current with Price Chopper's current performance and anticipated stabilization of retail sales. Table 3, on the previous page, provides a summary of estimated taxable sales for Price Chopper.

## TERM OF TIF, REDEVELOPMENT PLAN, AND TIMING OF REVENUE FLOWS

The capture of incremental tax revenues is authorized for a period of twenty-three years from the date of the ordinance approving the Redevelopment Project and adopting tax increment financing therein. Revenues available for the repayment of the Bonds may be generated during the period of October 3, 2017 to October 2, 2040.

A lag occurs between the time that sales tax revenues are generated and the time they are collected, distributed, and deposited to the Special Allocation Fund. It is anticipated that this time lag is approximately three months for sales tax revenues. The amount of sales tax revenues available at any given time also depends on when retailers pay sales taxes (i.e., whether on a monthly, quarterly, or annual basis). The retail tenants at Smithville Commons are expected to pay their sales taxes monthly.

Real estate taxes are due by December 31 each year, so revenues from PILOTS are collected by the County between November of the tax year through January of the following year and are then distributed to the County for deposit to the Special Allocation Fund. The aggregate equalized assessed value of the Redevelopment Area, as measured on a parcel-by-parcel basis, must exceed the base equalized assessed value in order to generate incremental real property tax revenue.

Projections of future revenues are based on a series of assumptions developed from existing available information. These assumptions are described in the balance of this section and **Section 3** and applied to the revenue tables herein. These tables provide assumptions and calculations used to generate the projections of revenues available for repayment of the Bonds.

## REAL PROPERTY TAX REVENUES (PILOTS)

To calculate incremental real property tax revenues, the base value of the existing property is subtracted from the value generated by new development. More specifically, the TIF Act stipulates that the initial equalized assessed valuation (base EAV) be determined and:

*(1) That portion of taxes levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid by the county collector to the respective affected taxing district in the manner required by law in the absence of the adoption of tax increment financing. (R.S. Mo. 99.845(1))*

Once the base EAV is determined by the County Assessor, any property taxes generated from an increase in the EAV (payment in lieu of taxes or "PILOTS") is used to pay redevelopment costs, determined by:

*(2) Payments in lieu of taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area selected for the redevelopment project over and above the initial equalized assessed value of each such unit of property in the area selected for the redevelopment project shall be allocated to and, when collected, shall be paid into a special fund called the "Special Allocation Fund" of the municipality for the purpose of paying redevelopment costs and obligations incurred in the payment thereof...(R.S. Mo. 99.845(2)(a))*

## BASE EQUALIZED ASSESSED VALUATION

The initial assessed valuation for the Area has been certified by the County Assessor to be \$52,430. A copy of the certification is included in the Appendix.

## REAL PROPERTY TAX RATE

The real property tax levies of the various taxing districts that comprise the real property tax rate are detailed in **Table 4 – 2021 Property Tax Rate Information**. The State of Missouri Blind Pension Fund Tax and the Merchant's and Manufacturer's Replacement Tax, also known as the Commercial Surcharge, are not subject to capture by TIF per the TIF Act.

*Table 4 – 2021 Property Tax Rate Information*

### 2021 Real Property Tax Rates per \$100 <sup>1</sup>

Smithville Commons Redevelopment Area  
Smithville, MO

Jurisdiction	Current Property Tax Rate Subject to Capture by TIF (\$100)	Current Property Tax Rate (\$100)
Clay County Services	\$ 0.001462	\$ 0.001462
Clay County Development Services	\$ 0.001028	\$ 0.001028
Clay County Health	\$ 0.000857	\$ 0.000857
Clay County Mental Health	\$ 0.000857	\$ 0.000857
Northland Regional Ambulance District	\$ 0.003940	\$ 0.003940
Mid-Continent Public Library	\$ 0.003153	\$ 0.003468
Smithville	\$ 0.004126	\$ 0.004126
Smithville Fire District #1	\$ 0.004906	\$ 0.007769
Smithville School District	\$ 0.048404	\$ 0.048404
<b>Total Tax Rate for TIF</b>	<b>\$ 0.068733</b>	<b>\$ 0.071911</b>

Source: City of Smithville

<sup>1</sup> Actual tax rates will vary from year-to-year.

The property tax rates may be adjusted every year. Some adjustments are required to ensure compliance with the Missouri Constitution, which limits the amount of increase in tax levies (not including taxes from new construction) that may occur without voter approval. While any future adjustments that may occur are unknown (including an increase due to voter approval or decrease due to constitutional requirements or otherwise), the 2021 real property tax rate is used to project future property tax revenues. Real property tax rates are certified in the fall of each tax year. Additionally, additional revenues directly attributable to a voter-approved increase to a taxing district's real property tax rate are not considered PILOTs and not subject to capture by the TIF without the consent of such taxing district. Voter approved increases to the Mid-Continent Library and the Smithville Fire District #1 are not included.

Further, the Smithville School District receives a capital contribution of 60% of the increment derived from their real property tax rate. 40% of the increment flows into the Special Allocation Fund for payment of project costs pursuant to the Redevelopment Agreement. Both the Northland Regional Ambulance District and the Smithville Fire District #1 receive a reimbursement rate of 75% of the increment derived from their respective real property



tax rate pursuant to the TIF Act, with 25% of the respective increment flows into the Special Allocation Fund available for payment of project costs pursuant to the Redevelopment Agreement.

## REAL PROPERTY TAX (PILOTS) REVENUE PROJECTIONS

**Table 5**, below, shows estimated assessed values. These values are based on a review of existing property values within the Area as well as comparable retail properties in Clay County.

*Table 5 – Property Values*

ParcelID	Use	2021 Appraised Value	2021 Assessed Value	Estimated 2022 Appraised Value	Estimated 2022 Assessed Value
5802000100200	Vacant Land	\$ 738,400	\$ 88,610	\$ 738,400	\$ 88,610
5802000100205	Vacant Land	\$ 548,600	\$ 175,550	\$ 548,600	\$ 175,550
5802000100206	Commercial Site	\$ 1,456,800	\$ 466,180	\$ 1,456,800	\$ 466,180
5802000100207	Price Chopper	\$ 8,330,600	\$ 2,665,790	\$ 8,330,600	\$ 2,665,790
5802000100209	Vacant Land	\$ 600	\$ 70	\$ 600	\$ 70
5802000100208	Porters Ace Hardware	\$ 1,787,100	\$ 571,870	\$ 1,787,100	\$ 571,870
5802000100401	Vacant Land	\$ 46,300	\$ 5,560	\$ 46,300	\$ 5,560
5802000100210	Retail (includes Dominoes)	\$ 309,600	\$ 99,070	\$ 309,600	\$ 99,070
5802000100201	Scooter's Coffeehouse	\$ 369,800	\$ 118,340	\$ 369,800	\$ 118,340
5802000100202	Taco Bell	\$ 927,500	\$ 296,800	\$ 927,500	\$ 296,800
5802000100204	Burger King	\$ 458,100	\$ 146,590	\$ 927,500	\$ 296,800
<b>Totals</b>		<b>\$14,973,400</b>	<b>\$4,634,430</b>	<b>\$15,442,800</b>	<b>\$4,784,640</b>

For the purposes of this analysis, the total market value of the Area is assumed to grow at a rate of three percent (3%) each reassessment year. Reassessment occurs every odd-numbered calendar year. New construction, however, is assessed in the year following completion. Detailed projections of PILOT revenues are shown on **Table 6 - Projection of Incremental Real Property Taxes (PILOTS)**, on the following page.

Table 6 – Projection of Incremental Property Taxes (PILOTs)

Revenue Sources	Prog. Yr.	Projected Revenues by Year in Dollars									
		2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
		4	5	6	7	8	9	10	11	12	13
<b>Estimated Real Property Values and Tax Revenues</b>											
Total Market Value		\$ 14,973,400	\$ 15,442,800	\$ 15,906,084	\$ 15,906,084	\$ 16,383,267	\$ 16,383,267	\$ 16,874,765	\$ 16,874,765	\$ 17,381,007	\$ 17,381,007
Total Assessed Value		\$ 4,791,488	\$ 4,941,696	\$ 5,089,947	\$ 5,089,947	\$ 5,242,645	\$ 5,242,645	\$ 5,399,925	\$ 5,399,925	\$ 5,561,922	\$ 5,561,922
Estimated Base EAV		\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430
Estimated Incremental Assessed Value		\$ 4,739,058	\$ 4,889,266	\$ 5,037,517	\$ 5,037,517	\$ 5,190,215	\$ 5,190,215	\$ 5,347,495	\$ 5,347,495	\$ 5,509,492	\$ 5,509,492
Total Taxes Paid on Total Assessed Value (Full Rates)		\$ 345,998	\$ 356,845	\$ 367,550	\$ 367,550	\$ 378,577	\$ 378,577	\$ 389,934	\$ 389,934	\$ 401,632	\$ 401,632
Taxes Paid on Total Assessed Value (TIF Rate)		\$ 329,333	\$ 339,658	\$ 349,847	\$ 349,847	\$ 360,343	\$ 360,343	\$ 371,153	\$ 371,153	\$ 382,288	\$ 382,288
Taxes Paid on Estimated Base EAV (TIF Rate)		\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604
40% of School District PILOTs		\$ 91,756	\$ 94,664	\$ 97,534	\$ 97,534	\$ 100,491	\$ 100,491	\$ 103,536	\$ 103,536	\$ 106,673	\$ 106,673
75% of Ambulance District PILOTs		\$ 14,004	\$ 14,448	\$ 14,886	\$ 14,886	\$ 15,337	\$ 15,337	\$ 15,802	\$ 15,802	\$ 16,281	\$ 16,281
75% of Fire Protection District PILOTs		\$ 17,437	\$ 17,990	\$ 18,536	\$ 18,536	\$ 19,097	\$ 19,097	\$ 19,676	\$ 19,676	\$ 20,272	\$ 20,272
<b>Estimated Total Available PILOTs</b>		<b>\$ 202,533</b>	<b>\$ 208,952</b>	<b>\$ 215,288</b>	<b>\$ 215,288</b>	<b>\$ 221,814</b>	<b>\$ 221,814</b>	<b>\$ 228,535</b>	<b>\$ 228,535</b>	<b>\$ 235,459</b>	<b>\$ 235,459</b>

Revenue Sources	Prog. Yr.	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040
		14	15	16	17	18	19	20	21	22	23
<b>Estimated Real Property Values and Tax Revenues</b>											
Total Market Value		\$ 17,902,438	\$ 17,902,438	\$ 18,439,511	\$ 18,439,511	\$ 18,992,696	\$ 18,992,696	\$ 19,562,477	\$ 19,562,477	\$ 20,149,351	\$ 20,753,832
Total Assessed Value		\$ 5,728,780	\$ 5,728,780	\$ 5,900,643	\$ 5,900,643	\$ 6,077,663	\$ 6,077,663	\$ 6,259,993	\$ 6,259,993	\$ 6,447,792	\$ 6,641,226
Estimated Base EAV		\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430	\$ 52,430
Estimated Incremental Assessed Value		\$ 5,676,350	\$ 5,676,350	\$ 5,848,213	\$ 5,848,213	\$ 6,025,233	\$ 6,025,233	\$ 6,207,563	\$ 6,207,563	\$ 6,395,362	\$ 6,588,796
Total Taxes Paid on Total Assessed Value (Full Rates)		\$ 413,681	\$ 413,681	\$ 426,091	\$ 426,091	\$ 438,874	\$ 438,874	\$ 452,040	\$ 452,040	\$ 465,602	\$ 479,570
Taxes Paid on Total Assessed Value (TIF Rate)		\$ 393,756	\$ 393,756	\$ 405,569	\$ 405,569	\$ 417,736	\$ 417,736	\$ 430,268	\$ 430,268	\$ 443,176	\$ 456,471
Taxes Paid on Estimated Base EAV (TIF Rate)		\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	\$ 3,604	
40% of School District PILOTs		\$ 109,903	\$ 109,903	\$ 113,231	\$ 113,231	\$ 116,658	\$ 116,658	\$ 120,188	\$ 120,188	\$ 123,824	
75% of Ambulance District PILOTs		\$ 16,774	\$ 16,774	\$ 17,281	\$ 17,281	\$ 17,805	\$ 17,805	\$ 18,343	\$ 18,343	\$ 18,898	
75% of Fire Protection District PILOTs		\$ 20,886	\$ 20,886	\$ 21,519	\$ 21,519	\$ 22,170	\$ 22,170	\$ 22,841	\$ 22,841	\$ 23,532	
<b>Estimated Total Available PILOTs</b>		<b>\$ 242,590</b>	<b>\$ 242,590</b>	<b>\$ 249,935</b>	<b>\$ 249,935</b>	<b>\$ 257,500</b>	<b>\$ 257,500</b>	<b>\$ 265,292</b>	<b>\$ 265,292</b>	<b>\$ 273,318</b>	

## SALES TAX COLLECTION

The State of Missouri's Department of Revenue ("MoDOR") collects and distributes all sales taxes. Each month (or quarterly or annually for smaller retailers), retailers report to MoDOR their total taxable sales for the prior month and pay their sales tax obligation according to the total sales tax rate in the area. In the month following the retailer's report, MoDOR remits to each affected taxing district the sales taxes owed less a one percent (1%) collection fee and a two percent (2%) timely payment discount. This process creates a lag of ninety days from the sale event to the deposit of sales taxes with each affected taxing district (e.g., Clay County, the CID, or the City) and then to the Special Allocation Fund.

## ECONOMIC ACTIVITY TAXES GENERATED BY THE DISTRICT

The TIF Act defines Economic Activity Taxes (EATs) as follows:

2. ...fifty percent of the total additional revenue from taxes imposed by the municipality, or other taxing district, which are generated by economic activities within the area of the redevelopment project over the amount of such taxes generated by economic activities within the area of the redevelopment project in the calendar year prior to the adoption of the redevelopment project by ordinance, while tax increment financing remains in effect, but excluding taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotel and motels, licenses, fees or special assessments and personal property taxes, other than payments in lieu of taxes, shall be allocated to, and paid by the collecting officer to the treasurer or other designated financial officer of the municipality, who shall deposit such funds in a separate segregated account within the special allocation fund. (R.S. Mo. 99.845).

Simply put, fifty percent (50%) of the economic activity taxes (in this case, retail sales taxes) that exceed the certified Economic Activity Tax Base are available for deposit into the Special Allocation Fund.

## BASE SALES TAXES

Clay County and the City have certified that the Economic Activity Tax Base is \$0 which figure is the total of the sales tax collections associated with the CID and other local sales taxes. The Developer shall make a payment to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in Redevelopment Area in each applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for calendar year does not equal or exceed \$289,138.50.

## SALES TAX RATES

The following sales taxes are subject to capture for deposit into the special allocation fund for the TIF District include:

1. Clay County (0.875%) – County sales taxes captured by TIF are calculated as fifty percent (50%) of the effective 2017 sales tax rates imposed by the County. County sales taxes captured by TIF are comprised of County General Fund (0.75%) and County Law Enforcement Fund (0.125%). Sales taxes generated from the County Children’s Services tax (0.25%) are not captured by TIF.
2. City of Smithville (1.5%) – City sales taxes captured by TIF are calculated as fifty percent of sales tax revenues collect from the 1.5 percent sales tax rate which is comprised of the City General Fund (1%) and City Transportation Sales Tax Fund (0.5%). Sales taxes generated from the City’s Capital Improvement Sales Tax (0.5%) and Park and Stormwater Sales Tax (0.5%) are not captured by TIF.
3. Smithville Area Fire Protection (0.5%) – Fire district sales taxes captured by TIF are calculated as twenty-five percent (25%) of the fire district’s 0.5% sales tax rate.
4. Kansas City Zoological District (0.125%)
5. Smithville Commons CID Sales Tax (1%)

TIF sales tax collections end on October 2, 2040.

## PROJECTED ECONOMIC ACTIVITY TAXES (EATs) REVENUES FOR TIF

Detailed projections of estimated sales tax revenues captured by TIF are shown on **Tables 7A, 7B, and 7C – Projection of Estimated Incremental Retail Sales and Sales Tax Revenues**, on the following page.

**Table 7A** shows estimated incremental retail sales generated the Project. Based on these estimates of incremental retail sales, **Table 7B** shows the estimated gross sales tax revenues to be generated for local taxing districts by the Project’s projected retail sales. **Table 7C** shows a projection of the total estimated incremental EATs sales tax revenues generated by the Project for TIF. EATs sale tax revenues for TIF are calculated as described in the previous section, *Sales Tax Rates*.

Table 7A, 7B, and 7C – Projection of Estimated Incremental Retail Sales and Sales Tax Revenues

Table 7A - Estimated Incremental Taxable Sales Retail Sales

Estimated Taxable Sales Volume	Estimated Retail Sales	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
		\$ 36,592,500	\$ 38,068,575	\$ 39,577,232	\$ 41,899,449	\$ 43,476,233	\$ 44,780,520	\$ 45,676,130	\$ 46,589,653	\$ 47,521,446	\$ 48,471,875	\$ 49,441,312	\$ 50,430,138	\$ 51,438,741	\$ 52,467,516	\$ 53,516,866	\$ 54,587,204	\$ 55,678,948	\$ 56,792,527	\$ 57,928,377	\$ 59,086,945	\$ 60,268,684	\$ 61,474,057

Table 7B - Estimated Gross Total Local Sales Taxes

Local Sales Taxes	Rates	Projected Revenues by Year in Dollars																					
		2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
County General Fund	0.750%	\$ 266,210	\$ 276,949	\$ 287,924	\$ 304,818	\$ 316,290	\$ 325,778	\$ 332,294	\$ 338,940	\$ 345,719	\$ 352,633	\$ 359,686	\$ 366,879	\$ 374,217	\$ 381,701	\$ 389,335	\$ 397,122	\$ 405,064	\$ 413,166	\$ 421,429	\$ 429,858	\$ 438,455	\$ 447,224
County Childrens Services	0.250%	\$ 88,737	\$ 92,316	\$ 95,975	\$ 101,606	\$ 105,430	\$ 108,593	\$ 110,765	\$ 112,980	\$ 115,240	\$ 117,544	\$ 119,895	\$ 122,293	\$ 124,739	\$ 127,234	\$ 129,778	\$ 132,374	\$ 135,021	\$ 137,722	\$ 140,476	\$ 143,286	\$ 146,152	\$ 149,075
County Law Enforcement Fund (Public Safety)	0.125%	\$ 44,368	\$ 46,158	\$ 47,987	\$ 50,803	\$ 52,715	\$ 54,296	\$ 55,382	\$ 56,490	\$ 57,620	\$ 58,772	\$ 59,948	\$ 61,147	\$ 62,369	\$ 63,617	\$ 64,889	\$ 66,187	\$ 67,511	\$ 68,861	\$ 70,238	\$ 71,643	\$ 73,076	\$ 74,537
City General Fund	1.000%	\$ 354,947	\$ 369,265	\$ 383,899	\$ 406,425	\$ 421,719	\$ 434,371	\$ 443,058	\$ 451,920	\$ 460,958	\$ 470,177	\$ 479,581	\$ 489,172	\$ 498,956	\$ 508,935	\$ 519,114	\$ 529,496	\$ 540,086	\$ 550,888	\$ 561,905	\$ 573,143	\$ 584,606	\$ 596,298
City Transportation Sales Tax Fund	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
City Capital Improvement Sales Tax	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
City Park and Stormwater Sales Tax	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
Smithville Area Fire Protection	0.500%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
Kansas City Zoological District	0.125%	\$ 44,368	\$ 46,158	\$ 47,987	\$ 50,803	\$ 52,715	\$ 54,296	\$ 55,382	\$ 56,490	\$ 57,620	\$ 58,772	\$ 59,948	\$ 61,147	\$ 62,369	\$ 63,617	\$ 64,889	\$ 66,187	\$ 67,511	\$ 68,861	\$ 70,238	\$ 71,643	\$ 73,076	\$ 74,537
Smithville Commons CID	1.000%	\$ 354,947	\$ 369,265	\$ 383,899	\$ 406,425	\$ 421,719	\$ 434,371	\$ 443,058	\$ 451,920	\$ 460,958	\$ 470,177	\$ 479,581	\$ 489,172	\$ 498,956	\$ 508,935	\$ 519,114	\$ 529,496	\$ 540,086	\$ 550,888	\$ 561,905	\$ 573,143	\$ 584,606	\$ 596,298
<b>Total Estimated Gross Local Sales Taxes Generated</b>	<b>5.250%</b>	<b>\$ 1,863,473</b>	<b>\$ 1,938,642</b>	<b>\$ 2,015,471</b>	<b>\$ 2,133,729</b>	<b>\$ 2,214,027</b>	<b>\$ 2,280,448</b>	<b>\$ 2,326,057</b>	<b>\$ 2,372,578</b>	<b>\$ 2,420,030</b>	<b>\$ 2,468,430</b>	<b>\$ 2,517,799</b>	<b>\$ 2,568,155</b>	<b>\$ 2,619,518</b>	<b>\$ 2,671,908</b>	<b>\$ 2,725,346</b>	<b>\$ 2,779,853</b>	<b>\$ 2,835,450</b>	<b>\$ 2,892,159</b>	<b>\$ 2,950,003</b>	<b>\$ 3,009,003</b>	<b>\$ 3,069,183</b>	<b>\$ 3,130,566</b>

Table 7C - Estimated Incremental Sales Taxes Captured by TIF

EATs Sales Taxes for TIF	Rates	Projected Revenues by Year in Dollars																					
		2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043
County General Fund	0.750%	\$ 133,105	\$ 138,474	\$ 143,962	\$ 152,409	\$ 158,145	\$ 162,889	\$ 166,147	\$ 169,470	\$ 172,859	\$ 176,316	\$ 179,843	\$ 183,440	\$ 187,108	\$ 190,851	\$ 194,668	\$ 198,561	\$ 202,532	\$ 206,583	\$ 210,714	\$ 214,929	\$ 219,227	\$ 223,612
County Law Enforcement Fund (Public Safety)	0.125%	\$ 22,184	\$ 23,079	\$ 23,994	\$ 25,402	\$ 26,357	\$ 27,148	\$ 27,691	\$ 28,245	\$ 28,810	\$ 29,386	\$ 29,974	\$ 30,573	\$ 31,185	\$ 31,808	\$ 32,445	\$ 33,093	\$ 33,755	\$ 34,430	\$ 35,119	\$ 35,821	\$ 36,538	\$ 37,269
City General Fund	1.000%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
City Transportation Sales Tax Fund	0.500%	\$ 88,737	\$ 92,316	\$ 95,975	\$ 101,606	\$ 105,430	\$ 108,593	\$ 110,765	\$ 112,980	\$ 115,240	\$ 117,544	\$ 119,895	\$ 122,293	\$ 124,739	\$ 127,234	\$ 129,778	\$ 132,374	\$ 135,021	\$ 137,722	\$ 140,476	\$ 143,286	\$ 146,152	\$ 149,075
Smithville Area Fire Protection *	0.500%	\$ 44,368	\$ 46,158	\$ 47,987	\$ 50,803	\$ 52,715	\$ 54,296	\$ 55,382	\$ 56,490	\$ 57,620	\$ 58,772	\$ 59,948	\$ 61,147	\$ 62,369	\$ 63,617	\$ 64,889	\$ 66,187	\$ 67,511	\$ 68,861	\$ 70,238	\$ 71,643	\$ 73,076	\$ 74,537
Kansas City Zoological District	0.125%	\$ 22,184	\$ 23,079	\$ 23,994	\$ 25,402	\$ 26,357	\$ 27,148	\$ 27,691	\$ 28,245	\$ 28,810	\$ 29,386	\$ 29,974	\$ 30,573	\$ 31,185	\$ 31,808	\$ 32,445	\$ 33,093	\$ 33,755	\$ 34,430	\$ 35,119	\$ 35,821	\$ 36,538	\$ 37,269
Smithville Commons CID	1.000%	\$ 177,474	\$ 184,633	\$ 191,950	\$ 203,212	\$ 210,860	\$ 217,186	\$ 221,529	\$ 225,960	\$ 230,479	\$ 235,089	\$ 239,790	\$ 244,586	\$ 249,478	\$ 254,467	\$ 259,557	\$ 264,748	\$ 270,043	\$ 275,444	\$ 280,953	\$ 286,572	\$ 292,303	\$ 298,149
<b>Total Estimated EATs Sales Taxes for TIF</b>	<b>4.000%</b>	<b>\$ 665,526</b>	<b>\$ 692,372</b>	<b>\$ 719,811</b>	<b>\$ 762,046</b>	<b>\$ 790,724</b>	<b>\$ 814,446</b>	<b>\$ 830,735</b>	<b>\$ 847,349</b>	<b>\$ 864,296</b>	<b>\$ 881,582</b>	<b>\$ 899,214</b>	<b>\$ 917,198</b>	<b>\$ 935,542</b>	<b>\$ 954,253</b>	<b>\$ 973,338</b>	<b>\$ 992,805</b>	<b>\$ 1,012,661</b>	<b>\$ 1,032,914</b>	<b>\$ 1,053,572</b>	<b>\$ 1,074,644</b>	<b>\$ 1,096,137</b>	<b>\$ 1,118,059</b>

\* Smithville Area Fire Protection receives 75% of the incremental sales taxes generated by their sales tax levy and, as a result, 25% of this jurisdiction's incremental sales taxes are subject to capture by TIF.

## PROJECTED TOTAL REVENUES

No private independent market study has been prepared or provided to PGAV. Assumptions have been made regarding the performance of existing and contemplated retail uses. The actual tax revenues generated will vary from these projections.

The sales figures used in this document reflect taxable sales only. Pharmaceutical sales and SNAP food stamp sales are not subject to sales tax, and therefore we have not included these sales in our projections. Retail sales are estimated to grow at a rate of one percent (1%) on an average annual basis after stabilization. Stabilization occurs at a retailer after a maturation period, which occurs in the retail stores early life. Typically, over the first two or three years of a retailer store's operations, sales volume increases steadily, and at rates of 10% or more. After this initial period, sales "stabilize" or reach a relatively level sales volume that grows more slowly, or gradually, over time.

Projections of growth in assessed value are based on our firm's observations of changes in assessed valuations and tax rates associated with similar commercial retail property over time. Our firm's observation is that a well-maintained commercial retail center with low vacancy will experience increases in the property tax bill associated with such a property at an average rate of 1.5% each year. Since future changes in tax rates are difficult to predict with any degree of certainty, our estimates of growth in real property tax revenue rely on the reassessment schedule (every odd year in Missouri) since we know that the assessment may change every odd year.

**Table 8 – Revenue Projection Summary**, below, shows the total projected PILOTs and Sales Tax Revenues estimated to be available for the repayment of the Bonds. Estimated revenues generated from PILOTs totals \$4.3 million. This figure is calculated as the sum of estimated annual PILOT revenues shown in **Table 6 - Projection of Incremental Property Taxes (PILOTs)**. Estimated Incremental EATs for TIF totals \$16.6 million. This figure is calculated as the sum of the estimated annual EATs sales tax revenues as shown in **Tables 7C – Projection of Incremental EATs for TIF**. “Bottom-Half CID Sales Tax Not Captured by TIF” totals \$4.4 million. This figure is calculated as 50 percent of the total estimated incremental CID sales taxes generated as shown in **Table 7B – Estimated Gross Total Local Sales Taxes**. The Smithville Commons Redevelopment Area is estimated to generate a total of \$25.3 million over the remaining life of the TIF district for repayment of bonds.

Table 8 – Revenue Projection Summary

Revenue Projections Summary Smithville Commons Redevelopment Area Smithville, MO				
Year	Estimated PILOTs	Estimated Incremental EATs for TIF	Bottom-Half CID Sales Tax Not Captured by TIF	Total Revenues
2022	\$ 208,952	\$ 665,526	\$ 177,474	\$ 1,051,952
2023	\$ 215,288	\$ 692,372	\$ 184,633	\$ 1,092,293
2024	\$ 215,288	\$ 719,811	\$ 191,950	\$ 1,127,048
2025	\$ 221,814	\$ 762,046	\$ 203,212	\$ 1,187,072
2026	\$ 221,814	\$ 790,724	\$ 210,860	\$ 1,223,397
2027	\$ 228,535	\$ 814,446	\$ 217,186	\$ 1,260,167
2028	\$ 228,535	\$ 830,735	\$ 221,529	\$ 1,280,799
2029	\$ 235,459	\$ 847,349	\$ 225,960	\$ 1,308,768
2030	\$ 235,459	\$ 864,296	\$ 230,479	\$ 1,330,234
2031	\$ 242,590	\$ 881,582	\$ 235,089	\$ 1,359,260
2032	\$ 242,590	\$ 899,214	\$ 239,790	\$ 1,381,594
2033	\$ 249,935	\$ 917,198	\$ 244,586	\$ 1,411,719
2034	\$ 249,935	\$ 935,542	\$ 249,478	\$ 1,434,955
2035	\$ 257,500	\$ 954,253	\$ 254,467	\$ 1,466,220
2036	\$ 257,500	\$ 973,338	\$ 259,557	\$ 1,490,395
2037	\$ 265,292	\$ 992,805	\$ 264,748	\$ 1,522,845
2038	\$ 265,292	\$ 1,012,661	\$ 270,043	\$ 1,547,996
2039	\$ 273,318	\$ 1,032,914	\$ 275,444	\$ 1,581,676
2040	\$ -	\$ 1,053,572	\$ 206,583	\$ 1,260,155
<b>TOTALS</b>	<b>\$ 4,315,093</b>	<b>\$ 16,640,385</b>	<b>\$ 4,363,066</b>	<b>\$ 25,318,544</b>

## BASIS FOR PROJECTIONS

This Report and the financial projections contained herein are based on estimates, assumptions, and information provided by the Developer and various other sources considered to be reliable. The Developer has provided PGAV information with respect to tenants that will engage in retail operations within the Area. PGAV has conducted independent research with respect to the economic characteristics of these tenants. PGAV neither verified nor audited the information that was provided by others. Information provided by others is assumed to be reliable, but PGAV assumes no responsibility for its accuracy or certainty. The analysis is based, in part, on assumptions and conditions provided by these various sources. PGAV believes that the assumptions used in this analysis constitute a reasonable basis for its preparation.

No professional standards or guidance relevant to the preparation of this Report exist or have been developed by any professional agency. The National Federation of Municipal Analysts has developed recommended guidelines for the production of expert work products such as this Report, and PGAV adheres to these guidelines in its work. PGAV has prepared this Report based on standards and methodology the firm has developed over the course of preparing hundreds of similar analyses of historical trends and projections of sales taxes associated with various types of taxing districts in support of bond financings throughout the country over the past 25 years.

PGAV's methodology for preparing this Report includes the review of economic and demographic data, both current and historic, in order to develop assumptions about future growth. In light of this information, PGAV develops reasonable assumptions about future growth and applies those assumptions to the projections of future revenue in this Report.

The projections presented in this document are forward-looking and involve certain assumptions and judgments regarding future events. Although the projections formulated in this Report are based on currently available information, they are also based on assumptions about the future state of the national and regional economy and the local real estate markets, as well as assumptions about future actions by various parties, which cannot be assured or guaranteed. The ability to achieve the results described herein depends on the timing and probability of a complex series of future events, both internal and external to the Redevelopment Project. Any event or action that alters an assumed event, assumption, or condition used to achieve the projections contained herein will cause a deviation from all financial projections contained in this analysis and may render them obsolete. These projections are not provided as predictions or assurances that a certain level of performance will be achieved or that certain events will occur. The actual results will vary from the projections described herein, and the variations may be material. Because the future is uncertain, there is risk associated with achieving the results projected. PGAV assumes no responsibility for any degree of risk involved. PGAV assumes no liability should market conditions change.



Accordingly, PGAV does not express an opinion as to whether or not the Redevelopment Project will achieve the results projected herein if economic, environmental, legislative, or physical events or conditions occur that would significantly affect the projected revenue streams. Specifically, there are a number of situations that could occur that would have major impacts on the revenue projections presented herein. Examples of events that could affect the projected availability of revenues include: changes in taxing provisions and/or market acceptance of commercial additions to the Redevelopment Project that affect the amount of sales tax revenues generated within the Redevelopment Project; and changes in legislation.

The terms of PGAV's engagement for this study do not provide for reporting on events subsequent to the date of this Report. Therefore, PGAV accepts no responsibility to either update or revise this Report subsequent to its issuance.

This Report is intended solely for the internal use of the County, the District, the City, the City's legal counsel, the City's financial advisor, bond underwriter, and its counsel, and bond counsel. Neither this Report nor its contents may be referred to or quoted, in whole or in part, for any purpose including, but not limited to, any official statement for a bond issue and consummation of a bond sale, any registration statement, prospectus, loan, or other agreement or document, without prior review and written approval by PGAV regarding any representations therein with respect to PGAV's organization and work product. Included in any offering statement must be a document signed by a representative of PGAV which document constitutes PGAV's written consent to this Report's use in such offering statement.

## **CONFLICTS OF INTEREST**

PGAV has no financial interest in the issuance and/or sale of the Bonds.

## **PAYMENT TO PGAV**

Payment to PGAV for the preparation of this Report is not contingent on the sale of the Bonds.

## **OTHER WORK FOR ISSUER OR DISTRICT**

PGAV has not conducted any work on behalf of the City or the Issuer in the prior five years.

## **SECTION 4 – CONDITIONS AND ASSUMPTIONS**

### **CONTINUED PUBLIC SUPPORT**

The successful ongoing administration of the statutory mechanisms generating revenues within the Area will require the commitment of the governing authority of the County and the City, property owner(s) and retailers. Likewise, it is assumed that the Missouri legislature will not make any future changes to State law or pass other legislation that will negatively affect economic development districts in existence prior to such changes or legislation.

### **COURT ACTION**

The results of future court decisions, unknown at this time, which could impact, either positively or negatively, the future performance of the Redevelopment Project as envisioned.

### **COMPETENT STAFF SUPPORT**

The future success of the Redevelopment Project will depend, to a great degree, on the presence of competent support on the part of the Trustee and the governing authority of the City, the County, and the District in order to adhere to schedules and to execute the administrative duties required to provide funds for debt payments.

### **NATURAL DISASTERS**

Future success of the retailers within the Redevelopment Project could be affected by fires, floods, storms, or other "acts of God," or civil unrest that could interrupt, halt or otherwise disturb commercial retail activity within the City.

### **ECONOMIC AND MARKET STABILITY**

National, regional, and local economic stability will need to prevail over the life of the Redevelopment Area and continue to support the need for retail uses at this location. In addition, prolonged labor strikes or terrorist attacks at the national, regional, or local level could adversely affect the business environment or business productivity at this location.

# APPENDIX

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**CITY OF SMITHVILLE, MISSOURI**

**and**

**UMB BANK, N.A.,  
as Trustee**

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**TRUST INDENTURE**

**Dated as of May 17, 2022**

**Relating to:**

**[\$[Principal Amount]  
City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

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## **TRUST INDENTURE**

**THIS TRUST INDENTURE** (the “Indenture”), made and entered into as of May \_\_, 2022, by and between the **CITY OF SMITHVILLE, MISSOURI**, a fourth-class city and political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the “City”), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set out under the laws of the United States of America, and having a corporate trust office located in Kansas City, Missouri, as trustee (the “Trustee”);

### **RECITALS:**

**1.** The City is authorized and empowered under the Revised Statutes of Missouri, as amended, to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of such bonds.

**2.** A plan for redevelopment known as the “Smithville Commons Tax Increment Financing Plan” (the “Original Redevelopment Plan”), as amended by the First Amendment to the Smithville Commons Tax Increment Financing Plan (the “First Amended Plan,” together with the Original Redevelopment Plan, the “Redevelopment Plan”), for an area designated therein as the redevelopment area (the “Redevelopment Area”), as legally described in the Redevelopment Plan, has been prepared and reviewed by the Tax Increment Financing Commission of the City of Smithville, Missouri (the “Commission”) and the City, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the “TIF Act”).

**3.** On August 1, 2017, the Board of Aldermen adopted (a) Ordinance No. 2969-17 (i) approving the Redevelopment Plan and finding the Redevelopment Area to be a “blighted area” within the meaning of the TIF Act and (ii) designating Development Associates Smithville, LLC, a Missouri limited liability company (the “Developer”), as the developer to implement the Redevelopment Projects of the Redevelopment Plan (as therein defined), (b) Ordinance No. 2971-17, authorizing the execution and delivery of a contract (the “Redevelopment Agreement”) between the City and the Developer, and (c) Ordinance No. 2972-17 authorizing the execution and delivery of a Reimbursement Agreement with the Northland Regional Ambulance District and a Reimbursement Agreement with the Smithville Area Fire Protection District to provide for the reimbursement of revenues to the respective taxing jurisdiction (the “Reimbursement Agreements”).

**4.** On October 3, 2017, the Board of Aldermen adopted Ordinance No. 2970-17 which approved and designated an area (the “Redevelopment Project”) within the Redevelopment Area for redevelopment contemplated as a commercial and retail development and adopted tax increment financing for the Redevelopment Project.

**5.** On November 21, 2017, the Board of Aldermen adopted Ordinance No. 2986-17 which approved the First Amended Plan and the First Amendment to the Redevelopment Agreement, which provided for an amended capital contribution to the Smithville School District.

**6.** The Smithville Commons Community Improvement District (the “District”) is authorized and empowered under the Missouri Community Improvement District Act, Sections 67.1401 through 67.1571 of the Revised Statutes of Missouri, as amended (the “CID Act”), to fund, promote, plan, design, construct, improve, maintain, and operate certain improvements, or to assist in any such activity. Pursuant to the CID Act, on August 1, 2017 Ordinance No. 2974-17 was approved by the Board of Aldermen creating the District for the purpose of funding certain improvements and services (the “CID Project”). The voters



of the District have approved the imposition of a sales tax at the rate of 1.0% for the purpose of paying the cost of the CID Project and financing the costs of formation and operation of the District.

7. The City has determined that it is in the best interests of the City to issue its Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022, in the aggregate principal amount of \$[Principal Amount] (the “Bonds”), for the purpose of (a) financing certain Redevelopment Project Costs, (b) funding a debt service reserve for the Bonds, and (c) paying the costs of issuance of the Bonds.

8. On \_\_\_\_\_, 2022, the Board of Aldermen of the City adopted Ordinance No. \_\_\_\_\_ (the “Bond Ordinance”), authorizing the issuance of the Bonds pursuant to this Indenture for the above purposes.

9. Pursuant to the Bond Ordinance, the City is authorized to execute and deliver this Indenture and a Financing Agreement between the City and the District (the “Financing Agreement”) for the purpose of issuing and securing the Bonds as hereinafter provided.

10. All things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid, legal and binding obligations of the City, and to constitute this Indenture a valid, legal and binding pledge and assignment of the property, rights, interests and revenues herein made for the security of the payment of the principal of and interest on the Bonds issued hereunder, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

#### **NOW THEREFORE, THIS INDENTURE WITNESSETH:**

#### **GRANTING CLAUSES**

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Bonds according to their tenor and effect and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a) and (b) below (said property being herein referred to as the “Trust Estate”), to wit:

(a) All Net Revenues derived by the City under and pursuant to and subject to the provisions of the Redevelopment Agreement or otherwise (excluding the City’s rights to payment of its fees and expenses and to be indemnified in certain events) and the Pledged Revenues; and

(b) All moneys and securities from time to time held by the Trustee under the terms of this Indenture (except payments required to be made to meet the requirements of Section 148(f) of the Code, as defined below, whether or not held in the Rebate Fund, as defined below) and any and all other property (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

**TO HAVE AND TO HOLD**, all and singular, the Trust Estate with all rights and privileges hereby transferred, pledged, assigned and/or granted or agreed or intended so to be, to the Trustee and its successors and assigns in trust forever;

**IN TRUST NEVERTHELESS**, upon the terms and conditions herein set forth for the equal and proportionate benefit, security and protection of all present and future Owners of the Bonds Outstanding, without preference, priority or distinction as to participation in the lien, benefit and protection hereof of one Bond over or from the others, except as herein otherwise expressly provided;

**PROVIDED, NEVERTHELESS**, and these presents are upon the express condition, that if the City or its successors or assigns pays or causes to be paid the principal of such Bonds with interest, according to the provisions set forth in the Bonds, or provides for the payment or redemption of such Bonds by depositing or causing to be deposited with the Trustee the entire amount of funds or securities required for payment or redemption thereof when and as authorized by the provisions of **Article IX** hereof, and also pays or causes to be paid all other sums payable hereunder by the City, then these presents and the estate and rights hereby granted shall cease, terminate and become void; otherwise this Indenture shall be and remain in full force;

**THIS INDENTURE FURTHER WITNESSETH**, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time of the Bonds, as follows:

## **ARTICLE I**

### **DEFINITIONS; RULES OF CONSTRUCTION**

**Section 101. Definitions of Words and Terms.** In addition to words and terms elsewhere defined herein, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

**“Ambulance District”** means the Northland Regional Ambulance District and its successors and assigns.

**“Ambulance District PILOTS Reimbursement”** means 75% of the property taxes imposed by the Ambulance District and treated as Payments in Lieu of Taxes, which amount is paid to or retained by the Ambulance District pursuant to the Reimbursement Agreements.

**“Approved Investors”** means, (a) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, or (ii) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933.

**“Arbitrage Instructions”** means the investment restrictions related to the funds and accounts held by the Trustee contained in the Tax Compliance Agreement, as the same may be amended or supplemented in accordance with the provisions thereof.

**“Authorized City Representative”** means the Mayor, City Administrator or Assistant City Administrator, or such other Person at the time designated to act on behalf of the City as evidenced by

written certificate furnished to the Trustee containing the specimen signature of such Person and signed on behalf of the City by its Mayor. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

**“Authorized Denominations”** means \$100,000 or any integral multiple of \$5,000 in excess thereof or, if the Outstanding principal amount of the Bonds is less than \$100,000, an amount equal to the Outstanding principal amount of the Bonds.\$5,000 or any integral multiple thereof.

**“Authorized District Representative”** means the authorized representative of the District designated to act on behalf of the District as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the District by its chief executive officer.

**“Authorized Developer Representative”** means the managing member of the Developer, or such other person at the time designated to act on behalf of the Developer as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Developer by its authorized member.

**“Bonds”** means the Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 issued under this Indenture.

**“Bond Counsel”** means Gilmore & Bell, P.C. or any other attorney or firm of attorneys with a nationally recognized standing in the field of municipal bond financing and experienced in matters relating to the tax exemption of interest payable on obligations of states and their instrumentalities and political subdivisions, and which is selected by the City and acceptable to the Trustee.

**“Bond Ordinance”** means Ordinance No. \_\_\_\_\_ of the City adopted on \_\_\_\_\_, 2022, authorizing the execution and delivery of this Indenture and the Financing Documents, and the issuance of the Bonds.

**“Bondowner” or “Owner” or “Registered Owner”** means the person in whose name such Bond is registered on the Register.

**“Business Day”** means any day other than a Saturday, Sunday or any other day on which banking institutions in the city in which the corporate trust office of the Trustee is located are required or authorized by law to close.

**“Cede & Co.”** means Cede & Co., as nominee of The Depository Trust Company, New York, New York, or any successor nominee of the Securities Depository with respect to the Bonds.

**“CID Act”** means the Community Improvement District Act, Sections 67.1401 to 67.1571, inclusive, of the Revised Statutes of Missouri, as amended.

**“CID Agreement”** means the Cooperative Agreement among the City, the District and the Developer dated as of July 16, 2019.

**“CID Operating Costs”** means the actual, reasonable expenses which are reasonably necessary for the operation of the District which shall include, but is not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, insurance, the engagement of special legal counsel, financial auditing services, and other consultants or services including companies engaged by the District (or the City on behalf of the District) to review applications for reimbursement for payment of

District improvement costs, and shall also include reasonable attorneys' fees for the formation of the District.

**"CID Revenues"** means the revenues received by the District from the 1% sales tax imposed by the District within its boundaries and within the Redevelopment Project **exclusive** of (a) the District's CID Operating Costs to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax, (b) Economic Activity Tax Revenues derived from the CID sales tax, and (c) the administrative fee retained by the City in the amount of 1% of all revenues received by the District from such sales tax imposed by the District to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax.

**"City"** means the City of Smithville, Missouri, a fourth-class city and political subdivision of the State.

**"City Administrative Fee"** means all documented costs and expenses reasonably incurred by the City for planning, legal, financial, administrative and other costs associated with the review, consideration, approval and implementation of the Redevelopment Plan, including the Redevelopment Project and the Redevelopment Agreement, plus 1% of the total revenues distributed to the District.

**"Code"** means the Internal Revenue Code of 1986, as amended, and the applicable regulations, temporary regulations and proposed regulations thereunder.

**"Debt Service Fund"** means the fund by that name created in **Section 401** hereof.

**"Debt Service Requirements"** means for any period of time for which calculated, the aggregate of the payments to be made during such period in respect of principal (whether at maturity or otherwise) and interest on Bonds; provided that such payments are excluded from Debt Service Requirements to the extent that cash or Investment Securities are on deposit in an irrevocable escrow or trust account and such amounts (including, where appropriate, the earnings or other increment to accrue thereon) are required to be applied to pay principal or interest on the Bonds and are sufficient to pay such principal or interest.

**"Debt Service Reserve Fund"** means the fund by that name created in **Section 401** hereof.

**"Debt Service Reserve Requirement"** means (1) with respect to the Bond Proceeds Account, the sum of \$\_\_\_\_\_ to be deposited into the Bond Proceeds Account of the Debt Service Reserve Fund for the Bonds, which is a sum, at the date of original issuance and delivery of the Bonds, is not greater than the least of (A) **10%** of the original aggregate principal amount of the Bonds, (B) the maximum annual Debt Service Requirements on the Bonds in any future fiscal year following such date, or (C) **125%** of the average future annual Debt Service Requirements on the Bonds, plus (2) with respect to the Business Interruption Account, the sum of \$\_\_\_\_\_ to be deposited into the Business Interruption Account of the Debt Service Reserve Fund.

**"Developer"** or **"Redeveloper"** means Development Associates Smithville, LLC, a Missouri limited liability company, and any successors or assigns thereto permitted under the Redevelopment Agreement.

**"District"** means the Smithville Commons Community Improvement District and its successors and assigns.

**"Economic Activity Tax Revenues"** means 50% of the total additional revenue from taxes imposed by the City or other taxing districts (as that term is defined in Section 99.805 of the TIF Act) which

are generated by economic activities within the Redevelopment Project over the amount of such taxes generated by economic activities within the Redevelopment Project in the calendar year ending December 31, 2016, but excluding therefrom any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, personal property taxes, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo., excluding the Fire District EATs Reimbursement, and excluding the Grocery Store Sales Tax Payment.

**“Event of Default”** means any event or occurrence as defined in **Section 701** hereof.

**“Extraordinary Expense Fund”** means the fund by that name created in Section 401.

**“Financing Agreement”** means the Financing Agreement between the City and the District related to the Bonds, as amended from time to time.

**“Financing Documents”** means this Indenture, the Financing Agreement, the Redevelopment Agreement, the Tax Compliance Agreement, the CID Agreement, the Reimbursement Agreements, the Private Placement Agreement and any other documents entered into in connection with the issuance of the Bonds or the payment thereof.

**“Fire District”** means the Smithville Area Fire Protection District.

**“Fire District EATs Reimbursement”** means 75% of the sales taxes collected by the Fire District from all Fire District sales tax revenues from within the Redevelopment Area while tax increment financing is in effect in such area, which amount is retained by the Fire District pursuant to the Reimbursement Agreements.

**“Fire District PILOTS Reimbursement”** means 75% of the property taxes collected by the Fire District and treated as Payments in Lieu of Taxes, which amount is paid to the Fire District by the City pursuant to the Reimbursement Agreements.

**“First Amended Plan”** means the First Amendment to the Smithville Commons Tax Increment Financing Plan.

**“First Amendment to the Redevelopment Agreement”** means the First Amendment to the Tax Increment Financing Agreement Between the City of Smithville and Development Associates Smithville, LLC dated November 21, 2017.

**“Fiscal Year”** means the fiscal year adopted by the City for accounting purposes, which as of the execution of this Indenture commences on November 1 and ends October 31.

**“Force Majeure”** means strikes, lockouts, other labor or industrial disturbances, civil disturbances, future valid orders of any governmental authorities, act of the public enemy, war, riot, sabotage, blockade, embargo, failure or inability to secure material or labor by reason of priority or similar regulation or orders of any governmental authorities, lightning, earthquake, fire, storm, hurricane, pandemic, flood, washout, explosion, act of God, or any other similar cause beyond the reasonable control of the Developer.

**“Government Securities”** means direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed as to full and timely payment by the United States of America and backed by the full faith and credit thereof.

**“Grocery Store Sales Tax Payment”** means a payment from the Developer to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in the Redevelopment Area in the applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for a calendar year does not equal or exceed \$289,138.50, as described in the Redevelopment Agreement.

**“Immediate Notice”** means notice given no later than the close of business on the date required by the provisions of this Indenture by telegram, telex, telecopier or other telecommunication device to such phone numbers or addresses as are specified in **Section 1102** hereof or such other phone number or address as the addressee shall have directed in writing, the receipt of which is confirmed by telephone, promptly followed by written notice by first-class mail, postage prepaid to such addressees.

**“Investment Securities”** means any of the following securities purchased in accordance with **Section 502** hereof, if and to the extent the same are at the time legal for investment of the funds being invested:

- (a) Government Securities;
- (b) bonds, notes or other obligations of the State, or any political subdivision of the State, that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) repurchase agreements with any bank, bank holding company, savings and loan association, trust company, or other financial institution organized under the laws of the United States or any state, including, without limitation, the Trustee or any of its affiliates, that are continuously and fully secured by any one or more of the securities described in clause (a), (b) or (d) and have a market value at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the City;
- (d) obligations of Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks and Farm Service Agency;
- (e) certificates of deposit, U.S. dollar denominated deposit accounts or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, including, without limitation, the Trustee or any of its affiliates, provided that such certificates of deposit or time deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (d) above, inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit or time deposits;
- (f) money market mutual funds that are invested in Government Securities; and
- (g) any other securities or investments that are lawful for the investment of moneys held in such funds or accounts under the laws of the State.

**“Letter of Representations”** means, collectively, the blanket letters from the City and the Trustee to the Securities Depository representing the matters necessary to qualify the Bonds pursuant to **Section 208**.

**“Net Revenues”** means (a) all moneys on deposit (including investment earnings thereon) in the PILOTS Account of the Special Allocation Fund but excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement, the School District PILOTS Reimbursement and the City Administrative Fee, (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the Economic Activity Tax Account of the Special Allocation Fund, but excluding the Fire District EATs Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee determined based on the amount of Economic Activity Tax Revenues, and (c) subject to annual appropriation by the District, all CID Revenues (including investment earnings thereon) paid by or on behalf of the District to the Trustee as provided in **Section 401** herein. Net Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum until such suit or claim is resolved in favor of the City, (iii) any amounts set aside in escrow pursuant to State law that the City reasonably believes were collected and/or paid to the City erroneously.

**“Opinion of Counsel”** means a written opinion of an attorney or firm of attorneys addressed to the Trustee, for the benefit of the Trustee and the Owners of the Bonds, who may be (except as otherwise expressly provided in this Indenture) counsel to the City, the District, the Owners of the Bonds or the Trustee, and who is acceptable to the Trustee.

**“Outstanding”** means when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered under this Indenture except:

- (a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds which are deemed to have been paid in accordance with **Section 902** hereof;
- (c) Bonds alleged to have been mutilated, destroyed, lost or stolen which have been paid as provided in **Section 206** hereof; and
- (d) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

**“Owner”** or **“Bondowner”** or **“Registered Owner”** means the Person in whose name any Bond is registered on the Register.

**“Paying Agent”** means the Trustee and any other bank or trust institution organized under the laws of any state of the United States of America or any national banking association designated by this Indenture as paying agent for the Bonds at which the principal of and interest on such Bonds shall be payable.

**“Payment Date”** means any date on which the principal of or interest on any Bonds is payable.

**“Payments in Lieu of Taxes”** means those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the TIF Act), if any, attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement and the School District PILOTS Reimbursement.

**“Person”** means any natural person, firm, partnership, association, corporation, limited liability company or public body.

**“Placement Agent”** means UMB Bank, N.A., Kansas City, Missouri.

**“Placement Agreement”** means the Private Placement Agreement among the City, the Developer and the Placement Agent related to the purchase and sale of the Bonds.

**“Pledged Revenues”** means all Net Revenues and all moneys held in the Project Fund, the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund under this Indenture, together with investment earnings thereon.

**“Project”** means the construction of Project Improvements (as contemplated in the Redevelopment Agreement) in the City of Smithville, Missouri, as described on **Exhibit D** attached hereto.

**“Project Costs”** means the cost of the design and construction of the Project and other related costs of the Project.

**“Public Improvement Costs”** means all actual and reasonable costs and expenses which are incurred by or at the direction of the District with respect to the construction of District improvements, as described in the CID Agreement.

**“Rebate Fund”** means the fund by that name created in **Section 401** hereof.

**“Record Date”** for the interest payable on any Payment Date means the 15<sup>th</sup> calendar day, whether or not a Business Day, of the month next preceding such Payment Date.

**“Redevelopment Agreement”** means the Tax Increment Redevelopment Agreement dated August 1, 2017 between the City and the Developer, as amended by the First Amendment to the Redevelopment Agreement.

**“Redevelopment Area”** means the area legally described in **Exhibit A** to the Redevelopment Agreement.

**“Redevelopment Plan”** means the Smithville Commons Tax Increment Financing Plan, as amended to date by the First Amended Plan and as it may be amended from time to time, as described in the recitals to this Indenture.

**“Redevelopment Project”** means the redevelopment project located within the Redevelopment Area as contemplated by the Redevelopment Agreement and the Redevelopment Plan.

**“Register”** means the registration books of the City kept by the Trustee to evidence the registration, transfer and exchange of Bonds.

**“Registrar”** means the Trustee when acting as such under this Indenture.

**“Reimbursable Project Cost”** means any cost for the Project pursuant to the Redevelopment Plan and the Redevelopment Agreement and, any Public Improvement Costs incurred by the Developer and approved by the City for reimbursement pursuant to the Redevelopment Plan and the Redevelopment Agreement.



**“Replacement Bonds”** means, if the City determines not to use the book-entry system of the Securities Depository pursuant to **Section 208**, one or more Bond certificates in principal amounts corresponding to the identifiable beneficial owners’ interests in the Bonds pursuant to the records of the Securities Depository.

**“Revenue Fund”** means the fund by that name created in **Section 401** hereof.

**“Reimbursement Agreements”** means the Reimbursement Agreement (Northland Regional Ambulance District) between the City and the Ambulance District dated July 17, 2027 and the Reimbursement Agreement (Smithville Area Fire Protection District) between the City and the Fire District dated as of August 1, 2017.

**“Securities Depository”** means The Depository Trust Company, New York, New York, or any successor Securities Depository appointed pursuant to **Section 208**.

**“School District”** means the Smithville R-II School District of Clay County, Missouri.

**“School District PILOTS Reimbursement”** means 40% of the Payments in Lieu of Taxes received by the City that are attributable to ad valorem taxes imposed by the School District to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, to be paid to the School District as reimbursement for capital improvement costs in accordance with the Redevelopment Agreement.

**“Special Allocation Fund”** means the Special Allocation Fund created within the Treasury of the City and ratified pursuant to **Section 401** herein and in accordance with Section 99.845 of the TIF Act and the TIF Ordinance for the projects within the Redevelopment Area, and within the Special Allocation Fund a PILOTS Account and an Economic Activity Tax Account.

**“State”** means the State of Missouri.

**“Supplemental Indenture”** means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article X** hereof.

**“Tax Compliance Agreement”** means the Tax Compliance Agreement of even date herewith, between the City and the Trustee, as from time to time amended in accordance with the provisions thereof.

**“Taxing Districts”** means any political subdivision of the State having the power to levy taxes with boundaries in the Redevelopment Area.

**“TIF Act”** means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended.

**“TIF Ordinance”** means Ordinance No. 2970-17 authorizing the adoption of tax increment financing within the Redevelopment Project.

**“Trust Estate”** means the Trust Estate described in the granting clauses of this Indenture.

**“Trustee”** means UMB Bank, N.A., Kansas City, Missouri, in its capacity as trustee hereunder, and its successor or successors and any other association or corporation which at any time may be substituted in its place pursuant to and at the time serving as trustee under this Indenture.

#### **Section 102. Rules of Construction.**

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) 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.

(c) The table of contents hereto and the headings and captions herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(d) Terms used in an accounting context and not otherwise defined shall have the meaning ascribed to them by accounting principles generally accepted in the United States of America.

(e) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

### **ARTICLE II**

#### **THE BONDS**

#### **Section 201. Authorization, Issuance and Terms of Bonds.**

(a) *Authorized Amount of Bonds.* No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The total principal amount of the Bonds is limited to \$[Principal Amount].

(b) *Title of Bonds.* The general title of the Bonds authorized to be issued under this Indenture shall be “Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022.”

(c) *Form of Bonds.* The Bonds shall be substantially in the form set forth in **Exhibit A** attached hereto, and may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law with respect thereto.

(d) *Denominations.* The Bonds shall be issuable as fully registered Bonds in the Authorized Denominations.

(e) *Numbering.* Unless the City directs otherwise, the Bonds shall be numbered from R-1 upward.

(f) *Dating.* The Bonds shall be dated their date of delivery.

(g) *Method and Place of Payment.* The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. Payment of the principal of or interest on any Bond shall be made (i) by check or draft of the Trustee mailed to the person in whose name such Bond is registered on the Register as of the close of business of the Trustee on the Record Date for such Payment Date or (ii) or in the case of a principal or interest payment to the Securities Depository or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice delivered to the Trustee not less than 5 days prior to the Record Date from and signed by such owner containing electronic transfer instructions including the name of the bank (which shall be in the continental United States), ABA routing number and account name and account number to which such Owner wishes to have such transfer directed.

## **Section 202. Nature of Obligations.**

(a) The Bonds and the interest thereon shall be special, limited obligations of the City payable solely from the Pledged Revenues and other moneys pledged thereto and held by the Trustee as provided herein, and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Owners of the Bonds, as provided in this Indenture.

(b) The Bonds and the interest thereon do not constitute a debt of the City, the State or any political subdivision thereof, and do not constitute an indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the District, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment.

(c) No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in this Indenture, against any past, present or future elected official of the City or any trustee, officer, official, employee or agent of the City, as such, either directly or through the City or any successor to the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member of the City, trustee, officer, official, employee or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of this Indenture and the issuance of any of the Bonds.

(d) **The obligations of the City with respect to the application of Economic Activity Tax Revenues and Payments in Lieu of Taxes to the repayment of the Bonds terminate on October 2, 2040, whether or not the principal amount thereof or interest thereon has been paid in full.**

## **Section 203. Execution, Authentication and Delivery of Bonds.**

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by the Persons who, at the actual time of the execution of such Bond, are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit A** hereto, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purpose unless and until such Certificate of Authentication has been duly executed by the Trustee. Such executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee, but it shall not be necessary that the same authorized signatory sign the Certificate of Authentication on all of the Bonds that may be issued hereunder at any one time.

#### **Section 204. Registration, Transfer and Exchange of Bonds.**

(a) The Trustee is hereby appointed Registrar and as such shall keep the Register for the registration and for the transfer of Bonds as provided in this Indenture. Each Bond when issued shall be registered in the name of the Owner thereof on the Register.

(b) Any Bond may be transferred only upon the Register upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of the same series and maturity and in any Authorized Denomination authorized by this Indenture. The Bonds may only be purchased by or transferred to Approved Investors.

(c) Any Bond, upon surrender thereof at the corporate trust office of the Trustee or such other payment office as the Trustee shall designate, together with an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee, may, at the option of the Owner thereof, be exchanged for Bonds of the same series and maturity, of any Authorized Denomination authorized by this Indenture, bearing interest at the same rate, and registered in the name of the Owner.

(d) In all cases in which Bonds are exchanged or transferred hereunder, the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee.

(e) No service charge shall be made for any registration, transfer or exchange of Bonds, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, and such charge shall be paid before any such new Bond shall be delivered. The fees and charges of the Trustee for making any transfer or exchange and the expense of any bond printing necessary to effect any such transfer or exchange shall be paid by the City. In the event any registered owner fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such registered owner sufficient to pay any governmental charge required to be paid as a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Trustee from amounts otherwise payable to such registered owner hereunder or under the Bonds.

(f) At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied by the City or the Owners (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

(g) The Person in whose name any Bond is registered on the Register shall be deemed and regarded as the absolute owner of such Bond for all purposes, and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

## **Section 205. Description of Bonds.**

(a) There shall be issued and secured by this Indenture the Bonds in an aggregate principal amount of \$[Principal Amount].

(b) The Bonds shall become due in the amounts on the maturity dates, subject to redemption and payment prior to their maturities as provided in **Article III** hereof, and shall bear interest at the rates specified below (computed on the basis of a 360-day year of twelve 30-day months) from the date thereof or from the most recent Payment Date to which interest has been paid or duly provided for, payable semiannually on June 1 and December 1 in each year, beginning on December 1, 2022.

### **SERIAL BONDS**

<b><u>Maturity</u></b> <b><u>December 1</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>
2022	\$	%
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		
2032		

### **TERM BONDS**

<b><u>Maturity</u></b> <b><u>December 1</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>
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(c) The Trustee is hereby designated as the Paying Agent for the payment of the principal of and interest on the Bonds.

(d) The Bonds shall be executed substantially in the form and manner set forth in **Exhibit A** attached hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee the following:

(1) A copy of the Bond Ordinance, certified by the City Clerk of the City, approving the issuance of the Bonds and authorizing the execution of this Indenture and the other Financing Documents.

(2) An original executed counterpart of this Indenture and the other Financing Documents.

(3) An opinion of Bond Counsel to the effect that the Bonds constitute valid and legally binding obligations of the City and that the interest on the Bonds is excludable from gross income of the owners thereof for federal income tax purposes.

(4) A copy of the Redevelopment Plan, certified by the City Clerk of the City.

(5) A request and authorization to the Trustee on behalf of the City, executed by an Authorized City Representative, to execute the Bonds, to deliver the Bonds as directed by the Placement Agent upon payment of the purchase price thereof. The Trustee shall be entitled to conclusively rely upon such request and authorization as to the name of the purchaser(s) and the amount of such purchase price.

(6) An opinion of Bond Counsel to the effect that the Bonds are exempt from registration under the Securities Act of 1933, as amended, and this Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.

(7) An executed investor letter in the form attached hereto as **Exhibit E** from each of the original purchasers of the Bonds.

(8) Such other certificates, statements, receipts, opinions and documents required by any of the foregoing documents or as the Trustee (or its counsel) or Bond Counsel shall reasonably require for the delivery of the Bonds.

(e) When the documents mentioned in paragraph (d) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, the Trustee shall deliver the Bonds as directed in writing by the Placement Agent, but only upon payment to the Trustee of the purchase price thereof.

**Section 206. Mutilated, Lost, Stolen or Destroyed Bonds.** If any Bond becomes mutilated or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like date and tenor as the Bond mutilated, lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee. In the case of any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity to the City and the Trustee satisfactory to the Trustee to save and hold harmless both the Trustee and the City. If any such Bond has matured, is about to mature or has been called for redemption, instead of issuing a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount by the Owner sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

**Section 207. Cancellation and Destruction of Bonds Upon Payment.** All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be immediately canceled upon the

payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee and periodically destroyed by the Trustee in accordance with applicable record retention requirements. The Trustee shall, at their written request, execute a certificate describing the Bonds so canceled, and shall file an executed counterpart of such certificate with the City.

#### **Section 208. Book-Entry System.**

(a) The Bonds will initially be registered on the Register maintained by the Trustee in the name of Cede & Co., and beneficial owners will not receive certificates representing their respective interests in the Bonds, except if the Trustee issues Replacement Bonds as provided below. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among the participants in the Securities Depository (the “DTC Participants”) and receive and transmit notices with respect to, and payments of principal of and interest on, the Bonds until and unless the Trustee authenticates and delivers Replacement Bonds to the beneficial owners as described below.

(b) The Trustee agrees to give the various written notices to the Securities Depository in accordance with the Letter of Representations, including, without limitation, on or prior to each Payment Date a notice to the Securities Depository specifying the amounts of each payment on such Payment Date allocable to interest and to principal.

(c) If the Securities Depository determines to discontinue providing its services with respect to the Bonds and the City cannot obtain a qualified successor Securities Depository, or if DTC Participants holding a majority interest in the Bonds determine not to use the book-entry system of the Securities Depository, the City shall execute and the Trustee shall authenticate and deliver one or more Replacement Bonds to the DTC Participants in principal amounts corresponding to the identifiable beneficial owners’ interests in the Bonds. The Trustee may conclusively rely on information provided by the Securities Depository as to the identities and addresses of the DTC Participants and the beneficial owners and their interests in the Bonds. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository, or the Trustee as agent of the Securities Depository, has possession of at least one Bond. Upon the issuance of Replacement Bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Trustee, to the extent applicable, with respect to such Replacement Bonds.

(d) If the Securities Depository resigns, is unable to properly discharge its responsibilities or is no longer qualified to act as a securities depository and registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation, the Trustee, with the written consent of the City, may appoint a successor Securities Depository, provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any successor Securities Depository must be a securities depository that is a registered clearing agency under the Securities Exchange Act of 1934, as amended, or other applicable state or federal statute or regulation. Upon the appointment of a successor Securities Depository, the former Securities Depository will surrender the Bonds, together with assignments duly executed in accordance with the provisions of **Section 204**, to the Trustee for transfer to the successor Securities Depository, and the Trustee shall cause the authentication and delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein and as directed by the successor Securities Depository.

### **ARTICLE III**

#### **REDEMPTION OF BONDS**

**Section 301. Redemption of Bonds Generally.** The Bonds shall be subject to redemption prior to maturity in accordance with the terms and provisions set forth in this Article.

**Section 302. Redemption of Bonds.**

(a) *Optional Redemption.*

The Bonds are subject to optional redemption by the City in whole or in part at any time on or after December 1, 20\_\_\_\_, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

(b) *Special Mandatory Redemption.*

(1) The Bonds maturing December 1, 20\_\_\_\_ and thereafter are subject to special mandatory redemption by the City in order of maturity on each December 1 commencing December 1, 20\_\_\_\_, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

(2) The Bonds are subject to special mandatory redemption by the City, in whole but not in part, on any date in the event that moneys in the applicable account of the Debt Service Fund and the Debt Service Reserve Fund are sufficient to redeem all of the Bonds at a redemption price of 100% of such Bonds Outstanding, together with accrued interest thereon to the date fixed for redemption.

(c) *Mandatory Redemption.* The Bonds maturing December 1, \_\_\_\_ (the "Term Bonds") will be subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements set forth below at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The Trustee shall redeem on December 1 in each year, the following principal amounts of such Bonds:

**December 1**

**Amount**

\_\_\_\_\_  
\*Final Maturity

At its option, to be exercised on or before the 45th day next preceding any mandatory Redemption Date, the City may: (1) deliver to the Trustee for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Trustee funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Registered Owner thereof whereupon the Trustee shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the City under this Section for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date that, prior to such date, have been redeemed (other than through the operation of the mandatory redemption requirements of this subsection (c)) and canceled by the Trustee and not theretofore applied as a credit against any redemption obligation under this subsection (c). Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the City to redeem Term



Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the requirements of this Section shall be accordingly reduced. If the City intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the City will, on or before the 45th day next preceding each mandatory Redemption Date, furnish the Trustee a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with respect to such mandatory redemption payment and any Term Bonds to be credited pursuant to (3) above.

### **Section 303. Selection of Bonds to be Redeemed.**

(a) Bonds shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Bonds are to be optionally redeemed and paid prior to maturity, such Bonds or portions of Bonds to be redeemed shall be selected in Authorized Denominations by the Trustee from such maturities and in such amounts as the City may determine, and Bonds of less than a full maturity shall be selected by the Trustee in Authorized Denominations by lot or in such other equitable manner as it may determine.

(b) In the case of a partial redemption of Bonds when Bonds of denominations greater than the minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each Authorized Denomination unit of face value shall be treated as though it was a separate Bond of the denomination of the minimum Authorized Denomination. If one or more, but not all, of the minimum Authorized Denomination units of principal amount represented by any Bond are selected for redemption, then upon notice of intention to redeem such minimum Authorized Denomination unit or units, the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (i) for payment of the redemption price (including the interest to the date fixed for redemption) of the minimum Authorized Denomination unit or units of principal amount called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond of a denomination greater than minimum Authorized Denomination fails to present such Bond to the Trustee for payment and exchange as aforesaid, said Bond shall, nevertheless, become due and payable on the redemption date to the extent of the minimum Authorized Denomination unit or units of principal amount called for redemption (and to that extent only) and shall cease to accrue interest on the principal amount so called for redemption.

### **Section 304. Notice of Redemption of Bonds.**

(a) In the case of Bonds called for redemption under **Section 302**, the Trustee shall call Bonds for redemption and payment as herein provided and shall give notice of redemption as provided below upon receipt by the Trustee at least 35 days prior to the redemption date of a written request of the City. The foregoing provisions of this Section shall not apply in the case of any mandatory redemption of Bonds under this Bond Indenture, and the Trustee shall call Bonds for redemption and shall give notice of redemption pursuant to such mandatory redemption requirements without the necessity of any action by the City.

Unless waived by any Owner of Bonds to be redeemed, official notice of any redemption of any Bond shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 20 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Register; provided, however, that failure to give such notice by mailing as aforesaid to any Owner or any defect therein as to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bonds.

- (b) All official notices of redemption shall be dated and shall state:
- (1) the redemption date,
  - (2) the redemption price,
  - (3) if less than all Outstanding Bonds are to be redeemed, the identification of the Bonds to be redeemed (such identification to include interest rates, maturities, CUSIP numbers and such additional information as the Trustee may reasonably determine),
  - (4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
  - (5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the corporate trust office of the Trustee or such other payment office as the Trustee may designate.

In addition to the foregoing notice, the Trustee shall also comply with any mandatory requirements or guidelines published by the Securities and Exchange Commission relating to providing notices of redemption. The failure of the Trustee to comply with any such requirements shall not affect or invalidate the redemption of said Bonds.

- (c) The Trustee shall mail by first-class mail to the City a copy of such redemption notice.

Any provision in this Indenture to the contrary notwithstanding, any notice of optional redemption pursuant to **Section 302** shall state that it is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds, and such notice and optional redemption shall be of no effect if by no later than the scheduled redemption date, sufficient moneys to redeem the Bonds are not on deposit with and available to the Trustee.

So long as the Securities Depository is effecting book-entry transfers of the Bonds, the Trustee shall provide the notices specified in this Section only to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

**Section 305. Effect of Call for Redemption.** On or prior to the date fixed for redemption, moneys or Government Securities shall be deposited with the Trustee as provided in **Section 402** hereof to pay the Bonds called for redemption and accrued interest thereon to the redemption date. Upon the happening of the above conditions, and notice having been given as provided in **Section 304** hereof, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, provided moneys sufficient for the payment of the redemption price are on deposit at the place of payment at the time, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

## ARTICLE IV

### FUNDS AND REVENUES

#### **Section 401. Creation of Funds; Application of Bond Proceeds.**

(a) The following funds of the City are hereby created and established with the Trustee:

(1) Revenue Fund, which shall contain a PILOTs Account, an EATs Account, and a CID Account.

(2) Debt Service Fund, which shall contain a Bond Payment Account and a Redemption Account.

(3) Debt Service Reserve Fund, with a Bond Proceeds Account and a Business Interruption Account.

(4) Project Fund.

(6) Rebate Fund.

(7) Extraordinary Expense Fund.

Each fund and account shall be maintained by the Trustee as a separate and distinct trust fund and the moneys therein shall be held, managed, invested, disbursed and administered as provided in this Indenture. All moneys deposited in the funds and accounts shall be used solely for the purposes set forth in this Indenture. The Trustee shall keep and maintain adequate records pertaining to each fund and account, each series of the Bonds and all disbursements therefrom.

(b) The net proceeds received from the sale of the Bonds shall be deposited or paid simultaneously with the delivery of the Bonds as follows:

(1) the accrued interest, if any, received from the sale of the Bonds shall be deposited in the Bond Payment Account of the Debt Service Fund;

(2) an amount equal to \$\_\_\_\_\_ from the proceeds of the Bonds shall be deposited in the Bond Proceeds Account of the Debt Service Reserve Fund; and

(3) the remaining moneys from the proceeds of the Bonds shall be deposited into the Project Fund.

(c) The Special Allocation Fund held by the City is hereby ratified and confirmed. Moneys in the Special Allocation Fund shall be paid by the City on the tenth day of each month (or the next Business Day thereafter if the tenth day is not a Business Day) to the Trustee, with (A) all Net Revenues as of the last day of the preceding month consisting of Payments in Lieu of Taxes (excluding amounts held for the Ambulance District PILOTs Reimbursement, the Fire District PILOTs Reimbursement, the School District PILOTs Reimbursement and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Payments in Lieu of Taxes and directing the Trustee that such amounts are to be deposited into the PILOTs Account of the Revenue Fund, and (B) subject to annual appropriation by the City and **Section 602** herein, all Net Revenues as of the last day of the preceding month consisting of Economic Activity Tax Revenues (excluding the Fire District EATs Reimbursement, the

Grocery Store Sales Tax Payment and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Economic Activity Tax Revenues and directing the Trustee that such amounts are to be deposited into the EATS Account of the Revenue Fund. The Trustee shall notify the City and the Placement Agent if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

(d) Any CID Revenues collected by or on behalf of the District, and transferred to the Trustee by the District or the City pursuant to the Financing Agreement and as provided herein on or before the tenth day of each month (or the next Business Day thereafter if the tenth day is not a Business Day) and accompanied by written notice identifying such amounts as CID Revenues shall be deposited into the CID Account in the Revenue Fund. The Trustee shall notify the City, the Placement Agent, and the District if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

**Section 402. Revenue Fund.** Moneys in the Revenue Fund on the 40<sup>th</sup> day prior to each Payment Date (or at any time in the event of rebate payable to the United States of America) shall be applied by the Trustee to the extent necessary for the purposes and in the amounts as follows, drawing *first* on the CID Revenue Account in the Revenue Fund, *second* on the PILOTs Account in the Revenue Fund, and *third* on the EATs Account in the Revenue Fund:

*First*, for transfer to the Rebate Fund when necessary, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Instructions and an amount equal to all fees, charges, advances and expenses related to the calculations necessary to determine the amount of rebate, if any, that may be due and payable;

*Second*, to the Trustee, an amount equal to all fees, charges, advances and expenses of the Trustee due and payable pursuant to this Indenture (fees, charges, advances and expenses of the Trustee incurred in connection with the Trustee's ordinary services under this Indenture shall not exceed \$5,000 per Fiscal Year; provided the Trustee or other person or entity shall also be entitled to compensation for (i) services, if any, as dissemination agent and (ii) extraordinary services rendered and reimbursed for extraordinary out of pockets costs and expenses incurred, in accordance with **Section 802** of this Indenture);

*Third*, for payment to the City of an amount sufficient for payment of any fees and expenses that may be owing pursuant to **Section 609** and **Section 610** hereof, upon delivery to the Trustee of a written request (which shall be accompanied by an invoice) for such amounts;

*Fourth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the interest on the Bonds on the next two succeeding Payment Dates;

*Fifth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of and premium, if any, due on the Bonds by their terms on the next two succeeding Payment Dates;

*Sixth*, for deposit to the Bond Proceeds Account of the Debt Service Reserve Fund until the Bond Proceeds Account has been funded or restored in an amount equal to the Debt Service Reserve Requirement applicable to the Bond Proceeds Account;

*Seventh*, for deposit to the Business Interruption Account of the Debt Service Reserve Fund until the Business Interruption Account has been funded or restored to the Debt Service Reserve Requirement applicable to the Business Interruption Account;

*Eighth*, transfer to the Extraordinary Expense Fund, an amount (not to exceed \$10,000 per Fiscal Year) sufficient to cause the balance in said fund to equal \$20,000; and

*Ninth*, for transfer to the Redemption Account of the Debt Service Fund, all remaining funds to redeem Bonds pursuant to the Special Mandatory Redemption provisions contained in **Section 302(b)** of this Indenture in Authorized Denominations which shall be applied to the payment of the principal of and accrued interest on all Bonds which are subject to redemption on the next succeeding Payment Date.

If necessary, on the Business Day prior to each Payment Date, drawing *first* on the CID Account in the Revenue Fund, *second* on the PILOTs Account in the Revenue Fund, and *third* on the EATs Revenue Account in the Revenue Fund, the Trustee shall transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of or interest on the Bonds due on the next Payment Date.

**For purposes of the transfers set forth above, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentage as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

#### **Section 403. Debt Service Fund.**

(a) Except as otherwise provided herein, all amounts paid and credited to the Debt Service Fund shall be expended solely for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same mature and become due or upon the redemption thereof.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient moneys from the Debt Service Fund to pay the principal of and interest on the Bonds as the same become due and payable and to make said moneys so withdrawn available to the Paying Agent for the purpose of paying said principal of and interest on the Bonds.

(c) The Trustee shall use any moneys remaining in the Debt Service Fund to redeem all or part of the Bonds Outstanding and interest to accrue thereon prior to such redemption, in accordance with and to the extent permitted by **Article III** hereof, so long as said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption. The Trustee, upon the written instructions from the City, signed by the Authorized City Representative, shall use moneys in the Redemption Account of the Debt Service Fund on a best efforts basis for the purchase of Bonds in the open market to the extent practical for the purpose of cancellation at prices not exceeding the principal amount thereof plus accrued interest thereon to the date of such purchase.

(d) Except as provided in **Section 402**, if the moneys in the Debt Service Fund are insufficient to pay all accrued interest on the Bonds on any Payment Date, then such moneys shall be applied ratably, according to the amounts due on such installment, to the Persons entitled thereto without any discrimination

or privilege, and any unpaid portion shall accrue to the next Payment Date, with interest thereon at the rate or rates specified in the Bonds to the extent permitted by law. Except as provided in **Section 402**, if the moneys in the Debt Service Fund are insufficient to pay the principal of the Bonds on the maturity date thereof, then such moneys shall be applied ratably, according to the amounts of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(e) After payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as specified in this Indenture), and the fees, charges and expenses of the Trustee and any Paying Agents and any other amounts required to be paid under this Indenture, all amounts remaining in the Debt Service Fund consisting of (i) Payments in Lieu of Taxes and Economic Activity Tax Revenues shall be paid to the City for deposit into the Special Allocation Fund, and (ii) CID Revenues shall be paid to the District.

#### **Section 404. Project Fund.**

(a) Moneys in the Project Fund shall be disbursed by the Trustee from time to time, upon receipt of a written request of the Authorized City Representative and containing the statements, representations and certifications set forth in the form of such request attached as **Exhibit B** hereto and otherwise substantially in such form, to pay costs related to the issuance of the Bonds or to pay, or reimburse the Developer for payment of, the costs of the Project as described on **Exhibit D**. Any moneys remaining on deposit in the Project Fund when the portion of the Project financed with the proceeds of the Bonds is completed, as stated in a certificate delivered by the Authorized City Representative to the Trustee, shall immediately be transferred by the Trustee to the Bond Payment Account in the Debt Service Fund.

(b) In making payments and disbursements pursuant to this Section, the Trustee may rely upon the written requests and accompanying certificates and statements. The Trustee is not required to make any independent investigation or inspection in connection with the matters set forth in the written requests.

**Section 405. Debt Service Reserve Fund.** Except as otherwise provided in this Indenture, moneys in the Debt Service Reserve Fund shall be used by the Trustee without further authorization solely for the payment of the principal of and interest on the Bonds if moneys otherwise available for such purpose as provided in **Section 403** hereof are insufficient to pay the same as they become due and payable. In the event the balance of moneys in the Debt Service Fund is insufficient to pay principal of or interest on the Bonds when due and payable, moneys in the Debt Service Reserve Fund shall be transferred into the Debt Service Fund in an amount sufficient to make up such deficiency, using the moneys in the Business Interruption Account until all such money has been expended and then moneys in the Bond Proceeds Account. The Trustee may use moneys in the Debt Service Reserve Fund for such purpose whether or not the amount in the Debt Service Reserve Fund at that time equals the Debt Service Reserve Requirement. Such moneys shall be used first to make up any deficiency in the payment of interest and then principal. Moneys in the Bond Proceeds Account and the Business Interruption Account of the Debt Service Reserve Fund shall also be used to pay the last Bonds becoming due unless such Bonds and all interest thereon be otherwise paid. The amount on deposit in the Debt Service Reserve Fund shall be valued by the Trustee 45 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day) and the Trustee shall give immediate written notice to the City if such amount is less than the Debt Service Reserve Requirement. For the purpose of determining the amount on deposit in the Debt Service Reserve Fund, the value of any investments shall be valued at their fair market value on the date of valuation. Moneys in the Debt Service Reserve Fund that are in excess of the Debt Service Reserve Requirement shall be deposited by the Trustee without further authorization in the Debt Service Fund.

#### **Section 406. Rebate Fund.**

(a) There shall be deposited by the Trustee in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Arbitrage Instructions. Subject to the transfer provisions provided in subsection (b) below, all money at any time deposited in the Rebate Fund and any income earned thereon shall be held in trust, to the extent required to pay arbitrage rebate to the federal government of the United States of America, and neither the City, the District nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Arbitrage Instructions (which is incorporated herein by reference).

(b) Pursuant to the Arbitrage Instructions, the Trustee, on behalf of the City, shall remit from the Rebate Fund rebate installments and the final rebate payments to the United States in accordance with the written direction of, or on behalf of, the City. Any moneys remaining in the Rebate Fund after redemption and payment of all of the Bonds and payment and satisfaction of any arbitrage rebate, or provision made therefore, consisting of (i) Payments in Lieu of Taxes and Economic Activity Tax Revenues shall be paid to the City for deposit into the Special Allocation Fund and (ii) CID Revenues shall be paid to the District.

(c) Notwithstanding any other provision of this Indenture, including in particular this Article, the obligation to remit arbitrage rebate to the United States and to comply with all other requirements of this Section, the preceding Section and the Arbitrage Instructions shall survive the defeasance or payment in full of the Bonds.

#### **Section 407. Extraordinary Expense Fund.**

(a) Amounts on deposit in the Extraordinary Expense Fund shall be used only for the purpose of paying the fees, expenses and other costs, including legal fees, incurred by the City in connection with the defense or interpretation of the Indenture, or an audit, questionnaire or other request for information from the Internal Revenue Service, the Securities Exchange Commission or other federal or state entity or regulatory authority in connection with the Bonds, including legal fees incurred and any rebate obligations, fines or penalties owed. The Trustee will disburse moneys from the Extraordinary Expense Fund upon receipt by the Trustee of a written request signed by the Authorized City Representative that includes identification of the persons or entities owed such fees, expenses and other costs.

(b) In making payments and disbursements pursuant to this Section, the Trustee may conclusively rely upon the written requests and accompanying certificates and statements. The Trustee is not required to make any independent inspection or investigation in connection with the matters set forth in the written requests.

(c) Upon the payment in full of the principal of and interest due on the Bonds (or provision having been made for the payment thereof as specified in this Indenture) and the fees, charges and expenses of the Trustee and any Paying Agents, and any other amounts required to be paid under this Indenture, all amounts remaining on deposit in the Extraordinary Expense Fund with respect to the Bonds shall be paid to the City for deposit into the Special Allocation Fund.

**Section 408. Non-Presentation of Bonds.** If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof, and provided the Trustee is holding sufficient funds for the payment thereof, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, without liability for interest thereon, for the benefit

of the Owner of such Bond who shall thereafter be restricted exclusively to such moneys, for any claim of whatever nature on such Owner's part under this Indenture or on, or with respect to, said Bond.

Any moneys so deposited with and held by the Trustee not so applied to the payment of Bonds within one year after the date on which the same have become due shall be paid by the Trustee to the City without liability for interest thereon, free from the trusts created by this Indenture. Thereafter, Owners shall be entitled to look only to the City for payment, and then only to the extent of the amount so repaid by the Trustee. The City shall not be liable for any interest on the sums paid to it pursuant to this Section and shall not be regarded as a trustee of such money.

**Section 409. Separation of Revenues.** The Trustee shall establish separate subaccounts within the Funds and Accounts or otherwise segregate moneys within such Funds and Accounts, on a book-entry basis or in such other manner as the Trustee may deem necessary or convenient, to separately account for the CID Revenues consistent with the purposes for which the CID Revenues are authorized.

## **ARTICLE V**

### **SECURITY FOR DEPOSITS AND INVESTMENT OF MONEYS**

**Section 501. Moneys to be Held in Trust.** All moneys deposited with or paid to the Trustee for the account of any fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture and, until used or applied as herein provided, shall (except for the Rebate Fund) constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except as otherwise provided herein.

**Section 502. Investment of Moneys.**

(a) Moneys in all funds and accounts under any provision of this Indenture shall be continuously invested and reinvested by the Trustee in Investment Securities at the written direction of the City given by the Authorized City Representative or, if such written directions are not received, then in Investment Securities described in subparagraph (f) of the definition thereof. Moneys on deposit in all funds and accounts may be invested only in Investment Securities which mature or are subject to redemption at the option of the owner thereof prior to the date such funds are expected to be needed. The Trustee may make investments through its investment division or short-term investment department.

(b) All investments and the interest earnings or profit therefrom shall constitute a part of the fund or account from which the moneys used to acquire such investments have come. The Trustee shall sell and reduce to cash a sufficient amount of investments in a fund or account whenever the cash balance therein is insufficient to pay the amounts required to be paid therefrom. The Trustee may transfer investments from any fund or account to any other fund or account in lieu of cash when required or permitted by the provisions of this Indenture. In determining the balance in any fund or account, investments shall be valued at the lower of their original cost or their fair market value on the most recent Payment Date, except as otherwise provided in **Section 405** hereof. The Trustee shall not be liable for any loss resulting from any investment made in accordance herewith.

## **ARTICLE VI**

### **PARTICULAR COVENANTS AND PROVISIONS**



**Section 601. Authority to Issue Bonds and Execute Indenture.** The City covenants that it is duly authorized under the laws of the State to execute and deliver this Indenture, to issue the Bonds and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable limited obligations of the City according to the import thereof.

**Section 602. Covenant to Request Appropriations.**

***Annual Appropriation.*** The City intends, on or before the last day of each Fiscal Year, to budget and appropriate moneys constituting Economic Activity Tax Revenues to the repayment of the principal of and interest on the Bonds for that Fiscal Year. The City shall deliver written notice to the Trustee no later than 15 days after the commencement of its Fiscal Year stating whether or not the Board of Aldermen has appropriated such funds during such Fiscal Year. If the Board of Aldermen shall have made the appropriation, the failure of the City to deliver the foregoing notice on or before the 15<sup>th</sup> day after the commencement of its Fiscal Year shall not constitute an event of default and, on failure to receive such notice 15 days after the commencement of the City's Fiscal Year, the Trustee shall request the City confirm in writing whether or not such appropriation has been made.

***Payments to Constitute Current Expenses of the City.*** The City acknowledges that the application of Economic Activity Tax Revenues under this Indenture shall constitute currently budgeted expenditures of the City, and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, nor shall anything contained in this Indenture constitute a pledge of the general credit, tax revenues, funds or moneys of the City. The City's obligations to apply Economic Activity Tax Revenues under the Indenture shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing Fiscal Year beyond the then current Fiscal Year. Neither this Indenture nor the issuance of the Bonds shall directly or indirectly obligate the City to levy or pledge any form of taxation or make any appropriation or make any payments beyond those appropriated for the City's then current Fiscal Year in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, but in each Fiscal Year Economic Activity Tax Revenues shall be payable solely from the amounts budgeted or appropriated therefor by the City, for such year; provided, however, that nothing in this Indenture shall be construed to limit the rights of the owners of the Bonds or the Trustee to receive any amounts which may be realized from the Trust Estate pursuant to this Indenture.

**Section 603. Performance of Covenants.** The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings pertaining thereto.

**Section 604. Instruments of Further Assurance.** The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better assuring, transferring, pledging and assigning to the Trustee, and granting a security interest unto the Trustee in and to the Trust Estate and the other property and revenues herein described. The Redevelopment Agreement, the CID Agreement, the Financing Agreement and all other documents or instruments required by the Trustee shall be delivered to and held by the Trustee.

**Section 605. General Limitation on City Obligations.** ANY OTHER TERM OR PROVISION OF THIS INDENTURE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION

WITH THE TRANSACTION WHICH IS THE SUBJECT HEREOF TO THE CONTRARY NOTWITHSTANDING, THE CITY SHALL NOT BE REQUIRED TO TAKE OR OMIT TO TAKE, OR REQUIRE ANY OTHER PERSON OR ENTITY TO TAKE OR OMIT TO TAKE, ANY ACTION WHICH WOULD CAUSE IT OR ANY PERSON OR ENTITY TO BE, OR RESULT IN IT OR ANY PERSON OR ENTITY BEING, IN VIOLATION OF ANY LAW OF THE STATE.

**Section 606. Recording and Filing.** The City shall file or cause to be kept and filed all financing statements, and the Trustee shall file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto and such other documents as may be necessary to be kept and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the Owners of the Bonds and the rights of the Trustee hereunder. Unless otherwise notified in writing by the City, the Trustee may conclusively rely upon the originally filed financing statements in filing any continuation statements. The City hereby authorizes the filing of uniform commercial code financing statements to reflect the security interests granted hereby. In carrying out its duties under this Section, the Trustee shall be entitled to rely on an Opinion of Counsel specifying what actions are required to comply with this Section.

**Section 607. Possession and Inspection of Books and Documents.** The City and the Trustee covenant and agree that all books and documents in their possession relating to the Bonds, the Special Allocation Fund, the Net Revenues and to the distribution of proceeds thereof shall at all reasonable times and upon reasonable notice be open to inspection by such accountants or other agencies or Persons as the other party may from time to time designate. On or before October 31 of each year (or if such date is not a Business Day, the immediately preceding Business Day), commencing October 31, 2022, the Trustee shall provide written notice to the City of the following:

- (a) the aggregate amount of money on deposit in the Revenue Fund on such date;
- (b) any deficiency in the Debt Service Reserve Fund as of such date; and
- (c) the amount of scheduled debt service payable on the Bonds during the immediately succeeding Fiscal Year.

**Section 608. Tax Covenants.** The City and the Trustee covenant and agree with respect to the interest on any of the Bonds that is excluded from gross income for federal income tax purposes:

(a) The City shall not use or permit the use of any proceeds of the Bonds or any other funds of the City, and the Trustee shall not use any proceeds of the Bonds or any other funds of the City held by the Trustee, directly or indirectly, to acquire any securities or obligations, and shall not use or permit the use of any amounts received by the City or the Trustee in any manner, and shall not take or permit to be taken any other action or actions, which would cause any Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Code, or “federally guaranteed” within the meaning of Section 149(b) of the Code. If at any time the City is of the opinion that for purposes of this subsection (a) it is necessary to restrict or limit the yield on or change in any way the investment of any moneys held by the Trustee under this Indenture, the City shall so instruct the Trustee in writing and the Trustee shall act in accordance with such instructions. The City shall be deemed in compliance with this Section to the extent it follows the Arbitrage Instructions or an opinion of Bond Counsel with respect to the investment of funds hereunder. The Trustee shall be deemed in compliance with this Section to the extent it follows the written instructions of the City or an opinion of Bond Counsel with respect to the investment of funds hereunder.

(b) The City shall not (to the extent within its power or direction) use or permit the use of any proceeds of the Bonds or any other funds of the City, directly or indirectly, in any manner, and shall not

take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as other than an obligation described in Section 103(a) of the Code.

(c) The City will not (to the extent within its power or direction) use any portion of the proceeds of the Bonds, including any investment income earned on such proceeds, directly or indirectly, in a manner that would cause any Bond to be a “private activity bond” within the meaning of Section 141 (a) of the Code.

(d) The Trustee agrees to comply with any written letter or opinion of Bond Counsel which sets forth the requirements to comply with any statute, regulation or ruling that may apply to the Trustee hereunder and relating to reporting requirements or other requirements necessary to preserve the exclusion from federal gross income of the interest on the Bonds.

(e) The foregoing covenants of this Section shall remain in full force and effect notwithstanding the defeasance of the Bonds pursuant to **Article IX** hereof or any other provision of this Indenture, until the final scheduled payment of all Bonds Outstanding.

**Section 609. Collection of Payments.** The City shall, at the expense of the Trust Estate, (a) take all lawful action within its control to cause the assessment of the real property and improvements within the Redevelopment Area, and the collection of Payments in Lieu of Taxes, at the times and in the manner required by the TIF Act, (b) take such lawful action within its control as may be required to cause the Director of Revenue of the State of Missouri and all other Persons to pay all Economic Activity Tax Revenues which are due to the City under the TIF Act, and (c) take all lawful action within its control to collect, or enforce all remedies to collect, the CID Revenues required to be paid by the District to the City pursuant to the CID Agreement. The Trustee shall, upon written direction of a majority of the Owners of the Bonds then Outstanding and upon being indemnified as provided in **Section 801(I)**, and at the expense of the Trust Estate, take such lawful action within its control to cause the assessment of the real property and improvements within Redevelopment Area at the times and in the manner required by the TIF Act, and cause the payment of the sales taxes associated with the Economic Activity Tax Revenues that are due to the City pursuant to the Redevelopment Agreement. The City covenants and agrees that, so long as the Bonds are Outstanding, the City will not authorize or grant real property tax abatement within the Redevelopment Area.

**Section 610. Enforcement of Agreements.**

(a) The City shall enforce the provisions of the Financing Documents in such manner as the City deems prudent and advisable in its good faith discretion. The City may enforce all appropriate available remedies thereunder, including particularly any actual, agreed or liquidated damages for failure to perform under the Financing Documents, and shall transfer to the Trustee for deposit to the Revenue Fund all sums received on account of such damages.

(b) The City shall notify the Trustee in writing as to any material failure of performance under the Financing Documents, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies. If, in the sole judgment of the Trustee, such action is less likely to be effective than some other or additional action, the Trustee may so advise the City promptly in writing. If, within 30 days following advice by the Trustee that some additional or other action would be more effective, or less than 30 days if so directed by a majority of the Owners, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee shall have the right to take such action, whether the action was suggested by the Trustee or otherwise, as the Trustee may deem most expedient and in the interest of the Owners of the Bonds. In furtherance of the rights granted to the Trustee

by this Section, the City hereby assigns to the Trustee all of the rights it may have in the enforcement of the Financing Documents, further authorizing the Trustee in its own name or in the name of the City to bring such actions, employ such counsel, execute such documents and do such other things as may in the judgment of the Trustee be necessary or appropriate under the circumstance at the expense of the Trust Estate.

(c) The City shall not modify, amend or waive any provision of the Financing Documents without the prior written consent of the Trustee, whose consent may be based upon the advice or opinion of counsel. The Trustee may withhold its consent to any such proposed modification, amendment or waiver of the Financing Documents if the proposed modification, amendment or waiver may adversely affect the security for the Bonds or may adversely affect the exclusion of interest on any Bonds from gross income of the Owners thereof for federal income tax purposes for Bonds that were exempt from taxation for federal income tax purposes or as may impose additional duties on the Trustee that were not contemplated upon the original execution of this Indenture. In exercising such judgment and in providing any consent pursuant to this Section, the Trustee may rely on an Opinion of Counsel.

**Section 611. Monthly Report.** The City shall provide to the Trustee, no later than the fifteenth day of each month, commencing June 15, 2022, a report of the Economic Activity Tax Revenues, Payments in Lieu of Taxes, and CID Revenues received by the City and transferred to the Trustee, which report shall be substantially in the form attached hereto as **Exhibit C**.

## **ARTICLE VII**

### **DEFAULT AND REMEDIES**

**Section 701. Events of Default.** If any one or more of the following events occur, it is hereby defined as and declared to be and to constitute an “Event of Default”:

(a) Default in the performance or observance of any of the covenants, agreements or conditions on the part of the City in this Indenture or in the Bonds contained, and the continuance thereof for a period of 30 days after written notice thereof has been given (i) to the City by the Trustee, or (ii) to the Trustee (which notice of default the Trustee shall be required to accept) and the City by the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding; provided, however, if any default is such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected; or

(b) The filing by the City of a voluntary petition in bankruptcy, or failure by the City to promptly lift any execution, garnishment or attachment of such consequence as would impair the ability of the City to carry on its operation, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of federal bankruptcy law, or under any similar acts which may hereafter be enacted.

(c) The failure to pay the principal of, redemption premium, if any, or interest on the Bonds when due.

The Trustee shall give written notice of any Event of Default to the City as promptly as practicable after the occurrence of an Event of Default of which the Trustee has notice as provided in **Section 801(h)** hereof.

**Section 702. No Acceleration.** The Bonds shall not in any event be subject to acceleration prior to maturity.

**Section 703. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.** If an Event of Default has occurred and is continuing, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and out of the same and any moneys received from any receiver of any part thereof pay and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including, but not limited to, (i) reasonable compensation to the Trustee, its agents and counsel, and (ii) any reasonable charges of the Trustee hereunder, and the Trustee shall apply the remainder of the moneys so received in accordance with **Section 708** hereof.

Whenever all that is due upon the Bonds has been paid and all defaults made good, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default.

While in possession of the Trust Estate, the Trustee shall render annually to the City a summarized statement of receipts and expenditures in connection therewith.

**Section 704. Appointment of Receivers in Event of Default.** If an Event of Default has occurred and is continuing, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

**Section 705. Exercise of Remedies by the Trustee.** If an Event of Default has occurred and is continuing, the Trustee may pursue any available remedy at law or equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding, and to enforce and compel the performance of the duties and obligations of the City as herein set forth.

If an Event of Default has occurred and is continuing, and if requested so to do by the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding and indemnified as provided in **Section 801(1)** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, deems most expedient in the interests of the Owners; provided, however, that the Trustee shall not be required to take any action which in its good faith conclusion could result in personal liability to it.

All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Owner, and any recovery or judgment shall, subject to **Section 708** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

**Section 706. Limitation on Exercise of Remedies by Owners.** No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless:

(i) a default has occurred of which the Trustee has notice as provided in **Section 801(h)** hereof, and

(ii) such default has become an Event of Default, and

(iii) the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee, shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and shall have provided to the Trustee indemnity as provided in **Section 801(1)** hereof, and

(iv) the Trustee shall thereafter fail or refuse to exercise the powers herein granted or to institute such action, suit or proceeding in its own name;

and such notification, request and indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture, however, shall affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after its maturity or the obligation of the City to pay the principal of and interest on each of the Bonds to the respective Owners thereof at the time, place, from the source and in the manner herein and in such Bond expressed.

**Section 707. Right of Owners to Direct Proceedings.** Any other provision herein to the contrary notwithstanding, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and provided, further, that the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith determines that the proceeding so directed would involve it in personal liability or the Trustee has not been indemnified as provided in **Section 801** hereof.

**Section 708. Application of Moneys in Event of Default.** Upon an Event of Default, all moneys held or received by the Trustee pursuant to this Indenture or the Financing Documents pursuant to any right given or action taken under this Article shall, after payment of the reasonable fees, costs, advances and expenses of the Trustee and the proceedings resulting in the collection of such moneys (including without limitation attorneys' fees and expenses), subject to the limitations contained in **Article IV** herein, be deposited in the Debt Service Fund. All moneys in the Debt Service Fund, the Debt Service Reserve Fund, the Project Fund and the Revenue Fund shall be applied as follows:

*First* – To the payment to the Owners entitled thereto of all installments of interest then due and payable on the Bonds, in the order in which such installments of interest became due and payable, with interest thereon at the rate or rates specified in the respective

Bonds to the extent permitted by law, and, if the amount available is not sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege.

*Second* – To the payment to the Owners entitled thereto of the unpaid principal of any of the Bonds that have become due and payable (other than Bonds called for redemption for the payment of which moneys or securities are held pursuant to this Indenture), in the order of their due dates, and, if the amount available is not sufficient to pay in full such principal due on any particular date, together with such interest, then to the payment ratably, according to the amounts of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

Whenever moneys are to be applied pursuant to this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future.

**For purposes of the transfers set forth above, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentages as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

**Section 709. Remedies Cumulative.** No remedy conferred by this Indenture upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute.

**Section 710. Delay or Omission Not Waiver.** No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient.

**Section 711. Effect of Discontinuance of Proceedings.** If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then the City, the Trustee, the District and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

**Section 712. Waivers of Events of Default.** The Trustee shall waive any Event of Default and its consequences upon the written request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding; provided that there shall not be waived without the written consent of the Owners of all the Bonds Outstanding any Event of Default in the payment of the principal of any Outstanding Bonds at their maturity or upon the redemption thereof, or unless, prior to such waiver or rescission, all arrears of payments of principal when due, all fees, charges and expenses of the City and the Trustee in connection with such Event of Default shall have been paid or provided for. However, no Default involving the nonpayment of the fees, charges or expenses of the Trustee shall be waived without the prior written consent of the Trustee. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Trustee and the Bondowners shall be restored to their former

positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## ARTICLE VIII

### THE TRUSTEE

**Section 801. Acceptance of Trusts.** The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts as a corporate trustee ordinarily would perform said trusts under a corporate indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent person under reasonably similar circumstances would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, attorneys, receivers, employees or such other professionals but shall not be answerable for the conduct of the same in accordance with the standard specified above, provided the Trustee has exercised reasonable care in making such selection. The Trustee may act and conclusively rely upon the opinion or advice of counsel, who may, without limitation, be counsel to the City or an employee of the Trustee, concerning all matters of trust hereof and the duties hereunder, and, subject to the restrictions of **Section 802** hereof, may in all cases pay such reasonable compensation to all such agents, attorneys, receivers, employees and other such professionals as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction by it taken or omitted to be taken in good faith and shall be fully protected in reliance upon such opinion or advice of counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or for the recording, re-recording or filing of this Indenture or any security agreements in connection therewith (except as provided in **Section 606** herein), or for insuring any of the improvements constructed in the Redevelopment Area or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any or instruments of further assurance, or for the sufficiency of the security for the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article V** hereof. The Trustee makes no representations as to the value or condition of the Trust Estate or any part thereof, or as to the validity or sufficiency of this Indenture or of the Bonds. The Trustee shall not be accountable for the use or application by the City of any of the Bonds or the proceeds thereof or of any money paid to or upon the order of the City under any provision of this Indenture.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the owner of Bonds with the same rights which it would have if it were not Trustee.



(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to and in accordance with this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is the Owner of any Bond, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefore or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee deems it desirable that a matter be proven or established prior to taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by an Authorized City Representative, an Authorized District Representative or Authorized Developer Representative as sufficient evidence of the facts therein contained. Prior to the occurrence of an Event of Default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(h) The Trustee shall not be required to take notice of any default or Event of Default, other than a failure to make any payment on the Bonds when due, unless the Trustee is specifically notified in writing of such Event of Default by the City or by the Owners of at least 10% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but shall not be required, to inspect any and all of the Project, the Redevelopment Area, including all books, papers and records of the City or the District pertaining to the Bonds, and to take copies of such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of its trusts and powers hereunder.

(k) The Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any funds, or any action whatsoever within the purview of this Indenture, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee as are deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any funds or the taking of any other action by the Trustee.

(l) Anything herein to the contrary notwithstanding, before taking any action under this Indenture, other than any action under **Article II** hereof concerning the payment of principal and interest on the Bonds, declaring an Event of Default and accelerating the maturity of the Bonds, the Trustee may, in its discretion, require that satisfactory indemnity be furnished to it by the

Owners or other parties for the reimbursement of all reasonable fees, costs, liabilities, losses, claims and expenses to which it or its agents or counsel may be put and to protect it against all liability including environmental, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) All moneys received by the Trustee shall, until used, applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds, except to the extent required by law or this Indenture. The Trustee shall be under no liability for interest on any moneys received hereunder, except to account for interest earned from Investment Securities.

(n) Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture that occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.

(o) No provision of this Indenture shall be deemed to require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of its rights or powers, if the Trustee has reasonable grounds for believing that repayment of those funds or, in the alternative, adequate indemnity against such risk or liability is not reasonably assured to it.

(p) The Trustee has no obligation or liability to the Bondowners for the payment of interest or premium, if any, on or principal of the Bonds, but rather the Trustee's sole obligations are to administer, for the benefit of the City and the Bondowners, the Funds established hereunder.

(q) In the event the Trustee shall receive inconsistent or conflicting requests and indemnity from two or more groups of Bondowners, each representing less than a majority of the aggregate principal amount of the Bonds then Outstanding, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

(r) The Trustee shall have no responsibility with respect to any information in any offering memorandum or other disclosure material distributed with respect to the Bonds. The Trustee shall have no responsibility for compliance with securities laws in connection with issuance of the Bonds.

(s) The Trustee's immunities and protections from liability, and its right to payment of compensation and indemnification in connection with performance of its duties and obligations under this Indenture, shall survive the Trustee's resignation or removal, or the final payment of the Bonds.

(t) The Trustee is under no duty, obligation or responsibility to verify any insurance policy, audit, schedule, statement, report, surety bond or other instrument required or directed to be delivered or filed with the Trustee by any provision of this Indenture nor is the Trustee under any duty of any other character with respect to the foregoing except to hold the foregoing as a repository for Bondowners to verify compliance with this Indenture or deliver a copy from time to time during reasonable business hours to any Bondowner desiring to inspect the foregoing (provided that the Bondowner pays the associated costs).

(u) The Trustee will not be liable for any error of judgment made in good faith by an authorized officer of the Trustee, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(v) Whether or not expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of, conveying rights or duties, or affording protection to the Trustee, whether in its capacity as Trustee, Paying Agent, Bond Registrar or any other capacity, will be subject to the provisions of this Section.

(w) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(i) this subsection shall not be construed to affect the limitation of the Trustee's duties and obligations provided in this Section or the Trustee's right to rely on the truth of statements and the correctness of opinions as provided in this Section;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority in principal amount of the Bonds then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(iii) subject to subsection (l) above, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial or environmental liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(iv) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder; and

(v) the Trustee shall not be liable for any error of judgment made in good faith by any one of its directors, officers or employees unless it is established that the Trustee was negligent in ascertaining the pertinent facts.

**Section 802. Fees, Charges and Expenses of the Trustee.** The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) by the City for its ordinary services rendered hereunder and all agent and counsel fees and other ordinary costs and expenses reasonably made or incurred by the Trustee in connection with such ordinary services and, if it becomes necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefore and to reimbursement for reasonable and necessary extraordinary costs and expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefore. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent and as Registrar for the Bonds. Upon the occurrence of an Event of Default

and during its continuance, the Trustee shall have a first lien with right of payment prior to payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing advances, fees, costs and expenses incurred. If moneys in the Revenue Fund are insufficient to make payment to the Trustee for its fees and expenses, as provided in subparagraph *Second* of **Section 402** on any Payment Date, the unpaid portion shall be carried forward to the next Payment Date, together with interest thereon at the Trustee's base lending rate plus 2%.

**Section 803. Notice of Default.** If a default or Event of Default occurs of which the Trustee is required to take notice or notice is given to the Trustee as provided in **Section 801(h)** hereof, then the Trustee shall give written notice thereof to the City and within 30 days (five Business Days if the maturity of the Bonds has been accelerated pursuant to **Section 702** hereof) by first class mail to the Owners of all Bonds then Outstanding as shown by the Register.

**Section 804. Intervention by the Trustee.** In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners of the Bonds, the Trustee may intervene on behalf of Owners and shall do so if requested in writing by the Owners of at least 25% in the aggregate principal amount of Bonds then Outstanding, provided that the Trustee shall first have been provided indemnity provided under **Section 801(i)** hereof as it may require against the reasonable costs, expenses and liabilities which it may incur in or by reason of such proceeding, including without limitation attorneys' fees and expenses.

**Section 805. Successor Trustee Upon Merger, Consolidation or Sale.** Any corporation or association with or into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which the Trustee may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any merger, conversion, sale, consolidation or transfer to which it is a party, provided such corporation or association is otherwise eligible under **Section 808** hereof, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

**Section 806. Resignation or Removal of Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City and the Owners, and such resignation shall take effect upon the appointment of a successor Trustee pursuant to **Section 807** hereof. If at any time the Trustee ceases to be eligible in accordance with the provisions of this Indenture, it shall resign immediately in the manner provided in this Section. The Trustee may be removed for cause or without cause at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the City and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding. If no Event of Default has occurred and is continuing, or no condition exists which will become an Event of Default as provided in **Section 701(a)** hereof, the Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the Owners and signed by the City. The City or the Owners of a majority in aggregate principal amount of the Bonds then Outstanding may at any time petition any court of competent jurisdiction for the removal for cause of the Trustee. No resignation or removal of the Trustee shall become effective until a successor Trustee has accepted its appointment under **Section 809** hereof.

**Section 807. Appointment of Successor Trustee.** In case the Trustee hereunder shall resign or be removed, or shall otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee may be appointed by (i) the City (provided no Default, Event of Default or condition which, with the giving of notice, the passage of time or both, would constitute a Default or an Event of Default has occurred and is

continuing), or (ii) the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing. In case of such vacancy the City may appoint a temporary Trustee, to fill such vacancy, until a successor Trustee shall be appointed in the manner above provided. If no successor has been appointed within 60 days after notice of the resignation or removal is given, the Trustee may petition a court of competent jurisdiction to appoint a successor; and any such temporary Trustee so appointed by the City or a court shall immediately and without further acts be superseded by the successor Trustee so appointed. Any successor Trustee or temporary Trustee must have the qualifications provided for in Section 809.

**Section 808. Qualifications of Trustee and Successor Trustees.** The Trustee and every successor Trustee appointed hereunder shall be a trust institution or commercial bank qualified to do business in the State, shall be in good standing and qualified to accept such trusts, shall be subject to examination by a federal or state bank regulatory authority, and shall have a reported capital and surplus of not less than \$50,000,000, or must provide a guaranty of the full and prompt performance by the Trustee of its obligations under this Indenture and any other agreements made in connection with the Bonds, on terms satisfactory to the City, by a guarantor with such combined capital and surplus. If such institution publishes reports of conditions at least annually pursuant to law or regulation, then for the purposes of this Section the capital and surplus of such institution shall be deemed to be its capital and surplus as set forth in its most recent report of condition so published.

**Section 809. Vesting of Trusts in Successor Trustee.** Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City an instrument in writing accepting such appointment hereunder, and thereupon such successor shall become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the obligations of the predecessor Trustee hereunder shall cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, and upon the payment of its outstanding fees and expenses, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

**Section 810. Trust Estate May be Vested in Co-Trustee.**

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Financing Documents, and in particular in case of the enforcement of either upon an Event of Default, or if the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as co-trustee or separate trustee, each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation

necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee dies, becomes incapable of acting, resigns or is removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

**Section 811. Annual Statement.** Unless providing statements more frequently, the Trustee shall render an annual statement for each Fiscal Year to the City and, if so requested and the expense thereof is paid, to any Owner requesting the same. The annual statement shall show in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and shall include a break-down of money deposited into each account of the Revenue Fund and the balance in any funds and accounts created by this Indenture as of the beginning and close of such accounting period.

**Section 812. Paying Agents; Registrar; Appointment and Acceptance of Duties; Removal.**

(a) The Trustee is hereby designated and agrees to act as Paying Agent and as Registrar for and in respect of the Bonds.

(b) The City may appoint one or more additional Paying Agents for the Bonds. Each Paying Agent other than the Trustee shall signify its acceptance of the duties and obligations imposed upon it by this Indenture by executing and delivering to the City and the Trustee a written acceptance thereof. The City may remove any Paying Agent other than the Trustee and any successors thereto, and appoint a successor or successors thereto; provided that any such Paying Agent designated by the City shall continue to be a Paying Agent of the City for the purpose of paying the principal of and interest on the Bonds until the designation of a successor as such Paying Agent and acceptance by such successor of the appointment. Each Paying Agent is hereby authorized to pay or redeem Bonds when such Bonds are duly presented to it for payment or redemption, which Bonds shall thereafter be delivered to the Trustee for cancellation.

(c) The Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice to the City and the Trustee. The Paying Agent may be removed by the City at any time by an instrument signed by the City and filed with the Paying Agent and the Trustee. In the event of the resignation or removal of the Paying Agent, the Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there be no successor, to the Trustee.

If the City fails to appoint a Paying Agent hereunder, or the Paying Agent resigns or is removed, or is dissolved, or if the property or affairs of the Paying Agent are taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the City has not appointed its successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the City of the Paying Agent or successor Paying Agent, as the case may be. The Trustee shall give each Owner notice by first-class mail of the appointment of a Paying Agent or successor Paying Agent other than the Trustee.

## **ARTICLE IX**

### **SATISFACTION AND DISCHARGE OF THE INDENTURE**

#### **Section 901. Satisfaction and Discharge of the Indenture.**

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 902** hereof, and provision also is made for paying all other sums payable hereunder, including the fees and expenses of the Trustee and the Paying Agents to the date of payment of the Bonds, then the right, title and interest of the Trustee under this Indenture shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release this Indenture and shall execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City any property at the time subject to this Indenture which may then be in the Trustee's possession, except amounts in the Debt Service Fund required to be paid to the City under **Article IV** hereof, and except funds or securities in which such moneys are invested and held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate of the Trustee stating that the whole amount of the principal and interest so due and payable upon all of the Bonds then Outstanding has been paid or provision for such payment has been made in accordance with **Section 902** hereof as evidence of satisfaction of this Indenture, and upon receipt thereof the City shall cancel and erase the inscription of this Indenture from its records.

#### **Section 902. Bonds Deemed to Be Paid.**

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal on such Bonds, plus premium, if any, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms hereof, or (2) provision therefore has been made by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and the Trustee shall have received an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that such deposit of interest on any Bonds will not result in the interest on any Bonds then Outstanding and exempt from taxation for federal income tax purposes becoming subject to federal income taxes then in effect and that all conditions precedent to the satisfaction of this Indenture have been met. At such time as a Bond is deemed to be paid hereunder as aforesaid, such Bond shall no longer be secured by or be entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed prior to the stated maturities thereof, no deposit under clause (2) of subsection (a) above shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed prior to their respective stated maturities, proper notice of such redemption has been given in accordance with **Article III** hereof or irrevocable instructions have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust

pursuant to the provisions of this Section for the payment of Bonds and interest thereon shall be applied to and be used solely for the payment of the particular Bonds and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

(d) If the entire amount necessary to pay Outstanding Bonds has not been deposited with the Trustee, and the final payment to pay Outstanding Bonds is more than 90 days subsequent to such deposit, the Trustee shall receive a verification report of a firm of independent certified public accountants that the moneys and Government Securities deposited with the Trustee are sufficient to pay when due the principal or redemption price, if any, and interest on the Bonds on or prior to the applicable redemption or maturity date.

(e) Upon the payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as specified in this Indenture) and the fees, charges and expenses of the Trustee and any Paying Agents, and any other amounts required to be paid under this Indenture, all amounts remaining on deposit in the Funds consisting of the CID Revenues shall be paid to the District and all other amounts remaining on deposit in the Funds shall be paid to the City for deposit into the Special Allocation Fund.

## **ARTICLE X**

### **SUPPLEMENTAL FINANCING DOCUMENTS**

**Section 1001. Supplemental Financing Documents Not Requiring Consent of Owners.** The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such supplements to the Financing Documents as are not inconsistent with the terms and provisions hereof, for any one or more of the following proposes:

(a) to cure any ambiguity or formal defect or omission in any Financing Document or to release property which was included by reason of an error or other mistake;

(b) to grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;

(c) to subject to any Financing Document additional revenues, properties or collateral;

(d) to modify, amend or supplement the Indenture in such manner as to permit the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute hereafter in effect, or to permit the qualification of the Bonds for sale under the securities laws of any state of the United States;

(e) to provide for the refunding of any Bonds in accordance with the terms hereof;

(f) to evidence the appointment of a separate trustee or the succession of a new trustee hereunder;

(g) to modify or eliminate any of the terms of any Financing Documents; provided, however, that:



(1) such amendment to a Financing Document shall expressly provide that any such modifications or eliminations shall become effective only when there is no Bond Outstanding issued prior to the execution of such amended Financing Document; and

(2) the Trustee may, in its discretion, decline to enter into any such amendment to a Financing Document which, in its opinion, may not afford adequate protection to the Trustee when the same becomes operative;

(h) to make any other change which, in the sole judgment of the Trustee, does not materially adversely affect the security of the Owners. In exercising such judgment the Trustee may rely on an Opinion of Counsel.

**Section 1002. Supplemental Financing Documents Requiring Consent of Owners.** In addition to supplements to Financing Documents permitted by **Section 1001** hereof and subject to the terms and provisions contained in this Section, and not otherwise, with the consent of the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding, the City and the Trustee may from time to time enter into such other amendment to the Financing Documents as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in a Financing Document; provided, however, that nothing in this Section contained shall permit or be construed as permitting:

(a) an extension of the maturity of the principal of or the scheduled date of payment of interest on any Bond or any change of the redemption date on any Bond;

(b) a reduction in the principal amount, redemption premium or any interest payable on any Bond;

(c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds;

(d) a reduction in the aggregate principal amount of Bonds the Owners of which are required for consent to any such Supplemental Indenture; or

(e) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee.

If at any time the City requests the Trustee to enter into any amendment to a Financing Document for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such amendment to be sent to each Owner. Such notice shall briefly set forth the nature of the proposed amendment and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as shall be prescribed by the City following the sending of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such amendment have consented to and approved the execution thereof as herein provided, no Owner of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment as in this Section permitted and provided, the Financing Documents shall be and be deemed to be modified and amended in accordance therewith.

**Section 1003. Opinion of Bond Counsel.** Notwithstanding anything to the contrary in **Sections 1001 or 1002** hereof, before the City and the Trustee enter into any amendment to a Financing

Document pursuant to **Sections 1001 or 1002** hereof, there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such amendment is authorized or permitted by this Indenture, the TIF Act and the CID Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms and will not cause any Bonds then Outstanding and exempt from taxation for federal income tax purposes to become subject to federal income taxes then in effect.

## **ARTICLE XI**

### **MISCELLANEOUS PROVISIONS**

**Section 1101. Consents and Other Instruments by Owners.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument (other than the assignment of a Bond) may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the Register. In all cases where Bonds are owned by persons other than the City, the Developer or an assignee of the City or the Developer, in determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by, or held by or for the account of, the City, the Developer or any affiliate or any Person controlling, controlled by or under common control with either of them, shall be disregarded and deemed not to be Outstanding under this Indenture.

**Section 1102. Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given to or filed with the City or the Trustee if the same is duly mailed by registered or certified mail, postage pre-paid, return receipt requested, or sent by telegram, telecopy or telex or other similar communication, or when given by telephone, confirmed by telephone, on the same day, addressed as follows, provided that notices to the Trustee shall be effective only upon receipt:

(1) To the City at:  
City of Smithville, Missouri  
107 West Main Street  
Smithville, Missouri 64089  
Attention: City Administrator  
Telephone: (816) 532-3897

(2) To the Trustee at:  
UMB Bank, N.A.

1010 Grand Boulevard, 4<sup>th</sup> Floor  
Kansas City, Missouri 64106  
Attn: Corporate Trust Services  
Telephone: (816) 860-3248

- (3) To the Developer at:  
Development Associates Smithville, LLC  
c/o Cadence Commercial Real Estate  
10985 Cody, Suite 220  
Overland Park, Kansas 66210

With a copy to:

Korb Maxwell  
Polsinelli  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112  
Telephone: (816) 360-4327

- (4) To the District at:  
  
Development Associates Smithville, LLC  
c/o Cadence Commercial Real Estate  
10985 Cody, Suite 220  
Overland Park, Kansas 66210

With a copy to:

Korb Maxwell  
Polsinelli  
900 W. 48<sup>th</sup> Place, Suite 900  
Kansas City, MO 64112  
Telephone: (816) 360-4327

- (5) To the Owners:

By first-class mail addressed to each of the Owners of all Bonds at the time Outstanding, as shown by the Register. Any notice so mailed to the Owners of the Bonds shall be deemed given at the time of mailing whether or not actually received by the Owners.

In the event of any notice to a party other than the City, a copy of said notice shall be provided to the City. The above parties may from time to time designate, by notice given hereunder to the other parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 1103. Limitation of Rights Under the Indenture.** With the exception of rights herein expressly conferred and as otherwise provided in this Section, nothing expressed or mentioned in or to be implied by this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners of the Bonds, any right, remedy or claim under or in respect to this Indenture. This Indenture and all of the covenants, conditions and provisions hereof are, except as otherwise provided

in this Section, intended to be and are for the sole and exclusive benefit of the parties hereto and the Owners of the Bonds as herein provided.

**Section 1104. Suspension of Mail Service.** If, because of the temporary or permanent suspension of mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such delivery of notice in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient notice.

**Section 1105. Business Days.** If any date for the payment of principal of or interest on the Bonds or the taking of any other action hereunder is not a Business Day, then such payment shall be due, or such action shall be taken, on the first Business Day thereafter; provided, however, any interest that accrues on any unmatured or unredeemed Bonds from the due date shall be payable on the next succeeding Payment Date.

**Section 1106. Immunity of Officers, Employees and Members of City.** No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future officer, director, member, employee or agent of the City, the governing body of the City, or of any successor public corporation, as such, either directly or through the City or any successor public corporation, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the issuance of such Bonds.

**Section 1107. No Sale.** The City covenants and agrees that, except as provided herein or in the Redevelopment Agreement, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the moneys subject to this Indenture.

**Section 1108. Severability.** If any provision of this Indenture is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained shall not affect the remaining portions of this Indenture, or any part thereof.

**Section 1109. Execution in Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 1110. Electronic Transaction.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received and stored by electronic means. In addition, the transaction described herein may be conducted and related documents may be sent, received and stored by electronic means, copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**Section 1111. Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**Section 1112. Anti-Discrimination Against Israel Act.**

(a) The State has adopted the “Anti-discrimination Against Israel Act,” Section 34.600, Revised Statutes of Missouri (the “Act”), which provides that “[a] public entity shall not enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.” The Act provides that any contract that fails to comply with the Act’s provisions shall be void as against public policy.

(b) The Trustee hereby certifies and agrees that, to the extent the Act is applicable to this Indenture, the Trustee is not currently engaged in and shall not, for the duration of this Indenture, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by or organized under the laws of the State of Israel or persons or entities doing business with the State of Israel, in all respects within the meaning of the Act.

(c) The foregoing certification shall not be deemed an admission or agreement that the Act is applicable to this Indenture but the foregoing certification is provided if the Act is applicable. If the Act is initially deemed or treated as applicable to this Indenture, but it is subsequently determined not to apply to this Indenture for any reason including by reason of applicable federal law, including without limitation, 50 U.S.C. Section 4607, the repeal or amendment of the Act or any ruling of a court of competent jurisdiction as to the unenforceability or invalidity of the Act, then the foregoing certification shall cease and not exist.

**IN WITNESS WHEREOF**, the City of Smithville, Missouri has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, and to evidence its acceptance of the trusts hereby created, UMB Bank, N.A., has caused these presents to be signed in its name and behalf by its duty authorized officer, all as of the day and year first above written.

**CITY OF SMITHVILLE, MISSOURI**

[SEAL]

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Mayor

ATTEST:

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City Clerk

Indenture

**UMB BANK, N.A., as Trustee**

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

Indenture

**EXHIBIT A**

**FORM OF BONDS**

**THE TRANSFER OF THIS BOND IS SUBJECT TO RESTRICTIONS. THIS BOND MAY ONLY BE TRANSFERRED TO APPROVED INVESTORS IN ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE INDENTURE.**

**EXCEPT AS OTHERWISE PROVIDED IN THE INDENTURE (DESCRIBED HEREIN), THIS GLOBAL BOND MAY BE TRANSFERRED, IN WHOLE BUT NOT IN PART, ONLY TO ANOTHER NOMINEE OF THE SECURITIES DEPOSITORY (DESCRIBED HEREIN) OR TO A SUCCESSOR SECURITIES DEPOSITORY OR TO A NOMINEE OF A SUCCESSOR SECURITIES DEPOSITORY.**

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

Registered  
No. R-\_\_\_\_

Registered  
\$\_\_\_\_\_

**CITY OF SMITHVILLE, MISSOURI**

**SPECIAL OBLIGATION REVENUE BOND  
(SMITHVILLE COMMONS PROJECT)  
SERIES 2022**

**Rate of Interest:**

**Maturity Date:**

**Dated Date:**

**CUSIP No.**

\_\_\_\_\_%

\_\_\_\_\_

REGISTERED OWNER:

\_\_\_\_\_

PRINCIPAL AMOUNT:

\_\_\_\_\_ DOLLARS.

The **CITY OF SMITHVILLE, MISSOURI**, a fourth-class city and an incorporated political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the "City"), for value received, hereby promises to pay to the registered owner shown above, or registered assigns, the Principal Amount shown above on the Maturity Date shown above, and to pay interest thereon from the Dated Date shown above or from the most recent Interest Payment Date to which interest has been paid or duly provided for, at the Rate of Interest per annum shown above. Interest shall be payable semiannually on June 1 and December 1 in each year (each, an "Interest Payment Date"), beginning on December 1, 2022. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.



Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Indenture (as hereinafter defined). REFERENCE IS MADE TO THE INDENTURE AND THE REDEVELOPMENT AGREEMENT FOR A COMPLETE DESCRIPTION OF THE CITY OBLIGATIONS HEREUNDER.

The principal of this Bond shall be paid at maturity or upon earlier redemption to the Person in whose name this Bond is registered on the Register at the maturity or redemption date thereof. The interest payable on this Bond on any Payment Date shall be paid by UMB Bank, N.A., Kansas City, Missouri (the "Trustee") to the person in whose name this Bond is registered on the Register at the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date. Such interest shall be payable (a) by check or draft mailed by the Trustee to the address of such registered Owner shown on the Register or (b) in the case of a principal or interest payment the Securities Depository or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such registered Owner upon written notice given to the Trustee not less than 5 days prior to the Record Date for such interest and signed by such registered Owner, containing the electronic transfer instructions including the name of the bank (which shall be in the continental United States), ABA routing number and account name and account number to which such Registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Bonds shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Bond is one of an authorized series of fully registered bonds of the City designated "City of Smithville, Missouri, Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022," in the aggregate principal amount of \$[Principal Amount] (the "Bonds"). **The obligations of the City with respect to the application of Economic Activity Tax Revenues and Payments in Lieu of Taxes to the repayment of the Bonds terminate on October 2, 2040, whether or not the principal amount thereof or interest thereon has been paid in full.**

The Bonds are being issued pursuant to a Trust Indenture dated as of May \_\_, 2022, between the City and the Trustee (the "Indenture"), for the purpose of (a) financing certain Redevelopment Project Costs, (b) funding the debt service reserve fund, and (c) paying the costs of issuance of the Bonds, all under the authority of and in full compliance with the Constitution and laws of the State of Missouri.

The Bonds constitute special, limited obligations of the City payable as to principal, premium, if any, and interest solely from the Pledged Revenues and other moneys pledged thereto and held by the Trustee pursuant to the Indenture. The Bonds shall not constitute debts or liabilities of the City, the State of Missouri or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction.

The Bonds are subject to redemption as follows:

(a) *Optional Redemption.* The Bonds are subject to optional redemption by the City in whole or in part at any time on or after December 1, 20\_\_, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

(b) *Special Mandatory Redemption.*

(1) The Bonds maturing December 1, 20\_\_ are subject to special mandatory redemption by the City in order of maturity on each December 1 commencing December 1, 20\_\_, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on

deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

(2) The Bonds are subject to special mandatory redemption by the City, in whole but not in part, on any date in the event that moneys in the applicable account of the Debt Service Fund (and, with respect to the last series of Bonds Outstanding, the Debt Service Reserve Fund) are sufficient to redeem all of the Bonds of the applicable series at a redemption price of 100% of such Bonds Outstanding, together with accrued interest thereon to the date fixed for redemption.

[(c) *Mandatory Redemption.* The Bonds maturing December 1, 20\_\_ (the “Term Bonds”) will be subject to mandatory redemption and payment prior to maturity in the amounts and on the dates as set forth in the Indenture at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date.]

Bonds shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Bonds are to be redeemed and paid prior to maturity, such Bonds or portions of Bonds to be redeemed shall be selected in Authorized Denominations by the Trustee from such maturities and in such amounts as the City may determine.

Unless waived by any Owner of Bonds to be redeemed, official notice of any redemption of any Bond shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 20 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Register.

The City, the Tax Increment Financing Commission of the City of Smithville, Missouri, the commissioners of said Commission, the elected officials, officers and employees of the City and any person executing the Bonds shall not be personally liable for such obligations by reason of the issuance thereof.

The Bonds are issuable in the form of fully registered Bonds without coupons in the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof.

This Bond may be transferred or exchanged, as provided in the Indenture, only upon the books for the registration, transfer and exchange thereof (the “Register”) kept by the Trustee, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered Owner or the registered Owner’s duly authorized agent, whereupon a new Bond of the same series and maturity and in the same principal amount outstanding as the Bond which was presented for transfer or exchange shall be issued to the transferee in exchange therefore as provided in the Indenture, and upon payment of the charges therein prescribed. The City and the Trustee may deem and treat the Person in whose name this Bond is registered on the Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. **The Bonds may only be purchased by or transferred to Approved Investors.** No such assignment, transfer or conveyance shall be effective as against the City unless and until such registered owner has delivered to the City and the Trustee written notice thereof that discloses the name and address of the purchaser or transferee and such assignment, transfer or conveyance shall be made only upon receipt by the Trustee of a letter in substantially the form attached to the Indenture executed by the proposed purchaser or transferee.

This Bond shall not be valid or binding on the City or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Trustee.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Bonds have existed, happened and been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the **CITY OF SMITHVILLE, MISSOURI** has executed this Bond by causing it to be signed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its official seal to be affixed or imprinted hereon, and this Bond to be dated as of the Dated Date shown above.

Registration Date: \_\_\_\_\_

**CITY OF SMITHVILLE, MISSOURI**

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the within-mentioned Indenture.

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

**UMB BANK, N.A.,**  
as Trustee

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Authorized Signatory

By: \_\_\_\_\_  
City Clerk

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**ASSIGNMENT**

**FOR VALUE RECEIVED**, the undersigned sells, assigns and transfers unto

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(Print or Type Name, Address and Social  
Security Number or other Taxpayer Identification Number of Transferee)

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_ agent to transfer the within Bond on the books  
kept by the Trustee for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_.

---

**NOTICE:** The signature to this assignment must  
correspond with the name of the Registered  
Owner as it appears upon the face of the within  
Bond in every particular.

Medallion Signature Guarantee:

**EXHIBIT B**

Request No. \_\_\_\_\_

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

**WRITTEN REQUEST FOR DISBURSEMENT FROM THE  
PROJECT FUND – CITY OF SMITHVILLE, MISSOURI, TAX  
INCREMENT REVENUE BONDS (SMITHVILLE COMMONS  
PROJECT), SERIES 2022**

To: UMB Bank, N.A., as Trustee  
Kansas City, Missouri  
Attention: Corporate Trust Department

as Trustee under the Indenture of Trust, dated as of May \_\_, 2022, from the City of Smithville, Missouri to said Trustee (the “Indenture”)

Pursuant to **Section 404** of the Indenture, the City of Smithville, Missouri (the “City”) requests payment from the Project Fund in accordance with this request and said **Section 404** and hereby states and certifies as follows:

1. The date and number of this request are as set forth above.
2. All terms in this request shall have and are used with the meanings specified in the Indenture.
3. The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the costs for which each obligation requested to be paid hereby was incurred are as set forth on Attachment I hereto.
4. These costs have been incurred and are presently due and payable and are reasonable costs that are payable or reimbursable under the Indenture and each item thereof is a proper charge against the Project Fund.
5. Each item listed above has not previously been paid or reimbursed from moneys in the Project Fund and no part thereof has been included in any other Disbursement Request previously filed with the Trustee under the provisions of the Indenture or reimbursed from Bond proceeds.
6. With respect to any such requisition, the City (i) certifies they have reviewed any wire instructions set forth in such written disbursement direction to confirm such wire instructions are accurate, and (ii) agrees they will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with the disbursement direction.

**CITY OF SMITHVILLE, MISSOURI**

By: \_\_\_\_\_  
Authorized City Representative

**ATTACHMENT I  
TO WRITTEN REQUEST FOR DISBURSEMENT FROM  
THE PROJECT FUND – CITY OF SMITHVILLE, MISSOURI,  
TAX INCREMENT REVENUE BONDS  
(SMITHVILLE COMMONS PROJECT), SERIES 2022**

REQUEST NO. \_\_\_\_\_

DATED \_\_\_\_\_, \_\_\_\_

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**SCHEDULE OF PAYMENTS REQUESTED**

Person, firm or corporation to whom payment is due	Amount to be paid	General classification and description of the costs for which the Obligation to be paid was incurred
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**EXHIBIT C**

[Date]

UMB Bank, N.A.  
1010 Grand Blvd, 4<sup>th</sup> Floor  
Kansas City, Missouri 64106  
Attention: Corporate Trust Department

UMB Bank, N.A.  
1010 Grand Blvd.  
Kansas City, Missouri  
Attention:

Re: Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022

Ladies and Gentlemen:

Please be advised that during the month of \_\_\_\_\_, [year], the City of Smithville, Missouri received the following Economic Activity Tax Revenues attributable to the following sources to be deposited into the EATs Account of the Revenue Fund:

		<u>Percentage of Total</u>
Clay County	\$ _____	_____ %
Smithville	\$ _____	_____ %
Zoological District	\$ _____	_____ %
Smithville Area Fire District	\$ _____	_____ %

Total EATS: \$ \_\_\_\_\_

During such period, the City of Smithville, Missouri received the following Payments in Lieu of Taxes from property owners within the Redevelopment Area to be deposited into the PILOTs Account of the Revenue Fund:

<u>Taxpayer</u>	<u>Payments in Lieu of Taxes</u>	<u>Percentage of Total</u>
	\$ _____	_____ %

Total PILOTS: \$ \_\_\_\_\_

During such period, the City of Smithville, Missouri, received the following CID Revenues to be deposited into the CID Account in the Revenue Fund: \$ \_\_\_\_\_. Permitted percentage of CID Revenues for Debt Service (\_\_\_\_ %) \$ \_\_\_\_\_

From the Total PILOTS, the City has retained the following amounts pursuant to the Indenture:

Ambulance District PILOTs Reimbursement	\$ _____
Fire District PILOTs Reimbursement:	\$ _____
School District PILOTs Reimbursement:	\$ _____

From the Total EATs, the City has retained the following amounts pursuant to the Indenture:

Fire District EATs Reimbursement:	\$ _____
Grocery Store Sales Tax Payment	\$ _____



From the CID Revenues, the City has retained \$\_\_\_\_\_ as the City's 1.0% administrative fee and \$\_\_\_\_\_ as District Operating Expenses, pursuant to the Financing Agreement and the CID Agreement.

From the Payments in Lieu of Taxes and Economic Activity Tax Revenues, the City has retained \$\_\_\_\_\_ as the City Administrative Fee.

All moneys so received, totaling \$\_\_\_\_\_, have been transferred to UMB Bank, N.A., as Trustee (the "Trustee") under the Trust Indenture dated as of May \_\_, 2022 between the Trustee and the City of Smithville. All capitalized terms not defined herein shall have the meanings ascribed for them in said Indenture.

CITY OF SMITHVILLE, MISSOURI

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

## **EXHIBIT D**

### **PROJECT DESCRIPTION AND COSTS PAID WITH PROCEEDS OF BONDS**

The Project includes the construction of an approximately 65,500+ square foot grocery store anchor tenant building and other primary and secondary retail uses, including installing roadways and access points as described in the Redevelopment Plan.

**EXHIBIT E**

**FORM OF INITIAL INVESTOR LETTER**

City of Smithville, Missouri  
Smithville, Missouri  
ATTN: City Administrator

UMB Bank, N.A., as Trustee  
Kansas City, Missouri  
ATTN: Corporate Trust Department

UMB Bank, N.A., as Placement Agent  
Kansas City, Missouri

Re: Smithville, Missouri Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the “Bonds”), the undersigned (the “Investor”) hereby represents, warrants and agrees as follows:

1. The Investor understands that (a) the Bonds are being issued under and pursuant to a Trust Indenture dated as of May 15, 2022 (the “Indenture”), between the City of Smithville, Missouri (the “Issuer”) and UMB Bank, N.A., as trustee (the “Trustee”), and (b) the Bonds are payable solely out of certain revenues and receipts to be received by the Trustee as provided in the Indenture. Capitalized terms not defined herein have the meanings set forth in the Indenture.

2. The Investor understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward its distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds. The Investor is an Approved Investor as defined in the Indenture.

3. The Investor agrees not to attempt to offer, sell, or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture.

4. The Investor has been provided (a) such information as the Investor deems necessary to make an informed investment decision with respect to the purchase of the Bonds, (b) ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City, the Developer and others related to the Project, the Redevelopment Plan and the terms and conditions of the Bonds, and (c) all additional information which it has requested.

5. The Investor is familiar with the Project and fully aware of terms and risks of the Bonds. The Investor believes the Bonds that it is acquiring are a security of the kind that it wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program. The Investor is able to bear the economic risk of an investment in the Bonds, including a complete loss of such investment.

Dated: \_\_\_\_\_

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

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

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

---

**FINANCING AGREEMENT**

**BETWEEN THE**

**SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT**

**AND THE**

**CITY OF SMITHVILLE, MISSOURI**

**DATED AS OF MAY \_\_, 2022**

**RELATING TO**

**\$(Principal Amount)**  
**TAX INCREMENT REVENUE BONDS**  
**(SMITHVILLE COMMONS PROJECT)**  
**SERIES 2022**

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# **FINANCING AGREEMENT**

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## **FINANCING AGREEMENT**

This **FINANCING AGREEMENT** (the “Financing Agreement”) is dated as of May \_\_, 2022 between the **SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT**, a community improvement district and political subdivision of the State of Missouri (the “District”) and the **CITY OF SMITHVILLE, MISSOURI**, a fourth-class city and political subdivision of the State of Missouri (the “City”).

### **RECITALS:**

**1.** The City is authorized and empowered under the Revised Statutes of Missouri, as amended, to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of such bonds.

**2.** A plan for redevelopment known as the “Smithville Commons Tax Increment Financing Plan” (the “Original Redevelopment Plan”), as amended by the First Amendment to the Smithville Commons Tax Increment Financing Plan (the “First Amended Plan,” together with the Original Redevelopment Plan, the “Redevelopment Plan”) for an area designated therein as the redevelopment area (the “Redevelopment Area”), as legally described in the Redevelopment Plan, has been prepared and reviewed by the Tax Increment Financing Commission of Smithville, Missouri (the “Commission”) and the City, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the “TIF Act”).

**3.** On August 1, 2017, the Board of Aldermen adopted (a) Ordinance No. 2969-17 (i) approving the Redevelopment Plan and finding the Redevelopment Area to be a “blighted area” within the meaning of the TIF Act and (ii) designating Development Associates Smithville, LLC, a Missouri limited liability company (the “Developer”), as the developer to implement the Redevelopment Projects of the Redevelopment Plan (as therein defined), (b) Ordinance No. 2971-17, authorizing the execution and delivery of a contract (the “Redevelopment Agreement”) between the City and the Developer, and (c) Ordinance No. 2972-17 authorizing the execution and delivery of a Reimbursement Agreement with the Northland Regional Ambulance District and a Reimbursement Agreement with the Smithville Area Fire Protection District to provide for the reimbursement of revenues to the respective taxing jurisdiction (the “Reimbursement Agreements”).

**4.** On October 3, 2017, the Board of Aldermen adopted Ordinance No. 2970-17 which approved and designated an area (the “Redevelopment Project”) within the Redevelopment Area for redevelopment contemplated as a commercial and retail development and adopted tax increment financing for the Redevelopment Project.

**5.** On November 21, 2017, the Board of Aldermen adopted Ordinance No. 2986-17 which approved the First Amended Plan and the First Amendment to the Redevelopment Agreement, which provided for an amended capital contribution to the Smithville School District.

**6.** The Smithville Commons Community Improvement District (the “District”) is authorized and empowered under the Missouri Community Improvement District Act, Sections 67.1401 through 67.1571 of the Revised Statutes of Missouri, as amended (the “CID Act”), to fund, promote, plan, design, construct, improve, maintain, and operate certain improvements, or to assist in any such activity. Pursuant to the CID Act, on August 1, 2017 Ordinance No. 2974-17 was approved by the Board of Aldermen creating the District for the purpose of funding certain improvements and services (the “CID



Project”). The voters of the District have approved the imposition of a sales tax at the rate of 1.0% for the purpose of paying the cost of the CID Project and financing the costs of formation and operation of the District.

7. The City has determined that it is in the best interests of the City to issue its Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022, in the aggregate principal amount of \$[Principal Amount] (the “Bonds”), for the purpose of (a) financing certain Redevelopment Project Costs, (b) funding a debt service reserve for the Bonds, and (c) paying the costs of issuance of the Bonds.

8. On \_\_\_\_\_, 2022, the Board of Aldermen of the City adopted Ordinance No. \_\_\_\_\_ (the “Bond Ordinance”), authorizing the issuance of the Bonds pursuant to the Trust Indenture (the “Indenture”) dated as of the date hereof between the City and UMB Bank, N.A., as trustee for the above purposes.

9. Pursuant to the Bond Ordinance, the City is authorized to execute and deliver this Financing Agreement between the City and the District for the purpose of issuing and securing the Bonds as hereinafter provided.

10. The City and the District are entering into this Financing Agreement pursuant to which the City and the District will transfer certain funds to be used to pay debt service of the Bonds.

#### **AGREEMENT:**

**NOW THEREFORE**, for and in consideration of the premises and the mutual representations, covenants and agreements contained herein, the City and the District do hereby represent, covenant and agree as follows:

#### **ARTICLE I**

##### **DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** Unless the context requires otherwise, capitalized terms used in this Financing Agreement but not defined herein shall have the same meanings as set forth in **Section 101** of the Indenture.

#### **ARTICLE II**

##### **THE DISTRICT**

**Section 2.1. Representations by the District.** The District represents and warrants to the City and the Trustee as follows:

(a) The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the CID Act.

(b) The District has lawful power and authority to enter into, execute and deliver this Financing Agreement and to carry out its obligations hereunder. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Financing Agreement, acting by and through its duly authorized officers.

(c) The execution and delivery of this Financing Agreement, the consummation of the transactions contemplated by this Financing Agreement and the performance of or compliance with the terms and conditions of this Financing Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which the District is a party or by which it or any of its property is bound, or by any of the constitutional or statutory laws, rules, regulations or orders applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreement to which the District is a party.

(d) There is no litigation or proceeding pending or threatened against the District or any other person affecting the right of the District to execute or deliver this Financing Agreement or the ability of the District to otherwise comply with the obligations under this Financing Agreement. Neither the execution and delivery of this Financing Agreement by the District, nor compliance by the District with its obligations under this Financing Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

(e) The District has duly completed all required proceedings and approvals in connection with the establishment of the District and the Project, and the imposition of the District Sales Taxes (defined below), all in accordance with the CID Act.

## **Section 2.2. Collection and Application of District Sales Taxes.**

(a) The District hereby ratifies and confirms the establishment of an account held by the City (the "District Revenue Fund") into which all proceeds of the 1.0% sales tax imposed by the District on retail sales within the boundaries of the District (the "District Sales Taxes") are to be deposited. The District confirms that it has imposed the District Sales Taxes at the rate of 1.0% of retail sales. In no event while Bonds are Outstanding under the Indenture shall the District take any action to repeal or reduce the amount of District Sales Taxes imposed or enter into any agreements that would prohibit the District Sales Taxes from being generally applicable taxes. The District agrees that a portion of the District Sales Taxes in the District Revenue Fund shall be considered Economic Activity Tax Revenues subject to deposit into the Special Allocation Fund in accordance with Section 99.845 of the Revised Statutes of Missouri, as amended.

(b) The District hereby authorizes and directs the City to perform all functions incident to the administration, collection, enforcement and operation of the District Sales Taxes or to provide for the performance of such functions by the Missouri Department of Revenue. The District shall direct the transfer of all proceeds of its District Sales Taxes that may lawfully be collected to the City for deposit into the District Revenue Fund, subject to the provisions in **Section 2.3** below. The District's Board of Directors may, in its sole discretion, direct the City in making investments of any or all of the moneys deposited in the District Revenue Fund in accordance with applicable laws relating to investment of the District's funds. In the absence of any direction for investments by the District, the City may invest moneys in the District Revenue Fund in accordance with applicable laws relating to the investment of the District's funds. All interest earned upon the balance in the District Revenue Fund shall be credited to the District Revenue Fund.

(c) The City, on behalf of the District, shall keep accurate records of the amount of District Sales Taxes collected and such records shall be open to the inspection of officers of the District, the Trustee, the Bondholders and the general public to the extent allowed under Missouri law.

(d) Subject to appropriation by the District, upon receipt of proceeds of the District Sales Taxes, the City shall transfer to the Economic Activity Tax Account of the City's Special Allocation Fund such amounts as are required to be deposited into the Special Allocation Fund pursuant to the TIF Act. Subject to appropriation by the District, on the 10th day (and if such day is not a Business Day, the next succeeding Business Day) of each calendar month during the term of this Financing Agreement, the District hereby directs the payment by the City to the Trustee of the portion of the District Sales Taxes representing Economic Activity Tax Revenues pursuant to the TIF Act.

(e) Subject to appropriation by the District, on the 10th day (and if such day is not a Business Day, the next succeeding Business Day) of each calendar month during the term of this Financing Agreement, the District hereby directs the payment by the City to the Trustee of all remaining CID Revenues on deposit in the District Revenue Fund.

**Section 2.3. Appropriation; Budget.** The District has adopted a budget for the 2022 fiscal year which appropriates the District Sales Taxes collected during such fiscal year for application as provided in **Sections 2.2(d) and (e)**. The District hereby covenants and agrees to include in the budget proposal submitted to the District's Board of Directors for each fiscal year a request for an appropriation of the District Sales Taxes collected during such fiscal year for deposit in the Revenue Fund under the Indenture. The City, on behalf of the District, shall deliver written notice to the Trustee no later than 15 days after the commencement of each fiscal year of the District if the Board of Directors of the District has not appropriated funds in an amount equal to the District Sales Taxes received during such fiscal year. The parties hereto acknowledge and agree that the payment of District Sales Taxes to the Trustee shall constitute currently budgeted expenditures of the District and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the District in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the District. The District's obligations under this Financing Agreement shall be from year to year only, and shall not constitute a mandatory payment obligation of the District in any ensuing fiscal year beyond the then current fiscal year. If in any fiscal year the Board of Directors of the District fails to adopt a budget, the budget for the prior fiscal year shall continue. Any District Sales Taxes so appropriated are pledged by the District to payment of the Bonds and shall be transferred by the City to the Revenue Fund at the times and in the manner provided in the Indenture and in **Section 2.2(d) and (e)** herein.

**Section 2.4. Records of the District.** The District shall keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business affairs of the District in accordance with accounting principles generally accepted in the United States of America, and the District will furnish to the City such information not otherwise available to the City as it may reasonably request concerning the District, including such statistical and other operating information requested on a periodic basis, in order to determine whether the covenants, terms and provisions of this Financing Agreement have been met. The City, on behalf of the District, will furnish to the Trustee annually by each October 31 a certificate of the Authorized District Representative to the effect that during the preceding fiscal year the District complied with the terms, covenants and provisions of this Financing Agreement and such information as the Trustee may reasonably request concerning the District Sales Taxes, including such statistical and other operating information requested, in order to enable such parties to determine whether the covenants, terms and provisions of this Financing Agreement have been complied with. For that purpose all pertinent books, documents and vouchers relating to the Project, the District and its District Sales Taxes shall at all times during regular business hours be open to inspection.

**Section 2.5. Budget and Reporting Requirements.** The District (or the City on its behalf) shall comply with the budgetary and reporting requirements contained in the Revised Statutes of Missouri, including without limitation the following:

(a) The District shall prepare and submit a proposed annual budget to the City in accordance with Section 67.1471.2 of the Revised Statutes of Missouri, as amended.

(b) The District shall submit an annual report to the City Clerk and the Missouri Department of Economic Development in accordance with Section 67.1471.4 of the Revised Statutes of Missouri, as amended.

(c) The District shall submit an annual financial report to the Missouri State Auditor in accordance with Section 105.145 of the Revised Statutes of Missouri, as amended.

**Section 2.6. Administrative Fees and Operating Expenses.**

(a) The City shall be entitled to retain from the District Sales Taxes the amount equal to 1.0% of the total District Sales Taxes collected by the City on behalf of the District (including the portion of such collections required to be deposited in the Special Allocation Fund), as payment for the City's services in the administration of the District and the collection of the District Sales Taxes pursuant to the CID Agreement.

(b) The District shall pay, or shall reimburse itself for the payment of, from that portion of the District Sales Taxes which is not required to be deposited in the Special Allocation Fund, the operating costs of the District described in the CID Agreement (the "District Operating Expenses"), as budgeted and approved by the District.

(c) Promptly following the adoption of each annual budget by the Board of Directors of the District, the City, on behalf of the District, shall provide written notice to the Trustee of the amount of operating expenses of the District included in such budget so that the Trustee can determine the District Operating Expenses for such fiscal year in accordance with the provisions of the Indenture.

**Section 2.7. Restriction on Transfer of District's Interests.** The District will not sell, assign, transfer or convey its interests in the District Sales Taxes or this Financing Agreement except pursuant to this Financing Agreement. Other than the CID Agreement, the District will not enter into any tax-sharing agreement or other similar arrangement with respect to the District Sales Taxes and agrees that any additional financing of the costs of the Project for the District will be financed by the City.

**Section 2.8. Indemnification.** To the extent permitted by law, the District agrees to indemnify the City and any past, present or future elected official, trustee, officer, employee or agent of the City for and to hold them harmless against all liabilities, claims, costs and expenses incurred without negligence or willful misconduct on the part of the City or such past, present or future elected official, trustee, officer, employee or agent of the City, on account of any action taken or omitted to be taken by the City in accordance with the terms of this Financing Agreement, the Bonds or the Indenture or any action taken at the request of or with the consent of the District, including the costs and expenses of the City in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Financing Agreement, the Bonds or the Indenture.

**Section 2.9. Audit.** The District will cause, at its expense, an annual audit of the District to be completed by a firm of certified public accountants and will, within 180 days of the end of the District's fiscal year (i) present such audit at a regular or special meeting at the District for approval by the District and (ii) cause to be delivered to the Trustee and the City a certificate of the firm of certified public accountants performing the audit to the effect that in the performance of its examination it discovered no failure on the part of the District to comply with the requirements of this Financing Agreement, or, if such failure to comply was noted, specifying the nature thereof.

**Section 2.10. Cooperative Agreement.** The District will comply with, or cause to be complied with, all of the terms, provisions, covenants and agreements applicable to District under the Cooperative Agreement. The District shall enforce the provisions of the Cooperative Agreement in such manner as the District deems prudent and advisable in its good faith discretion. The District may enforce all appropriate available remedies thereunder, including particularly any actual, agreed or liquidated damages for failure to perform under the Cooperative Agreement, and hereby directs the City to transfer to the Trustee for deposit to the Revenue Fund all sums received on account of such damages.

### **ARTICLE III**

#### **THE CITY**

**Section 3.1. Representations by the City.** The City represents and warrants to the Trustee and the District, as follows:

(a) The City (i) is a fourth-class city duly organized and validly existing under the laws of the State of Missouri, (ii) has lawful power and authority to enter into, execute and deliver this Financing Agreement and to carry out its obligations hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Financing Agreement, acting by and through its duly authorized officers.

(b) The execution and delivery of this Financing Agreement by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the City is a party, or by any of the constitutional or statutory laws, rules or regulations applicable to the City.

(c) There is no litigation or proceeding pending or, to the knowledge of the City, threatened against the City or any other person affecting the right of the City to execute this Financing Agreement or to otherwise comply with the obligations under this Financing Agreement. Neither the execution and delivery of this Financing Agreement by the City, nor compliance by the City with its obligations under this Financing Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

(d) No elected official, officer or employee of the City has any significant or conflicting interest, financial or otherwise, in the Project or in the transactions contemplated hereby.

(e) The City has duly completed all required proceedings and approvals in connection with the execution and delivery of this Financing Agreement and the collection of Revenues hereunder, all in accordance with the TIF Act and the CID Act.

**Section 3.2. Assignment by the City.** The City, by means of the Indenture and as security for the payment of the principal of, and redemption premium, if any, and interest on the Bonds, will assign, pledge and grant a security interest in all of its rights, title and interests in, to and under this

Financing Agreement to the Trustee for the benefit of the Owners (reserving its rights to payments owed to the City for its benefit).

**Section 3.3. Restriction on Transfer of City's Interests.** The City will not sell, assign, transfer or convey its interests in this Financing Agreement except pursuant to the Indenture and this Financing Agreement.

**Section 3.4. Application of Proceeds.** The City covenants and agrees to cause the proceeds of the Bonds and the District Sales Tax that it may receive to be applied in accordance with the Indenture and this Financing Agreement. The City agrees that it will pay to the Trustee any of the District Sales Tax and the Economic Activity Tax Revenues it has received on or before the 10th day of each month.

**Section 3.5. Enforcement of Agreements.**

(a) The City shall enforce the provisions of the Financing Documents in such manner as the City deems prudent and advisable in its good faith discretion. The City may enforce all appropriate available remedies thereunder, including particularly any actual, agreed or liquidated damages for failure to perform under the Bond Documents, and shall transfer to the Trustee for deposit to the Revenue Fund all sums received on account of such damages.

(b) The City shall notify the Trustee in writing as to any material failure of performance under the Financing Documents, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies. If, in the sole judgment of the Trustee, such action is less likely to be effective than some other or additional action, the Trustee may, or at the request of the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, shall so advise the City promptly in writing. If, within 30 days following advice by the Trustee that some additional or other action would be more effective, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee is hereby authorized to take such action, whether the action was suggested by the Trustee or otherwise, as the Trustee may deem most expedient and in the interest of the Owners of the Bonds. In furtherance of the rights granted to the Trustee by this Section, the City hereby assigns to the Trustee all of the rights it may have in the enforcement of the Financing Documents, further authorizing the Trustee in its own name or in the name of the City to bring such actions, employ such counsel, execute such documents and do such other things as may in the judgment of the Trustee be necessary or appropriate under the circumstance at the expense of the Trust Estate.

## **ARTICLE IV**

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 4.1. Events of Default Defined.** The term "Event of Default" shall mean any one or more of the following events:

(a) Failure by the District or the City to timely transfer any Net Revenues to the City or the Trustee (as applicable), as provided herein.

(b) Failure to make any payment on the Bonds when due.

(c) Failure by the District or the City to observe and perform any covenant, condition or agreement under this Financing Agreement, the Indenture or any other document entered into in connection with the financing of the Project, other than as referred to in the preceding

subparagraphs (a) and (b) of this Section, for a period of 30 days after written notice of such default has been given to the defaulting party, during which time such default is neither cured by the defaulting party nor waived in writing by the Trustee, provided that, if the failure stated in the notice cannot be corrected within said 30-day period, the Trustee may consent in writing to an extension of such time prior to its expiration if corrective action is instituted by the defaulting party within the 30-day period and diligently pursued to completion and if such consent, in the judgment of the Trustee, does not materially adversely affect the security of the Owners of the Bonds.

(d) Any representation or warranty by the District or the City herein or in any certificate or other instrument delivered under or pursuant to this Financing Agreement or the Indenture or in connection with the financing of the Project shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made, unless waived in writing by the Trustee or cured by the defaulting party within 30 days after notice thereof has been given to the defaulting party.

**Section 4.2. Remedies on an Event of Default.** Whenever any Event of Default shall have occurred and be continuing, the Trustee, as the assignee of the City, shall give written notice to the defaulting party of such Event of Default and after five (5) Business Days after such notice, the Trustee may immediately proceed to take whatever other action at law or in equity is necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein or in the Indenture, as may appear necessary or desirable to collect the amounts payable pursuant to this Financing Agreement then due and thereafter to become due or to enforce the performance and observance of any obligation, agreement or covenant under this Financing Agreement or the Indenture.

Any amount collected pursuant to action taken under this Section shall be paid to the Trustee and applied, first, to the payment of any reasonable costs, expenses and fees incurred by the Trustee as a result of taking such action and, next, any balance shall be transferred to the Revenue Fund and applied in accordance with the Indenture and, then, to cure any other Event of Default.

Notwithstanding the foregoing, the Trustee shall not be obligated to take any step that in its opinion will or might cause it to expend time or money or otherwise incur liability, unless and until indemnity satisfactory to it has been furnished to the Trustee at no cost or expense to the Trustee, except as otherwise provided in **Section 801(l)** of the Indenture.

**Section 4.3. No Remedy Exclusive.** No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

**Section 4.4. Agreement to Pay Attorneys' Fees and Expenses.** In connection with any Event of Default, if the Trustee employs attorneys or incurs other expenses for the collection of amounts payable hereunder or the enforcement of the performance or observance of any covenants or agreements herein contained, the City and the District agree, should they be the defaulting party hereunder, subject to appropriation of funds, that they will, on demand therefor, pay to the Trustee the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Trustee. In connection with any Event of Default, if the City employs attorneys or incurs other expenses for the enforcement of the performance or

observance of any covenants or agreements herein contained, the defaulting party agrees that they will, to the extent they are the defaulting party or caused the City to be the defaulting party, on demand therefor, pay to the City the reasonable fees of such attorneys and such other reasonable expenses so incurred by the City.

**Section 4.5. Notice of an Event of Default.** The parties hereto shall each promptly give to the Trustee written notice of any Event of Default of which they shall have actual knowledge or written notice, but the parties hereto shall not be liable for failing to give such notice.

**Section 4.6. Remedial Rights Assigned to the Trustee.** Upon the execution and delivery of the Indenture, the City will thereby have assigned to the Trustee all rights and remedies conferred upon or reserved to the City by this Financing Agreement, reserving only the City's rights to payments for its own benefit. The Trustee shall have the exclusive right to exercise such rights and remedies conferred upon or reserved to the City by this Financing Agreement in the same manner and to the same extent, but under the limitations and conditions imposed thereby and hereby. The Owners of the Bonds shall be deemed third party creditor beneficiaries of all representations, warranties, covenants and agreements contained herein.

## **ARTICLE V**

### **MISCELLANEOUS**

**Section 5.1. Terms of Financing Agreement.** This Financing Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until all of the principal of, redemption premium, if any, and interest on all the Bonds shall have been paid in accordance with their terms or provision has been made for such payment, as provided in the Indenture, and provision shall also be made for paying all other sums payable under the Indenture, including the fees, costs and expenses of the Trustee and the Paying Agent to the date of retirement of the Bonds.

**Section 5.2. Notices.** All written notices required by this Financing Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party's office at its address hereinafter set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual or attempted delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service. Notices shall be sent to the address provided in the Indenture.

Each party shall have the right to specify that notice be addressed to any other address by giving to the other parties ten (10) days written notice thereof.

**Section 5.3. Performance Date Not a Business Day.** If any date for the taking of any action hereunder is on a Saturday, Sunday or business holiday of the State, then such action shall be taken on the first Business Day thereafter with the same force and effect as if made on the date fixed for payment or performance.



**Section 5.4. Binding Effect.** This Financing Agreement shall inure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns.

**Section 5.5. Amendments, Changes and Modifications.** This Financing Agreement may not be effectively amended, changed, modified, altered or terminated without the prior concurring written consent of all the parties hereto and compliance with the requirements of **Article X** of the Indenture.

**Section 5.6. Execution in Counterparts.** This Financing Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 5.7. No Pecuniary Liability.** All covenants, obligations and agreements contained in this Financing Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the parties hereto in other than their official capacity. No provision hereof shall be construed to impose any personal or pecuniary liability upon any present or future director, officer, agent or employee of the parties hereto, and all such liability is hereby expressly waived and released as a condition of and consideration for the execution of this Financing Agreement and the issuance of the Bonds. With respect to any action for specific performance or any action in the nature of a prohibitory or mandatory injunction, neither the City nor any of its directors, trustees, officers, officials, employees or agents shall be liable for any action taken by the City, or for any failure to take action, in accordance with the terms of this Financing Agreement.

**Section 5.8. Entire Agreement.** This Financing Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior oral agreements or written agreements, arrangements, and understandings related thereto.

**Section 5.9. Severability.** If any provision of this Financing Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Financing Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 5.10. Governing Law.** This Financing Agreement shall be governed by and construed in accordance with the laws of the State.

**Section 5.11. Electronic Transactions.** The transaction described herein may be conducted and related documents may be stored, delivered and received by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.



**SMITHVILLE COMMONS COMMUNITY  
IMPROVEMENT DISTRICT**

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

(Seal)

ATTEST:

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

Financing Agreement

**CITY OF SMITHVILLE, MISSOURI**

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

(Seal)

ATTEST:

By: \_\_\_\_\_  
City Clerk

**PRIVATE PLACEMENT AGREEMENT**

relating to

\$ \_\_\_\_\_

**CITY OF SMITHVILLE, MISSOURI  
TAX INCREMENT REVENUE BONDS  
(SMITHVILLE COMMONS PROJECT)  
SERIES 2022**

May \_\_\_, 2022

City of Smithville, Missouri  
107 West Main Street  
Smithville, Missouri 64089  
Attention: City Administrator

Development Associates Smithville, LLC  
c/o Cadence Commercial Real Estate  
10985 Code, Suite 220  
Overland Park, Kansas 66210  
Attention: Justin Kaufmann

Ladies and Gentlemen:

On behalf of the representations, warranties and covenants and upon the terms and conditions contained in this Private Placement Agreement (this “**Private Placement Agreement**” or this “**Agreement**”), the undersigned, UMB Bank, N.A. (the “**Placement Agent**”), hereby agrees to privately place for the City of Smithville, Missouri (the “**City**”) its \$ \_\_\_\_\_ aggregate principal amount of Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 (the “**Bonds**”) with the original purchasers set forth on **Exhibit A** to this Agreement. The Bonds are being issued by the City pursuant to a Trust Indenture, dated as May 15, 2022 (the “**Indenture**”), between the City and UMB Bank, N.A., as bond trustee (the “**Bond Trustee**” or the “**Trustee**”) and are payable from moneys pledged or provided pursuant to the terms of the Indenture and the Financing Agreement, dated as of May 15, 2022 (the “**Financing Agreement**”), between the City and the Smithville Commons Community Improvement District (the “**District**”).

The City is issuing the Bonds pursuant to the term of (i) the Bond Ordinance (as defined herein), (ii) the Indenture and (iii) the Tax Increment Redevelopment Agreement, dated as of August 1, 2017 (as amended, the “**Redevelopment Agreement**”), between the City and Development Associates Smithville, LLC, a Missouri limited liability company (the “**Developer**”). The Bonds are being issued for the purpose of (i) financing certain Project Costs (as defined in the Indenture), (ii) funding a debt service reserve fund for the Bonds, and (iii) paying the costs of issuance of the Bonds, all as more fully described in the Indenture.

This offer is made subject to acceptance of this Agreement by the City and the Developer on or before 5:00 p.m. (central time) on the date hereof.

Terms not otherwise defined in this Agreement shall have the meaning ascribed thereto in the Indenture.

**1. Introductory.** We understand that the City proposes to issue and sell the Bonds pursuant to an ordinance adopted by the governing body of the City on May 17, 2022 (the “**Bond Ordinance**”) and the Indenture.

The Bonds and the interest thereon will be special, limited obligations of the City payable solely and only from the amounts pledged therefor pursuant to the Indenture. The Bonds and the interest thereon shall not constitute an indebtedness of the City, the State of Missouri (the “**State**”) or any political subdivision thereof within the meaning of any constitutional, statutory or other debt limitation or restriction and are not payable in any manner by taxation. The issuance of the Bonds does not, directly, indirectly or contingently, obligate the City, the District, the State or any political subdivision thereof to levy any form of general taxation therefor or to make any appropriation for their payment. The City, the District, the State, any political subdivision thereof, and any of their respective directors, officers, employees or agents or any person executing the Bonds shall not be liable for such obligations except to the extent set forth in the Indenture and the Financing Agreement.

The City and the Developer each acknowledge and agree with respect solely to itself that (i) this Agreement is an arm’s-length commercial transaction, (ii) in connection with such transaction, the Placement Agent is acting solely as an agent for the City and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), principal or a fiduciary of the City or the Developer, (iii) the Placement Agent has not assumed a fiduciary responsibility in favor of the City or the Developer with respect to the placement of the Bonds or the process leading thereto (whether or not the Placement Agent or any affiliate thereof has advised or is currently advising the City on other matters) or any other obligation to the City or the Developer except the obligations expressly set forth in this Agreement, (iv) the City and the Developer have each consulted with their own legal and financial advisors to the extent it deemed appropriate in connection with the placement of the Bonds and (v) the Placement Agent is acting solely as a placement agent with respect to the Bonds and is not serving as an underwriter in connection with the transactions described herein.

**2. Purchase, Sale and Delivery of the Bonds.** On the basis of the representations, warranties and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth, at the Closing Date the Placement Agent agrees to privately place for the City and the City agrees to sell the Bonds to the purchasers identified by the Placement Agent at the prices set forth on **Schedule I** hereto. The Placement Agent initially agrees to privately place the Bonds at the prices set forth on **Schedule I** hereto. The Placement Agent will be paid from the proceeds of the Bonds a placement fee for its services under this Agreement in the amount of \$\_\_\_\_\_ (the “**Placement Fee**”).

The Bonds shall have the maturities and interest rates, shall be sold at the prices and be subject to redemption as set forth in the Indenture and on **Schedule I** hereto.

Payment for the Bonds shall be made by federal wire transfer in immediately available federal funds payable to the order of the Bond Trustee for the account of the City (the “**Closing**”), at the offices of Gilmore & Bell, P.C., Kansas City, Missouri (“**Bond Counsel**”), at 10:00 a.m. (local time), on May \_\_\_\_, 2022, or such other place, time or date as shall be mutually agreed upon by the City, the Developer and the Placement Agent. The date of such delivery and payment is herein called the “**Closing Date**.” The Bonds so to be delivered will be delivered as definitive bonds in fully registered form, with CUSIP numbers imprinted thereon, in such denominations as we request. On the Closing Date, the Trustee will, at the written request and authorization of the City, hold the Bonds pursuant to DTC’s FAST procedures.

**3. Transaction Documents.** On or prior to the Closing Date, the Placement Agent shall have received the following documents in form and substance satisfactory to the Placement Agent and its counsel:

(a) Bond Counsel Opinion. The approving opinion of Bond Counsel, dated the Closing Date, addressed to the City, the Trustee and the Placement Agent relating to the due authorization,

execution and delivery of the Bonds, the tax-exempt status of the interest on the Bonds for federal or Missouri income tax purposes, and certain other matters, all in form and substance acceptable to the Placement Agent and the City.

(b) Developer's Counsel Opinion. The opinion of Polsinelli PC, Kansas City, Missouri, counsel to the Developer, dated the Closing Date, addressed to the City, the Trustee, Bond Counsel and the Placement Agent, in form and substance reasonably acceptable to such parties and their counsel and to Bond Counsel.

(c) Developer's Certificate. A certificate of the Developer dated the Closing Date, signed by an authorized officer of each Developer, on behalf of the Developer, in form and substance reasonably satisfactory to the City, the Placement Agent, their respective counsel and to Bond Counsel.

(d) Bonds. The Bonds.

(e) Private Placement Memorandum. The Private Placement Memorandum executed and approved on behalf of the parties thereto by duly authorized officials thereof.

(f) Indenture. The Indenture, duly executed by the parties thereto.

(g) Financing Agreement. The Financing Agreement, duly executed by the parties thereto.

(h) Tax Compliance Agreement. The Tax Compliance Agreement, duly executed by the parties thereto.

(i) Continuing Disclosure Agreement. The Continuing Disclosure Agreement, duly executed by the parties thereto.

(j) District Resolution(s). Resolution(s) of the District authorizing and approving, as appropriate, the execution and delivery of the Transaction Documents to which it is a party, together with a certificate dated the Closing Date to the effect that such resolution(s) have not been modified, amended or repealed.

(k) Developer Resolution(s). Resolution(s) of the Developer authorizing and approving, as appropriate, the execution and delivery of the Transaction Documents to which it is a party, together with a certificate dated the Closing Date to the effect that such resolution(s) have not been modified, amended or repealed.

(l) Certificates. Other certificates listed on a closing agenda to be approved by counsel to the City, Bond Counsel, counsel to the Developer and counsel to the Placement Agent, including any certificates or representations of the Developer required in order for Bond Counsel to deliver the opinion referred to in **Section 3(a)** of this Agreement.

(m) Form 8038. A completed form 8038-G (Information Return for Tax-Exempt Governmental Obligations).

(n) Placement Agent's Counsel Opinion. The opinion of FisherBroyles, LLP, counsel to the Placement Agent, dated the Closing Date, addressed to the Placement Agent and the City, in form and substance acceptable to Bond Counsel.

(o) Other Closing Materials. Such additional legal opinions, certificates, proceedings, instruments and other documents as Bond Counsel or counsel for the Placement Agent, the Developer

or the City may reasonably request to evidence compliance with all legal requirements, the truth and accuracy, as of the Closing, of the representations herein and the due performance or satisfaction of all agreements then to be performed and all conditions then to be satisfied.

The foregoing documents are hereinafter referred to as the “**Transaction Documents.**”

The City and the Developer have each authorized the use of the Private Placement Memorandum in connection with the offer, sale and distribution of the Bonds.

**4. Representations and Warranties of the City.** The City hereby represents and warrants to the Placement Agent and to the Developer that:

(a) Status. The City is and will be at Closing a political subdivision organized and existing under the laws of the State with the power and authority to issue the Bonds.

(b) Authorization By Law. The City is authorized by the laws of the State, including particularly the TIF Act, (i) to issue, sell and deliver the Bonds for the purposes set forth in the opening paragraphs hereof, (ii) to enter into and perform its obligations under the Transaction Documents to which it is a party, and (iii) to pledge and assign to the Trustee the Trust Estate (as defined in the Indenture) in accordance with the provisions of the Indenture.

(c) Power and Authority. The City has full power and authority to consummate the transactions to be performed by it under the Transaction Documents to which it is a party.

(d) Private Placement Memorandum. The information contained in the Private Placement Memorandum with respect to the City under the captions “THE CITY” and “ABSENCE OF LITIGATION - The City” does not and, as of the Closing Date, will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make any statement made therein, in light of the circumstances under which it was made, not misleading.

(e) Necessary Action. Prior to the Closing, the City shall have taken all necessary action to be taken by it for: (i) the issuance and sale of the Bonds upon the terms set forth herein; (ii) the approval, execution, delivery and receipt by the City of the Transaction Documents to which it is a party and any and all such other agreements and documents as may be required to be executed, delivered and received by the City in order to carry out, give effect to, and consummate the transactions contemplated hereby; (iii) the pledge and assignment of the Trust Estate to the Trustee; and (iv) making the proceeds of the Bonds available to the Developer in the amounts and subject to the terms of the Indenture and the Development Agreement.

(f) Documents Binding. The Bonds when executed, issued, authenticated, delivered and paid for as herein and in the Indenture provided, and the Transaction Documents, to which the City is a party, when executed will have been duly authorized and issued and will constitute legal, valid and binding obligations of the City, enforceable in accordance with their respective terms (subject as to enforcement to any applicable bankruptcy, reorganization, insolvency, moratorium or other law or laws affecting the enforcement of creditors’ rights generally or against municipal corporations such as the City from time to time in effect and further subject to the availability of equitable remedies).

(g) No Litigation. Except as described in the Private Placement Memorandum, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the City, threatened against the City wherein an unfavorable decision, ruling or finding would materially adversely affect the tax-exempt status of the interest on the Bonds for federal or Missouri income tax purposes (as described in the Private Placement Memorandum), the existence or powers of the City, the transactions contemplated hereby



or the validity or enforceability in accordance with their respective terms of this Agreement, the Indenture, the Financing Agreement, the Tax Compliance Agreement, the Bonds or any agreement or instrument to which the City is a party used or contemplated for use in the consummation of the transactions contemplated hereby or by the Private Placement Memorandum.

(h) No Conflict or Breach. The execution and delivery by the City of this Agreement, the Indenture, the Financing Agreement, the Tax Compliance Agreement, the Bonds and the other documents contemplated hereby to be executed and delivered by the City, and compliance with the provisions thereof, and the pledge of the Trust Estate to the Trustee pursuant to the Indenture, do not conflict with or constitute on the part of the City a breach of or a default under any existing law, court or administrative regulation, decree, order, agreement, indenture, mortgage or lease by which the City is or may be bound.

(i) Certificates. Any certificate signed by an authorized officer of the City and delivered to the Placement Agent shall be deemed a representation and warranty by the City to the Placement Agent as to the statements made therein.

**5. Developer's Representations and Warranties.** In order to induce the Placement Agent to enter into this Agreement and in order to induce the City to enter into the Transaction Documents to which it is a party, and to issue the Bonds, and in consideration of the foregoing and the execution and delivery of this Agreement, the Developer represents and warrants to and covenants on behalf of itself with the City and the Placement Agent as follows:

(a) Status. The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State. The Developer has all material licenses and permits necessary in order to carry on its business as currently conducted and has obtained all material licenses and permits required to be obtained as of the date hereof in connection with the facilities financed or refinanced with the proceeds of the Bonds. The Developer is not in violation of and has not received any notice of an alleged violation of or liability under any zoning, land use, environmental, pollution control, hazardous waste or similar laws or regulations that would have a material adverse effect on the operations or financial affairs of the Developer or the acquisition, construction and equipping of the Redevelopment Project. The Developer has full right, power and authority to authorize, approve, enter into, execute and deliver the Transaction Documents to which it is a party and to perform such other acts and things as are provided for in the Transaction Documents.

(b) No Conflict or Breach. The execution, delivery, performance (where applicable) and approval by the Developer of the Transaction Documents to which it is a party, and full compliance with the provisions of such Transaction Documents, have been duly authorized by all necessary corporate action of the Developer and do not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, the Developer's Articles of Organization or Operating Agreement, any law, court or administrative regulation, decree or order, or any agreement, indenture, mortgage, lease or instrument to which the Developer is a party or by which it is or may be bound.

(c) Corporate Action. The Developer has duly authorized all necessary action to be taken by it for: (i) the issuance and sale of the Bonds by the City upon the terms and conditions set forth herein and to be set forth in the Private Placement Memorandum, and (ii) the execution, delivery and performance (where applicable) of the Transaction Documents to which it is a party and any and all such other agreements and documents as may be required to be executed, delivered and performed by the Developer in order to carry out, effectuate and consummate the transactions contemplated hereby and by such Transaction Documents.

(d) Private Placement Memorandum True and Correct. The description and information contained in the Private Placement Memorandum relating to: the Developer; the Developer's organization, operations, company structure, and affairs; application by the Developer of the proceeds to be received from the sale of the Bonds; the Redevelopment Project, the District; and the Transaction Documents to which the Developer is a party and the Developer's participation in the transactions contemplated by the Transaction Documents are, and with respect to the Private Placement Memorandum, as of its date, true and correct and do not, and with respect to the Private Placement Memorandum, as of its date, contain any untrue statement of any material fact and do not, and with respect to the Private Placement Memorandum, as of its date, omit to state any material fact necessary to make any statement made therein, in light of the circumstances under which it was made, not misleading.

(e) Tax Status of Bonds. The Developer will not take or omit to take any action which action or failure to act will in any way cause or result in the proceeds from the sale of the Bonds being applied in a manner other than as provided in the Transaction Documents and as described in the Private Placement Memorandum.

(f) No Litigation. Except as may be described in the Private Placement Memorandum, to the Developer's knowledge after reasonable inquiry, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or, to the knowledge of the Developer, threatened against or affecting the Developer wherein an unfavorable decision, ruling or finding could have a material adverse effect on the financial condition of the Developer or the operation by the Developer of its property or the transactions contemplated by the Transaction Documents or on the validity or enforceability in accordance with its terms of any of the Transaction Documents or any other agreement or instrument to which the Developer is a party or by which it is bound or would in any way contest the existence or powers of the Developer.

(g) Documents Legal, Valid and Binding. The Developer shall, on or before the Closing, execute and deliver the applicable Transaction Documents and said Transaction Documents, when executed and delivered by the Developer and all of the other parties thereto, will be, and this Agreement is, the legal, valid and binding obligation of the Developer enforceable against it in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies.

(h) Compliance with Laws and Regulations. The Developer shall conduct its affairs and carry on its business and operations in such manner as to comply in all material respects with any and all applicable laws of the United States of America and the several states thereof and to observe and conform in all material respects to all valid orders, regulations or requirements of any governmental authority applicable to the conduct of its business and operations and the ownership of its property.

(i) Project. To the best of Developer's knowledge after reasonable inquiry, any notification of or filing with, or consent or approval of any governmental agency or entity required with respect to the issuance of the Bonds or the acquisition, construction and equipping of the Project, either has been made or obtained or will be prior to the time such are required to be obtained. The financing as contemplated in the Private Placement Memorandum is consistent with and does not violate or conflict with the terms of the various consents or approvals of any such agencies or entities.

(j) Certificates. Any certificate signed by an authorized officer or agent of the Developer and delivered to the City or the Placement Agent shall be deemed a representation and warranty by the Developer to such parties as to the statements made therein.

(k) No Default Under Transaction Documents. To the best of Developer's knowledge after reasonable inquiry, no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a breach of or an event of default by the Developer under any of the Transaction Documents to which it is a party.

(l) Supplements to Private Placement Memorandum. If the Private Placement Memorandum is supplemented or amended pursuant to subsection (m) of this **Section 5**, at the time of such supplement or amendment thereto, the information contained in the Private Placement Memorandum with respect to the Developer and related matters as provided in subsection (d) of this **Section 5** as so supplemented or amended will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(m) Subsequent Events. If between the date of the Private Placement Memorandum and the Closing Date any event shall occur which might or would cause the information contained in the Private Placement Memorandum with respect to the Developer and related matters in subsection (d) of this **Section 5** to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Developer shall notify the Placement Agent thereof, and if in the opinion of the Placement Agent, such event requires the preparation and publication of a supplement or amendment to the Private Placement Memorandum, the Developer will, at its expense, supplement or amend the Private Placement Memorandum in a form and in a manner approved by the Placement Agent.

(n) Payment of Taxes and Other Charges. The Developer shall pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Developer or its property or any part thereof or upon any income therefrom; provided, however, that the Developer shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall be contested in good faith by appropriate proceedings in accordance with applicable laws.

(o) Rights, Licenses and Permits. The Developer shall procure and maintain all material rights, licenses and permits necessary in the operation of its business and affairs; provided, however, that the Developer shall not be required to procure or maintain in effect any right, license or permit that the governing board of the Developer shall have determined in good faith is not in the best interests of the Developer and is no longer desirable in the conduct of its business and that lack of such compliance will not materially impair the ability of the Developer to pay or perform its obligations under the Transaction Documents.

(p) No Federal Guarantee. The Bonds are not federally guaranteed within the meaning of Section 149(b) of the Code.

**6. Placement Agent Undertaking Regarding Transfers.** On or before the Closing, the Placement Agent will provide evidence to the City that the Placement Agent has provided notice on the services of Bloomberg L.P. that the Bonds may only be transferred to Approved Investors (as defined in the Indenture).

**7. Indemnity, Hold Harmless and Contribution.**

(a) Developer. The Developer agrees to indemnify and hold harmless the City, the Placement Agent, each director, member, officer, employee or agent of the City or of the Placement Agent and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the City, or of the Placement Agent through the ownership of voting securities, by contract or otherwise (collectively in this subsection (a) called the "**Indemnified Parties**"), from and against any and all

losses, claims, demands, damages, liabilities or reasonable expenses whatsoever caused by (i) any breach of the undertakings or representations of the Developer contained herein; or (ii) any untrue or misleading statement, whether actual or alleged, of a material fact contained in the Private Placement Memorandum or caused by any omission, whether actual or alleged, from the Private Placement Memorandum of any material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, insofar as such statements appear in, or matter omitted pertains to material appearing in, any section of the Private Placement Memorandum that either: (A) was prepared from information furnished by the Developer or its agents (including, without limitation, attorneys, accountants or consultants); or (B) contains information about the Developer, the District or the Project; or (C) both.

In case a claim shall be made or any action shall be brought against one or more of the Indemnified Parties in respect of which indemnity can be sought against the Developer pursuant to the preceding paragraph, the Indemnified Parties shall promptly notify the Developer in writing, and the Developer shall promptly assume the defense thereof, including, with the consent of the Placement Agent and the City, which consents shall not be unreasonably withheld, the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Developer or there is a conflict of interest that would prevent counsel for the Developer from adequately representing the Developer and the Indemnified Parties. The Developer shall not be liable for any settlement of any such action effected without its written consent, but if settled with the written consent of the Developer or if there be a final judgment for the plaintiff in any such action which the Developer is required hereunder to assume the defense of, the Developer agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(b) Survival. The covenants and agreements contained in this **Section 7** shall survive the delivery of the Bonds.

**8. Conditions to Obligations of Placement Agent.** The obligation of the Placement Agent to place the Bonds and the obligation of the City to sell the Bonds, in each case on the Closing Date, will be subject to the accuracy of the representations and warranties of the Developer and the City herein, to the accuracy of statements to be made on behalf of the City and the Developer hereunder, to the performance by the City and the Developer of their obligations hereunder and to the following additional conditions precedent:

(a) At the Closing Date, the Bond Ordinance, the Transaction Documents, and all official action of the City relating thereto and all actions taken by the Trustee and the Developer in connection therewith shall be in full force and effect and shall not have been amended, modified or supplemented, and the Private Placement Memorandum shall not have been amended or supplemented except as may have been agreed to by the Placement Agent.

(b) The Placement Agent shall have received each of the documents set forth in **Section 3** of this Agreement.

All opinions, letters, certificates, instruments and other documents mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof if, but only if, they are in form and substance satisfactory to the Placement Agent.

**9. Right to Termination.** The Placement Agent shall have the right to cancel its obligation to place the Bonds upon written notification by the Placement Agent to the City and the Developer if between the date hereof and the date of the Closing:

(a) (i) legislation shall be enacted or be actively considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration or introduced with an effective date which would, if enacted, apply to the Bonds, or (ii) a decision by a federal court of the United States or the United States Tax Court shall be rendered, or a ruling, regulation, release or other promulgation by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed with respect to federal taxation upon revenues or other income pledged by the City under the Indenture, or upon interest on the Bonds or securities of the general character of the Bonds, or (iii) other action or events shall have occurred or transpired, any of which has the purpose or effect, directly or indirectly, in the reasonable opinion of Bond Counsel or counsel to the Placement Agent, of materially adversely affecting the federal or State of Missouri income tax consequences of any of the transactions contemplated in connection herewith, or, in the reasonable opinion of the Placement Agent, materially adversely affects the market for the Bonds or the ability of the Placement Agent to enforce contracts for the sale of the Bonds at the contemplated offering price; or

(b) there shall exist any fact or any event shall have occurred which either (i) makes untrue or incorrect any statement of a material fact or material information contained in the Private Placement Memorandum as then amended or supplemented or (ii) is not reflected in the Private Placement Memorandum as then amended or supplemented but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect; or

(c) there shall have occurred any outbreak or escalation of hostilities or any national or international calamity or crisis, including a financial crisis, the effect of which on the financial markets of the United States being such as, in the reasonable opinion of the Placement Agent, would materially adversely affect the market for the Bonds or the ability of the Placement Agent to enforce contracts for the sale of the Bonds at the contemplated offering prices; or

(d) there shall be in force a general suspension of trading on the New York Stock Exchange or a general banking moratorium shall have been declared by federal, Missouri or New York authorities, the effect of which on the financial markets of the United States is such as would materially adversely affect the market for the Bonds or the ability of the Placement Agent to enforce contracts for the sale of the Bonds at the contemplated offering prices; or

(e) legislation shall be enacted or considered for enactment by the Congress, or recommended to the Congress for passage by the President of the United States, or introduced in either House of Congress by any Committee of such House to which such legislation has been referred for consideration, or a decision, order or decree of a court of competent jurisdiction shall be rendered, or an order, ruling, regulation or Private Placement Memorandum of or on behalf of the Securities and Exchange Commission or the Municipal Securities Rulemaking Board shall be rendered or made, with the purpose or effect that the issuance, offering or sale of the Bonds, as contemplated by this Agreement or by the Private Placement Memorandum, is or would be in violation of any provision of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or the Trust Indenture Act of 1939, as amended, or with the purpose or effect of otherwise prohibiting the issuance, offering or sale of the Bonds as contemplated by this Agreement or by the Private Placement Memorandum; or

(f) in the reasonable opinion of the Placement Agent, the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be adversely affected because: (i) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities

exchange; (ii) the New York Stock Exchange or other national securities exchange, or any governmental authority, shall impose, as to the Bonds or similar obligations, any material restrictions which are neither now in force nor have been announced to become effective prior to the Closing, or increase materially those now in force or so announced, with respect to the extension of credit by, or the charge to the net capital requirements of, underwriters, or (iii) the President of the United States of America, a member of his cabinet or the Securities and Exchange Commission, including a lesser official acting on the behalf of any of them, or a member of the Congress, shall have announced the intended introduction of legislation to achieve the same effect as that described in clause (a) or (e) of this paragraph.

To the Placement Agent's actual knowledge, no events listed in the subsections above (excluding subsection (b)) that would permit the Placement Agent to cancel its obligations pursuant to this Agreement have occurred.

#### **10. Expenses.**

(a) If the Bonds are sold to the bond purchaser or purchasers by the City, the City shall cause the Trustee to pay solely out of the proceeds of the Bonds the following expenses incident to the performances of its obligations hereunder: (i) the cost of preparing, duplicating (or printing), mailing and delivering the Transaction Documents, including the costs of delivering electronic copies of the Preliminary Private Placement Memorandum and the Private Placement Memorandum; (ii) the Placement Fee and any applicable DALCOMP, MSRB, BMA, DTC and CUSIP charges; (iii) the fees and disbursements of Bond Counsel, the Trustee, the City, counsel to the City, the financial advisor to the City and counsel to the Placement Agent; and (iv) all other fees and expenses reasonably incurred in connection with the preparation of the Transaction Documents and/or the initial offering and sale of the Bonds except those to be paid by the Placement Agent pursuant to the last paragraph of this **Section 10**.

(b) Except as otherwise provided above in this **Section 10**, the Placement Agent shall pay all travel, postage, photocopying, telephone, fax, computer, word processing and other similar expenses incurred by them or any of them in connection with its placement of the Bonds.

**11. Notices.** Any notice or other communication to be given to the City under this Agreement may be given by delivering the same in writing to the City at its address set forth above, and any notice or other communication to the Developer may be given by delivering the same in writing to the Developer at its address set forth above. Any notice or other communication to be given to the Placement Agent under this Agreement may be given by delivering the same in writing to UMB Bank, N.A., 928 Grand Boulevard, 14<sup>th</sup> Floor, Kansas City, Missouri 64106, Attention: Scott Crist.

**12. Benefits; Successors.** This Agreement is made solely for the benefit of the City, the Developer and the Placement Agent and no other person shall acquire or have any right hereunder or by virtue hereof.

**13. Governing Law.** This Agreement shall be governed by the laws of the State.

**14. Survival.** All of the representations, warranties and agreements of the City, the Placement Agent and the Developer hereunder shall remain operative and be in full force and effect regardless of any investigations made by and on behalf of the Placement Agent, and shall survive the delivery of the Bonds to the Placement Agent.

**15. Counterparts.** This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**16. Effectiveness.** This Agreement (i) shall become effective upon the execution of the acceptance hereof by the City and the Developer and (ii) supersedes all prior agreements between the City, the Developer and the Placement Agent regarding the issuance of the Bonds.

**17. Electronic Transaction.** The parties agree that the transaction described herein may be conducted and related documents may be sent, received and stored by electronic means. In addition, the transaction described herein may be conducted and related documents may be sent, received and stored by electronic means, copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

**18. Anti-Discrimination Against Israel Act.** Pursuant to Section 34.600 of the Revised Statutes of Missouri, the Placement Agent certifies it is not currently engaged in and shall not, for the duration of this Private Placement Agreement, engage in a boycott of goods or services from (a) the State of Israel, (b) companies doing business in or with the State of Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or (c) persons or entities doing business in the State of Israel.

*(Remainder of this page intentionally left blank)*

Very truly yours,

**UMB BANK, N.A.**, as Placement Agent

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

Accepted:

**CITY OF SMITHVILLE, MISSOURI**

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

Date: May \_\_\_\_, 2022

Accepted:

**DEVELOPMENT ASSOCIATES  
SMITHVILLE, LLC**, a Missouri limited liability  
company

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

Date: May \_\_\_\_, 2022



**EXHIBIT A**

<u>Original Purchaser</u>	<u>20   Term Bond</u>	<u>20   Term Bond</u>	<u>Total Principal Amount</u>
Total			

**SCHEDULE I TO PRIVATE PLACEMENT AGREEMENT**

**MATURITY SCHEDULE**

**\$ \_\_\_\_\_**  
**CITY OF SMITHVILLE, MISSOURI**  
**TAX INCREMENT REVENUE BONDS**  
**(SMITHVILLE COMMONS PROJECT)**  
**SERIES 2022**

<u>Maturity</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Price</u>	<u>Yield</u>
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**TAX COMPLIANCE AGREEMENT**

**Dated as of May 15, 2022**

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**Among**

**CITY OF SMITHVILLE, MISSOURI,**

**SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT**

**And**

**UMB BANK, N.A.,  
as Trustee**

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**[\$[Principal Amount]  
City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

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# **TAX COMPLIANCE AGREEMENT**

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Schedule A – Attachment to Form 8038-G

**Exhibit C** – Description of Property Comprising the Financed Facility

**Exhibit D** – Sample Annual Compliance Checklist

**Exhibit E** – Sample Final Written Allocation

\* \* \*

## **TAX COMPLIANCE AGREEMENT**

**THIS TAX COMPLIANCE AGREEMENT** (the “Tax Agreement”), entered into as of May 15, 2022, among the **CITY OF SMITHVILLE, MISSOURI**, a political subdivision organized and existing under the laws of the State of Missouri (the “Issuer”), the **SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT** (the “District”) and **UMB BANK, N.A.**, national banking association duly organized and existing under the laws of the United States of America, as Trustee (the “Trustee”);

### **RECITALS**

1. This Tax Agreement is being executed and delivered in connection with the issuance by the Issuer of \$[Principal Amount] principal amount of Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022 (the “Bonds”), under a Trust Indenture dated the date of this Tax Agreement (the “Indenture”) between the Issuer and the Trustee and the Financing Agreement (the “Financing Agreement”) dated as of the date of this Tax Agreement between the Issuer and the Smithville Commons Community Improvement District (the “District”) for the purposes described in this Tax Agreement, in the Indenture, and in the Financing Agreement.

2. The Internal Revenue Code of 1986, as amended (the “Code”), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the “Regulations”), impose certain limitations on the uses and investment of the Bond proceeds and of certain other money relating to the Bonds and set forth the conditions under which the interest on the Bonds will be excluded from gross income for federal income tax purposes.

3. The Issuer and the Trustee are entering into this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of Bond proceeds and the property financed or refinanced with those proceeds and the investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

4. The Issuer adopted a Tax-Exempt Financing Compliance Policy and Procedure (the “Tax Compliance Procedure”) for the purpose of setting out general procedures to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations. This Tax Agreement is entered into as required by the Tax Compliance Procedure to set out specific tax compliance procedures applicable to the Bonds.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Issuer and the Trustee represent, covenant and agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Indenture, and certain other words and phrases

have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

**“Adjusted Gross Proceeds”** means the Gross Proceeds of the Bonds reduced by amounts (a) in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, (b) that as of the Issue Date are not expected to be Gross Proceeds, but which arise after the end of the applicable spending period, and (c) representing grant repayments or sale or Investment proceeds of any purpose Investment.

**“Available Construction Proceeds”** means the sale proceeds of the Bonds, increased by (i) Investment earnings on the sale proceeds, (ii) earnings on amounts in a reasonably required reserve or replacement fund allocable to the Bonds but not funded from the Bonds, and (iii) earnings on such earnings, reduced by sale proceeds (A) in any reasonably required reserve fund or (B) used to pay issuance costs of the Bonds. Available Construction Proceeds do not include Investment earnings on amounts in a reasonably required reserve or replacement fund after the earlier of (a) the second anniversary of the Issue Date or (b) the date the Financed Facility is substantially completed. If the Issuer has elected under Code § 148(f)(4)(C)(vi)(IV) to rebate earnings on a reasonably required reserve or replacement fund, then Available Construction Proceeds do not include any earnings on such account.

**“Bona Fide Debt Service Fund”** means a fund, which may include Bond proceeds, that (a) is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and (b) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Bond Year, or (2) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

**“Bond”** or **“Bonds”** means any Bond or Bonds described in the recitals, authenticated and delivered under the Indenture.

**“Bond Compliance Officer”** means the Issuer’s Finance Director, or other person named in the Tax Compliance Procedure.

**“Bond Counsel”** means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the Issuer.

**“Bond Year”** means each one-year period (or shorter period for the first Bond Year) ending December 1, or another one-year period selected by the Issuer.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Compliance Account”** means the account by that name created under the Indenture, to provide for the payment of certain expenses as described in **Section 2.1(i)(2)** of this Tax Agreement.

**“Computation Date”** means each date on which arbitrage rebate for the Bonds is computed. The Issuer may treat any date as a Computation Date, subject to the following limits:

- (a) the first rebate installment payment must be made for a Computation Date not later than 5 years after the Issue Date;
- (b) each subsequent rebate installment payment must be made for a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and

(c) the date the last Bond is discharged is the final Computation Date.

The Issuer selects May \_\_, 2027 as the first Computation Date but reserves the right to select a different date consistent with the Regulations.

**“Debt Service Fund”** means, collectively, the Bond Payment Account and the Redemption Account which are contained in the Debt Service Fund established with the Trustee under the Indenture. The Bond Payment Account will be used to pay principal of and interest on any Bonds when they become due on scheduled mandatory redemption dates. The Redemption Account will be used to redeem the Bonds.

**“Debt Service Reserve Fund”** means the debt service reserve fund established with the Trustee under the Indenture.

**“District”** means the Smithville Commons Community Improvement District and its successors and assigns, or any body, agency or instrumentality of the State of Missouri succeeding to or charged with the powers, duties and functions of the District.

**“Financing Agreement”** means the Financing Agreement, dated the date of this Tax Agreement, between the Issuer and the District, as amended and supplemented in accordance with the provisions of the Financing Agreement.

**“Final Written Allocation”** means the Final Written Allocation of expenditures prepared by the Bond Compliance Officer in accordance with the Tax Compliance Procedure and **Section 4.2(b)** of this Tax Agreement.

**“Financed Facility”** means the portion of the Project being financed or refinanced with the proceeds of the Bonds as described on **Exhibit D**.

**“Financing Agreement”** means the Financing Agreement dated the date of this Tax Agreement, between the Issuer and the District as from time to time amended by Supplemental Financing Agreements in accordance with the provisions of the Financing Agreement.

**“Gross Proceeds”** means (a) sale proceeds (any amounts actually or constructively received by the Issuer from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds, or other Investment proceeds), (c) any amounts held in a sinking fund for the Bonds, (d) any amounts held in a pledged fund or reserve fund for the Bonds, and (e) any other replacement proceeds.

Specifically, Gross Proceeds includes (but is not limited) to amounts held in the following funds and accounts:

- (1) Debt Service Fund, and therein a Bond Payment Account and a Redemption Account.
- (2) Debt Service Reserve Fund, and therein a Bond Proceeds Account and a Business Interruption Account.
- (3) Project Fund.
- (4) Rebate Fund (to the extent funded with sale proceeds or Investment proceeds of the Bonds).



(5) Extraordinary Expense Fund.

**“Guaranteed Investment Contract”** is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

**“Indenture”** means the Trust Indenture, dated the date of this Tax Agreement, between the Issuer and the Trustee, as amended and supplemented in accordance with the provisions of the Indenture.

**“Investment”** means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

**“IRS”** means the United States Internal Revenue Service.

**“Issue Date”** means May \_\_, 2022.

**“Issuer”** means the City of Smithville, Missouri and its successors and assigns, or any body, agency or instrumentality of the State of Missouri succeeding to or charged with the powers, duties and functions of the Issuer.

**“Management Agreement”** means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. Contracts for services that are solely incidental to the primary governmental function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing, or similar services), however, are not treated as Management Agreements.

**“Measurement Period”** means, with respect to each item of property financed as part of the Financed Facility, the period beginning on the later of (a) the Issue Date or (b) the date the property is placed in service and ending on the earlier of (1) the final maturity date of the Bonds or (2) the end of the expected economic useful life of the property.

**“Minor Portion”** means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

**“Net Proceeds”** means the sale proceeds of the Bonds (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

**“Non-Qualified Use”** means use of Bond proceeds or the Financed Facility in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Bond proceeds or the Financed Facility are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facility, will constitute use under Regulations § 1.141-3.

**“Non-Qualified User”** means any person or entity other than a Qualified User.

**“Opinion of Bond Counsel”** means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of bond counsel. Unless otherwise specifically noted herein an Opinion of Bond Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

**“Post-Issuance Tax Requirements”** means those requirements related to the use of proceeds of the Bonds, the use of the Financed Facility and the investment of Gross Proceeds after the Issue Date of the Bonds.

**“Project”** means all of the property being acquired, developed, constructed, renovated, and equipped by the Issuer using Bond proceeds and Qualified Equity, all as described on **Exhibit D**.

**“Qualified Equity”** means funds (but excluding an existing equity ownership interest in real property or tangible personal property) that are not derived from proceeds of a tax-exempt financing that are spent on the Project on a date that is no earlier than a date on which such expenditures would be eligible for reimbursement by proceeds of the Bonds under Regulations § 1.150-2(d)(2) and ending not later than the date the Project is capable of and actually used at substantially its designed level.

**“Qualified Use Agreement”** means any of the following:

(a) A lease or other short-term use by members of the general public who occupy the Financed Facility on a short-term basis in the ordinary course of the Issuer’s governmental purposes.

(b) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 200 days in length pursuant to an arrangement whereby (1) the use of the Financed Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (2) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(c) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 100 days in length pursuant to arrangements whereby (1) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (2) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (3) the Financed Facility was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(d) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 50 days in length pursuant to a negotiated arm’s-length arrangement at fair market value so long as the Financed Facility was not constructed for a principal purpose of providing the property for use by that person.

**“Qualified User”** means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

**“Reasonable Retainage”** means Gross Proceeds retained by the Issuer for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed (a) for purposes of the 18-month spending test, 5% of net sale proceeds of the Bonds on the date 18 months after the Issue Date, or (b) for purposes of the 2-year spending test, 5% of the Available Construction Proceeds as of the end of the 2-year spending period.

**“Rebate Analyst”** means Gilmore & Bell, P.C. or any successor Rebate Analyst selected pursuant to this Tax Agreement.

**“Regulations”** means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

**“Revenue Fund”** means the Revenue Fund created under the Indenture, into which the Trustee shall deposit all Net Revenues.

**“Revenues”** means the amounts pledged under the Indenture to the payment of principal of, premium, if any, and interest on the Bonds, consisting generally of “Net Revenues” (as defined in the Indenture).

**“Tax Agreement”** means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

**“Tax Compliance Procedure”** means the Issuer’s Tax-Exempt Financing Compliance Policy and Procedure, dated August 21, 2012, as it may from time to time be amended.

**“Tax-Exempt Bond File”** means documents and records for the Bonds, maintained by the Bond Compliance Officer pursuant to the Tax Compliance Procedure.

**[“Tax Revenues”** means all (a) Economic Activity Tax Revenues (subject to appropriation by the Issuer), excluding the Fire District EATs Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee; (b) Payments in Lieu of Taxes, excluding Fire District PILOTs Reimbursement, the School District PILOTs reimbursement and the City Administrative Fee; and (c) CID Revenues (subject to appropriation by the District).]

**“Transcript”** means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

**“Trustee”** means UMB Bank, n.a., and its successor or successors and any other corporation or association which at any time may be substituted in its place at the time serving as Trustee under the Indenture.

**“Yield”** means yield on the Bonds, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

## ARTICLE II

### GENERAL REPRESENTATIONS AND COVENANTS

**Section 2.1. Representations and Covenants of the Issuer and the District.** The Issuer represents and covenants as follows:

*(a) Organization and Authority.*

(1) The Issuer (1) is a political subdivision organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Indenture, to enter into, execute and deliver the Indenture, the Financing Agreement, the Bonds, and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Indenture, the Financing Agreement, the Bonds, and this Tax Agreement, acting by and through its duly authorized officials.

(2) The District is (1) a community improvement district and political subdivision organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to enter into, execute and deliver the Financing Agreement and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Financing Agreement and this Tax Agreement, acting by and through its duly authorized officials.

*(b) Tax-Exempt Status of Bonds—General Representation and Covenants.* In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Issuer and District (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or Investment of, any Bond proceeds, other money held under the Indenture, or other funds of the Issuer, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facility in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.

*(c) Governmental Obligations—Use of Proceeds.* The proceeds of the Bonds will be used to finance the Financed Facility.

*(d) Governmental Obligations—Private Security or Payment – No Impermissible Agreements.*

(1) As of the Issue Date the Issuer expects that none of the principal and interest on the Bonds will be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:

(i) secured by (A) any interest in property used or to be used for a Non-Qualified Use, or (B) any interest in payments in respect of such property; or

(ii) derived from payments (whether or not such payments are made to the Issuer) in respect of property, or borrowed money, used or to be used for a Non-Qualified Use.

(2) For purposes of the foregoing, taxes of general application, including Tax Revenues, are not treated as private payments or as private security. Tax Revenues will be the primary source of repayment of the Bonds. Tax Revenues are generally applicable taxes because they are an enforced contribution exacted pursuant to legislative authority as part of the taxing power, are imposed and collected for the purpose of raising revenue to be used for governmental purposes, have a uniform rate of collection that applies to all persons of the same classification in the appropriate jurisdiction and have a generally applicable manner of collection and determination. No taxpayer has entered into any “impermissible agreement” relating to the payment of Tax Revenues. An “impermissible agreement” generally includes any agreement described in Regulations § 1.141-4(e)(4)(ii), including the following:

(i) An agreement to be personally liable for a tax that does not impose personal liability.

(ii) An agreement to provide additional credit support such as a guaranty or to pay unanticipated shortfalls in tax collections.

(iii) An agreement as to the minimum market value of property subject to a property tax.

(iv) An agreement not to challenge or to seek deferral of a tax.

(v) Any similar agreement that causes a tax to fail to have a generally applicable manner of determination or collection.

(3) The Issuer will not permit any private security or payment with respect to the Bonds without first consulting with Bond Counsel.

(e) *No Private Loan.* Not more than 5% of the Net Proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User.

(h) *Limit on Maturity of Bonds.* A list of the assets included in the Financed Facility and a computation of the “average reasonably expected economic life” is attached to this Tax Agreement as **Exhibit C**. Based on this computation, the “average maturity” of the Bonds of \_\_\_\_ years, as computed by Bond Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Facility (\_\_\_\_ years).

(i) *Expenditure of Bond Proceeds.*

(1) The Issuer will evidence each allocation of the proceeds of the Bonds and Qualified Equity for the Project to an expenditure in writing. No allocation will be made more than 18 months following the later of (i) the date of the expenditure or (ii) the date the Financed Facility was placed in service.

(2) Reimbursement of Expenditures; Official Intent. The Issuer will not allocate any proceeds of the Bonds to reimburse and expenditure paid prior to the Issue Date.

(j) *Registered Bonds.* The Indenture requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).

(k) *Bonds Not Federally Guaranteed.* The Issuer and the District will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).

(l) *IRS Form 8038-G.* Bond Counsel will prepare Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) based on the representations and covenants of the Issuer contained in this Tax Agreement or otherwise provided by the Issuer and the District. Bond Counsel will sign the return as a paid preparer following completion and will then deliver copies to the Issuer for execution and for the Issuer’s records. The Issuer agrees to timely execute and return to Bond Counsel the execution copy of Form 8038-G for filing with the IRS. A copy of the “as-filed” copy along with proof of filing will be included as **Exhibit B**.

(m) *Hedge Bonds.* At least 85% of the net sale proceeds of the Bonds will be used to carry out the governmental purpose of the Bonds within three years after the Issue Date, and not more than 50% of the proceeds of the Bonds will be invested in Investments having a substantially guaranteed Yield for four years or more.

(n) *Compliance with Future Tax Requirements.* The Issuer and the District understand that the Code and the Regulations may impose new or different restrictions and requirements on the Issuer in the future. The Issuer and the District will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(o) *Single Issue; No Other Issues.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c).

(p) *Interest Rate Swap.* As of the Issue Date the Issuer and the District have not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds. The Issuer and the District will not enter into any such arrangement in the future without first consulting with Bond Counsel.

(q) *Guaranteed Investment Contract.* As of the Issue Date of the Bonds, the Issuer and the District do not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The Issuer will be responsible for complying with **Section 4.4(d)** if it decides to enter into a Guaranteed Investment Contract at a later date.

(r) *Bank Qualified Tax-Exempt Obligation.* The Bonds are not “qualified tax-exempt obligations” under Code § 265(b)(3).

**Section 2.2. Representations and Covenants of the Trustee.** The Trustee represents and covenants to the Issuer as follows:

(a) The Trustee will comply with the provisions of this Tax Agreement that apply to it as Trustee and any written letter or Opinion of Bond Counsel, specifically referencing the Bonds and received by the Trustee, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Trustee and relating to reporting requirements or other requirements necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

(b) The Trustee, acting on behalf of the Issuer, may from time to time cause a firm of attorneys, consultants or independent accountants or an Investment banking firm to provide the Trustee

with such information as it may request in order to determine all matters relating to (1) the Yield on the Bonds as it relates to any data or conclusions necessary to verify that the Bonds are not “arbitrage bonds” within the meaning of Code § 148, and (2) compliance with arbitrage rebate requirements of Code § 148(f). The Issuer will pay all costs and expenses incurred in connection with supplying the foregoing information.

**Section 2.3. Survival of Representations and Covenants.** All representations, covenants and certifications of the Issuer and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the Issuer or the Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

### ARTICLE III

#### ARBITRAGE CERTIFICATIONS AND COVENANTS

**Section 3.1. General.** The purpose of this **Article III** is to certify, under Regulations § 1.148-2(b), the Issuer’s expectations as to the sources, uses and investment of Bond proceeds and other money, in order to support the Issuer’s conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Agreement on behalf of the Issuer is an officer of the Issuer responsible for issuing the Bonds.

**Section 3.2. Reasonable Expectations.** The facts, estimates and expectations set forth in this **Article III** are based upon and in reliance upon the Issuer’s understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the Issuer’s knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Issuer set forth in this Tax Agreement are reasonable. The Issuer has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

**Section 3.3. Purpose of Financing.** The Bonds are being issued for the purpose of providing funds to finance the Financed Facility.

**Section 3.4. Funds and Accounts.** The following funds and accounts have been established under the Indenture:

- Revenue Fund, and therein a PILOTs Account, an EATs Account, and a CID Account.
- Debt Service Fund, and therein a Bond Payment Account and a Redemption Account.
- Debt Service Reserve Fund, and therein a Bond Proceeds Account and a Business Interruption Account.
- Project Fund.
- Rebate Fund
- Extraordinary Expense Fund.

**Section 3.5. Amount and Use of Bond Proceeds and Other Money.**

(a) *Amount of Bond Proceeds.* The total proceeds to be received by the Issuer from the sale of the Bonds will be as follows:

Principal Amount	[\$[Principal Amount]].00
Total Proceeds Received by Issuer	\$

(b) *Use of Bond Proceeds.* The Bond proceeds are expected to be allocated to expenditures as follows:

(a) The accrued interest, if any, received from the sale on the Bonds will be deposited in the Debt Service Fund.

(b) an amount equal to \$\_\_\_\_\_ from the proceeds of the Bonds shall be deposited in the Bond Proceeds Account of the Debt Service Reserve Fund; and

(c) the remaining moneys from the proceeds of the Bonds shall be deposited into the Project Fund.

**Section 3.6. Multipurpose Issue.** The Issuer is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes pursuant to Regulations § 1.148-9(h)(3)(i).

**Section 3.7. No Advance Refunding.** No proceeds of the Bonds will be used more than 90 days following the Issue Date to pay principal or interest on any other debt obligation.

**Section 3.8. No Current Refunding.** No proceeds of the Bonds will be used to pay principal or interest on any other debt obligation.

**Section 3.9. Project Completion.** The Issuer has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the Net Proceeds of the Bonds on the Financed Facility. The completion of the Financed Facility and the allocation of the Net Proceeds of the Bonds to expenditures will proceed with due diligence. At least 85% of the Net Proceeds of the Bonds will be allocated to expenditures on the Financed Facility within three years after the Issue Date.

**Section 3.10. Sinking Funds.** The Issuer is required to make periodic payments in amounts sufficient to pay the principal of and interest on the Bonds. Such payments will be deposited into the Debt Service Fund. Except for the Debt Service Fund and the Debt Service Reserve Fund, no sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds has been established or is expected to be established. The Debt Service Fund is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the Issuer expects that the Debt Service Fund will qualify as a Bona Fide Debt Service Fund.

**Section 3.11. Reserve, Replacement and Pledged Funds.**

(a) *Debt Service Reserve Fund.* The Indenture establishes a bond proceeds account in the debt service reserve fund to be funded at the time of issuance of the Bonds in an amount equal to \$\_\_\_\_\_, the Debt Service Reserve Requirement. The amount to be held in the Debt Service



Reserve Fund will not exceed the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date), or (3) 125% of the average annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount. Any amounts in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement will be transferred to the Project Fund or, if the Financed Facility is complete, to the Debt Service Fund.

(b) *Debt Service Reserve Fund – Business Interruption Account.* The Indenture establishes the Business Interruption Account in the Debt Service Reserve Fund to be funded over time from Net Revenues until the amount on deposit in the account reaches \$\_\_\_\_\_, the Debt Service Reserve Requirement for the Business Interruption Account for the Bonds. Amounts on deposit in the Business Interruption Account of the Debt Service Reserve Fund are to be applied by the Trustee solely for the payment of the principal of and interest on the Bonds if other available moneys (including amounts on deposit in the Debt Service Fund and the Bond Proceeds Account of the Debt Service Reserve Fund) are insufficient to pay the Bonds as they become due and payable. Any amounts in the Business Interruption Account of the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement for the Business Interruption Account will be transferred to the Revenue Fund.

(c) *No Other Replacement or Pledged Funds.* None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Facility, and that instead has been or will be used to acquire higher yielding Investments. Except for the Debt Service Fund and the Debt Service Reserve Fund, there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Issuer encounters financial difficulty.

(d) *Other Funds and Accounts.* The Revenue Fund is expected to be used for the temporary deposit of Tax Revenues until such amounts are transferred to other funds and accounts in accordance with the Indenture. The Extraordinary Expense Fund is expected to be used for any expenses related to fees incurred by the City to interpret or defend the Indenture, or any audit or request from any federal or state entity or regulatory authority in connection with the Bonds. Therefore, amounts held in these funds and accounts are not pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Issuer encounters financial difficulty.

**Section 3.12. Purpose Investment Yield.** The proceeds of the Bonds will not be used to purchase an Investment for the purpose of carrying out the governmental purpose of the financing.

### **Section 3.13. Issue Price and Yield on Bonds.**

(a) *Issue Price.* In the Placement Agent's Closing Certificate, the Placement Agent has certified that (1) all of the Bonds have been the subject of an initial offering to the public at prices no higher than those shown on the inside cover page of the Private Placement Memorandum for the Bonds, without accrued interest (the "Offering Prices"), and (2) the Placement Agent expects that at least 10% of each maturity of the Bonds will be sold to the public at initial offering prices no higher than said Offering Prices. The aggregate initial offering price of the Bonds is \$[Principal Amount], without accrued interest.

(b) *Bond Yield.* Based on the Offering Prices of the Bonds, the Yield on the Bonds is \_\_\_\_\_%, as computed by Bond Counsel as shown on **Exhibit A**. The Issuer has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

#### **Section 3.14. Miscellaneous Arbitrage Matters.**

(a) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Issuer to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) *No Over-Issuance.* The sale proceeds of the Bonds, together with expected Investment earnings thereon and other money contributed by the Issuer, do not exceed the cost of the governmental purpose of the Bonds as described above.

**Section 3.15. Conclusion.** On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Issuer does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148 and the Regulations.

### **ARTICLE IV**

#### **POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES**

##### **Section 4.1. General.**

(a) *Purpose of Article.* The purpose of this Article is to supplement the Tax Compliance Procedure and to set out specific policies and procedures governing compliance with the federal income tax requirements that apply after the Bonds are issued. The Issuer recognizes that interest on the Bonds will remain excludable from gross income only if the Post-Issuance Tax Requirements are followed after the Issue Date. The Issuer further acknowledges that written evidence substantiating the Post-Issuance Tax Requirements must be retained in order to permit the Bonds to be refinanced with tax-exempt obligations and substantiate the position that interest on the Bonds is exempt from gross income in the event of an audit of the Bonds by the IRS.

(b) *Written Policies and Procedures of the Issuer.* The Issuer intends for the Tax Compliance Procedure, as supplemented by this Tax Agreement, to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Bonds and to supplement any other formal policies and procedures related to tax compliance that the Issuer has established. The provisions of this Tax Agreement are intended to be consistent with the Tax Compliance Procedure. In the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.

(c) *Bond Compliance Officer.* The Issuer and the District acknowledge that the investment and expenditure of proceeds of the Bonds are within the control of the Issuer, and that substantially all of the proceeds of the property financed by the Bonds is controlled by the Issuer. For these reasons, the District is relying on the Issuer and the Bond Compliance Officer to carry out the Post-Issuance Tax Requirements as set out in this Tax Agreement and the Tax Compliance Procedure. The Issuer has agreed to undertake the obligations imposed on it by the Tax Compliance Procedure. The District will cooperate with the Issuer when necessary to enable the Issuer to fulfill its Post-Issuance Tax Requirements will,

through its Bond Compliance Officer, sign Form 8038-T in connection with the payment of arbitrage rebate or Yield reduction payments, participate in any federal income tax audit of the Bonds or related proceedings under a voluntary compliance agreement procedures (VCAP) or undertake a remedial action procedure pursuant to Regulations §§ 1.141-12. In each case, all costs and expenses incurred by the Issuer shall be treated as a reasonable cost of administering the Bonds and the Issuer shall be entitled to reimbursement and recovery of its costs to the same extent as provided in the Indenture or State law.

#### **Section 4.2. Record Keeping; Use of Bond Proceeds and Use of Financed Facility.**

(a) *Record Keeping.* The Bond Compliance Officer will maintain the Tax-Exempt Bond File for the Bonds in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in advice or a written Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Bond Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (1) the Bonds or (2) any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (i) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (ii) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (iii) exhibit a high degree of legibility and readability both electronically and in hardcopy, (iv) provide support for other books and records of the Issuer and (v) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Issuer's premises.

(b) *Accounting and Allocation of Bond Proceeds and Qualified Equity to Expenditures.* The Bond Compliance Officer will account for the investment and expenditure of Bond proceeds in the level of detail required by the Tax Compliance Procedure. The Bond Compliance Officer will supplement the expected allocation of Bond proceeds and Qualified Equity to expenditures with a Final Written Allocation as required by the Tax Compliance Procedure. A sample form of Final Written Allocation is attached as **Exhibit E**.

(c) *Annual Compliance Checklist.* Attached as **Exhibit D** is a sample Annual Compliance Checklist for the Bonds. The Bond Compliance Officer will prepare and complete an Annual Compliance Checklist for the Financed Facility at least annually in accordance with the Tax Compliance Procedure. If the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Bond Compliance Officer will take the actions identified in advice of Bond Counsel or as described in the Tax Compliance Procedure to correct any deficiency.

(d) *Opinions of Bond Counsel.* The Bond Compliance Officer is responsible for obtaining and delivering to the Issuer and the Trustee any advice or Opinion of Bond Counsel required under the provisions of this Tax Agreement, including any advice or Opinion of Bond Counsel required by this Tax Agreement or the Annual Compliance Checklist.

**Section 4.3. Temporary Periods/Yield Restriction.** Except as described below, the Issuer will not invest Gross Proceeds at a Yield greater than the Yield on the Bonds:

(a) *Project Fund.* Bond proceeds deposited in the Project Fund and investment earnings on those proceeds may be invested without Yield restriction for up to 3 years following the Issue Date. If any unspent proceeds remain in the Project Fund after 3 years, those amounts may continue to be invested without Yield restriction so long as the Issuer pays to the IRS all Yield reduction payments in accordance

with Regulations § 1.148-5(c). These payments are required whether or not the Bonds are exempt from the arbitrage rebate requirements of Code § 148.

(b) *Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.

(c) *Debt Service Reserve Fund- Bond Proceeds Account.* Money in the bond proceeds account of the Debt Service Reserve Fund may be invested without Yield restriction up to the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date), or (3) 125% of the average annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount.

(d) *Debt Service Reserve Fund – Business Interruption Account.* Money in the Business Interruption Account of the Debt Service Reserve Fund, in the aggregate, may be invested without Yield restriction to the extent that such amounts, when added to the Debt Service Reserve Requirement for the Bond Proceeds Account, does not exceed 15% of the original principal amount of the Bonds, so long as the Issuer pays to the IRS all Yield reduction payments in accordance with Regulations § 1.148-5(c).

(e) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

#### **Section 4.4. Fair Market Value.**

(a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

(b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

(c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The Issuer is applying Regulations § 1.148-5(d)(6)(iii)(A) to the Bonds. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. The Issuer or the Trustee makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(i) The bid specifications are in writing and are timely forwarded to potential providers.

(ii) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(iii) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (A) that the potential provider did not consult with any other potential provider about its bid, (B) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Issuer, the Trustee, or any other person (whether or not in connection with the bond issue), and (C) that the bid is not being submitted solely as a courtesy to the Issuer, the Trustee, or any other person, for purposes of satisfying the requirements of the Regulations.

(iv) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(v) The terms of the solicitation take into account the Issuer’s reasonably expected deposit and draw-down schedule for the amounts to be invested.

(vi) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(vii) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(i) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (A) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (B) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (C) a provider that is

a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(ii) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(iii) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest Yielding bona fide bid (determined net of any broker's fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The Issuer and the Trustee retain the following records with the Bond documents until three years after the last outstanding Bond is redeemed:

(i) A copy of the Guaranteed Investment Contract.

(ii) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Issuer or the Trustee, and the certification as to fees paid, described in paragraph (d)(4) above.

(iii) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(iv) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) *Other Investments*. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

#### **Section 4.5. Certain Gross Proceeds Exempt from the Rebate Requirement.**

(a) *General*. A portion of the Gross Proceeds of the Bonds may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Bonds and will not otherwise affect the application of the Investment limitations described in **Section 4.3**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.6** applies even if a portion of the gross proceeds of the

Bonds is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from rebate the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.6**. The Issuer may defer the final rebate Computation Date and the payment of rebate for the Bonds to the extent permitted by Regulations § 1.148-7(b)(1) and § 1.148-3(e)(2) but only in accordance with specific written instructions provided by the Rebate Analyst.

(b) *Applicable Spending Exceptions.*

(1) The 2-year spending exception is unavailable for the Bonds because the Issuer does not expect that at least 75% of the Available Construction Proceeds will be used for construction or rehabilitation expenditures for property owned by the Issuer.

(2) The following optional rebate spending exceptions can apply to the Bonds:

- (i) 6-month Exception (Code § 148(f)(4)(B) and Regulations § 1.148-7(c))
- (ii) 18-month Exception (Regulations § 1.148-7(d)).

(c) *Special Elections Made with Respect to Spending Exception Elections.* No special elections are being made in connection with the application of the spending exceptions.

(d) *Bona Fide Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, Investment earnings in the account cannot be taken into account in computing arbitrage rebate.

(e) *Documenting Application of Spending Exception.* At any time prior to the first Computation Date, the Issuer may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the Issuer must continue to comply with **Section 4.6** hereof.

(f) *General Requirements for Spending Exception.* The following general requirements apply in determining whether a spending exception is met.

(1) Using Adjusted Gross Proceeds or Available Construction Proceeds to pay principal of any Bonds is not taken into account as expenditure for purposes of meeting any of the spending tests.

(2) The six-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent within six months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial six-month period, so long as this amount is spent within one year of the Issue Date.

(3) The 18-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent in accordance with the following schedule:

<b>Time Period After the Issue Date</b>	<b>Minimum Percentage of Adjusted Gross Proceeds Spent</b>
6 months	15%
12 months	60%
18 months (Final)	100%

(4) For purposes of applying the 18-month spending exceptions only, the failure to satisfy the **final** spending requirement is disregarded if the Issuer uses due diligence to complete the Financed Facility and the failure does not exceed the lesser of 3% of the aggregate issue price the Bonds or \$250,000. **No such exception applies for any other spending period.**

(6) For purposes of applying the 18-month spending exceptions only, the Bonds meet the applicable spending test even if, at the end of the **final** spending period, proceeds not exceeding a Reasonable Retainage remain unspent, so long as such Reasonable Retainage is spent within 30 months (in the case of the 18-month exception) after the Issue Date.

#### **Section 4.6. Computation and Payment of Arbitrage Rebate.**

(a) *Rebate Fund.* The Trustee will keep the Rebate Fund separate from all other funds and will administer the Rebate Fund under this Tax Agreement. Any Investment earnings derived from the Rebate Fund will be credited to the Rebate Fund, and any Investment loss will be charged to the Rebate Fund.

(b) *Computation of Rebate Amount.* The Trustee will provide the Rebate Analyst Investment reports relating to each fund held by the Trustee that contains Gross Proceeds of the Bonds at such times as reports are provided to the Issuer, and not later than ten days following each Computation Date. The Issuer will provide the Rebate Analyst with copies of Investment reports for any funds containing Gross Proceeds that are held by a party other than the Trustee annually as of the end of each Bond Year and not later than ten days following each Computation Date. Each Investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date such Investment was allocated to the Bonds, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Trustee and the Issuer together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is less than the arbitrage rebate due, the Issuer will, within 55 days after such Computation Date, pay to the Trustee from available Tax Revenues the amount of the deficiency for deposit into the Rebate Fund. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is greater than the Rebate Amount, the Trustee will transfer such surplus in the Rebate Fund to the Debt Service Fund. After the final Computation Date or at any other time if the Rebate Analyst has advised the Trustee, any money left in the Rebate Fund will be paid to the Issuer and may be used for any purpose not prohibited by law.



(c) *Rebate Payments.* Within 60 days after each Computation Date, the Trustee must pay (but solely from money in the Rebate Fund or provided by the Issuer) to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment must be (1) accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service Center  
Ogden, UT 84201

**Section 4.7. Successor Rebate Analyst.** If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the Issuer desires that a different firm act as the Rebate Analyst, then the Issuer by an instrument or concurrent instruments in writing delivered to the firm then serving as the Rebate Analyst and any other party to this Tax Agreement, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder. In the event the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason and the Issuer fails to appoint a qualified successor Rebate Analyst within thirty (30) days following notice of such resignation then the Trustee will appoint a firm to act as the successor Rebate Analyst.

**Section 4.8. Filing Requirements.** The Trustee and the Issuer will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with advice of Bond Counsel.

**Section 4.9. Survival after Defeasance.** Notwithstanding anything in the Indenture to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

## ARTICLE V

### MISCELLANEOUS PROVISIONS

**Section 5.1. Term of Tax Agreement.** This Tax Agreement will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States.

**Section 5.2. Amendments.** This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondowners, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the Issuer and the Trustee receive this Opinion of Bond Counsel.

**Section 5.3. Opinion of Bond Counsel.** The Issuer and the Trustee may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel addressed to each of

them to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Issuer and the Trustee will comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

**Section 5.4. Reliance.** In delivering this Tax Agreement the Issuer and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. Neither the Issuer nor the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

**Section 5.5. Severability.** If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

**Section 5.6. Benefit of Agreement.** This Tax Agreement is binding upon the Issuer and the Trustee and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Indenture or the Bonds, express or implied, gives to any person, other than the parties to this Tax Agreement and their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement.

**Section 5.7. Default; Breach and Enforcement.** Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Bondowners or the other party or parties to this Tax Agreement pursuant to the terms of the Indenture or any other document which references this Tax Agreement and gives remedies for a misrepresentation or breach thereof.

**Section 5.8. Execution in Counterparts.** This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

**Section 5.9. Governing Law.** This Tax Agreement will be governed by and construed in accordance with the laws of the State of Missouri.

**Section 5.10. Electronic Transactions.** The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be sent, received and stored, by electronic means.

[Remainder of this page intentionally left blank.]

The parties to this Tax Agreement have caused this Tax Agreement to be duly executed by their duly authorized officers as of the Issue Date of the Bonds.

**CITY OF SMITHVILLE, MISSOURI**

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

**SMITHVILLE      COMMONS      COMMUNITY  
IMPROVEMENT DISTRICT**

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

**UMB BANK, N.A., as Trustee**

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

**EXHIBIT A**

**DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD**

**EXHIBIT B**

**IRS FORM 8038-G**

## EXHIBIT C

## DESCRIPTION OF PROPERTY COMPRISING THE FINANCED FACILITY

[illegible]



**EXHIBIT D****SAMPLE  
ANNUAL COMPLIANCE CHECKLIST**

<b>Name of tax-exempt bonds (“Bonds”) financing Financed Asset:</b>	<b>\$(Principal Amount) City of Smithville, Missouri Tax Increment Revenue Bonds (Smithville Commons Project), Series 2022</b>
<b>Issue Date of Bonds:</b>	<b>May __, 2022</b>
<b>Placed in service date of Project Facility:</b>	
<b>Name of Bond Compliance Officer:</b>	
<b>Period covered by request (“Annual Period”):</b>	

Item	Question	Response
1. Private Security or Payment	Has the Issuer or the District entered into any agreement or arrangement with any entity whereby the entity makes payments to the Issuer or the District for the use of any portion of the Financed Facility (e.g., a lease) or agrees to provide security for the Bonds (e.g., a guarantee)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Has the Issuer or the District entered into any special agreement or arrangement with any entity relating to the payment of the taxes securing the Bonds (i.e., the PILOTS, the EATs, or the CID Sales Taxes)?	
	If Yes, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	

Item	Question	Response
2. Rebate Calculations	Has the Issuer obtained required rebate calculations for the Bonds?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If Yes, include a copy in the Tax-Exempt Bond File, if No; consult with the Rebate Analyst and include all correspondence in the Tax-Exempt Bond File.	

Item	Question	Response
3. Continuing Disclosure Filings	Was the annual report (including audited financial statements and any other financial information and operating data required for the Bonds) timely filed with the MSRB on EMMA?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If No, arrange to file the appropriate failure to file notice required for the Bonds with the MSRB on EMMA. In addition, contact Bond Counsel and file the deficient material with the MSRB on EMMA and include a description of the reason for the delay in the Tax-Exempt Bond File.	

Item	Question	Response
<b>4.</b> <b>Material</b> <b>Event</b> <b>Filings</b>	<p>Did any of the following events occur with respect to the Bonds?</p> <ul style="list-style-type: none"> <li>• principal and interest payment delinquencies;</li> <li>• non-payment related defaults, if material;</li> <li>• unscheduled draws on debt service reserves reflecting financial difficulties;</li> <li>• unscheduled draws on credit enhancements reflecting financial difficulties;</li> <li>• substitution of credit or liquidity providers, or their failure to perform;</li> <li>• adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;</li> <li>• modifications to rights of bondholders, if material;</li> <li>• bond calls, if material, and tender offers;</li> <li>• defeasances;</li> <li>• release, substitution or sale of property securing repayment of the Bonds, if material;</li> <li>• rating changes;</li> <li>• bankruptcy, insolvency, receivership or similar event of the obligated person;</li> <li>• the consummation of a merger, consolidation, or acquisition involving the obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;</li> <li>• appointment of a successor or additional trustee or the change of name of the trustee, if material;</li> <li>• incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and</li> <li>• default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.</li> </ul>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<p>If “Yes,” was Bond Counsel contacted and notice of the material event filed with the MSRB on EMMA?</p> <p>If No, contact Bond Counsel immediately and prepare and file any required notice with the MSRB on EMMA.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**Bond Compliance Officer:** \_\_\_\_\_

**Date Completed:** \_\_\_\_\_

## EXHIBIT E

### SAMPLE FINAL WRITTEN ALLOCATION

**[\$[Principal Amount]  
City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

#### **Final Written Allocation**

The undersigned is the Bond Compliance Officer of the City of Smithville, Missouri (the “Issuer”) and in that capacity is authorized to execute federal income tax returns required to be filed by the Issuer and to make appropriate elections and designations regarding federal income tax matters on behalf of the Issuer. This allocation of the proceeds of the bond issue referenced above (the “Bonds”) is necessary for the Issuer to satisfy ongoing reporting and compliance requirements under federal income tax laws.

*Purpose.* This document, together with the schedules and records referred to below, is intended to memorialize allocations of Bond proceeds to expenditures for purposes of §§ 141 and 148 of the Internal Revenue Code (the “Code”). All allocations are or were previously made no later than 18 months following the date the expenditure was made by the Issuer or, if later, the date the “project” was “placed in service” (both as defined below), and no later than 60 days following the 5th anniversary of the issue date of the Bonds.

*Background.* The Bonds were issued on May \_\_, 2022 (the “Issue Date”), by Issuer. The Bonds were issued in order to provide funds needed to construct, equip and furnish an economic development project (the “Project”). The Bonds were issued pursuant to an Ordinance of the Issuer and a Trust Indenture dated as of May 15, 2022 between the Issuer and UMB Bank, N.A., as trustee. Proceeds of the Bonds were deposited to the following accounts:

Debt Service Reserve Fund.  
Project Fund.

*Sources Used to Fund Project Costs and Allocation of Proceeds to Project Costs.* A portion of the costs of the Project was paid from sale proceeds of the Bonds and the remaining portion of the costs of the Project was paid from earnings from the investment of bond sale proceeds as shown on **Schedule 1** to this Final Written Allocation.

*Identification of Financed Assets.* The portions of the Project financed from Bond proceeds (i.e., the “Financed Facility” referenced in the Tax Compliance Agreement) are listed on page 1 of **Schedule 2** to this Final Written Allocation.

*Identification and Timing of Expenditures for Arbitrage Purposes.* For purposes of complying with the arbitrage rules, the Issuer allocates the proceeds of the Bonds to the various expenditures described in the invoices, requisitions or other substantiation attached as **Schedule 2** to this Final Written Allocation. In each case, the cost requisitioned was either paid directly to a third party or reimbursed the Issuer for an amount it had previously paid or incurred. Amounts received from the sale of the Bonds and

retained as underwriters discount are allocated to that purpose and spent on the Issue Date. Amounts allocated to interest expense are treated as paid on the interest payment dates for the Bonds.

*Placed In Service.* The Project was “placed in service” on the date set out on **Schedule 2** to this Final Written Allocation. For this purpose, the assets are considered to be “placed in service” as of the date on which, based on all the facts and circumstances: (a) the constructing and equipping of the asset has reached a degree of completion which would permit its operation at substantially its design level; and (b) the asset is, in fact, in operation at that level.

This allocation has been prepared based on statutes and regulations existing as of this date. The Issuer reserves the right to amend this allocation to the extent permitted by future Treasury Regulations or similar authorities.

**CITY OF SMITHVILLE, MISSOURI**

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

Dated: \_\_\_\_\_

Name of Legal Counsel/Law Firm Reviewing Final Written Allocation:

\_\_\_\_\_  
Date of Review: \_\_\_\_\_

**SCHEDULE 1**  
**TO FINAL WRITTEN ALLOCATION**

**ALLOCATION OF SOURCES AND USES**

**SCHEDULE 2**  
**TO FINAL WRITTEN ALLOCATION**

**IDENTIFICATION OF FINANCED ASSETS**  
**&**  
**DETAILED LISTING OF EXPENDITURES**

## NEW ISSUE – BOOK-ENTRY ONLY

NOT RATED

*In the opinion of Gilmore & Bell, P.C., Bond Counsel, under existing law and assuming continued compliance with certain requirements of the Internal Revenue Code of 1986, as amended (the “Code”), (1) the interest on the Bonds (including any original issuance discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes, and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, and (2) the interest on the Bonds is exempt from Missouri income taxation by the State of Missouri. The Bonds have not been designated as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code. See the caption “TAX MATTERS” in this Private Placement Memorandum.*

\$11,345,000\*

**CITY OF SMITHVILLE, MISSOURI  
TAX INCREMENT REVENUE BONDS  
(SMITHVILLE COMMONS PROJECT)  
SERIES 2022**

**Dated: Date of Delivery****Due: December 1, as shown on the inside cover page**

The Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 (the “Bonds”) are being issued by the City of Smithville, Missouri (the “City”) pursuant to a Trust Indenture, dated as of May 15, 2022 (the “Indenture”), between the City and UMB Bank, N.A., as bond trustee (the “Trustee”). **The Bonds are special, limited obligations of the City payable solely from Pledged Revenues (as defined herein), consisting of Net Revenues (as defined herein) and certain moneys on deposit under the Indenture.** Interest on the Bonds will be payable semiannually on June 1 and December 1 in each year, beginning on December 1, 2022.

THE BONDS DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE CITY AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY, THE DISTRICT (AS DEFINED HEREIN), THE STATE OF MISSOURI (THE “STATE”) OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL, STATUTORY OR CHARTER DEBT LIMITATION OR RESTRICTION. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWERS OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.

**The Bonds may be transferred only in Authorized Denominations. The Bonds shall be sold to the original purchasers thereof on the closing date only upon prior delivery to the City and the Trustee of an Investor Letter in substantially the form of Exhibit E to the Indenture (the form of which is included as Appendix A-1 to this Private Placement Memorandum), signed by the original purchaser, stating that the transferee is an Approved Investor (as defined herein) and certain other matters set forth in the form thereof. The Bonds may be subsequently transferred to Approved Investors.**

The Bonds are subject to redemption prior to maturity in certain circumstances as described in this Private Placement Memorandum under the caption “THE BONDS – Redemption.”

Prospective investors are advised that none of the property comprising the Redevelopment Project is pledged as security for the Bonds. Neither the Developer nor any affiliate of the Developer or any partner, shareholder, officer, director, agent or representative of the Developer, has pledged its credit or assets or has provided any guaranty, surety or undertaking of any kind, moral or otherwise, to pay the principal of, premium, if any, and interest on the Bonds. **There is no mortgage securing the Bonds.**

An investment in the Bonds involves a high degree of risk, and prospective purchasers should read the section herein captioned “INVESTMENT CONSIDERATIONS AND RISKS.” The Bonds are not suitable investments for all persons, and prospective purchasers should carefully evaluate the risks and merits of an investment in the Bonds, should confer with their own legal and financial advisors and should be able to bear the risk of loss of their investment in the Bonds before considering a purchase of the Bonds.

The Bonds will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). Individual purchases of interests in the Bonds will be made in book-entry form only. Purchasers of such interests (the “Beneficial Owners”) will not receive certificates representing their interests in the Bonds. So long as Cede & Co., as nominee of DTC, is the owner of the Bonds, references herein to the owners or registered owners shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the Bonds. Principal of, redemption premium, if any, and interest on the Bonds is payable to the registered owners of the Bonds as described in this Private Placement Memorandum.

The Bonds are offered when, as and if issued by the City and accepted by the purchasers thereof, subject to the approval of legality by Gilmore & Bell, P.C., Kansas City, Missouri, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Developer by Polsinelli PC, Kansas City Missouri; and for the Placement Agent by FisherBroyles, LLP. Piper Sandler & Co. served as municipal advisor to the City in connection with the issuance of the Bonds. It is expected that the Bonds will be available for delivery through DTC on or about May \_\_\_, 2022.



acting as Placement Agent

The date of this Private Placement Memorandum is May \_\_\_, 2022

\* Preliminary; subject to change.



**DATED DATE, MATURITY DATES, PRINCIPAL AMOUNTS,  
INTEREST RATES AND PRICES\***

**\$11,345,000\***

**City of Smithville, Missouri  
Tax Increment Revenue Bonds  
(Smithville Commons Project)  
Series 2022**

**Dated: Date of Issuance and Delivery**

**Term Bonds**

\$1,550,000 \_\_\_\_\_% Term Bonds due December 1, 2025; Price: \_\_\_\_\_%

\$1,955,000 \_\_\_\_\_% Term Bonds due December 1, 2029; Price: \_\_\_\_\_%

\$2,515,000 \_\_\_\_\_% Term Bonds due December 1, 2033; Price: \_\_\_\_\_%

\$2,340,000 \_\_\_\_\_% Term Bonds due December 1, 2036; Price: \_\_\_\_\_%

\$2,985,000 \_\_\_\_\_% Term Bonds due December 1, 2039; Price: \_\_\_\_\_%

*The City may elect to issue all or a portion of the Bonds as taxable bonds in a separate series of Bonds. If all a portion of the Bonds were issued on a taxable basis, such Bonds would be issued pursuant to the Indenture on a parity basis with any of the Bonds issued on a tax-exempt basis. This Preliminary Private Placement Memorandum has been prepared on the assumption that all of the Bonds will be issued on a tax-exempt basis.*

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\* Preliminary; subject to change.



**CITY OF SMITHVILLE, MISSOURI**

107 W Main Street  
Smithville, Missouri 64089  
(816) 532-3897

**Elected Officials**

Damien Boley, Mayor

Marvin Atkins, Alderman (Ward 3)  
John Chevalier, Jr., Alderman (Ward 2)  
Dan Hartman, Alderman (Ward 1)  
Kelly Kobylski, Alderman (Ward 3)  
Ronald Russell, Alderman (Ward 2)  
Dan Ulledahl, Alderman (Ward 1)

**Administrative Officials**

Cynthia Wagner, City Administrator  
Anna Mitchell, Assistant City Administrator  
Stephen Larson, Finance Director  
Linda Drummond, City Clerk

**BOND COUNSEL**

Gilmore & Bell, P.C.  
Kansas City, Missouri

**MUNICIPAL ADVISOR TO THE CITY**

Piper Sandler & Co.  
Leawood, Kansas

**TRUSTEE**

UMB Bank, N.A.  
Kansas City, Missouri

**DEVELOPER**

Development Associates Smithville, LLC  
Overland Park, Kansas

**DEVELOPER'S & DISTRICT'S COUNSEL**

Polsinelli PC  
Kansas City, Missouri

**PLACEMENT AGENT**

UMB Bank, N.A.  
Kansas City, Missouri

**PLACEMENT AGENT'S COUNSEL**

FisherBroyles, LLP

## **REGARDING USE OF THIS PRIVATE PLACEMENT MEMORANDUM**

No dealer, broker, salesperson or other person has been authorized by the City, the District, the Developer or the Placement Agent to give information or to make any representations with respect to the Bonds, other than those contained in this Private Placement Memorandum, and, if given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing. This Private Placement Memorandum is being furnished by the City and the Developer for the purpose of each such investor's consideration of the purchase of the Bonds as described herein, and is not to be used for any other purpose or made available to anyone not directly concerned with the decision regarding such purchase. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Private Placement Memorandum, nor any sale hereunder implies that there has been no change in the matters described herein since the date hereof. This Private Placement Memorandum does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds by any person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale. Interested investors are being provided the opportunity to ask questions and examine documents and records as they may desire, and are advised to contact the Placement Agent to secure further information concerning the Bonds.

**THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE BONDS IN ACCORDANCE WITH APPLICABLE PROVISIONS OF SECURITIES LAWS OF ANY STATES IN WHICH THE BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE BONDS OR THE ACCURACY OR COMPLETENESS OF THIS PRIVATE PLACEMENT MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

**AN INVESTMENT IN THE BONDS INVOLVES A HIGH DEGREE OF RISK, AND PROSPECTIVE PURCHASERS SHOULD READ THE SECTION HEREIN CAPTIONED "INVESTMENT CONSIDERATIONS AND RISKS." THE BONDS ARE NOT SUITABLE INVESTMENTS FOR ALL PERSONS, AND PROSPECTIVE PURCHASERS SHOULD CAREFULLY EVALUATE THE RISKS AND MERITS OF AN INVESTMENT IN THE BONDS, SHOULD CONFER WITH THEIR OWN LEGAL AND FINANCIAL ADVISORS AND SHOULD BE ABLE TO BEAR THE RISK OF LOSS OF THEIR INVESTMENT IN THE BONDS BEFORE CONSIDERING A PURCHASE OF THE BONDS. THE BONDS HAVE RISK CHARACTERISTICS WHICH REQUIRE CAREFUL ANALYSIS AND CONSIDERATION BEFORE A DECISION TO PURCHASE IS MADE. THE BONDS SHOULD BE PURCHASED BY INVESTORS WHO HAVE ADEQUATE EXPERIENCE TO EVALUATE THE MERITS AND RISKS OF THE BONDS.**

**PROSPECTIVE INVESTORS ARE NOT TO CONSTRUE THE CONTENTS OF THIS PRIVATE PLACEMENT MEMORANDUM OR ANY PRIOR OR SUBSEQUENT COMMUNICATION FROM THE PLACEMENT AGENT, ITS AFFILIATES, OFFICERS AND EMPLOYEES OR ANY PROFESSIONAL ASSOCIATED WITH THIS OFFERING AS INVESTMENT OR LEGAL ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN COUNSEL, ACCOUNTANT AND OTHER ADVISORS AS TO FINANCIAL, LEGAL AND RELATED MATTERS CONCERNING THE INVESTMENT DESCRIBED HEREIN.**

**CAUTIONARY STATEMENTS REGARDING FORWARD-  
LOOKING STATEMENTS IN THIS PRIVATE PLACEMENT MEMORANDUM**

Certain statements included or incorporated by reference in this Private Placement Memorandum constitute “forward-looking statements” within the meaning of the United State Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as “plan”, “expect”, “estimate”, “anticipate”, “budget” or other similar words. Such forward looking statements include, among others, certain statements under the sections in this Private Placement Memorandum captioned **“PLAN OF FINANCE,” “PROJECTED ANNUAL DEBT SERVICE COVERAGE,” “INVESTMENT CONSIDERATIONS AND RISKS,” “THE SMITHVILLE COMMONS PROJECT,” “REVENUE STUDY”** and in **Appendix D** to this Private Placement Memorandum.

**THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. INCLUDED IN SUCH RISKS AND UNCERTAINTIES ARE (i) THOSE RELATING TO THE POSSIBLE INVALIDITY OF THE UNDERLYING ASSUMPTIONS AND ESTIMATES, (ii) POSSIBLE CHANGES OR DEVELOPMENTS IN SOCIAL, ECONOMIC, BUSINESS, INDUSTRY, MARKET, LEGAL AND REGULATORY CIRCUMSTANCES, AND (iii) CONDITIONS AND ACTIONS TAKEN OR OMITTED TO BE TAKEN BY THIRD PARTIES, INCLUDING CUSTOMERS, SUPPLIERS, BUSINESS PARTNERS AND COMPETITORS, AND LEGISLATIVE, JUDICIAL AND OTHER GOVERNMENTAL AUTHORITIES AND OFFICIALS. ASSUMPTIONS RELATED TO THE FOREGOING INVOLVE JUDGMENTS WITH RESPECT TO, AMONG OTHER THINGS, FUTURE ECONOMIC, COMPETITIVE, AND MARKET CONDITIONS AND FUTURE BUSINESS DECISIONS, ALL OF WHICH ARE DIFFICULT OR IMPOSSIBLE TO PREDICT ACCURATELY. FOR THESE REASONS, THERE CAN BE NO ASSURANCE THAT THE FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM WILL PROVE TO BE ACCURATE.**

**UNDUE RELIANCE SHOULD NOT BE PLACED ON FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM ARE BASED ON INFORMATION AVAILABLE TO THE CITY AND THE DEVELOPER ON THE DATE HEREOF, AND THE CITY AND THE DEVELOPER ASSUME NO OBLIGATION TO UPDATE ANY SUCH FORWARD-LOOKING STATEMENTS IF OR WHEN THE EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR OR FAIL TO OCCUR.**

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## PRIVATE PLACEMENT MEMORANDUM

relating to

\$11,345,000\*

### CITY OF SMITHVILLE, MISSOURI TAX INCREMENT REVENUE BONDS (SMITHVILLE COMMONS PROJECT) SERIES 2022

#### INTRODUCTION

The following introductory statement is subject in all respects to more complete information contained elsewhere in this Private Placement Memorandum. The order and placement of materials in this Private Placement Memorandum, including the Appendices, are not to be deemed to be a determination of relevance, materiality or relative importance, and this Private Placement Memorandum, including the cover page and the Appendices, must be considered in its entirety. The offering of the Bonds to potential investors is made only by means of the entire Private Placement Memorandum.

For definitions of certain capitalized terms used herein and not otherwise defined, see the definitions included in the form of the Indenture attached as Appendix A-1 to this Private Placement Memorandum.

#### Purpose of the Private Placement Memorandum

The purpose of this Private Placement Memorandum is to furnish information relating to (1) the City of Smithville, Missouri (the “**City**”), (2) the City’s Tax Increment Revenue Bonds (Smithville Commons Project) Series 2022 being issued in the original principal amount of \$11,345,000\* (the “**Bonds**”), (3) the Smithville Commons Community Improvement District (the “**District**”) (4) the Redevelopment Project (as defined herein) being redeveloped by Development Associates Smithville, LLC, a Missouri limited liability company (the “**Developer**”).

#### The City

The City is a fourth class city and political subdivision duly organized and validly existing under the laws of the State of Missouri (the “**State**”). For further information concerning the City, see the caption “**THE CITY**” in this Private Placement Memorandum.

The City is authorized under the laws of the State, including, but not limited to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the “**TIF Act**”), to issue bonds for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of the Bonds.

#### The Developer

The Developer is a limited liability company organized and validly existing under the laws of the State of Missouri. See the caption “**THE SMITHVILLE COMMONS PROJECT – The Developer**” in this Private Placement Memorandum for further information with respect to the Developer.

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\* Preliminary; subject to change.

## **The Bonds**

The City will issue the Bonds pursuant to a Trust Indenture, dated as of May 15, 2022 (the “**Indenture**”), between the City and UMB Bank, N.A., as trustee (the “**Trustee**”), for the purpose of providing funds to (i) finance certain Redevelopment Project Costs (as defined in the Indenture), (ii) fund a debt service reserve fund for the Bonds, and (iii) pay the costs of issuance of the Bonds. See the caption “**PLAN OF FINANCE**” in this Private Placement Memorandum.

A description of the Bonds is contained in this Private Placement Memorandum under the caption “**THE BONDS**.” All references to the Bonds are qualified in their entirety by the definitive form thereof and the provisions with respect thereto included in the Indenture.

The Bonds are subject to redemption prior to maturity as described under the caption “**THE BONDS – Redemption**” in this Private Placement Memorandum.

**The Bonds are payable only from the Net Revenues and certain other funds held by the Trustee under the terms of the Indenture, all as described in this Private Placement Memorandum under the caption “SECURITY AND SOURCES OF PAYMENT FOR THE BONDS.”**

## **The Redevelopment Project**

On August 1, 2017, the Board of Aldermen of the City adopted an ordinance approving the Smithville Commons Tax Increment Financing Plan (the “**Redevelopment Plan**”).

On October 3, 2017, the Board of Aldermen adopted an ordinance approving the redevelopment project provided for in the Redevelopment Plan (the “Redevelopment Project” or the “Project”) within an approximately 66.32 acre area of the City generally located between Cliff Drive and U.S. Highway 169 (the “**Redevelopment Area**”) and adopted tax increment financing therein pursuant to the TIF Act.

The Redevelopment Plan provides for the following Redevelopment Project within the Redevelopment Area:

- (i) acquisition of all property rights for the Redevelopment Area by the Developer;
- (ii) completion of site work and infrastructure improvements;
- (iii) construction of an approximately 65,000 square foot grocery store;
- (iv) construction of an approximately 15,120 square foot tractor and farm supply store;
- (v) construction of an approximately 12,000 square foot hardware store; and
- (v) construction of approximately 19,250 square feet of additional commercial space.

The City and the Developer entered into a Tax Increment Redevelopment Agreement dated August 1, 2017 (as amended and supplemented, the “**Redevelopment Agreement**”), pursuant to which the Developer agreed to redevelop the Redevelopment Area through the construction of the Redevelopment Project.

The Developer undertook the development of the Redevelopment Project, which provides for the redevelopment and financing of the retail center known as “Smithville Commons” in a single phase. See the caption “**THE SMITHVILLE COMMONS PROJECT**” in this Private Placement Memorandum.

## **The Smithville Commons Community Improvement District and CID Sales Tax**

On August 1, 2017, the Board of Aldermen of the City adopted an ordinance approving the petition for and establishing the Smithville Commons Community Improvement District (the “**District**”). The District is a political subdivision of the State with authority to impose certain taxes to carry out its purposes pursuant to the provisions of Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri (the “**CID Act**”). The boundaries of the District are coterminous to the boundaries of the Redevelopment Area.

The District was created for the purpose of imposing and levying a sales tax on retail sales occurring within the District. Voters of the District approved a CID sales tax in the amount of 1% that became effective on April 1, 2020 and will terminate 23 years later on March 31, 2043 (the “**CID Sales Tax**”).

Pursuant to the Cooperative Agreement, dated as of July 16, 2019 (the “**CID Agreement**”), among the City, the District and the Developer, the Indenture, and a Financing Agreement, dated as of May 15, 2022 (the “**Financing Agreement**”), between the City and the District, the CID Revenues (as defined herein) will be available for the payment of 9.2% of the debt service on the Bonds.

Fifty percent (50%) of the revenues from the CID Sales Tax, excluding certain items as described in the TIF Act, will be captured as Economic Activity Tax Revenues pursuant to the TIF Act and will be available, subject to annual appropriation by the City, as Economic Activity Tax Revenues for payment of the Bonds under the Indenture. See the captions “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**” and “**THE SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND THE CID SALES TAX**” in this Private Placement Memorandum.

### **Security and Sources of Payment for the Bonds**

**In General.** The Bonds and the interest thereon are special, limited obligations of the City, payable solely from the Pledged Revenues held by the Trustee as provided in the Indenture, and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Owners of the Bonds, as provided in the Indenture. The “**Trust Estate**” consists of:

(a) All Net Revenues derived by the City under and pursuant to and subject to the provisions of the Redevelopment Agreement or otherwise (excluding the City’s rights to payment of its fees and expenses and to be indemnified in certain events) and the Pledged Revenues; and

(b) All moneys and securities from time to time held by the Trustee under the terms of the Indenture (except payments required to be made to meet the requirements of Section 148(f) of the Code, as defined below, whether or not held in the Rebate Fund, as defined in the Indenture) and any and all other property (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture.

“**Pledged Revenues**” means all Net Revenues and all moneys held in the Project Fund, the Revenue Fund, the Debt Service Fund and the Debt Service Reserve Fund under the Indenture, together with investment earnings thereon.

“**Net Revenues**” means (a) all moneys on deposit (including investment earnings thereon) in the PILOTS Account of the Special Allocation Fund but excluding the Fire District PILOTS Reimbursement, the School District PILOTS Reimbursement and the City Administrative Fee, (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the Economic Activity Tax Account of the Special Allocation Fund, but excluding the Fire District EAT’s Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee determined based on the amount of Economic Activity Tax

Revenues, and (c) subject to annual appropriation by the District, all CID Revenues (including investment earnings thereon) paid by or on behalf of the District to the Trustee as provided in the Indenture and the Financing Agreement. Net Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum until such suit or claim is resolved in favor of the City, (iii) any amounts set aside in escrow pursuant to State law that the City reasonably believes were collected and/or paid to the City erroneously.

**Because the TIF Act provides that 23 years is the maximum amount of time for the retirement of obligations incurred to finance redevelopment project costs, the obligation of the City to transfer Economic Activity Tax Revenues and Payments in Lieu of Taxes to the Trustee for the repayment of the Bonds terminates on October 2, 2040 whether or not the principal amount thereof or interest thereon has been paid in full. However, CID Revenues allocable to repayment of the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds. See the caption “SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND CID SALES TAX” in this Private Placement Memorandum.**

<u>Source of Revenues</u>	<u>Start Date</u>	<u>End Date</u>
Payments in Lieu of Taxes and Economic Activity Tax Revenues	October 3, 2017	October 2, 2040
CID Sales Taxes	April 1, 2020	March 31, 2043

See the caption “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**” in this Private Placement Memorandum.

Financing Agreement. In connection with the issuance of the Bonds, the City and the District are entering into the Financing Agreement pursuant to which the parties have agreed to certain reporting and budgeting procedures relating to the operation of the District and affirmed that the CID Revenues shall be collected, applied and administered in accordance with the CID Agreement.

Debt Service Reserve Fund. The Bonds are secured by amounts on deposit in the Debt Service Reserve Fund. The Bond Proceeds Account of the Debt Service Reserve Fund for the Bonds will be funded initially from proceeds of the Bonds in the amount of \$1,030,300\*. The Business Interruption Account of the Debt Service Fund will be funded in an amount up to \$1,030,300\* over time from funds deposited into and applied from the Revenue Fund. Amounts in the Debt Service Reserve Fund will be available to pay principal of and interest on the Bonds, in the event that there are not sufficient moneys available in the Debt Service Fund for the Bonds for such purpose, and to make the final payment of principal of and interest on the Bonds. See the caption “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS – Indenture Funds and Accounts – Application of Moneys in the Revenue Fund**” and “- Debt Service Reserve Fund” in this Private Placement Memorandum

No Mortgage or General Obligation. The Bonds are not secured by a mortgage on any property in the Redevelopment Area. However, under the TIF Act, Payments in Lieu of Taxes that are due and owing constitute a lien against the real estate in the Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes on real property in the Redevelopment Area, the lien for such unpaid Payments in Lieu of Taxes may be enforced as provided by Missouri law. See the caption “**TAX INCREMENT FINANCING IN MISSOURI - Assessment and Collection of Ad Valorem Taxes**” in this Private Placement Memorandum.

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\* Preliminary; subject to change.

**THE BONDS DO NOT CONSTITUTE A GENERAL OBLIGATION OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT RESTRICTION OR LIMITATION. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT, DIRECTLY, INDIRECTLY OR CONTINGENTLY, OBLIGATE THE CITY, THE DISTRICT, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY ANY FORM OF TAXATION THEREFOR OR TO MAKE ANY APPROPRIATION FOR THEIR PAYMENT.**

Prospective investors are advised that none of the property comprising the Redevelopment Area, the District or the Redevelopment Project is pledged as security for the Bonds and neither the Developer nor any affiliate of the Developer or any partner, shareholder, officer, director, agent or representative of such entities, has pledged its credit or assets or has provided any guaranty, surety or undertaking of any kind, moral or otherwise, to pay the principal of, premium, if any, and interest on the Bonds. See the caption “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**” in this Private Placement Memorandum.

No recourse shall be had for the payment of the principal of or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement in the Indenture, the Financing Agreement or the Redevelopment Agreement, contained, against any past, present or future elected official of the City or the District or any trustee, officer, official, employee or agent of the City or the District, nor shall such recourse be had against the Developer, its principals, shareholders, members, affiliates, revenues or assets, as such, either directly or through the City or any successor thereto under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise.

#### **Restrictions on Transfers of the Bonds**

The Bonds contain certain restrictions on transferability. Prospective investors should review the captions “**THE BONDS – Registration, Transfer and Exchange**” and “**NOTICE TO INVESTORS**” in this Private Placement Memorandum.

#### **Investment Considerations and Risks**

Purchase of the Bonds will constitute an investment subject to significant risks, including the risk of nonpayment of principal and interest and the loss of all or part of the investment. There can be no assurance that the Redevelopment Area will be developed further nor that the Net Revenues will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and to avoid a default on such Bonds in the future. Prospective purchasers should carefully evaluate the risks and merits of an investment in the Bonds, confer with their own legal and financial advisors and be able to bear the risk of loss of their investment in the Bonds before considering a purchase of the Bonds. See the caption “**INVESTMENT CONSIDERATIONS AND RISKS**” in this Private Placement Memorandum.

#### **Revenue Study**

PGAV Planners, St. Louis, Missouri (the “**Consultant**”), has produced a report on the revenue generation potential of the Redevelopment Area based solely on the retail establishments currently operating a business and other retail space available to be leased within the Redevelopment Area (see the caption “**THE SMITHVILLE COMMONS PROJECT**” in this Private Placement Memorandum). Such report, entitled “**Smithville Commons Project Bond Revenue Study**” dated April 25, 2022 (the “**Revenue Study**”), is included in this Private Placement Memorandum as **Appendix D**. The Revenue Study includes a forecast of retail sales

of the Smithville Commons Project and a forecast of real property tax collections for the Smithville Commons Project based on actual and projected development activity within the Redevelopment Area.

The purpose of the Revenue Study is to provide a projection of the potential tax revenues available from the Redevelopment Area pursuant to the TIF Act and the CID Act to support the payment of debt service on the Bonds.

**The Consultant has not been engaged to perform, and has not performed, since the date of its report, any update of the projections contained in the Revenue Study.**

The financial forecast contained in the Revenue Study is based on certain assumptions, estimates and opinions as discussed in the Revenue Study. Certain of the assumptions, estimates and opinions contained in the Revenue Study may not materialize as unforeseen events and circumstances may occur subsequent to the date of the Revenue Study. Therefore, there usually will be differences between the forecasted and actual results and those differences may be material. There is no assurance that actual events will correspond with the Revenue Study or the assumptions, estimates or opinions on which they are based. The Revenue Study should be read in its entirety by prospective investors for a full understanding of the forecasted statements, assumptions and qualifications contained therein.

See the caption “**REVENUE STUDY**” in this Private Placement Memorandum and **Appendix D** to this Private Placement Memorandum.

#### **Continuing Disclosure**

The City and the District will enter into a continuing disclosure certificate to provide certain ongoing disclosure information to the Bondowners. See the caption “**CONTINUING DISCLOSURE**” in this Private Placement Memorandum and **Appendix C** to this Private Placement Memorandum for a description of such undertaking.

#### **Definitions, Financing Documents and Additional Information**

The form of the Indenture, including the definitions of certain words and terms used in this Private Placement Memorandum, is attached to this Private Placement Memorandum as **Appendix A-1**. The form of the Financing Agreement is attached to this Private Placement Memorandum as **Appendix A-2**. All references herein to such documents are qualified in their entirety by reference to the definitive forms of such documents, copies of which may be obtained from UMB Bank, N.A., 1010 Grand Boulevard, Kansas City, Missouri 64106, and will be provided to any prospective purchaser requesting the same upon payment of the cost of complying with such request. **Appendix B** contains the proposed form of opinion which is anticipated to be rendered by Bond Counsel at the time of delivery of the Bonds. **Appendix C** contains the form of the Continuing Disclosure Certificate. **Appendix D** contains the Revenue Study.

#### **THE CITY**

*The Bonds are not a general obligation of the City and are payable solely from the revenues described herein. The following information regarding the City is provided as general background information only.*

#### **General**

The City is a fourth-class city and political subdivision, duly created and existing under the laws of the State of Missouri. The City was founded in 1824 on the Little Platte River and was the second oldest settlement in Clay County, Missouri (the “**County**”). Because the City was subjected to occasional flooding, the Army Corps of Engineers built a dam, impounding potential floodwaters and creating Smithville Lake, a popular recreational

destination. The City is located in the northwestern part of Clay County, Missouri, with a small portion extending into Platte County, Missouri, approximately 20 miles north of Kansas City, Missouri, and 14 miles east of the Kansas City International Airport (KCI). The City's estimated population is approximately 10,406.

The City is governed by a Mayor and a six-member Board of Aldermen elected from three wards, each serving staggered two-year terms. The City Administrator is appointed by the Mayor with the approval of a majority of the Board of Aldermen. The appointment is for an indefinite term. The City Administrator is the budget officer of the City and works directly with the Finance Director and the Board of Aldermen in preparing the budget for each year. The City Administrator has continuing responsibility throughout the year in proper implementation and administration of the City budget. Tax rates are established by the Board of Aldermen to support the budget adopted. As required by state law, the aggregate City budget may not include any expenditures in excess of anticipated revenues plus any unencumbered balances. The City's fiscal year ends on October 31.

### **General Economic and Demographic Information**

**Population.** The following table sets forth certain population information for the City, the County and the State.

	<u><b>1990</b></u>	<u><b>2000</b></u>	<u><b>2010</b></u>	<u><b>2020</b></u>
City of Smithville	2,786	5,514	8,425	10,406
Clay County	153,411	184,006	221,939	253,335
State of Missouri	5,117,073	5,595,211	5,988,927	6,154,913

*Source:* U.S. Census Bureau

**Income.** The median family income and per capita income, according to the U.S. Census Bureau American Community Survey 5-year Estimates for the City, Clay County and the State are as follows:

	<u><b>Median Household Income</b></u>	<u><b>Median Family Income</b></u>	<u><b>Per Capita Income</b></u>
City of Smithville	\$82,398	\$94,145	\$33,509
Clay County	70,510	85,622	34,560
State of Missouri	57,409	76,060	30,810

*Source:* U.S. Census Bureau American Community Survey 5-year Estimates (2019).

**Major Area Employers.** Because of the City's location, employment opportunities for residents of the City are available both within the City and throughout the Kansas City metropolitan area. Listed below are the major employers located in the Kansas City Metropolitan Statistical Area (MSA):

<u>Employers</u>	<u>Product/Service</u>	<u>Approximate Number of Full-Time Equivalent Employees</u>
Federal Government	Government	28,395
The University of Kansas Health System	Healthcare	12,839
Cerner Corporation	Healthcare information systems	12,778
HCA Midwest Health	Healthcare	10,076
Saint Luke's Health System	Healthcare	9,056
Children's Mercy	Healthcare	7,460
Ford Kansas City Assembly Plant	Vehicle Manufacturing	7,250
T-Mobile US Inc.	Wireless carrier	6,000
Hallmark Cards Inc.	Greeting cards/media/marketing	5,400
Honeywell Federal Manufacturing & Technologies	Military defense manufacturing	4,812

*Source:* Kansas City Business Journal (July 2021).

**Unemployment Rates.** The following table sets forth certain seasonally adjusted labor force and unemployment information for the Kansas City MSA and the State as of December of each year.

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
<i>Kansas City MSA</i>					
Total Labor Force	1,130,392	1,130,688	1,149,322	1,153,283	1,164,666
Unemployed	40,951	37,176	37,285	50,957	39,291
Unemployment Rate	3.6%	3.3%	3.2%	4.4%	3.4%
<i>State of Missouri</i>					
Total Labor Force	3,048,580	3,057,685	3,100,780	3,051,663	3,058,440
Unemployed	107,199	97,065	108,602	135,112	101,988
Unemployment Rate	3.5%	3.2%	3.5%	4.4%	3.3%

*Source:* Missouri Economic Research and Information Center.

## THE BONDS

*The following is a summary of certain terms and provisions of the Bonds. Reference is hereby made to the Bonds and the provisions with respect to the Bonds in the Indenture for the detailed terms and provisions thereof.*

### General

The Bonds are being issued pursuant to and in full compliance with the Constitution and statutes of the State of Missouri, including particularly the TIF Act. The Bonds will be issuable as fully registered bonds, without coupons, in denominations of \$100,000 and integral multiples of \$5,000 in excess thereof or, if the Outstanding principal amount of the Bonds is less than \$100,000, an amount equal to the Outstanding principal amount of the Bonds (“**Authorized Denominations**”). The Bonds will be dated as of the date of initial issuance and delivery thereof.

The Bonds shall bear interest at the rate set forth on the inside cover page hereof (computed on the basis of a 360-day year of twelve 30-day months) from their date or from the most recent Interest Payment Date to



which interest has been paid or duly provided for, payable on June 1 and December 1 in each year, beginning on December 1, 2022.

### **Method and Placement of Payment on the Bonds**

The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. Payment of the principal of or interest on any Bond shall be made (i) by check or draft of the Trustee mailed to the Person in whose name such Bond is registered on the Register as of the commencement of business of the Trustee on the Record Date for such Payment Date, or (ii) in the case of a principal or interest payment to the Securities Depository or any Owner of \$500,000 or more in aggregate principal amount of Bonds, by electronic transfer to such Owner upon written notice delivered to the Trustee not less than 5 days prior to the Record Date from and signed by such Owner containing electronic transfer instructions including the name of the bank (which shall be in the continental United States), ABA routing number and account name and account number to which such Owner wishes to have such transfer directed.

Payment of principal of, premium, if any, and interest on the Bonds will be made directly to DTC or its nominee, Cede & Co., by the Trustee. See **Appendix E** to this Private Placement Memorandum. If the Bonds are not in a book-entry-only system, payment of principal of, premium, if any, and interest on the Bonds will be made as otherwise described in this Private Placement Memorandum and the Indenture.

### **Registration, Transfer and Exchange**

Any Bond may be transferred only upon the Register upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of the same series and maturity and in any Authorized Denomination authorized by the Indenture. **The Bonds may only be purchased by or transferred to Approved Investors (see the caption “NOTICE TO INVESTORS” in this Private Placement Memorandum).**

“**Approved Investors**” means, (a) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, or (ii) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933.

Any Bond, upon surrender thereof at the corporate trust office of the Trustee or such other payment office as the Trustee shall designate, together with an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee, may, at the option of the Owner thereof, be exchanged for Bonds of the same series and maturity, of any Authorized Denomination authorized by the Indenture, bearing interest at the same rate, and registered in the name of the Owner.

In all cases in which Bonds are exchanged or transferred under the Indenture, the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of the Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be canceled by the Trustee.

No service charge shall be made for any registration, transfer or exchange of Bonds, but the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, and such charge shall be paid before any such new Bond shall be delivered. The fees and charges of the Trustee for making any transfer or exchange and the expense of any bond printing necessary to effect any such transfer or exchange shall be paid by the City. In the event any registered owner fails to provide a correct taxpayer identification number to the Trustee, the Trustee may impose a charge against such registered owner sufficient to pay any governmental charge required to be paid as

a result of such failure. In compliance with Section 3406 of the Code, such amount may be deducted by the Trustee from amounts otherwise payable to such registered owner hereunder or under the Bonds.

At reasonable times and under reasonable regulations established by the Trustee, the Register may be inspected and copied by the City or the Owners (or a designated representative thereof) of 10% or more in principal amount of Bonds then Outstanding, such ownership and the authority of any such designated representative to be evidenced to the satisfaction of the Trustee.

The Person in whose name any Bond is registered on the Register shall be deemed and regarded as the absolute owner of such Bond for all purposes, and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the registered Owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

## Redemption

Optional Redemption. The Bonds are subject to optional redemption by the City in whole or in part at any time on or after December 1, 20\_\_, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, plus accrued interest to the redemption date.

### Special Mandatory Redemption.

(1) The Bonds maturing December 1, 20\_\_ and thereafter are subject to special mandatory redemption by the City in order of maturity on each December 1 commencing December 1, 20\_\_, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which is on deposit in the Redemption Account of the Debt Service Fund 40 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day).

(2) The Bonds are subject to special mandatory redemption by the City, in whole but not in part, on any date in the event that moneys in the applicable account of the Debt Service Fund and the Debt Service Reserve Fund are sufficient to redeem all of the Bonds at a redemption price of 100% of such Bonds Outstanding, together with accrued interest thereon to the date fixed for redemption.

Mandatory Sinking Fund Redemption. The Bonds maturing in the years 2025\*, 2029\*, 2033\*, 2036\* and 2039\* (the “**Term Bonds**”) will be subject to mandatory redemption and payment prior to maturity pursuant to the mandatory redemption requirements set forth below at a Redemption Price equal to 100% of the principal amount thereof plus accrued interest to the Redemption Date. The Trustee shall redeem on December 1 in each year, the following principal amounts of such Bonds:

### Term Bonds Maturing December 1, 2025\*

<u>Year</u>	<u>Principal Amount*</u>
2022	\$475,000
2023	320,000
2024	355,000
2025 <sup>(1)</sup>	400,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2029\*

<u>Year</u>	<u>Principal Amount*</u>
2026	\$435,000
2027	475,000
2028	505,000
2029 <sup>(1)</sup>	540,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2033\*

<u>Year</u>	<u>Principal Amount*</u>
2030	\$570,000
2031	610,000
2032	645,000
2033 <sup>(1)</sup>	690,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2036\*

<u>Year</u>	<u>Principal Amount*</u>
2034	\$730,000
2035	780,000
2036 <sup>(1)</sup>	830,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

Term Bonds Maturing December 1, 2039\*

<u>Year</u>	<u>Principal Amount*</u>
2037	\$885,000
2038	940,000
203 <sup>(1)</sup>	1,160,000

\* Preliminary; subject to change.

<sup>(1)</sup> Final Maturity

At its option, to be exercised on or before the 45<sup>th</sup> day next preceding any mandatory Redemption Date, the City may: (1) deliver to the Trustee for cancellation Term Bonds subject to mandatory redemption on said mandatory Redemption Date, in any aggregate principal amount desired; or (2) furnish the Trustee funds, together with appropriate instructions, for the purpose of purchasing any Term Bonds subject to mandatory redemption on said mandatory Redemption Date from any Registered Owner thereof whereupon the Trustee shall expend such funds for such purpose to such extent as may be practical; or (3) receive a credit with respect to the mandatory redemption obligation of the City under the mandatory sinking fund redemption requirement for any Term Bonds subject to mandatory redemption on said mandatory Redemption Date that, prior to such date, have been redeemed (other than through the operation of the mandatory sinking fund redemption requirements of the Indenture) and canceled by the Trustee and not theretofore applied as a credit against any

redemption obligation under the mandatory sinking fund redemption requirements of the Indenture. Each Term Bond so delivered or previously purchased or redeemed shall be credited at 100% of the principal amount thereof on the obligation of the City to redeem Term Bonds of the same Stated Maturity on such mandatory Redemption Date, and any excess of such amount shall be credited on future mandatory redemption obligations for Term Bonds of the same Stated Maturity in chronological order, and the principal amount of Term Bonds of the same Stated Maturity to be redeemed by operation of the mandatory sinking fund redemption requirements shall be accordingly reduced. If the City intends to exercise any option granted by the provisions of clauses (1), (2) or (3) above, the City will, on or before the 45<sup>th</sup> day next preceding each mandatory Redemption Date, furnish the Trustee a written certificate indicating to what extent the provisions of said clauses (1), (2) and (3) are to be complied with respect to such mandatory redemption payment and any Term Bonds to be credited pursuant to (3) above.

Selection of Bonds to be Redeemed. Bonds shall be redeemed only in Authorized Denominations. When less than all of the Outstanding Bonds are to be optionally redeemed and paid prior to maturity, such Bonds or portions of Bonds to be redeemed shall be selected in Authorized Denominations by the Trustee from such maturities and in such amounts as the City may determine, and Bonds of less than a full maturity shall be selected by the Trustee in Authorized Denominations by lot or in such other equitable manner as it may determine.

In the case of a partial redemption of Bonds when Bonds of denominations greater than the minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each Authorized Denomination unit of face value shall be treated as though it was a separate Bond of the denomination of the minimum Authorized Denomination. If one or more, but not all, of the minimum Authorized Denomination units of principal amount represented by any Bond are selected for redemption, then upon notice of intention to redeem such minimum Authorized Denomination unit or units, the Owner of such Bond or his attorney or legal representative shall forthwith present and surrender such Bond to the Trustee (i) for payment of the redemption price (including the interest to the date fixed for redemption) of the minimum Authorized Denomination unit or units of principal amount called for redemption, and (ii) for exchange, without charge to the Owner thereof, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any such Bond of a denomination greater than minimum Authorized Denomination fails to present such Bond to the Trustee for payment and exchange as aforesaid, said Bond shall, nevertheless, become due and payable on the redemption date to the extent of the minimum Authorized Denomination unit or units of principal amount called for redemption (and to that extent only) and shall cease to accrue interest on the principal amount so called for redemption.

Notice of Redemption.

Unless waived by any Owner of Bonds to be redeemed, official notice of any redemption of any Bond shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 20 days prior to the date fixed for redemption to the Owner of the Bond or Bonds to be redeemed at the address shown on the Register; provided, however, that failure to give such notice by mailing as aforesaid to any Owner or any defect therein as to any particular Bond shall not affect the validity of any proceedings for the redemption of any other Bonds.

All official notices of redemption shall be dated and shall state:

- (1) the redemption date,
- (2) the redemption price,

(3) if less than all Outstanding Bonds are to be redeemed, the identification of the Bonds to be redeemed (such identification to include interest rates, maturities, CUSIP numbers and such additional information as the Trustee may reasonably determine),

(4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and

(5) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the corporate trust office of the Trustee or such other payment office as the Trustee may designate.

In addition to the foregoing notice, the Trustee shall also comply with any mandatory requirements or guidelines published by the Securities and Exchange Commission relating to providing notices of redemption. The failure of the Trustee to comply with any such requirements shall not affect or invalidate the redemption of said Bonds.

Any provision in the Indenture to the contrary notwithstanding, any notice of optional redemption shall state that it is conditioned upon receipt by the Trustee of sufficient moneys to redeem the Bonds, and such notice and optional redemption shall be of no effect if by no later than the scheduled redemption date, sufficient moneys to redeem the Bonds are not on deposit with and available to the Trustee.

*So long as the Securities Depository is effecting book-entry transfers of the Bonds, the Trustee shall provide the redemption notices specified in the Indenture only to the Securities Depository. It is expected that the Securities Depository shall, in turn, notify its Participants and that the Participants, in turn, will notify or cause to be notified the beneficial owners. Any failure on the part of the Securities Depository or a Participant, or failure on the part of a nominee of a beneficial owner of a Bond to notify the beneficial owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.*

Effect of Call for Redemption. On or prior to the date fixed for redemption, moneys or Government Securities shall be deposited with the Trustee as provided in the Indenture hereof to pay the Bonds called for redemption and accrued interest thereon to the redemption date. Upon the happening of the above conditions, and notice having been given as provided in the Indenture, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, provided moneys sufficient for the payment of the redemption price are on deposit at the place of payment at the time, and shall no longer be entitled to the protection, benefit or security of the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture.

## **SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**

### **Limited Obligations; Sources of Payment**

The Bonds and the interest thereon shall be special, limited obligations of the City payable from and are secured by a transfer, pledge and assignment of and a grant of a security interest in the Trust Estate to the Trustee and in favor of the Bondowners, as provided in the Indenture.

The “**Trust Estate**” for the Bonds consists of:

(a) All Net Revenues derived by the City under and pursuant to and subject to the provisions of the Redevelopment Agreement or otherwise (excluding the City’s rights to payment of its fees and expenses and to be indemnified in certain events) and the Pledged Revenues; and

(b) All moneys and securities from time to time held by the Trustee under the terms of the Indenture (except payments required to be made to meet the requirements of Section 148(f) of the Code, as defined below, whether or not held in the Rebate Fund, as defined in the Indenture) and any and all other property (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of the Indenture.

See the caption “**Net Revenues**” below for the definition of Net Revenues, along with the definition of certain related terms.

***Because the TIF Act provides that 23 years is the maximum amount of time for the retirement of obligations incurred to finance redevelopment project costs, the obligation of the City to transfer Net Revenues to the Trustee for the repayment of the Bonds terminates on October 2, 2040 whether or not the principal amount thereof or interest thereon has been paid in full.***

Payments in Lieu of Taxes (as defined in Sections 99.805(10) and 99.845 of the TIF Act), if any, attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, excluding the Ambulance District PILOTs Reimbursement, the Fire District PILOTs Reimbursement and the School District PILOTs Reimbursement, will be used for the repayment of the Bonds.

Fifty percent of the Economic Activity Taxes generated within the Redevelopment Area, subject to annual appropriation by the City, excluding the Fire District EATs Reimbursement (as defined herein) and the Grocery Store Sales Tax Payments (as defined herein), will be used for the repayment of the Bonds.

The CID Revenues (which excludes the CID Operating Costs, the portion of the revenues of the CID Sales Tax captured as Economic Activity Tax Revenues and the administrative fee retained by the City in the amount of 1% of all revenues received by the District from the CID Sales Tax), subject to annual appropriation by the CID, will be used for the repayment of the Bonds.

The Bond Proceeds Account of the Debt Service Reserve Fund will be initially funded in the amount of \$1,030,300\* as additional security for the Bonds. The Business Interruption Account of the Debt Service Fund will be funded in an amount up to \$1,030,300\* over time from funds deposited into and applied from the Revenue Fund. Except as otherwise provided in the Indenture, moneys in the Debt Service Reserve Fund shall be used by the Trustee without further authorization solely for the payment of the principal of and interest on the Bonds if moneys otherwise available for such purpose as provided in the Indenture are insufficient to pay the same as they become due and payable and to retire the last Outstanding Bonds.

The Bonds are not secured by a mortgage on any property in the Redevelopment Area. However, the TIF Act provides that the Payments in Lieu of Taxes that are due and owing shall constitute a lien against the real estate in the Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes, the lien for such unpaid Payments in Lieu of Taxes may be enforced as provided by law. See the caption “**TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes**” in this Private Placement Memorandum.

The Bonds and interest thereon shall not be deemed to constitute a debt or liability of the City, the District, the State or of any political subdivision thereof within the meaning of any state constitutional or statutory debt limitation or restriction and shall not constitute a pledge of the full faith and credit of the City, the District, the State or of any political subdivision thereof, but shall be payable solely from the funds provided for in the

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\* Preliminary; subject to change.

Indenture. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City, the District, the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. None of the City, the District or the State shall, in any event, be liable for the payment of the principal of, redemption premium, if any, or interest on the Bonds or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the City. No breach by the City of any such pledge, mortgage, obligation or agreement may impose any liability, pecuniary or otherwise, upon the City, the District, the State or any charge upon their respective general credit or against their respective taxing powers.

## Revenues

There are three primary revenue sources for the Bonds: (a) Economic Activity Tax Revenues; (b) Payments in Lieu of Taxes; and (c) CID Revenues.

**Economic Activity Taxes.** The following table shows the sales taxes currently imposed within the Redevelopment Area and the taxes that are available for payment of the Bonds. Based on a certification of the City with respect to sales taxes received in the Redevelopment Area during calendar year 2016, the City and County sales taxes that are available for payment of the Bonds generated \$0.00 in total revenues to the City and the County before the adoption of tax increment financing; 50% of the revenues from those sales taxes above that amount are available for payment of the Bonds. However, pursuant to the Redevelopment Agreement, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area do not equal or exceed \$289,138.50, the Developer will make the Grocery Store Sales Tax Payment. **“Grocery Store Sales Tax Payment”** means a payment from the Developer to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in the Redevelopment Area in the applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for a calendar year does not equal or exceed \$289,138.50, as described in the Redevelopment Agreement.

The following table sets forth the sales taxes imposed in the Redevelopment Agreement and the portion of those sales taxes available for the payment of debt service on the Bonds as economic activity taxes:

	<u>Tax Rate</u>	<u>Available for Bonds</u>
State	4.225%	-
Clay County	1.125	0.4375%
City of Smithville	2.500	0.7500
Smithville Area Fire Protection District	0.500	0.1250
Kansas City Zoological District	0.125	0.0625
Smithville Commons Community Imp. District	<u>1.000</u>	<u>0.500</u>
<b>Total Sales Tax</b>	<b><u>9.475%</u></b>	<b><u>1.875%</u></b>

Per the TIF Act, if any voters in a taxing district approve a new sales tax or an increase to an existing sales tax, the revenues generated within the Redevelopment Area attributed to the new sales tax or increase will not be subject to capture and placed in the Special Allocation Fund without the consent of the taxing district. Currently, the City has authorized a capital improvement sales tax and a park/stormwater sales tax after approval of the Redevelopment Plan and have not consented to the capture of those revenues within the Redevelopment Area.

**CID Revenues.** The District’s boundaries match the boundaries of the Redevelopment Area. All retailers within the District are subject to the 1% CID Sales Tax. One-half of the revenues received from the CID Sales Tax will be captured as Economic Activity Taxes. The remaining funds available after (a) the District’s CID Operating Costs, (b) Economic Activity Tax Revenues derived from the CID sales tax, and (c) the administrative fee retained by the City in the amount of 1% of all revenues received by the District from such

sales tax imposed by the District to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax, will be available for payment of debt service on the Bonds

Payments in Lieu of Taxes. The base value (initial assessed value) of property within the Redevelopment Area has been certified at \$52,430 (see the caption “**TAX INCREMENT FINANCING IN MISSOURI – Overview**” in this Private Placement Memorandum). The total assessed value of property within the Redevelopment Area (including the base) since 2017 is as follows:

<u>Year</u>	<u>Assessed Valuation</u>
2017	\$ 52,430
2018	52,430
2019	50,260
2020	498,370
2021	4,634,430

Per the TIF Act, if voters in a taxing district approve an increase to the taxing district’s levy rate, any additional revenues generated within the Redevelopment Area that are directly attributable to the new increase will not be captured and placed into the Special Allocation Fund without the consent of the taxing district. Currently, the Mid-Continent Public Library and the Smithville Fire Protection District have authorized levy increases after approval of the Redevelopment Plan and have not consented to the capture of those revenues within the Redevelopment Area.

#### **City Annual Appropriation Obligation**

The City’s obligations under the Indenture to pay the Economic Activity Taxes for application to the Bonds are subject to annual appropriation. Such moneys must be appropriated each year by the Board of Aldermen. The Indenture contains the following provisions with respect to the City’s annual appropriation obligation:

Annual Appropriation. The City intends, on or before the last day of each Fiscal Year, to budget and appropriate moneys constituting Economic Activity Tax Revenues to the repayment of the principal of and interest on the Bonds for that Fiscal Year. The City shall deliver written notice to the Trustee no later than 15 days after the commencement of its Fiscal Year stating whether or not the Board of Aldermen has appropriated such funds during such Fiscal Year. If the Board of Aldermen shall have made the appropriation, the failure of the City to deliver the foregoing notice on or before the 15<sup>th</sup> day after the commencement of its Fiscal Year shall not constitute an event of default and, on failure to receive such notice 15 days after the commencement of the City’s Fiscal Year, the Trustee shall request the City confirm in writing whether or not such appropriation has been made.

Payments to Constitute Current Expenses of the City. The City acknowledges that the application of Economic Activity Tax Revenues under the Indenture shall constitute currently budgeted expenditures of the City, and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory debt limitation or restriction concerning the creation of indebtedness by the City, nor shall anything contained in the Indenture constitute a pledge of the general credit, tax revenues, funds or moneys of the City. The City’s obligations to apply Economic Activity Tax Revenues under the Indenture shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing Fiscal Year beyond the then current Fiscal Year. Neither the Indenture nor the issuance of the Bonds shall directly or indirectly obligate the City to levy or pledge any form of taxation or make any appropriation or make any payments beyond those appropriated for the City’s then current Fiscal Year in contravention of any applicable constitutional or statutory debt limitation or restriction concerning the creation of indebtedness by the City, but in each Fiscal Year Economic Activity Tax Revenues shall be payable solely from the amounts budgeted or appropriated therefor by the City, for such year; provided, however, that nothing in the



Indenture shall be construed to limit the rights of the owners of the Bonds or the Trustee to receive any amounts which may be realized from the Trust Estate pursuant to the Indenture.

### **District Annual Appropriation Obligation**

The District's obligation to pay the CID Revenues for application to the Bonds is subject to annual appropriation. Such moneys must be appropriated each year by the Board of Directors of the District. The CID Agreement, the Financing Agreement and the Indenture require the payment of the CID Revenues, subject to annual appropriation, to the CID Account of the Revenue Fund. ***The District cannot use the CID Revenues for any purposes other than to make payments with respect to the Bonds and pay CID Operating Costs without obtaining the Board of Aldermen's approval of amendments to the CID Agreement and the Financing Agreement.***

### **Net Revenues**

Pursuant to the Indenture, "**Net Revenues**" means (a) all moneys on deposit (including investment earnings thereon) in the PILOTS Account of the Special Allocation Fund but excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement, the School District PILOTS Reimbursement and the City Administrative Fee, (b) subject to annual appropriation by the City, all moneys on deposit (including investment earnings thereon) in the Economic Activity Tax Account of the Special Allocation Fund, but excluding the Fire District EATs Reimbursement, the Grocery Store Sales Tax Payment and the City Administrative Fee determined based on the amount of Economic Activity Tax Revenues, and (c) subject to annual appropriation by the District, all CID Revenues (including investment earnings thereon) paid by or on behalf of the District to the Trustee as provided in the Indenture. Net Revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum until such suit or claim is resolved in favor of the City, (iii) any amounts set aside in escrow pursuant to State law that the City reasonably believes were collected and/or paid to the City erroneously.

The following definitions set forth in the Indenture are used in determining Net Revenues:

"**CID Revenues**" means the revenues received by the District from the 1% sales tax imposed by the District within its boundaries and within the Redevelopment Project exclusive of (a) the CID Operating Costs to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax, (b) Economic Activity Tax Revenues derived from the CID sales tax, and (c) the administrative fee retained by the City in the amount of 1% of all revenues received by the District from such sales tax imposed by the District to be paid from CID Revenues other than the Economic Activity Tax Revenues derived from the CID sales tax.

"**City Administrative Fee**" means all documented costs and expenses reasonably incurred by the City for planning, legal, financial, administrative and other costs associated with the review, consideration, approval and implementation of the Redevelopment Plan, including the Redevelopment Project and the Redevelopment Agreement, plus 1% of the total revenues distributed to the District.

"**CID Operating Costs**" means the actual, reasonable expenses which are reasonably necessary for the operation of the District which shall include, but is not limited to, costs associated with notices, publications, meetings, supplies, equipment, photocopying, insurance, the engagement of special legal counsel, financial auditing services, and other consultants or services including companies engaged by the District (or the City on behalf of the District) to review applications for reimbursement for payment of District improvement costs, and shall also include reasonable attorneys' fees for the formation of the District.

**“Economic Activity Tax Revenues”** means 50% of the total additional revenue from taxes imposed by the City or other taxing districts (as that term is defined in Section 99.805 of the TIF Act) which are generated by economic activities within the Redevelopment Project over the amount of such taxes generated by economic activities within the Redevelopment Project in the calendar year ending December 31, 2016, but excluding therefrom any taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo., licenses, fees or special assessments other than payments in lieu of taxes and penalties and interest thereon, personal property taxes, and taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo., excluding the Fire District EATs Reimbursement and the Grocery Store Sales Tax Payment.

**“Ambulance District PILOTS Reimbursement”** means 75% of the property taxes imposed by the Ambulance District and treated as Payments in Lieu of Taxes, which amount is paid to or retained by the Ambulance District pursuant to the Reimbursement Agreements.

**“Fire District EATs Reimbursement”** means 75% of the sales taxes collected by the Fire District from all Fire District sales tax revenues from within the Redevelopment Area while tax increment financing is in effect in such area, which amount is retained by the Fire District pursuant to the Reimbursement Agreements.

**“Fire District PILOTS Reimbursement”** means 75% of the property taxes collected by the Fire District and treated as Payments in Lieu of Taxes, which amount is paid to the Fire District by the City pursuant to the Reimbursement Agreements

**“Grocery Store Sales Tax Payment”** means a payment from the Developer to the City in an amount equal to the lesser of (1) the difference between (a) \$289,138.50 and (b) the sales tax revenues actually received by the City from all economic activity in the Redevelopment Area in the applicable calendar year or (2) \$50,000, if the sales tax revenues received by the City from the economic activity within the Redevelopment Area for a calendar year does not equal or exceed \$289,138.50, as described in the Redevelopment Agreement.

**“Payments in Lieu of Taxes”** means those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the TIF Act), if any, attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, excluding the Ambulance District PILOTS Reimbursement, the Fire District PILOTS Reimbursement and the School District PILOTS Reimbursement.

**“Reimbursement Agreements”** means the Reimbursement Agreement (Northland Regional Ambulance District) between the City and the Ambulance District dated July 17, 2027 and the Reimbursement Agreement (Smithville Area Fire Protection District) between the City and the Fire District dated as of August 1, 2017.

**“School District PILOTS Reimbursement”** means 40% of the Payments in Lieu of Taxes received by the City that are attributable to ad valorem taxes imposed by the School District to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Project over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Project, as provided for by Section 99.845 of the TIF Act, to be paid to the School District as reimbursement for capital improvement costs in accordance with the Redevelopment Agreement.

## **Indenture Funds and Account**

### Deposit of Funds to Revenue Fund.

The Special Allocation Fund held by the City is ratified and confirmed pursuant to the Indenture. Moneys in the Special Allocation Fund shall be paid by the City on the 10<sup>th</sup> day of each month (or the next Business Day thereafter if the 10<sup>th</sup> day is not a Business Day) to the Trustee, with (A) all Net

Revenues as of the last day of the preceding month consisting of Payments in Lieu of Taxes (excluding amounts held for the Ambulance District PILOT's Reimbursement, the Fire District PILOT's Reimbursement, the School District PILOT's Reimbursement and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Payments in Lieu of Taxes and directing the Trustee that such amounts are to be deposited into the PILOT's Account of the Revenue Fund, and (B) subject to annual appropriation by the City and the terms of the Indenture, all Net Revenues as of the last day of the preceding month consisting of Economic Activity Tax Revenues (excluding the Fire District EAT's Reimbursement, the Grocery Store Sales Tax Payment and amounts retained as the City Administrative Fee) accompanied by written notice identifying the Net Revenues as Economic Activity Tax Revenues and directing the Trustee that such amounts are to be deposited into the EATS Account of the Revenue Fund. The Trustee shall notify the City and the Placement Agent if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

Any CID Revenues collected by or on behalf of the District, and transferred to the Trustee by the District or the City pursuant to the Financing Agreement and as provided in the Indenture on or before the 10<sup>th</sup> day of each month (or the next Business Day thereafter if the 10<sup>th</sup> day is not a Business Day) and accompanied by written notice identifying such amounts as CID Revenues shall be deposited into the CID Account in the Revenue Fund. The Trustee shall notify the City, the Placement Agent, the District if the Trustee has not received such Net Revenues on or before the 12<sup>th</sup> calendar day of each month (or the next Business Day thereafter if the 12<sup>th</sup> day is not a Business Day), or if any funds are received without the required notice related thereto directing the deposit of such funds into the appropriate account of the Revenue Fund.

Application of Moneys in the Revenue Fund. Moneys in the Revenue Fund on the 40<sup>th</sup> day prior to each Payment Date (or at any time in the event of rebate payable to the United States of America) shall be applied by the Trustee to the extent necessary for the purposes and in the amounts as follows, drawing first on the CID Revenue Account in the Revenue Fund, second on the PILOT's Account in the Revenue Fund, and third on the EAT's Account in the Revenue Fund:

*First*, for transfer to the Rebate Fund when necessary, an amount sufficient to pay rebate, if any, to the United States of America, owed under Section 148 of the Code, as directed in writing by the City in accordance with the Arbitrage Instructions and an amount equal to all fees, charges, advances and expenses related to the calculations necessary to determine the amount of rebate, if any, that may be due and payable;

*Second*, to the Trustee, an amount equal to all fees, charges, advances and expenses of the Trustee due and payable pursuant to the Indenture (fees, charges, advances and expenses of the Trustee incurred in connection with the Trustee's ordinary services under the Indenture shall not exceed \$5,000 per Fiscal Year; provided the Trustee or other person or entity shall also be entitled to compensation for (i) services, if any, as dissemination agent and (ii) extraordinary services rendered and reimbursed for extraordinary out of pockets costs and expenses incurred, in accordance with the Indenture);

*Third*, for payment to the City of an amount sufficient for payment of any fees and expenses that may be owing pursuant to the Indenture to collect Net Revenues and to enforce the Financing Documents, upon delivery to the Trustee of a written request (which shall be accompanied by an invoice) for such amounts;

*Fourth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the interest on the Bonds on the next two succeeding Payment Dates;

*Fifth*, for transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of and premium, if any, due on the Bonds by their terms on the next two succeeding Payment Dates;

*Sixth*, for deposit to the Bond Proceeds Account of the Debt Service Reserve Fund until the Bond Proceeds Account has been funded or restored in an amount equal to the Debt Service Reserve Requirement applicable to the Bond Proceeds Account;

*Seventh*, for deposit to the Business Interruption Account of the Debt Service Reserve Fund until the Business Interruption Account has been funded or restored to the Debt Service Reserve Requirement applicable to the Business Interruption Account;

*Eighth*, transfer to the Extraordinary Expense Fund, an amount (not to exceed \$10,000 per Fiscal Year) sufficient to cause the balance in said fund to equal \$20,000; and

*Ninth*, for transfer to the Redemption Account of the Debt Service Fund, all remaining funds to redeem Bonds pursuant to the special mandatory redemption provisions contained in the Indenture (see the caption “**THE BONDS – Redemption – Special Mandatory Redemption**” in this Private Placement Memorandum) in Authorized Denominations which shall be applied to the payment of the principal of and accrued interest on all Bonds which are subject to redemption on the next succeeding Payment Date.

If necessary, on the Business Day prior to each Payment Date, drawing first on the CID Account in the Revenue Fund, second on the PILOTs Account in the Revenue Fund, and third on the EATs Revenue Account in the Revenue Fund, the Trustee shall transfer to the Bond Payment Account in the Debt Service Fund an amount sufficient to pay the principal of or interest on the Bonds due on the next Payment Date.

**For purposes of the transfers set forth above, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentage as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

Project Fund. Moneys in the Project Fund shall be disbursed by the Trustee from time to time, upon receipt of a written request of the Authorized City Representative and containing the statements, representations and certifications set forth in the form of such request attached to the Indenture and otherwise substantially in such form, to pay costs related to the issuance of the Bonds or to pay, or reimburse the Developer for payment of, the costs of the Project as described in the Indenture. Any moneys remaining on deposit in the Project Fund when the portion of the Project financed with the proceeds of the Bonds is completed, as stated in a certificate delivered by the Authorized City Representative to the Trustee, shall immediately be transferred by the Trustee to the Bond Payment Account in the Debt Service Fund.

Debt Service Fund. Except as otherwise provided in the Indenture, all amounts paid and credited to the Debt Service Fund shall be expended solely for the payment of the principal of, redemption premium, if any, and interest on the Bonds as the same mature and become due or upon the redemption thereof.

Debt Service Reserve Fund. Except as otherwise provided in the Indenture, moneys in the Debt Service Reserve Fund shall be used by the Trustee without further authorization solely for the payment of the principal of and interest on the Bonds if moneys otherwise available for such purpose are insufficient to pay the same as they become due and payable. In the event the balance of moneys in the Debt Service Fund is insufficient to pay principal of or interest on the Bonds when due and payable, moneys in the Debt Service Reserve Fund shall be transferred into the Debt Service Fund in an amount sufficient to make up

such deficiency, using the moneys in the Business Interruption Account until all such money has been expended and then moneys in the Bond Proceeds Account. The Trustee may use moneys in the Debt Service Reserve Fund for such purpose whether or not the amount in the Debt Service Reserve Fund at that time equals the Debt Service Reserve Requirement. Such moneys shall be used first to make up any deficiency in the payment of interest and then principal. Moneys in the Bond Proceeds Account and the Business Interruption Account of the Debt Service Reserve Fund shall also be used to pay the last Bonds becoming due unless such Bonds and all interest thereon be otherwise paid. The amount on deposit in the Debt Service Reserve Fund shall be valued by the Trustee 45 days prior to each Payment Date (or if such date is not a Business Day, the immediately preceding Business Day) and the Trustee shall give immediate written notice to the City if such amount is less than the Debt Service Reserve Requirement. For the purpose of determining the amount on deposit in the Debt Service Reserve Fund, the value of any investments shall be valued at their fair market value on the date of valuation. Moneys in the Debt Service Reserve Fund that are in excess of the Debt Service Reserve Requirement shall be deposited by the Trustee without further authorization in the Debt Service Fund.

**“Debt Service Reserve Requirement”** means (1) the sum of \$1,030,300\* to be deposited into the Bond Proceeds Account of the Debt Service Reserve Fund for the Bonds, which is a sum, at the date of original issuance and delivery of the Bonds, is not greater than the least of (A) 10% of the original aggregate principal amount of the Bonds, (B) the maximum annual Debt Service Requirements on the Bonds in any future fiscal year following such date, or (C) 125% of the average future annual Debt Service Requirements on the Bonds, plus (2) the sum of \$1,030,300\* to be deposited into the Business Interruption Account of the Debt Service Reserve Fund.

**Rebate Fund.** There shall be deposited by the Trustee in the Rebate Fund such amounts as are required to be deposited therein pursuant to the Arbitrage Instructions. Subject to the transfer provisions provided in the Indenture, all money at any time deposited in the Rebate Fund and any income earned thereon shall be held in trust, to the extent required to pay arbitrage rebate to the federal government of the United States of America, and neither the City, the District nor the Owner of any Bonds shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by the Indenture and by the Arbitrage Instructions.

**Extraordinary Expense Fund.** Amounts on deposit in the Extraordinary Expense Fund shall be used only for the purpose of paying the fees, expenses and other costs, including legal fees, incurred by the City in connection with the defense or interpretation of the Indenture, or an audit, questionnaire or other request for information from the Internal Revenue Service, the Securities Exchange Commission or other federal or state entity or regulatory authority in connection with the Bonds, including legal fees incurred and any rebate obligations, fines or penalties owed. The Trustee will disburse moneys from the Extraordinary Expense Fund upon receipt by the Trustee of a written request signed by the Authorized City Representative that includes identification of the persons or entities owed such fees, expenses and other costs.

## **No Additional Bonds**

The Indenture does not authorize the issuance of any bonds other than the Bonds.

## **TAX INCREMENT FINANCING IN MISSOURI**

### **Overview**

Tax increment financing is a procedure whereby cities and counties encourage the redevelopment of designated areas. The theory of tax increment financing is that, by encouraging redevelopment projects, the

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\* Preliminary; subject to change.

value of real property in a redevelopment area should increase. When tax increment financing is adopted for a redevelopment area, the assessed value of real property in the redevelopment area is frozen for tax purposes at the then current rates for all similarly-situated property owners prior to the construction of improvements (the “**Base Value**”). The owners of the property continue to pay property taxes at the Base Value. As the property is improved, the assessed value of real property in the redevelopment area should increase above the Base Value. By applying the tax rate of all Taxing Districts (as defined herein) having taxing power within the redevelopment area to the increase in assessed valuation of the improved property over the Base Value, a “tax increment” is produced. The tax increments, referred to as “payments in lieu of taxes” or “PILOTs,” are paid by the owners of property in the same manner as regular property taxes. The payments in lieu of taxes are transferred by the collecting agency to the treasurer of the city or county and deposited in a “special allocation fund.” All or a portion of the moneys in the fund are used to pay directly for redevelopment project costs or to retire bonds or other obligations issued to pay such costs. The Base Value for the Redevelopment Area was certified at \$52,430.

### **The TIF Act**

The TIF Act was enacted in 1982 and has been amended several times in subsequent years. The constitutional validity of the TIF Act (prior to the amendments) was upheld by the Missouri Supreme Court in *Tax Increment Financing Commission of Kansas City, Missouri v. J.E. Dunn Construction Co., Inc.*, 781 S.W.2d 70 (Mo. 1989). The TIF Act authorizes cities and counties to provide long-term financing for redevelopment projects in “blighted,” “conservation” and “economic development” areas (as defined in the TIF Act) through the issuance of bonds and other obligations. Prior to the amendments to the TIF Act, such obligations were payable solely from PILOTs derived from the redevelopment area. As a result of amendments to the TIF Act, such obligations are also payable from economic activity tax revenues derived from the redevelopment area, except those economic activity tax revenues expressly excluded in the TIF Act. The validity of certain portions of amendments to the TIF Act relating to the capture of economic activity tax revenues was upheld by the Missouri Supreme Court in *County of Jefferson v. QuikTrip Corporation*, 912 S.W.2d 487 (Mo. 1995) (en banc).

Although payments in lieu of taxes may be irrevocably pledged to the repayment of bonds, economic activity tax revenues are subject to annual appropriation by the governing body of the city or county, and there is no obligation on the part of the governing body to appropriate economic activity tax revenues in any year. See the caption “**INVESTMENT CONSIDERATIONS AND RISKS – Risk of Non-Appropriation**” in this Private Placement Memorandum.

Section 99.848 of the TIF Act allows for certain emergency service taxing districts to receive reimbursement from the special allocation fund of some or all of the tax increment generated from such districts’ tax levies. With respect to Redevelopment Area, the City has entered into agreements with the Northland Regional Ambulance District to reimburse such district 75% of the payments in lieu of taxes generated from such district’s real property tax levy and the Smithville Area Fire Protection District to reimburse such district 75% of the payments in lieu of taxes and economic activity tax revenues generated from the districts’ real property levy and sales tax rate.

In addition, the Redevelopment Agreement requires that 40% of the payments in lieu of taxes received by the City that are attributable to ad valorem taxes imposed the Smithville R-II School District of Clay County, Missouri in the Redevelopment Area be paid to said school district as reimbursement for capital improvements costs.

### **Assessment and Collection of Ad Valorem Taxes**

General. The City and the Redevelopment Area are located within Clay County, Missouri (the “**County**”). On or before September 1 in each year, each political subdivision located within the County which imposes ad valorem taxes (the “**Taxing Districts**”) is required to estimate the amount of taxes that will be required during the next succeeding fiscal year to pay interest falling due on general obligation bonds issued and the principal

of bonds maturing in such year and the costs of operation and maintenance plus such amounts as shall be required to cover emergencies and anticipated tax delinquencies. The Taxing Districts certify the amount of such taxes which shall be levied, assessed and collected on all taxable tangible property in the County to the County Assessor by September 1.

All taxes levied must be based upon the assessed valuation of land and other taxable tangible property in the County as shall be determined by the records of the County Assessor and must be collected and remitted to the Taxing Districts. All the laws, rights and remedies provided by the laws of the State for the collection of State, county, city, school and other ad valorem taxes are applicable to the collection of taxes authorized to be collected in the redevelopment area.

The Missouri Constitution requires uniformity in taxation of real property by directing such property to be subclassed as agricultural, residential or commercial and permitting different assessment ratios for each subclass. Agricultural real property is currently assessed at 12% of true value in money, residential property is currently assessed at 19% of true value in money and commercial, industrial and all other real property is assessed at 32% of true value in money. The phrase "true value in money" has been held to mean "fair market value" except with respect to agricultural property.

Real property within the County is assessed by the County Assessor. The County Assessor is responsible for preparing the tax roll each year and for submitting the tax roll to the Board of Equalization. The Board of Equalization has the authority to question and determine the proper values of real property and then adjust and equalize individual properties appearing on the tax rolls. The County Collector collects taxes for all Taxing Districts within the County limits. The County Collector and the County Assessor deduct a commission for their services. After such collections and deductions of commission, taxes are distributed according to the Taxing District's pro rata share.

Taxes are levied on all taxable property based on the equalized assessed value thereof determined as of January 1 in each year. Under Missouri law, each property must be reassessed every two years (in odd-numbered years). The County Collector prepares the tax bills and mails them to each taxpayer in September. Payment is due by December 31, after which taxes become delinquent and accrue a penalty of one percent per month. In the event of an increase in the assessed value of a property, notice of such increase must be given to the owner of the affected property, which notice is generally given in April.

Valuation of Real Property. The County Assessor must determine the assessed value of a property based upon the State law requirement that property be valued at its true value in money. For agricultural land, true value is based on its productive capability. As to residential and commercial property, true value in money is the fair market value of the property on the valuation date. The fair market value is arrived at by using the three universally recognized approaches to value: cost approach, the sales comparison approach and the income approach.

The cost approach is typically applied when a property is newly constructed and is based on the principle of substitution. This principle states that no informed buyer will pay more for a property than the cost to reproduce or replace the property. Value is determined under the cost approach by adding the estimated land value to the replacement or reproduction cost of improvements reduced by estimated depreciation. Courts have held, however, that construction cost alone is not a proper basis for determining true value in money and that all factors which affect the use and utility of the property must be considered.

The sales comparison approach determines value based upon recent sales prices of comparable properties. Comparable sales are adjusted for differences in properties by comparing such items as sales price per square foot and net operating income capitalization rates.

The income approach estimates market value by discounting to present value a stream of estimated net operating income. First, the property's gross potential income is estimated based on gross rents being generated

at the property. A vacancy allowance is then deducted to arrive at effective gross income. Next, allowable operating expenses are deducted to arrive at an estimate of the property's net operating income. Finally, the net operating income is divided by an appropriate capitalization rate to arrive at the estimated present value of the income stream.

Appeal of Assessment. State statutes establish various mechanisms for a property owner to appeal the assessment of a tax on its property. Typically, there are four issues that can be raised in property tax appeals: overvaluation, uniformity, misclassification and exemption. Overvaluation appeals are the most common appeals presented by taxpayers. An overvaluation appeal requires the taxpayer to prove that the true value in money of the property is less than that determined by the assessor. Uniformity appeals are based on the assertion that other property in the same class and county as the subject property is assessed at a lower percentage of value than the subject property. A misclassification appeal is based on an assertion that assessing authorities have improperly subclassed a property. Exemption appeals are based on claims that the property in question is exempt from taxation.

Overvaluation appeals generally must be made administratively, first to the Board of Equalization and then to the State Tax Commission, within prescribed time periods following notice of an increase in assessment. Appeals to the Board of Equalization must be filed with the County Clerk as Secretary of the Board of Equalization on or before the third Monday in June of each year. Appeals to the State Tax Commission must be filed by the later of December 31 or 30 days after the date of the final decision of the Board of Equalization. Where valuation is not an issue, appeals must be taken directly to the State circuit court rather than the State Tax Commission. If an appeal is pending on December 31, the due date for the payment of taxes, State statutes provide a procedure for the payment of taxes under protest. If taxes are paid but not under protest, the taxpayer cannot recover the amount paid unless the taxes have been mistakenly or erroneously paid. Application for a refund of mistakenly or erroneously paid taxes must be made within one year after the tax in dispute was paid. Typically, only that portion of the taxes being disputed is identified as being paid under protest, unless a claim of exemption is being asserted. The portion of the tax paid under protest is required to be held in an interest bearing account. Unless an appeal before the Board of Equalization or State Tax Commission is pending, suit must be brought by the taxpayer to resolve the dispute within 90 days, or the escrowed funds will be released to the Collector of Revenue and distributed to the Taxing Districts.

Reassessment and Tax Rate Rollback. As previously stated, a general reassessment of all property in the State is required to be conducted every two years. When, as a result of such reassessment, the assessed valuation within a Taxing District increases by more than an allowable percentage, the Taxing District is required to roll back the rate of tax within the Taxing District so as to produce substantially the same amount of tax revenue as was produced in the previous year increased by an amount called a "preceding valuation factor." A "preceding valuation factor" is a percentage increase or decrease based on the average annual percentage changes in total assessed valuation of the County over the previous three or five years, whichever is greater, adjusted to eliminate the effect of boundary changes, changes from State to County assessed property, general reassessment and State ordered changes.

The Hancock Amendment. An amendment to the Missouri Constitution limiting taxation and government spending was approved by Missouri voters on September 4, 1980, and went into effect with the 1981-82 fiscal year. The amendment (Article X, Sections 16 through 24 of the Missouri Constitution, and commonly known as the Hancock Amendment) limits the rate of increase and the total amount of taxes that shall be imposed in any fiscal year, and provides that the limit shall not be exceeded without voter approval. Provisions are included in the Hancock Amendment for rolling back tax rates to produce an amount of revenues equal to that of the previous year if the definition of the tax base is changed or if property is reassessed. The tax levy on the assessed valuation of new construction is exempt from this limitation in the initial year of new construction.



## **Tax Delinquencies**

All real estate upon which taxes or payments in lieu of taxes remain unpaid on the first day of January, annually, are delinquent, and the County Collector is empowered to enforce the lien of the taxing jurisdictions thereon. Whenever the County Collector is unable to collect any taxes on the tax roll, having diligently endeavored and used all lawful means to do so, the County Collector is required to compile lists of delinquent tax bills collectible by such office. All lands and lots on which taxes are delinquent and unpaid are subject to suit to collect delinquent tax bills or suit for foreclosure of the tax liens. Upon receiving a judgment, the Sheriff must advertise the sale of the land, fixing the date of sale within 30 days after the first publication of the notice. Delinquent taxes, with penalty, interest and costs, may be paid to the County Collector at any time before the property is sold therefor. No action for recovery of delinquent taxes shall be valid unless initial proceedings therefor are commenced within five years after delinquency of such taxes.

## **Economic Activity Tax Revenues**

The Economic Activity Taxes that are available for the payment of the Bonds, subject to annual appropriation by the City, are 50% of the total additional revenue from taxes imposed by the City or other Taxing Districts and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in calendar year 2016, but excluding therefrom any taxes, licenses or fees excluded from tax increment financing by Missouri law.

Retail businesses are required to collect the sales tax from purchasers at the time of sale, and pay said amounts to the Missouri Department of Revenue with the filing of returns, except for the sales tax on motor vehicles, trailers, boats and outboard motors, which is due at the time application is made for title and registration. The sales volume of a retail business determines the frequency of payments made to the Department of Revenue. In most cases, the retail businesses in the City make monthly payments to the Department of Revenue, which are due on the tenth day of each calendar month for sales taxes collected in the preceding calendar month. Retail businesses located in the City submit applications to the City for a merchant's license and an occupancy permit, and before such license and permit are awarded verification of a tax identification number from the State is made by the City. In the event of a failure by a retail business to remit sales taxes, interest and penalties, the unpaid amount may become a lien in the nature of a judgment lien against the delinquent taxpayer. In the event of overpayment by any retail business as a result of error or duplication, provision is made under State law for refunds.

Pursuant to State law, taxpayers who promptly pay their sales taxes are entitled to retain 2% of the amount of taxes owed. Within 30 days of receipt of sales taxes by the Department of Revenue, the Director of the Department of Revenue remits to the State Treasurer for deposit in a special trust fund for the benefit of each political subdivision entitled to a sales tax distribution the amount of such sales tax receipts less 1% of such amount which constitutes a fee paid to the State for collecting and distributing the tax. The State Treasurer then distributes moneys on deposit in the special trust fund to the applicable political subdivisions, including the City, on a monthly basis.

Under the Redevelopment Agreement, no utility taxes will be collected as Economic Activity Taxes or otherwise made available for the repayment of the Bonds.

## **SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND CID SALES TAX**

### **Community Improvement District**

Pursuant to the provisions of Sections 67.1401 to 67.1571 of the Revised Statutes of Missouri, as amended (the "**CID Act**") the Developer petitioned the City and the City adopted an ordinance on August 1, 2017, creating the Smithville Commons Community Improvement District (the "**District**"). The District is a political

subdivision of the State and is authorized to impose certain taxes to carry out its purposes. The District was created for the purpose of imposing a 1% sales tax (the “**CID Sales Tax**”) on retail sales occurring within the boundaries of the District, which are coterminous with the Redevelopment Area.

On April 29, 2019, the Board of Directors of the District adopted a resolution calling an election to submit a question to the qualified voters within the District (the qualified voters in this case are the landowners within the Redevelopment Area) a ballot proposition to consider the CID Sales Tax. The imposition of the CID Sales Tax was approved by a majority of such voters and the Board of Directors for the District notified the Department of Revenue of the State of Missouri that the measure had passed. The CID Sales Tax went into effect on April 1, 2020 and will sunset on March 31, 2043.

### **CID Agreement**

The City, the District and the Developer entered into a CID Agreement which sets out the priority of payment of the CID Revenues, including the City serving as the District’s agent in connection the collection and disposition of revenues from the CID Sales Tax. Revenues from the CID Sales Tax (the “**District Sales Tax Revenues**”) received by the City shall be applied pursuant to the CID Agreement. Pursuant to the TIF Act and the TIF Plan, 50% of the revenues from the CID Sales Tax levied in the Redevelopment Area (the “**TIF Portion of CID Revenues**”) will be captured as Economic Activity Tax Revenues and, as described below, deposited into the Special Allocation Fund maintained by the City.

Pursuant to the CID Agreement and the Financing Agreement and so long as the Bonds remain outstanding, the City on behalf of the District shall, not later than the fifteen (15<sup>th</sup>) day of each month, distribute the District Sales Tax Revenues received in the preceding month in the following order of priority (capitalized terms in the following that are not otherwise defined in this Private Placement Memorandum shall the meaning ascribed to such terms in the CID Agreement):

- (a) The TIF Portion of the CID Revenues shall be deposited into the Economic Activity Taxes Account of the Special Allocation Fund and shall be expended in accordance with the Redevelopment Plan and the Redevelopment Agreement (the remaining balance of District Sales Tax Revenues are referred to as the “**Uncaptured District Revenues**”).
- (b) The City, on behalf of the District, shall pay the Administrative Fee or other amounts owing to the City from the Uncaptured District Revenues.
- (c) The City, on behalf of the District, shall pay the Operating Costs of the District from the Uncaptured District Revenues.
- (d) The City, on behalf of the District, shall make the remaining Uncaptured District Revenues available to pay debt service on the Bonds.

## **PLAN OF FINANCE**

### **Purpose of the Bonds**

The City will issue the Bonds pursuant to the Indenture for the purpose of providing funds to (i) finance, refinance and reimburse Redevelopment Project Costs, (ii) fund a deposit to the debt service reserve fund with respect to the Bonds, and (iii) pay the costs of issuance of the Bonds.

## Sources and Uses of Bond Funds

Following is a summary of the anticipated sources and uses of funds in connection with the issuance of the Bonds:

### Sources of Funds:

Principal Amount of Bonds	\$ _____
Plus / Less: Original Issue Premium / Discount	_____
Previously-collected Net Revenues	_____
Total Sources of Funds	<u>\$ _____</u>

### Uses of Funds:

Deposit to the Project Account of the Project Fund <sup>(1)</sup>	\$ _____
Deposit to the Bond Proceeds Account of the Debt Service Reserve Fund	_____
Total Uses of Funds	<u>\$ _____</u>

- <sup>(1)</sup> Funds deposited in the Project Account of the Project Fund are expected to be disbursed in full on the date the Bonds are issued to (i) reimburse the Developer for previously incurred Reimbursable Project Costs and (ii) pay the costs incurred in connection with the issuance of the Bonds.

## THE SMITHVILLE COMMONS PROJECT

### Overview

Pursuant to the Redevelopment Agreement, the Developer agreed to design, develop and construct the Redevelopment Project in the Redevelopment Area, including the demolition of the existing improvements that were located on the site. The Redevelopment Area consists of approximately 66.32 acres in the City generally located between Cliff Drive and U.S. Highway 169.

The Redevelopment Project includes the following redevelopment projects within the Redevelopment Area:

- (i) acquisition of all property rights for the Redevelopment Area by the Developer;
- (ii) completion of site work and infrastructure improvements;
- (iii) construction of an approximately 65,000 square foot grocery store;
- (iv) construction of an approximately 15,120 square foot tractor and farm supply store;
- (v) construction of an approximately 12,000 square foot hardware store; and
- (v) construction of approximately 19,250 square feet of additional commercial space.

The Developer completed a 61,613 square foot Cosentino's Price Chopper in October 2020. In addition, the following businesses have opened within the Redevelopment Project: (i) Scooter's Coffee; (ii) Taco Bell; (iii) Porter's Ace Hardware; (iv) Burger King; and (v) Domino's Pizza (along with approximately 7,800 square feet of additional leasable space available in the same building).

In connection with the proposed development, the Developer acquired the Redevelopment Area for approximately \$3.7 million. The following table sets for the budget for the development of the Redevelopment Project included in the Redevelopment Agreement:

<u>Project Costs</u>	<u>Total Costs</u>	<u>Estimated Reimbursable Project Costs</u>	<u>Estimated CID Reimbursable Project Costs</u>	<u>Estimated Other Funding Sources</u>
Acquisition Price	\$ 3,700,000	\$ 3,700,000	\$ 0	\$ 0
Site work / Infrastructure – Grocery / Hardware / Access	3,250,000	1,477,214	1,772,786	0
Site work / Infrastructure – Off-site Improvements	1,900,000	1,900,000	0	0
Site Work / Infrastructure – Tractor Supply Instructure	550,000	0	00	550,000
<u>Hard Construction Costs:</u>				
Grocery	6,550,000	1,984,140	0	4,586,860
Grocery Outfitting / FF&E	5,000,000	0	0	5,000,000
Hardware	1,680,000	0	0	1,680,000
Tractor Supply	1,875,000	0	0	1,875,000
Pad Sites	3,360,000	0	0	3,360,000
<u>Soft Costs:</u>				
Architecture	724,950	0	0	724,950
Engineering	724,950	0	0	724,950
Title & Survey	50,000	0	0	50,000
Legal	350,000	0	0	350,000
Interest Carry	500,000	0	0	500,000
Property Taxes	106,600	0	0	106,600
Environmental	30,000	0	0	30,000
Appraisal	25,000	0	0	25,000
Geotechnical	40,000	0	0	40,000
Loan Origination Fees	80,000	0	0	80,000
Lender Inspections	40,000	0	0	40,000
Developer Fees	1,000,000	0	0	1,000,000
Commissions	250,000	0	0	250,000
Subtotal	31,786,500	9,061,354	1,772,7860	20,952,360
10% Contingency	3,178,650	906,135	177,279	2,095,236
Total	<u>\$ 34,965,150</u>	<u>\$ 9,967,489</u>	<u>\$ 1,950,065</u>	<u>\$ 23,047,596</u>

### **Current Businesses within the Redevelopment Area**

As of the date hereof, the following business are currently operating within the Redevelopment Area:

<u>Business</u>	<u>Type of Business</u>	<u>Opened</u>
Cosentino's Price Chopper	Grocery Store	October, 2020
Porter's Ace Hardware	Hardware Store	October, 2020
Taco Bell	Fast Food Restaurant	December, 2019
Burger King	Fast Food Restaurant	December, 2021
Scooter's Coffee	Coffee Shop	July, 2019
Domino's Pizza	Fast Food Restaurant	Summer, 2021

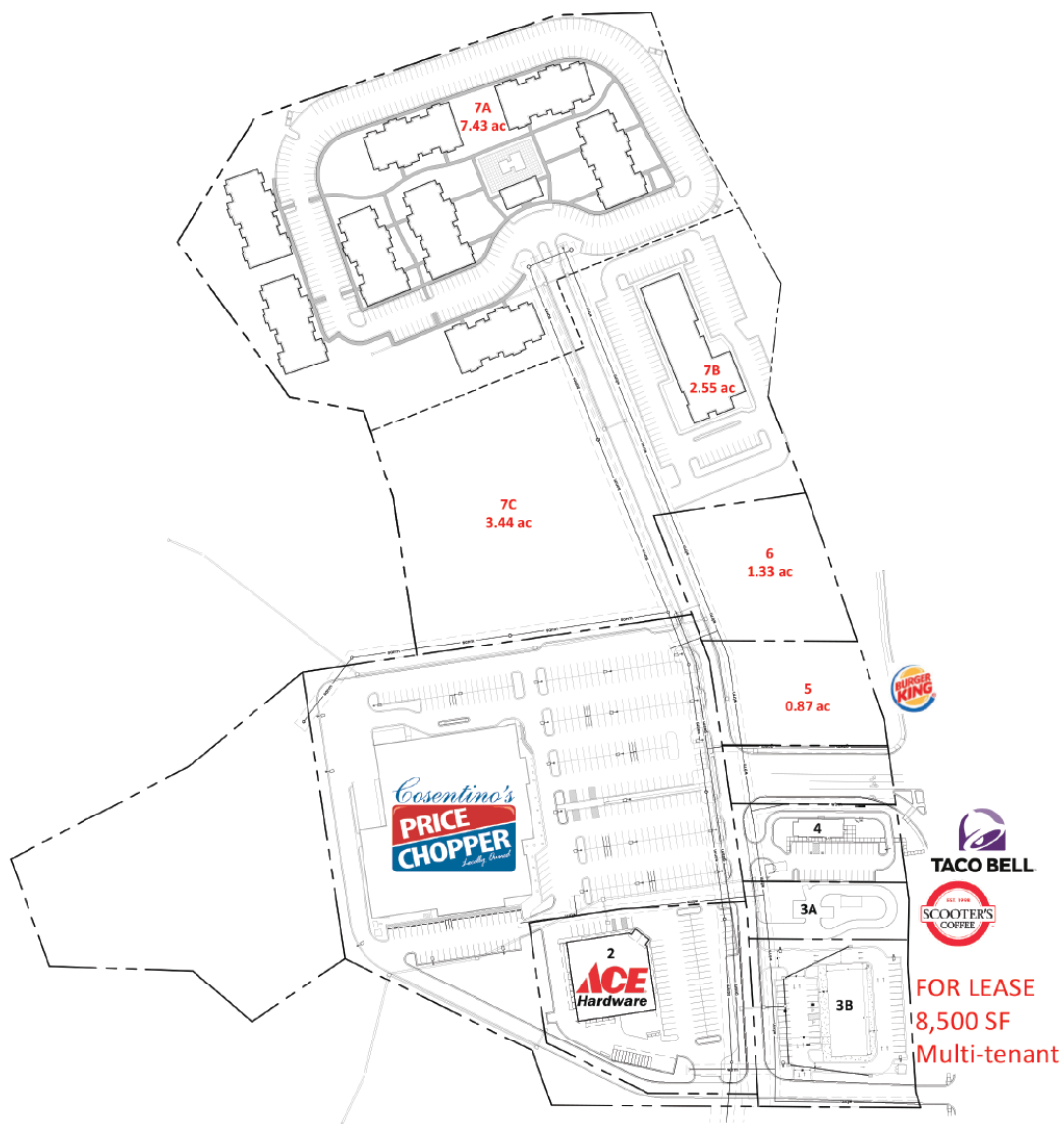
The Cosentino Price Chopper is operating in a 61,613 square foot building constructed by the Developer and is operated by Cosentino Enterprises, Inc. (the “**Grocery Tenant**”) pursuant to terms of a Lease Agreement, dated as of December 31, 2019 (as amended, the “**Grocery Lease**”), between the Developer and the Grocery Tenant. The term of the Grocery Lease commenced on November 1, 2020 and will terminate on October 31, 2040, subject to the option of the Grocery Tenant to extend the term for up to an additional 20 years consisting of four renewal periods of five years each.

The Scooter’s Coffee is operating in an approximately 495 square foot building constructed and operated by the tenant pursuant to a Ground Lease, dated as of July 2, 2019 (the “**Scooter’s Coffee Lease**”), between the Developer and Freedom Enterprises, LLC, as successor tenant. The term of the Scooter’s Coffee Lease commenced on January 20, 2020 and will terminate on January 31, 2035, subject to the tenant’s option to extend the term for up to an additional 15 years consisting of three renewal periods of five years each.

Each of the other businesses operating within the Redevelopment Area are operated on tracts within the Redevelopment Area that have been sold by the Developer to third parties for development and to either operate the related business or, in some cases, leasing to third parties operating business.

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The following map depicts the current development in the Redevelopment Area and the portions thereof available for future development.



Note: the Domino's Pizza is located in the multi-tenant building constructed on Lot 3B.

## Environmental Assessment

In connection with the acquisition of the real estate located within the Redevelopment Area, Cadence Commercial Real Estate, an affiliate of the Developer, obtained a Phase I Environmental Site Assessment Report from Environmental Works, Inc., Kansas City, Missouri. The Environmental Assessment noted a temporary concrete plant was located on the site, including a 1,000 gallon off-road diesel mobile aboveground storage tank, during 2000-2003 for use in fulfilling a Missouri Department of Transportation contract for development of U.S. Highway 169. The report did not find the temporary use of the site for concrete mixing to be a concern and, based on the findings of the assessment, no further actions were recommended.

## The Developer

The Developer is Smithville Development Associates, LLC, a Missouri limited liability company (the “**Developer**”). The Developer is affiliated with Cadence Commercial Real Estate (“**Cadence**”), an Overland Park, Kansas based developer and investor in retail properties, with a specific focus on grocery anchored neighborhood shopping centers. Cadence has built, acquired, and redeveloped over 500,000 square feet of grocery space and ancillary retail in the Kansas City MSA since its inception in 2016 including White Oak Marketplace (Price Chopper), Blue Springs North (Price Chopper), Arrowhead Shopping Center (Sun Fresh), Raintree Shopping Center (Price Chopper) Brookside Shopping Center (Price Chopper), Twin Trails Shopping Center (Carniceria El Torito Hispanic Grocer). Cadence has become one of the dominant players in grocery store and grocery anchored retail in the Kansas City MSA area as a result. Cadence also has a full service brokerage department which allows all needs of a development to be met in a streamlined fashion. Cadence oversees and manages a portfolio worth over \$100 Million in total commercial real estate assets.

## Manager

The Developer manages the Smithville Commons development and has the exclusive responsibility for the operation, maintenance, service and repair of the development.

## REVENUE STUDY

PGAV Planners, St. Louis, Missouri (the “**Consultant**”), has produced a report on the revenue generation potential of the Redevelopment Area based solely on the retail establishments currently operating a business and other retail space available to be leased within the Redevelopment Area (see the caption “**THE SMITHVILLE COMMONS PROJECT**” in this Private Placement Memorandum). Such report, entitled “Smithville Commons Project Bond Revenue Study” dated April 25, 2022 (the “**Revenue Study**”), is included in this Private Placement Memorandum as **Appendix D**. The Revenue Study includes a forecast of retail sales of the Smithville Commons Project and a forecast of real property tax collections for the Smithville Commons Project based on actual and projected retail activity within the Redevelopment Area.

**The Consultant has not been engaged to perform, and has not performed, since the date of its report, any update of the projections contained in the Revenue Study.**

The financial forecast contained in the Revenue Study, including the portion of the forecast relating to the ability of existing owners and businesses to generate Net Revenues within the Redevelopment Area, which are sufficient to meet the debt service requirements of the Bonds, is based on certain assumptions, estimates and opinions discussed in the Revenue Study. Certain of the Consultant’s assumptions, estimates and opinions may not materialize and unforeseen events and circumstances may occur subsequent to the date of the Revenue Study. Therefore, there will usually be differences between the forecasted and actual results and those differences may be material. There is no assurance that actual events will correspond with the Revenue Study or the assumptions, estimates or opinions on which they are based. The Revenue Study should be read in its entirety by prospective investors for a full understanding of the forecasted statements, assumptions and qualifications contained therein.

The Placement Agent has reviewed the information in this Private Placement Memorandum in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Placement Agent does not guarantee the accuracy or completeness of such information, including specifically but without limitation the information contained in the Revenue Study or any information excerpted therefrom. See the caption “**INVESTMENT CONSIDERATIONS AND RISKS**” in this Private Placement Memorandum and **Appendix D** to this Private Placement Memorandum.

The Revenue Study analyzes the revenue generation potential of the indicated retailers for the purpose of projecting the potential Net Revenues. Certain financial and statistical data included in this Private Placement Memorandum have been excerpted from the Revenue Study. The City, the District, the Developer and the Placement Agent make no representation or warranty, express or implied as to the accuracy or completeness of any financial, technical or statistical data or any estimates, projections, assumptions or expressions of opinion set forth in the Revenue Study, and there is no obligation to update such information after the delivery of the Bonds. The Consultant has consented to the inclusion of its report in this Private Placement Memorandum.

The Revenue Study is forward-looking and involves certain assumptions and judgments regarding future events. Although the Revenue Study is based on currently available information, it is also based on assumptions about the future state of the national and regional economy and the local real estate markets as well as assumptions about future actions by various parties, which cannot be assured or guaranteed. The Revenue Study is not a prediction or assurance that a certain level of performance will be achieved or that certain events will occur. The actual results will vary from the projections in the Revenue Study, and the variations may be material. Prospective purchasers of the Bonds should carefully review **Appendix D**, including particularly the assumptions underlying the forecasted Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues.



## PROJECTED ANNUAL DEBT SERVICE COVERAGE

The following table provides the projected annual debt service coverage ratio for the Bonds based on the projected Economic Activity Tax Revenues, Payments in Lieu of Taxes and CID Revenues described in the Revenue Study attached as **Appendix D** to this Private Placement Memorandum. The projected annual debt service coverage ratio set forth in the following table assumes the deposit of such revenues into the Revenue Fund and does not take into account the application of certain funds for the payment of certain fees and expenses and any rebate obligations related to the Bonds (see the caption “**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS**” in this Private Placement Memorandum). Potential investors are cautioned that the information in this section represents “forward-looking statements” as described under the caption “**INVESTMENT CONSIDERATIONS AND RISKS – Forward-Looking Statements**” in this Private Placement Memorandum.

<u>Year</u>	<u>Revenues<sup>(1)</sup></u>	<u>Annual Debt Service<sup>*, (2)</sup></u>	<u>Projected Annual Debt Service Coverage Ratio</u>
2022	\$1,051,952	\$697,648	1.51x
2023	1,092,293	724,640	1.51x
2024	1,127,048	751,000	1.50x
2025	1,187,072	786,415	1.51x
2026	1,223,397	810,615	1.51x
2027	1,260,167	837,130	1.51x
2028	1,280,799	852,405	1.50x
2029	1,308,768	871,750	1.50x
2030	1,330,234	885,010	1.50x
2031	1,359,260	903,920	1.50x
2032	1,381,594	916,350	1.51x
2033	1,411,719	937,485	1.51x
2034	1,434,955	951,955	1.51x
2035	1,466,220	972,755	1.51x
2036	1,490,395	991,555	1.50x
2037	1,522,845	1,013,355	1.50x
2038	1,547,996	1,030,300	1.50x
2039	2,611,976 <sup>(3)</sup>	1,209,880	2.16x

\* Preliminary; subject to change.

(1) See Table 8 in the Revenue Study.

(2) Assumes an average interest rate of 3.9386% on the Bonds, the maturity schedule set forth on the inside cover page of this Private Placement Memorandum and the mandatory sinking fund redemption requirements set forth under the caption “**THE BONDS – Redemption – Mandatory Sinking Fund Redemption**” in this Private Placement Memorandum.

(3) Includes funds on deposit in the Bond Proceeds Account of the Debt Service Reserve Fund in the amount of \$1,030,300\*.

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## INVESTMENT CONSIDERATION AND RISKS

The Bonds are speculative securities and an investment in the Bonds is subject to a number of significant risk factors. Prospective purchasers of the Bonds should make such investigations and obtain such additional information from the City, the Placement Agent, the Developer and others as they deem advisable in connection with their evaluation of the suitability of the Bonds for investment.

Before purchasing any of the Bonds, prospective investors and their professional advisors should carefully consider, among other things, the following risk factors, which are not meant to be an exhaustive listing of all risks associated with the purchase of the Bonds. The order of presentation of the risk factors does not necessarily reflect the order of their importance. Prospective purchasers of the Bonds should analyze carefully the information contained in this Private Placement Memorandum, including the appendices hereto, and additional information in the form of the complete documents summarized herein, copies of which are available as described in this Private Placement Memorandum.

This Private Placement Memorandum is furnished solely for consideration by prospective purchasers of the Bonds with the experience and financial expertise to understand and evaluate the significant degree of risk inherent in the investment. Purchase of the Bonds will constitute an investment subject to a significant degree of risk, including the risk of nonpayment of principal and interest.

### Limited Offering; Restrictions on Transfer

The Bonds have not been registered pursuant to the Securities Act of 1933, as amended (the “**Securities Act**”), in reliance upon exemption therefrom. Accordingly, the Bonds are being offered solely on a private placement basis to the original purchasers. Neither the Bonds nor any beneficial interest therein may be resold or transferred by any purchaser, except under the conditions described under the captions “**THE BONDS - Registration, Transfer and Exchange**” and “**NOTICE TO INVESTORS**” in this Private Placement Memorandum. The offering of the Bonds is being made to a limited number of knowledgeable and experienced investors who are not purchasing with a view to distributing the Bonds. Each purchaser must be an Approved Investor. *Each purchaser of the Bonds offered hereby will be deemed to have represented and warranted that (i) it is an Approved Investor, (ii) it is acquiring the Bonds for its own account or for the account of an Approved Investor, and not with a view to the further distribution thereof but expressly reserves the right to sell the Bonds and (iii) it will sell, transfer or otherwise dispose of the Bonds only in minimum denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof.* Moreover, the Bonds are a substantially illiquid investment and are being issued in minimum initial denominations of \$100,000 or integral multiples of \$5,000 in excess thereof. There may be a limited secondary market for the Bonds; therefore, Bonds should not be purchased by an investor unless the investor is able to hold such Bonds indefinitely.

The foregoing standards are only minimum requirements for prospective purchasers of the Bonds. The satisfaction of such standards does not necessarily mean that the Bonds are a suitable investment for a prospective investor. Accordingly, each prospective investor is urged to consult with its own legal, tax and financial advisors to determine whether an investment in the Bonds is appropriate in light of its individual legal, tax and financial situation.

### Limited Sources of Revenue for Debt Service

The Bonds are limited obligations of the City, payable solely and only from the Pledged Revenues and are secured by a pledge of the same to the Trustee in favor of the Bondowners, as provided in the Indenture. The Bond proceeds will be used to pay such Redevelopment Project Costs and to reimburse the Developer for certain Redevelopment Project Costs already expended by the Developer. No assurance can be given that Net

Revenues will be realized in amounts sufficient to pay the principal of and interest on the Bonds as such obligations become due. **The Bonds and the interest thereon are not a debt or general obligation of the City, the District or the State and do not constitute an indebtedness of the City, the District or the State within the meaning of any constitutional or statutory debt limitation or restriction.**

Because the TIF Act provides that 23 years is the maximum amount of time for the retirement of obligations incurred to finance redevelopment project costs, the obligation of the City to transfer Economic Activity Tax Revenues and Payments in Lieu of Taxes to the Trustee for the repayment of the Bonds terminates on October 2, 2040 whether or not the principal amount thereof or interest thereon has been paid in full.

**In addition, the CID Revenues allocable to pay the Debt Service Requirements for the Bonds shall not exceed 9.2% of the Debt Service Requirements for the Bonds for each calendar year (or such other percentage as provided in writing by the City to the Trustee permitted by law based on amounts paid from the Project Fund and eligible for payment from the CID Revenues).**

### **Factors Affecting Economic Activity Tax Revenues and CID Revenues**

Economic Activity Taxes and CID Revenues are contingent and may be adversely affected by a variety of factors, including without limitation economic conditions within the Redevelopment Area and the surrounding trade area and competition from other retail businesses, rental rates and occupancy rates in private developments in the Redevelopment Area, suitability of the Redevelopment Area for the local market, local unemployment, availability of transportation, neighborhood changes, online shopping, e-commerce, crime levels in the area, vandalism and rising operating costs, interruption or termination of operation of businesses in the Redevelopment Area as a result of fire, natural disaster, strikes, pandemics or similar events, among many other factors. As a result of all of the above factors, it is difficult to predict with certainty the expected amount of Economic Activity Taxes and CID Revenues which will be available for appropriation to the repayment of the Bonds. The retail sales industry is highly competitive. Existing retail businesses outside of the Redevelopment Area and the future development of retail businesses outside of the Redevelopment Area, which are competitive with retail businesses in the Redevelopment Area, may exist or may be developed after the date of this Private Placement Memorandum.

In addition to the foregoing, the partial or complete destruction of business in the Redevelopment Area, as a result of fire, natural disaster, man-made disasters or similar casualty event or the temporary or permanent closing of one or more of such retail establishments due to strikes or failure of the business, would adversely affect the Economic Activity Taxes and the CID Revenues and thereby adversely affect the revenues available to pay the Bonds and the interest thereon. Any insurance maintained by the owner of or the tenants in such areas for such casualty or business interruption is not likely to include coverage for sales taxes that otherwise would be generated by the establishment.

Products that are eligible for the federal food stamp program and pharmaceutical products that are purchased cannot, by law, be subject to state or local sales taxes. To the extent that products are sold to shoppers who purchase goods with food stamps or purchase pharmaceutical items, the expected amount of Economic Activity Tax Revenues and CID Revenues that will be available for appropriation for payment of the principal of and interest on the Bonds would be reduced.

### **Exempt Properties**

Missouri law exempts certain uses and property owners from the payment of real property taxes, including Payments in Lieu of Taxes, or the collection of sales taxes. There is no obligation on the part of the Developer to lease any space to entities that are not exempt from such taxes. If the Developer leases space to entities that are exempt from paying such taxes, the revenues may not materialize at the expected level.

## **Coronavirus and Other Pandemics**

Since December 2019, a novel strain of coronavirus (which leads to the disease known as “**COVID-19**”), has spread throughout the world and has been characterized by the World Health Organization as a pandemic. The impact of the COVID-19 pandemic on the U.S. economy has been and may continue to be broad based and to negatively impact national, state and local economies.

In response to the pandemic, the President of the United States and the Governor of the State made various declarations of emergency. On August 27, 2021, the Governor of the State terminated certain prior executive orders relating to the pandemic and signed Executive Order 21-09, which represents a more targeted state of emergency declaration that acknowledges the continued needs of Missouri’s health care system. Cities and counties have the ability, and continue, to impose local public health orders restricting economic activities within the State.

There are no current COVID-19-related public health orders in the City or the County relating to masks or capacity limitations. The County’s health department maintains a website where current information regarding COVID-19 in the County and the City is available.

According to the City’s administration, to date, COVID-19 has not had a material adverse impact on the City’s revenues. Nevertheless, the long-term impact of the COVID-19 pandemic (including any future variants thereof) or any future pandemic on the Economic Activity Tax Revenues or CID Revenues is difficult to determine at this point. The City cannot predict (a) the duration or extent of the COVID-19 (including any future variants thereof) or other pandemic; (b) the duration or expansion of any related business closings, public health orders, regulations and legislation; (c) what effect the COVID-19 (including any future variants thereof) pandemic or any other pandemic will continue to have on global, national, and local economies; (d) whether recent job losses resulting from COVID-19-related business closures or any future business closures will be temporary or permanent and what effect such losses will have on consumer confidence; (e) the impact the COVID-19 (including any future variants thereof) or any future pandemic will have on the willingness of the public to shop or dine in the retail operations located in the Redevelopment Area; or (f) the interest of businesses to sign contracts to lease or purchase property, or locate operations, within the Redevelopment Area. The generation of Economic Activity Tax Revenues and CID Revenues is dependent upon such activities. Developments regarding COVID-19 continue to occur on a daily basis and the extent to which COVID-19 will impact the Economic Activity Tax Revenues and CID Revenues in the future is highly uncertain and cannot be predicted. Neither the City nor the Placement Agent can predict the effect the spread of COVID-19 (including any future variants thereof) or other pandemic will have on Economic Activity Tax Revenues or CID Revenues.

## **No Pledge or Mortgage of the Redevelopment Project**

Payment of the principal of and interest on the Bonds is not secured by any deed of trust, mortgage or other lien on property within the Redevelopment Area or any portion thereof; however, under the TIF Act, PILOTs that are due and owing constitute a lien against the real estate in Redevelopment Area from which they are derived. Upon a default in the payment of any Payments in Lieu of Taxes, the lien for unpaid Payments in Lieu of Taxes may be enforced by the County.

No portion of the Redevelopment Project itself nor any revenues, assets, leases, lease payment, agreements or rights of such Redevelopment Project are pledged to the Trustee under the Indenture. Therefore, in the event of a default, the Trustee will not have the ability to sell the Redevelopment Project or any portion thereof to retire the Bonds nor look to the Developer or any principal or affiliate thereof or to any other asset or collateral to secure repayment of the Bonds. The Bonds are not the obligation of the Developer or its members, shareholders or affiliates. The Bonds are payable solely from the Pledged Revenues (and the pledge of the Trust Estate under the Indenture).

## **Revenue Study and Financial Projections**

The forecasted annual Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues contained in the Revenue Study and included or reflected in this Private Placement Memorandum are based on various assumptions concerning facts and events over which the City, the Developer or the Placement Agent have no control. No representation or warranty is or can be made about the amount or timing of any future income, loss, occupancy, valuation, increased assessment or revenues, or that actual results will be consistent with the Revenue Study or with the forecasts contained therein. The information in the Revenue Study is based on various assumptions, estimates and opinions. There is no assurance that actual events will correspond with the projections or the assumptions, estimates and opinions on which they are based.

The Revenue Study is forward-looking and involves certain assumptions and judgments regarding future events. Although the Revenue Study is based on currently available information, it is also based on assumptions about the future state of the national and regional economy and the local real estate markets as well as assumptions about future actions by various parties, which cannot be assured or guaranteed. The Revenue Study is not a prediction or assurance that a certain level of performance will be achieved or that certain events will occur. The actual results will vary from the Revenue Study, and the variations may be material. Prospective Bondowners should read the Revenue Study carefully and form their own opinions about the validity and reasonableness of such assumptions. See attached **Appendix D** and the caption “**REVENUE STUDY**” in this Private Placement Memorandum.

## **Risk of Non-Appropriation**

Economic Activity Tax Revenues. The application of Economic Activity Tax Revenues to the payment of the principal of and interest on the Bonds is subject to annual appropriation by the City. Although the City has covenanted in the Financing Agreement and in the Indenture that the appropriation of the Economic Activity Tax Revenues to the Special Allocation Fund will be included in the budget submitted to the Board of Aldermen for each fiscal year, there can be no assurance that such appropriation will be made by the Board of Aldermen, and the Board of Aldermen is not legally obligated to make any such appropriation.

CID Revenues. The application of CID Revenues to the payment of the principal of and interest on the Bonds is subject to annual appropriation by the District. Although the District has covenanted in the Financing Agreement that the appropriation of the CID Revenues will be included in the budget submitted to the board of directors for each fiscal year, there can be no assurance that such appropriation will be made by the board of directors, and the board of directors is not legally obligated to make any such appropriation.

## **Reduction in Assessed Valuation of the Property**

There can be no assurance that the assessed valuation of the property within the Redevelopment Area subject to Payments in Lieu of Taxes will equal or exceed the forecasted assessed value. Even if the assessed value is initially determined as forecasted, there can be no assurance that such assessed value will be maintained throughout the term of the Bonds. If at any time during the term of the Bonds the actual assessed value is less than forecasted, the amount of Payments in Lieu of Taxes may be less than forecasted and there may not be sufficient Payments in Lieu of Taxes to meet the obligations to the Bondowners.

Even if the County Assessor’s determination of the assessed valuation of property within the Redevelopment Area subject to Payments in Lieu of Taxes equals or exceeds the forecasted assessed value, the owners of such property have the right to appeal such determination. If any such appeal is not resolved prior to the time when real estate taxes and Payments in Lieu of Taxes are due, the taxpayer may pay the taxes and Payments in Lieu of Taxes in protest. In such event, that portion of taxes and Payments in Lieu of Taxes being protested will not be available for deposit into the Special Allocation Fund until the appeal has been concluded. If the appeal is resolved in favor of the taxpayer, the assessed valuation of property within the Redevelopment

Area subject to Payments in Lieu of Taxes will be reduced, in which event the Payments in Lieu of Taxes may be less than forecasted.

### **Environmental Conditions**

No assurance can be given that environmental conditions do not now or will not in the future exist at the Redevelopment Area or any development which could become the subject of enforcement actions by governmental agencies. Additionally, there can be no assurance that future environmental conditions, if any, would not adversely impact the willingness of the public to frequent the Redevelopment Area or any retail establishments. The amount of Pledged Revenues is largely dependent upon the taxable sales occurring within the Redevelopment Area.

### **Amendment to the TIF Act**

It is not possible to predict whether additional amendments to the TIF Act will be proposed in future Missouri legislative sessions, the nature of any such future proposed amendments, or whether such future proposed amendments will become law. Future amendments to the TIF Act may negatively affect the amounts of Payments in Lieu of Taxes and Economic Activity Tax Revenues available to pay principal and interest on the Bonds.

### **Accurate Calculation of Tax Increment Revenues**

Retailers within the Redevelopment Area may not accurately collect or accurately report all sales taxes. No assurances can be provided that the calculations of Net Revenues from the Redevelopment Area will be accurately computed.

### **Reliance on Developer, Tenants and Property Owners and Ongoing Financial Feasibility of the Redevelopment Project**

The physical development of the Redevelopment Area required by the Redevelopment Agreement is substantially complete. To receive timely payment of principal and interest on the Bonds, Owners must rely solely on the financial ability of the Developer or other property owners, as well as subsequent owner(s) within the Redevelopment Area and current and future tenants within the Redevelopment Area, to pay the Payments in Lieu of Taxes. No representation is made herein as to such entities' financial ability to make the Payments in Lieu of Taxes when due.

The Developer manages the development of the Redevelopment Area. The Developer is not obligated under the Redevelopment Agreement to lease space within the Redevelopment Area to businesses that make retail sales. The Owners will be dependent on the Developer and any future manager or owner of the Redevelopment Area to assure that sufficient CID Revenues and Economic Activity Taxes are generated for payment of the Bonds.

There is no obligation on the part of any retailer to remain open for business. Thus, a retailer may cease operations, but continue to own or pay rent to the property owner. Under such circumstances, no CID Revenues or Economic Activity Taxes would be generated by sales from such retailer.

### **Tax Increment Financing and Community Improvement District Litigation – In General**

From time to time cases are filed in a Missouri court challenging certain aspects of the TIF Act or the CID Act. Circuit courts in Missouri are trial courts and decisions in those courts are not binding on other Missouri courts. Circuit court decisions, whether favorable or unfavorable with respect to the constitutionality and application of the TIF Act or the CID Act, may be appealed to a Missouri Court of Appeals, and, ultimately, the Missouri Supreme Court. If the plaintiffs are successful in one or more of the currently pending cases, the

court's decision may interpret the requirements of the TIF Act or the CID Act in a manner adverse to the establishment of tax increment financing for the Redevelopment Area or the CID Sales Tax. It is not possible to predict whether an adverse holding in any current or future litigation would prompt a challenge to the adoption of tax increment financing in Redevelopment Area or the CID Sales Tax. If current or future litigation challenging all or any part of the TIF Act or the CID Act were to be applied to the adoption of tax increment financing in Redevelopment Area or the CID Sales Tax, the Economic Activity Tax Revenues or the CID Revenues may not be available to pay principal of and interest on the Bonds, the enforceability of the Indenture could be adversely affected. None of the City or any other party involved in the issuance and sale of the Bonds can predict or guarantee the outcome of any currently pending or future litigation challenging the constitutionality or the application of the TIF Act, the CID Act or the application by a court of a potential holding in any case to other tax increment projects or community improvement districts.

### **Changes in State and Local Tax Laws**

The Revenue Study assumes no substantial change in the basis of extending, levying and collecting real property taxes, Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues. Any change in the current system of collection and distribution of real property taxes, Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues in the County or the City, including without limitation the reduction or elimination of any such tax, judicial action concerning any such tax or voter initiative, referendum or action with respect to any such tax, could adversely affect the availability of revenues to pay the principal of and interest on the Bonds. There can be no assurance that the current system of collection and distribution of the real property taxes, Payments in Lieu of Taxes, Economic Activity Tax Revenues or CID Revenues in the County or the City will not be changed by any competent authority having jurisdiction to do so, including without limitation the State, the County, the City, school districts, the courts or the voters, and none of the documents relating to the issuance of the Bonds or the establishment of the Redevelopment Plan or the CID limits the ability of the City to make any such changes with respect to City taxes and levies.

In addition, if the assessed valuation in the City rises to the extent that a rollback in tax rates is required, and if the increase in assessed valuation within the Redevelopment Aea is not as extensive as the increase within the City generally, the rollback in tax rates may result in a reduction in Payments in Lieu of Taxes. See **“TAX INCREMENT FINANCING IN MISSOURI – Assessments and Collections of Ad Valorem Taxes – Reassessment and Tax Rate Rollback”** in this Private Placement Memorandum.

### **Change in State and Local Tax Rates**

Any Taxing District in the Redevelopment Area could lower its tax rate, which would have the effect of reducing the Payments in Lieu of Taxes or sales taxes derived from the Redevelopment Area. Such a reduction in rates could be as a result of a desire of the governing body of the Taxing District to lower tax rates, the retirement of general obligation bonds of the Taxing District, taxpayer initiative, or in response to state or local litigation or legislation affecting the broader taxing structure within the Taxing District, such as litigation or legislation affecting the primary reliance on ad valorem property taxes to fund elementary and secondary education in the State.

Pursuant to the TIF Act, if the voters in a Taxing District vote to approve an increase in such Taxing District's levy rate for ad valorem tax on real property, any additional revenues generated within an existing redevelopment project area that are directly attributable to the newly voter-approved incremental increase in such Taxing District's levy rate shall not be considered Payments in Lieu of Taxes subject to deposit into a special allocation fund without the consent of such Taxing District. Revenues will be considered directly attributable to the newly voter-approved incremental increase to the extent that they are generated from the difference between the Taxing District's actual levy rate currently imposed and the maximum voter approved levy rate at the time that the redevelopment project was adopted. If the voters in a Taxing District vote to approve an increase in such Taxing District's sales tax or use tax, other than the renewal of an expiring sales or use tax, any additional revenues generated within an existing redevelopment project area that are directly

attributable to the newly voter-approved incremental increase in such Taxing District's levy rate shall not be considered economic activity taxes subject to deposit into a special allocation fund without the consent of such Taxing District. No Taxing District, including the City, is under any obligation to consent to revenues from a future voter-approved tax being subjected to tax increment financing and deposited in the City's special allocation fund.

### **Debt Service Reserve Fund**

At the time of issuance of the Bonds, the Bond Proceeds Account Debt Service Reserve Fund will be funded in an amount equal to \$1,030,300.00\*. See "**SECURITY AND SOURCES OF PAYMENT FOR THE BONDS — Indenture Funds And Accounts**" in this Private Placement Memorandum. The Business Interruption Account of the Debt Service Reserve Funds is expected to be funded from funds transferred from the Revenue Fund until the amount on deposit therein is equal to \$1,030,300\*. There can be no assurance that the amounts on deposit in the Debt Service Reserve Fund will be available if needed for payment of the Bonds in the full amount of the Debt Service Reserve Requirement because (1) of fluctuations in the market value of the securities deposited therein and/or (2) if funds are transferred to the Debt Service Fund, sufficient revenues may not be available in the Revenue Fund to replenish the Debt Service Reserve Fund to the Debt Service Reserve Requirement.

### **Redemption of Bonds**

The Bonds are subject to redemption, in whole or in part, prior to maturity. If the Bonds are redeemed prior to their maturity, the Owners thereof will not receive the rate of interest indicated for the term of their initial investment, and, if so redeemed, the Owners may not be able to reinvest the proceeds thereof at comparable rates.

Purchasers of Bonds at a price in excess of their principal amount should consider the fact that the Bonds are subject to redemption at a redemption price equal to their principal amount plus accrued interest under certain circumstances. See the caption "**THE BONDS – Redemption**" in this Private Placement Memorandum.

### **Defeasance Risk**

When any or all of the Bonds or the interest payments thereon have been paid and discharged, then the requirements contained in the Indenture and the pledge of revenues made thereunder and all other rights granted thereby shall terminate with respect to the Bonds so paid and discharged. Bonds shall be deemed to be paid within the meaning of the Indenture when payment of the principal on such Bonds, plus premium, if any, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in the Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms of the Indenture, or (2) provision therefor has been made by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and the Trustee shall have received an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that such deposit of interest on any Bonds will not result in the interest on any Bonds then Outstanding and exempt from taxation for federal income tax purposes becoming subject to federal income taxes then in effect and that all conditions precedent to the satisfaction of the Indenture have been met. Any money and non-callable Government Securities that at any time shall be deposited with the Trustee by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or the interest payments thereon, shall be assigned, transferred and set over to the Trustee in trust for the respective Owners of the Bonds, and such moneys shall be irrevocably appropriated to the payment and discharge thereof. Non-callable

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\* Preliminary; subject to change.



Government Securities include, in addition to cash and obligations pre-refunded with cash, bonds, notes, certificates of indebtedness, treasury bills and other securities constituting direct obligations of, or obligations the principal of and interest on which are fully and unconditionally guaranteed as to full and timely payment by, the United States of America. Historically, such United States obligations have been rated in the highest rating category by the rating agencies. There is no legal requirement in the Indenture that Government Securities consisting of such United States obligations be or remain rated in the highest rating category by any rating agency. Prices of municipal securities in the secondary market are subject to adjustment upward and downward in response to changes in the credit markets and a change or downgrade in the rating of Government Securities could affect the price of Bonds defeased with such Government Securities.

### **Determination of Taxability**

The Bonds are not subject to redemption, nor are the interest rates on the Bonds subject to adjustment, in the event of a determination by the Internal Revenue Service (the “**Service**”) or a court of competent jurisdiction that the interest paid or to be paid on any Bond is or was includible in the gross income of the Owner of a Bond for federal income tax purposes. Such determination may, however, result in a breach of the City’s tax covenants set forth in the Indenture which may constitute an event of default under the Indenture. It may be that Owners would continue to hold their Bonds, receiving principal and interest as and when due, but would be required to include such interest payments in gross income for federal income tax purposes. Likewise, the Indenture does not provide for the redemption of the Bonds or the payment of any additional interest or pen

### **Future Changes in the Law**

There can be no assurance that the Missouri state legislature will not enact legislation that will amend the applicable state tax increment financing laws, state community improvement district laws or other laws or the Constitution of the State of Missouri resulting in a reduction of tax revenues, and consequently, an adverse effect on the revenues otherwise available to pay the debt service on any of the Bonds. Various state and federal laws, regulations and constitutional provisions apply to the obligations created by the Bonds. There is no assurance that there will not be any change in, interpretation of, or addition to such applicable laws, provisions and regulations which would have a material effect, either directly or indirectly, on the City or the taxing authority of the City.

### **Limitations on Remedies**

The remedies available to the Owners upon a default under the Indenture are in many respects dependent upon judicial action, which is often subject to discretion and delay under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the United States Code. The various legal opinions to be delivered concurrently with delivery of the Bonds will be qualified as to enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally, now or hereafter in effect; to usual equity principles which shall limit the specific enforcement under laws of the State as to certain remedies; to the exercise by the United States of America of the powers delegated to it by the United States Constitution; and to the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the State and its governmental bodies, in the interest of serving an important public purpose.

### **Lack of Rating and Market for the Bonds**

The Bonds have not received a credit rating by any rating agency. The absence of a rating could affect the ability of owners of the Bonds to sell their Bonds or the price at which their Bonds can be sold. No assurance can be given that a secondary market for the Bonds will develop following the completion of the offering of the Bonds. The Bonds are not readily liquid and no person should invest in the Bonds with funds such person may need to convert readily into cash. Bondowners should be prepared to hold their Bonds to the stated

maturity date. The Placement Agent will not be obligated to repurchase or place any of the Bonds, and no representation is made concerning the existence of any secondary market for the Bonds. No assurance can be given that any secondary market will develop following the completion of the offering of the Bonds and no assurance can be given that the initial offering price for the Bonds will continue for any period of time.

### **Risk of Audit**

The Internal Revenue Service has established an ongoing program to audit tax-exempt obligations to determine whether interest on such obligations should be included in gross income for federal income tax purposes. No assurance can be given that the Internal Revenue Service will not commence an audit of the Bonds. Owners of the Bonds are advised that, if an audit of the Bonds were commenced, in accordance with its current published procedures, the Internal Revenue Service would likely treat the City as the taxpayer, and the owners of the Bonds may not have a right to participate in such audit. Public awareness of any audit could adversely affect the market value and liquidity of the Bonds during the pendency of the audit, regardless of the ultimate outcome of the audit.

### **Cybersecurity Risks**

The City relies on its information systems to provide security for processing, transmission and storage of confidential personal, health-related, credit and other information. It is possible that the City's security measures will not prevent improper or unauthorized access or disclosure of personally identifiable information resulting from cyber-attacks. Security breaches, including electronic break-ins, computer viruses, attacks by hackers and similar breaches can create disruptions or shutdowns of the City and the services it provides, or the unauthorized disclosure of confidential personal, health-related, credit and other information. Any failure to maintain proper functionality and security of information systems could interrupt the City's operations, delay receipt of revenues (including Payments in Lieu of Taxes, Economic Activity Tax Revenues and CID Revenues), subject it to liability claims or regulatory penalties. The City has purchased an insurance policy to help mitigate its risk of loss in the event of a cyber-security event.

### **Amendments to Financing Documents**

Certain amendments to the Indenture and the Financing Agreement may be made without notice to or the consent of the Owners of the Bonds. Certain other amendments to the Indenture and the Financing Agreement may be made with the consent of the Owners of not less than a majority in principal amount of the Bonds then Outstanding affected by such supplemental indentures and certain other amendments may be made only with the consent of the Owners of 100% of the Bonds then outstanding. Such amendments may adversely affect the security of the Owners of the Bonds. In addition to the foregoing, in some jurisdictions outside the State, there are a variety of trust instruction procedure ("TIP") statutes, which generally allow judicially supervised remedies for trust estates of trustees that have a nexus, such as an office of the Trustee, with such jurisdiction. Under such TIP statutes, such jurisdictions may allow or order the Trustee to amend the documents relating to the Bonds, including the Indenture, in contravention of the manner provided for in such documents, including without limitation allowing the Trustee to disregard provisions requiring the consent of the Owners of the Bonds prior to certain amendments of these documents.

### **Forward-Looking Statements**

Certain statements included in or incorporated by reference in this Private Placement Memorandum that are not purely historical are "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the United States Securities Act of 1933, as amended, and reflect the Developer's current expectations, hopes, intentions or strategies regarding the future. Such statements may be identifiable by the terminology used such as "plan," "expect," "estimate," "budget," "intend" or other similar words. Such

forward-looking statements include, among others, certain statements under this section captioned “INVESTMENT CONSIDERATIONS AND RISKS.”

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS, INCLUDED IN SUCH RISKS AND UNCERTAINTIES ARE (i) THOSE RELATING TO THE POSSIBLE INVALIDITY OF THE UNDERLYING ASSUMPTIONS AND ESTIMATES, (ii) POSSIBLE CHANGES OR DEVELOPMENTS IN SOCIAL ECONOMIC, BUSINESS, INDUSTRY, MARKET, LEGAL AND REGULATORY CIRCUMSTANCES, AND (iii) CONDITIONS AND ACTIONS TAKEN OR OMITTED TO BE TAKEN BY THIRD PARTIES, INCLUDING CUSTOMERS, SUPPLIERS, BUSINESS PARTNERS AND COMPETITORS, AND LEGISLATIVE, JUDICIAL AND OTHER GOVERNMENTAL AUTHORITIES AND OFFICIALS. ASSUMPTIONS RELATED TO THE FOREGOING INVOLVE JUDGMENTS WITH RESPECT TO, AMONG OTHER THINGS, FUTURE ECONOMIC, COMPETITIVE, AND MARKET CONDITIONS AND FUTURE BUSINESS DECISIONS, ALL OF WHICH ARE DIFFICULT OR IMPOSSIBLE TO PREDICT ACCURATELY. FOR THESE REASONS, THERE CAN BE NO ASSURANCE THAT THE FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM WILL PROVE TO BE ACCURATE.

UNDUE RELIANCE SHOULD NOT BE PLACED ON FORWARD-LOOKING STATEMENTS. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS PRIVATE PLACEMENT MEMORANDUM ARE BASED ON INFORMATION AVAILABLE TO THE CITY AND THE DEVELOPER ON THE DATE HEREOF, AND NEITHER THE CITY NOR THE DEVELOPER ASSUMES ANY OBLIGATION TO UPDATE ANY SUCH FORWARD-LOOKING STATEMENTS IF OR WHEN THEIR EXPECTATIONS OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR OR FAIL TO OCCUR.

#### **In Summary**

*The foregoing is intended only as a summary of certain risk factors attendant to an investment in the Bonds. An investment in the Bonds involves a substantial element of risk. In order to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Private Placement Memorandum (including the Appendices to this Private Placement Memorandum) in order to make a judgment as to whether the Bonds are an appropriate investment.*

#### **ABSENCE OF LITIGATION**

##### **The City**

There is no litigation, controversy or other proceeding of any kind pending, or to the City’s knowledge, threatened in which any matter is raised or may be raised questioning, disputing, challenging or affecting in any way the legal organization of the City, the right or title of any of the City’s officers to their respective offices, the Financing Documents, the legality of any official act taken in connection with the issuance of the Bonds or the legality of any of the proceedings had or documents entered into in connection with the authorization, issuance or sale of the Bonds.

## **The Developer**

There is no litigation, proceedings or investigation pending or, to the knowledge of the corporate officers of the Developer, threatened against the Developer, except litigation involving claims the probable recoveries in which and the estimated costs and expenses of defense of which, (i) will be entirely within the applicable insurance policy limits (subject to applicable deductibles) of the Developer, or (ii) if adversely determined, will not materially and adversely affect the ability of the Developer to perform its obligations under the documents relating to the Bonds and the Redevelopment Project.

In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the corporate officers of the Developer, threatened against the Developer seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of the Financing Documents, the Bonds or any other required documents by the City, or any other required documents by the Developer, or which would in any manner challenge or adversely affect the corporate existence or powers of the Developer to enter into and carry out the transactions described in or contemplated by or the execution, delivery, validity or performance by the Developer of the terms and provisions of the Redevelopment Agreement or any other documents relating to the issuance of the Bonds or relating to the development of the Redevelopment Project to which it is a party.

## **The District**

There is no litigation, controversy or other proceeding of any kind pending, or to the District's knowledge, threatened in which any matter is raised or may be raised questioning, disputing, challenging or affecting in any way the legal organization of the District, the right or title of any of the District's officers to their respective offices, the legality of any official act taken in connection with the imposition of the CID Sales Tax or the legality of any of the proceedings had or documents entered into in connection with the authorization, issuance or sale of the Financing Document or the Bonds.

## **MUNICIPAL ADVISOR**

Piper Sandler & Co. (the "**Municipal Advisor**"), is a registered municipal advisor with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. The Municipal Advisor is employed by the City to render certain professional services, including advising the City on a plan of financing relating to the Bonds. The Municipal Advisor is not obligated to verify, and has not reviewed or undertaken an independent verification of, the accuracy, completeness or fairness of the information contained in this Official Statement.

## **LEGAL MATTERS**

Legal matters incident to the authorization, issuance and sale of the Bonds by the Issuer are subject to the approving legal opinion of Gilmore & Bell, P.C., Kansas City, Missouri, Bond Counsel, whose approving opinion will be delivered with the Bonds. A copy of the proposed form of such opinion is attached as **Appendix B** to this Private Placement Memorandum. Certain legal matters will be passed upon for (i) the Developer and the District by Polsinelli PC, Kansas City, Missouri, and (ii) the Placement Agent by FisherBroyles, LLP.

The legal opinions to be delivered concurrently with the delivery of the Bonds express the professional judgment of the attorneys rendering the opinions as to the legal issues explicitly addressed therein. By rendering a legal opinion, the opinion giver does not become an insurer or guarantor of that expression of professional judgment, of the transactions opined upon or of the future performance of parties to such transaction, and the rendering of an opinion does not guarantee the outcome of any legal dispute that may arise out of the transaction.

## TAX MATTERS

*The following is a summary of the material federal and State of Missouri income tax consequences of holding and disposing of the Bonds and assumed that all of the Bonds are issued on a tax-exempt basis. This summary is based upon laws, regulations, rulings and judicial decisions now in effect, all of which are subject to change (possibly on a retroactive basis). This summary does not discuss all aspects of federal income taxation that may be relevant to investors in light of their personal investment circumstances or describe the tax consequences to certain types of owners subject to special treatment under the federal income tax laws (for example, dealers in securities or other persons who do not hold the Bonds as a capital asset, tax-exempt organizations, individual retirement accounts and other tax deferred accounts, and foreign taxpayers), and, except for the income tax laws of the State of Missouri, does not discuss the consequences to an owner under any state, local or foreign tax laws. The summary does not deal with the tax treatment of persons who purchase the Bonds in the secondary market. Prospective investors are advised to consult their own tax advisors regarding federal, state, local and other tax considerations of holding and disposing of the Bonds.*

### Opinion of Bond Counsel

In the opinion of Gilmore & Bell, P.C., Bond Counsel, under the law existing as of the issue date of the Bonds:

Federal and Missouri Tax Exemption. The interest on the Bonds (including any original issuance discount properly allocable to an owner thereof) is excludable from gross income for federal income tax purposes and is exempt from Missouri income taxation by the State of Missouri.

Alternative Minimum Tax. The interest on the Bonds is not an item of tax preference for purposes of computing the federal alternative minimum tax.

Bank Qualification. The Bonds have not been designated as “qualified tax-exempt obligations” for purposes of Section 265(b) of the Code.

Bond Counsel’s opinions are provided as of the date of the original issue of the Bonds, subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excludable from gross income for federal income tax purposes. The City has covenanted to comply with all such requirements. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. Bond Counsel is expressing no opinion regarding other federal, state or local tax consequences arising with respect to the Bonds but has reviewed the discussion under the heading “**TAX MATTERS.**”

### Other Tax Consequences

Original Issue Discount. For federal income tax purposes, original issue discount is the excess of the stated redemption price at maturity of a Bond over its issue price. The stated redemption price at maturity of a Bond is the sum of all payments on the Bond other than “qualified stated interest” (*i.e.*, interest unconditionally payable at least annually at a single fixed rate). The issue price of a Bond is generally the first price at which a substantial amount of the Bonds of that maturity have been sold to the public. Under Section 1288 of the Code, original issue discount on tax-exempt bonds accrues on a compound basis. The amount of original issue discount that accrues to an owner of a Bond during any accrual period generally equals (1) the issue price of that Bond, plus the amount of original issue discount accrued in all prior accrual periods, multiplied by (2) the yield to maturity on that Bond (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), minus (3) any interest payable on that Bond during that accrual period. The amount of original issue discount accrued in a particular accrual period will be considered to be received ratably on each day of the accrual period, will be excludable from gross income for federal income tax purposes, and will increase the owner’s tax basis in that Bond. Prospective investors should consult their own tax advisors concerning the calculation and accrual of original issue discount.

Original Issue Premium. For federal income tax purposes, premium is the excess of the issue price of a Bond over its stated redemption price at maturity. The stated redemption price at maturity of a Bond is the sum of all payments on the Bond other than “qualified stated interest” (i.e., interest unconditionally payable at least annually at a single fixed rate). The issue price of a Bond is generally the first price at which a substantial amount of the Bonds of that maturity have been sold to the public. Under Section 171 of the Code, premium on tax-exempt bonds amortizes over the term of the Bond using constant yield principles, based on the purchaser’s yield to maturity. As premium is amortized, the owner’s basis in the Bond and the amount of tax-exempt interest received will be reduced by the amount of amortizable premium properly allocable to the owner, which will result in an increase in the gain (or decrease in the loss) to be recognized for federal income tax purposes on sale or disposition of the Bond prior to its maturity. Even though the owner’s basis is reduced, no federal income tax deduction is allowed. Prospective investors should consult their own tax advisors concerning the calculation and accrual of bond premium.

Sale, Exchange or Retirement of Bonds. Upon the sale, exchange or retirement (including redemption) of a Bond, an owner of the Bond generally will recognize gain or loss in an amount equal to the difference between the amount of cash and the fair market value of any property received on the sale, exchange or retirement of the Bond (other than in respect of accrued and unpaid interest) and such owner’s adjusted tax basis in the Bond. To the extent a Bond is held as a capital asset, such gain or loss will be capital gain or loss and will be long-term capital gain or loss if the Bond has been held for more than 12 months at the time of sale, exchange or retirement.

Reporting Requirements. In general, information reporting requirements will apply to certain payments of principal, interest and premium paid on the Bonds, and to the proceeds paid on the sale of the Bonds, other than certain exempt recipients (such as corporations and foreign entities). A backup withholding tax will apply to such payments if the owner fails to provide a taxpayer identification number or certification of foreign or other exempt status or fails to report in full dividend and interest income. The amount of any backup withholding from a payment to an owner will be allowed as a credit against the owner’s federal income tax liability.

Collateral Federal Income Tax Consequences. Prospective purchasers of the Bonds should be aware that ownership of the Bonds may result in collateral federal income tax consequences to certain taxpayers, including, without limitation, financial institutions, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, certain S corporations with “excess net passive income,” foreign corporations subject to the branch profits tax, life insurance companies, and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry or have paid or incurred certain expenses allocable to the Bonds. Bond Counsel expresses no opinion regarding these tax consequences. Purchasers of Bonds should consult their tax advisors as to the applicability of these tax consequences and other federal income tax consequences of the purchase, ownership and disposition of the Bonds, including the possible application of state, local, foreign and other tax laws.

## CONTINUING DISCLOSURE

The City and the District have agreed in a Continuing Disclosure Certificate to provide certain financial information, operating data, and notices of certain events to the Municipal Securities Rulemaking Board (the “**MSRB**”), in compliance with Rule 15c2-12 (the “**Rule**”) promulgated by the Securities and Exchange Commission. The form of the proposed Continuing Disclosure Certificate is included in **Appendix C** to this Private Placement Memorandum.

A failure by the City or the CID to comply with the requirements of the Continuing Disclosure Certificate will not constitute an Event of Default under the Indenture (although Bondowners will have any available remedy at law or in equity).

The City has engaged in undertakings similar to the Continuing Disclosure Certificate with respect to other obligations previously issued by the City to provide to the MSRB the audited financial statements of the City and updates of certain operating data of the City. During the previous five years, the City has not failed to comply, in all material respects, with any previous undertakings it has entered into with respect to Rule 15c2-12.

The CID has not previously entered into any continuing disclosure agreement or undertaking.

### **CERTAIN RELATIONSHIPS**

Gilmore & Bell, P.C., Bond Counsel, is representing the City in connection with the issuance of the Bonds and has represented the Placement Agent in transactions unrelated to the issuance of the Bonds, but is not representing the Placement Agent in connection with the issuance of the Bonds.

### **PRIVATE PLACEMENT OF BONDS**

UMB Bank, N.A. (the “**Placement Agent**”), pursuant to a Private Placement Agreement among the City, the Developer and the Placement Agent, has agreed, subject to certain conditions contained therein, to use its best efforts to privately place the Bonds at the aggregate purchase price of \$\_\_\_\_\_. The Placement Agent will receive a placement fee in the amount of \$\_\_\_\_\_. The obligations of the Placement Agent to use its best efforts to place the Bonds is subject to certain terms and conditions set forth in the Private Placement Agreement.

### **NOTICE TO INVESTORS**

The Bonds have not been registered under the Securities Act or under applicable state securities laws and may not be offered or sold within the United States or to U.S. persons (as such terms are defined in the Securities Act) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements thereunder.

**The Bonds may only be purchased by or transferred to Approved Investors.**

**Each initial purchaser will be required to delivery to the City and the Trustee a letter in substantially the form attached as Exhibit E to the Indenture executed by the proposed purchaser or transferee.**

“**Approved Investors**” means, (a) an “accredited investor” under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, or (ii) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act of 1933.

Each purchaser of the Bonds offered hereby will be deemed to have represented and agreed as follows (terms used herein that are defined in the Securities Act are used herein as defined therein):

**The purchaser (i) is an accredited investor or a qualified institutional buyer, and (ii) is acquiring such Bonds for its own account or for the account of a qualified institutional buyer, as the case may be, and understands that any subsequent owner of the Bonds is required to be an “accredited investor” under Rule 501(a) of Regulation D or a “qualified institutional buyer” as defined in Rule 144A.**

### **Notice Regarding Restriction on Use of Retirement Plan Assets to Purchasers of the Bonds**

In addition, by its acceptance of a Bond, each purchaser and subsequent transferee of a Bond will be deemed to have represented and warranted that either (i) no portion of the assets used by such purchaser or

transferee to acquire and hold the Bonds constitutes assets of any employee benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or Section 4975 of the Internal Revenue Code of 1986, as amended (the “**Code**”), or the applicable provisions of any federal, state, local or non-United States laws which are similar to the provisions of Title I of ERISA or Section 4975 of the Code (“**Similar Laws**”) or (ii) the purchase and holding of such Bond by such purchaser or transferee will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or violation of any applicable Similar Laws.

### **NO RATINGS**

The City has not applied to any rating service for a rating on the Bonds.

### **MISCELLANEOUS**

The references herein to the TIF Act, the CID Act, the Indenture, the Financing Agreement, the CID Agreement, the Redevelopment Plan and the Redevelopment Agreement are brief outlines of certain provisions of such documents and do not purport to be complete. Reference is made to the TIF Act, the CID Act, and such documents for full and complete statements of their provisions. Copies of such documents are on file at the offices of the Placement Agent (see the section herein captioned “**INTRODUCTION - Definitions, Summaries of Documents and Additional Information**”) and following delivery of the Bonds will be on file at the office of the Trustee.

Any statements in this Private Placement Memorandum involving matters of opinion or forecast, whether or not expressly so stated, are intended as such and not as representations of fact. This Private Placement Memorandum is not to be construed as a contract or agreement between the City, the Developer, the District, the Placement Agent and the purchasers or owners of the Bonds.

The agreement of the City with the owners of the Bonds is fully set forth in the Indenture, and neither any advertisement of the Bonds nor this Private Placement Memorandum is to be construed as constituting an agreement with the purchasers of the Bonds.

The cover page and the attached Appendices are integral parts of this Private Placement Memorandum and must be read together with all of the foregoing statements.

The information presented in this Private Placement Memorandum has been furnished by sources believed by the Placement Agent to be reliable.

Neither the City, the District nor any of their respective officials, officers or employees make any warranties or representations regarding either the accuracy or sufficiency of the material furnished in this Private Placement Memorandum, except as otherwise expressly set forth herein. Neither the City, the District nor any of their respective officials, officers or employees assumes any duties, responsibility or obligations with respect to the Bonds other than those imposed, either expressly or by fair implication, upon such party by the Indenture, the Bonds, the Redevelopment Agreement or any other agreements executed in connection with the transactions described herein.



The Developer has reviewed the information contained in this Private Placement Memorandum under the captions **“INTRODUCTION – The Redevelopment Project,” “INTRODUCTION – The Smithville Commons Community Improvement District and CID Sales Tax,” “SMITHVILLE COMMONS COMMUNITY IMPROVEMENT DISTRICT AND CID SALES TAX,” “THE SMITHVILLE COMMONS PROJECT,” “ABSENCE OF LITIGATION – The District” and “ABSENCE OF LITIGATION – The Developer.”** The execution and delivery of this Private Placement Memorandum has been duly authorized by the Developer.

**SMITHVILLE DEVELOPMENT ASSOCIATES,  
LLC**, a Missouri limited liability company

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

**APPENDIX A-1**  
**FORM OF THE INDENTURE**

**APPENDIX A-2**  
**FORM OF THE FINANCING AGREEMENT**

**APPENDIX B**  
**FORM OF BOND COUNSEL OPINION**

## **APPENDIX C**

### **FORM OF THE CONTINUING DISCLOSURE CERTIFICATE**

**APPENDIX D**  
**REVENUE STUDY**

**APPENDIX E**  
**BOOK-ENTRY ONLY SYSTEM**

## APPENDIX E

### BOOK-ENTRY ONLY SYSTEM

*The information provided immediately below concerning DTC and the Book-Entry-Only System, as it currently exists, has been obtained from DTC and is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation by, the Placement Agent, the City or the Developer.*

#### General

When the Bonds are issued, ownership interests will be available to purchasers only through a book-entry-only system (the “**Book-Entry-Only System**”) maintained by DTC. DTC will act as securities depository for the Bonds. Initially, the Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee). The following discussion will not apply to any Bonds issued in certificate form due to the discontinuance of the DTC Book-Entry-Only System, as described below.

#### DTC and its Participants

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“**Direct Participants**”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“**DTCC**”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“**Indirect Participants**”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

#### Purchase of Ownership Interests

Purchases of the Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (the “**Beneficial Owner**”) is, in turn, to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners, however, are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

So long as Cede & Co., as nominee of DTC, is the registered owner of any of the Bonds, the Beneficial Owners of such Bonds will not receive or have the right to receive physical delivery of the Bonds, and references



herein to the bondowners or registered owners of such Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners of such Bonds.

## **Transfers**

To facilitate subsequent transfers, all Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds. DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

## **Notices**

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

## **Voting**

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority of the securities as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date identified in a listing attached to the Omnibus Proxy.

## **Payments of Principal and Interest**

So long as any Bond is registered in the name of DTC's nominee, all payments of principal of, premium, if any, and interest on such Bond will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Paying Agent or Bond Registrar, on payable dates in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC nor its nominee, the Trustee, the Borrower or the Authority, subject to any statutory and regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, disbursement of such payments to Direct Participants is the responsibility of DTC, and disbursement of such payments to the Beneficial Owners is the responsibility of Direct and Indirect Participants.

## **Discontinuation of Book-Entry-Only System**

DTC may discontinue providing its services as a securities depository with respect to the Bonds at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, the Bonds are required to be printed and delivered as described in the Loan and Trust Agreement.

The use of the system of book-entry transfers through DTC (or a successor securities depository) may be discontinued as described in the Indenture. In that event, the Bonds will be printed and delivered as described in the Indenture.

*The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Placement Agent, the City and the Developer believe to be reliable, but none of the Placement Agent, the City or the Developer takes any responsibility for the accuracy thereof, and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters but should instead confirm the same with DTC or the DTC Participants, as the case may be.*



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Development

**AGENDA ITEM:** Bill No. 2938-22 Fairview Crossing Rezoning and Conceptual Plan Approval – second reading by title only.

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**RECOMMENDED ACTION:**

A motion to approve Bill No. 2938-22 for second reading by title only for Fairview Crossing Rezoning and Conceptual Plan Approval.

**SUMMARY:**

Approving this ordinance would rezone the land and create an overlay district at property located at the northeast corner of Highway 169 and 144<sup>th</sup> St. to allow a new mixed-use subdivision to be called Fairview Crossing.

**BACKGROUND:**

This project is on the 53.92 acres at the northeast corner of 169 Highway and 144<sup>th</sup> Street. The applicant acquired the property after reviewing the Smithville Comprehensive Plan 2030, which identifies this area to be mixed use with a higher density of housing. The plan submitted separates the property into a commercial area to the west of the overhead powerline easement that bisects the property with townhomes and apartments on the east side of that same easement. The conceptual plan process allows developers to create cohesive developments with variances from some of the lot size and access restrictions contained in the zoning code so long as the overall plan meets the intent of the underlying district designation. The approval of a conceptual plan sets the limits of what can be constructed upon the property but gives the developer flexibility to adjust the project to the market, so long as the densities of housing, parking requirements, stormwater management and availability of services is otherwise met.

A conceptual plan is not to be considered as a subdivision that creates separate lots, but as a plan of use and development within the approved scope of that plan. Any subdivision of land for the project is subject to the parameters of this plan but includes substantial additional review matters to be handled separately. The applicant has also requested a preliminary plat approval for the subdivision, which is currently underway and must be presented to the Planning Commission for a recommendation first. This portion of the project will include a development agreement that addresses capabilities/design of stormwater retention facilities, water and sewer requirements, as well as on-and off-site road improvements as described in an approved traffic impact study. Those traffic studies recommend off-site improvements that will allow additional

traffic to properly use and pass this site safely and can include turn lanes, pavement improvements, access points and traffic signals when warranted.

Development, Public Works and Utilities Departments and MoDOT are currently working on review of all of the submitted studies on the second portion of this project submittal to provide comments to the developer prior to any Planning Commission review.

Conceptual Plan approval is a zoning measure that allows the intent of the zoning districts to be met prior to final subdivision design.

**PREVIOUS ACTION:**

N/A

**POLICY ISSUE:**

Comprehensive Plan Development

**FINANCIAL CONSIDERATIONS:**

No budgetary impact

**ATTACHMENTS:**

- ☒ Ordinance
- ☐ Resolution
- ☒ Staff Report
- ☐ Other:

- ☐ Contract
- ☒ Plans
- ☐ Minutes

**AN ORDINANCE APPROVING A REZONING AND CONCEPTUAL ZONING PLAN FOR FAIRVIEW CROSSING ON CERTAIN LANDS LOCATED IN THE CITY OF SMITHVILLE, MISSOURI, UNDER THE AUTHORITY GRANTED BY THE CODE OF ORDINANCES OF THE CITY OF SMITHVILLE, MISSOURI**

**WHEREAS**, The City of Smithville received an application for a Rezoning and a Conceptual Plan approval on A-1 and B-3 land at the northeast corner of 169 Highway and 144<sup>th</sup> Street; and

**WHEREAS**, public notice was properly advertised in the Courier Tribune; and

**WHEREAS**, adjoining property owners were properly notified by certified mail; and

**WHEREAS**, a public hearing was held before the Planning Commission on April 12, 2022;

**WHEREAS**, the Commission adopted the findings recommended in the Staff Report and recommended approval of the Fairview Crossing Conceptual Plan.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, THAT;**

Section 1. Having received a recommendation from the Planning Commission, and proper notice having been given and public hearing held as provided by law, and under the authority of and subject to the provisions of the zoning ordinances of the City of Smithville, Missouri, by a majority council vote, the zoning classification(s) or district(s) of the lands legally described hereby are changed as follows:

The property legally described as: See Attached Exhibits A-1 and A-2

is hereby designated B-3P and R-3P as contained in the Fairview Crossing Conceptual Plan as approved by the Planning Commission on April 12, 2022 and shown on Exhibit A-2.

Section 2. Upon the taking effect of this ordinance, the above zoning changes shall be entered and shown upon the "Official Zoning Map" previously adopted and said Official Zoning Map is hereby reincorporated as a part of the zoning ordinance as amended.

Section 3. This ordinance shall take effect and be in full force from and after its passage according to law.

PASSED THIS 17<sup>th</sup> DAY OF MAY, 2022

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Mayor

ATTEST:

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City Clerk

1<sup>st</sup> reading 05/03/2022

2<sup>nd</sup> reading 05/17/2022

RECORD DESCRIPTION

TRACT I:

ALL OF THE SOUTHWEST QUARTER OF SECTION THIRTY-FIVE (35) IN TOWNSHIP FIFTY-THREE (53), RANGE THIRTY-THREE (33), IN CLAY COUNTY, MISSOURI, SUBJECT TO THAT PART, IF ANY, IN STREETS, ROADWAYS, HIGHWAYS OR OTHER PUBLIC RIGHT-OF-WAYS.

EXCEPT THE FOLLOWING DESCRIBED TRACTS:

ALL OF A TRACT OF LAND IN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 53 NORTH, RANGE 33 WEST, CLAY COUNTY, MISSOURI DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTH 01 DEGREE 00 MINUTES 27 SECONDS WEST ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER 50.34 FEET TO A POINT; THENCE SOUTH 89 DEGREES 11 MINUTES 16 SECONDS EAST, 79.22 FEET TO A SET 5/8 INCH SET REBAR AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY OF U.S. HIGHWAY 169 AND THE SOUTH RIGHT-OF-WAY LINE OF COMMERCIAL AVENUE BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 11 MINUTES 16 SECONDS EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF COMMERCIAL AVENUE 328.40 FEET TO A 5/8 INCH SET REBAR; THENCE SOUTH 00 DEGREES 48 MINUTES 44 SECONDS WEST, 10.0 FEET TO A 5/8 INCH SET REBAR; THENCE SOUTH 89 DEGREES 11 MINUTES 16 SECONDS EAST ALONG A LINE PARALLEL TO THE NORTH LINE OF SAID SOUTHWEST QUARTER 330.05 FEET TO A 5/8 INCH SET REBAR; THENCE SOUTH 01 DEGREES 00 MINUTES 27 SECONDS WEST ALONG A LINE PARALLEL TO THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 35, 646.85 FEET TO A 5/8 INCH SET REBAR; THENCE NORTH 89 DEGREES 11 MINUTES 16 SECONDS WEST ALONG A LINE PARALLEL TO THE NORTH LINE OF SAID SOUTHWEST QUARTER 678.96 FEET TO A 5/8 INCH SET REBAR ON THE EAST RIGHT-OF-WAY OF U.S. HIGHWAY 169; THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING BEARINGS AND DISTANCES NORTH 03 DEGREES 13 MINUTES 44 SECONDS EAST, 97.19 FEET; THENCE SOUTH 86 DEGREES 46 MINUTES 16 SECONDS EAST, 70.0 FEET; THENCE NORTH 03 DEGREES 13 MINUTES 44 SECONDS EAST, 20.0 FEET; THENCE NORTH 85 DEGREES 46 MINUTES 16 SECONDS WEST 75.0 FEET; THENCE NORTH 03 DEGREES 13 MINUTES 44 SECONDS EAST, 540.03 FEET TO THE POINT OF BEGINNING, FILED FOR RECORD AS INSTRUMENT NO. F59666 IN BOOK 1732 AT PAGE 984.

AND EXCEPT:

A TRACT OF LAND LYING AND BEING SITUATED IN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 53 NORTH, RANGE 33 WEST, OF THE FIFTH PRINCIPAL MERIDIAN, COUNTY OF CLAY, STATE OF MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A FOUND ALUMINUM MONUMENT AT THE SOUTHWEST CORNER OF SECTION 35 TOWNSHIP 53 NORTH, RANGE 33 WEST; THENCE NORTH 09 DEGREES 40 MINUTES 03 SECONDS EAST, 1042.51 FEET TO A SET 5/8 INCH IRON PIN WITH CAP, SAID POINT BEING ON THE TRUE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 46 MINUTES 04 SECONDS WEST 255.81 FEET TO A SET COPPERWELD; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 11,188.72 FEET, A DISTANCE OF 44.56 FEET, AND CHORD BEARS NORTH 01 DEGREES 38 MINUTES 45 SECONDS WEST TO A SET COPPERWELD; THENCE SOUTH 88 DEGREES 55 MINUTES 34 SECONDS EAST 285.82 FEET TO A SET 5/8 INCH IRON PIN WITH CAP; THENCE SOUTH 25 DEGREES 06 MINUTES 39 SECONDS EAST 334.31 FEET TO A SET 5/8 INCH IRON PIN WITH CAP; THENCE NORTH 88 DEGREES 55 MINUTES 28 SECONDS WEST, 418.65 FEET TO THE POINT OF BEGINNING AND EXCEPT THE FOLLOWING PLATS ALL OF HILLS OF SHANNON - FIRST PLAT, A SUBDIVISION IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, FILED FOR RECORD AS INSTRUMENT NO. M29883 IN BOOK D AT PAGE 55.

ALL OF HILLS OF SHANNON - SECOND PLAT, A SUBDIVISION IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, FILED FOR RECORD AS INSTRUMENT NO. M72777 IN BOOK E AT PAGE 3.  
ALL OF HILLS OF SHANNON - THIRD PLAT, A SUBDIVISION IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, FILED FOR RECORD AS INSTRUMENT NO. N19596 IN CABINET E SLEEVE 28.  
ALL OF HILLS OF SHANNON - FOURTH PLAT, A SUBDIVISION IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, FILED FOR RECORD AS INSTRUMENT NO. P24772 IN CABINET E SLEEVE 97.  
ALL OF HILLS OF SHANNON - FIFTH PLAT, A SUBDIVISION IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, FILED FOR RECORD AS INSTRUMENT NO. Q11906 IN CABINET E SLEEVE 152.  
ALL OF ESTATES OF WILKERSON CREEK, A SUBDIVISION IN THE CITY OF SMITHVILLE, CLAY COUNTY, MISSOURI, FILED FOR RECORD AS INSTRUMENT NO. 2019039687 IN BOOK I AT PAGE 88.4.

TRACT II:

A TRACT OF LAND LYING AND BEING SITUATED IN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 53 NORTH, RANGE 33 WEST, OF THE FIFTH PRINCIPAL MERIDIAN, COUNTY OF CLAY, STATE OF MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT A FOUND ALUMINUM MONUMENT AT THE SOUTHWEST CORNER OF SECTION 35 TOWNSHIP 53 NORTH, RANGE 33 WEST; THENCE NORTH 09 DEGREES 40 MINUTES 03 SECONDS EAST, 1042.51 FEET TO A SET 5/8 INCH IRON PIN WITH CAP, SAID POINT BEING ON THE TRUE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 46 MINUTES 04 SECONDS WEST 255.81 FEET TO A SET COPPERWELD; THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 11,188.72 FEET, A DISTANCE OF 44.56 FEET, AND CHORD BEARS NORTH 01 DEGREES 38 MINUTES 45 SECONDS WEST TO A SET COPPERWELD; THENCE SOUTH 88 DEGREES 55 MINUTES 34 SECONDS EAST 285.82 FEET TO A SET 5/8 INCH IRON PIN WITH CAP; THENCE SOUTH 25 DEGREES 06 MINUTES 39 SECONDS EAST 334.31 FEET TO A SET 5/8 INCH IRON PIN WITH CAP; THENCE NORTH 88 DEGREES 55 MINUTES 28 SECONDS WEST, 418.65 FEET TO THE POINT OF BEGINNING.









April 7, 2022  
Conceptual Plan Approval of Clay County Parcel Id's  
# 05-917-00-07-005.00 & 05-917-00-07-006.00

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Application for a Conceptual Plan Approval – Fairview Crossing

Code Sections:

400.200 et seq.      Planned Development Overlay District

Property Information:

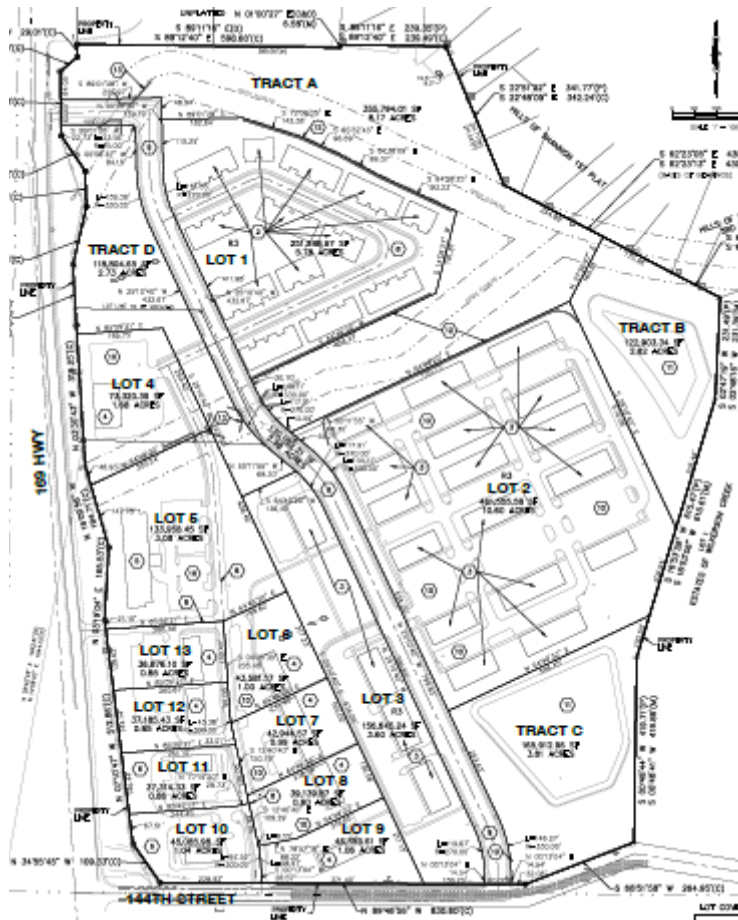
Address:              NE corner of 144<sup>th</sup> St. and 169 Hwy  
Owner:                Kansas City Properties & Investments  
Current Zoning:      A-1 & B-3

Public Notice Dates:

1st Publication in Newspaper:      March 24, 2022  
Letters to Property Owners w/in 185':      March 28, 2022

GENERAL DESCRIPTION:

The property is currently two unplatted tracts lying between 144<sup>th</sup> St. on the south and the Central Bank property just south of Commercial. The tract is approximately 53 acres and includes a large overhead power line easement that bisects the property. The proposed conceptual plan is for dividing this 53+/- acre parcel into 3 multifamily and 10 commercial lots. The multifamily would include townhomes and apartments with a calculated total of 255 dwelling units upon completion of all buildings, along with 10 commercial lots, including 2 fast food lots, a hotel lot and 7 other retail/commercial lots. Lot sizes vary, but there are some lots that will only access a private drive, which requires the conceptual plan to allow variances from basic lot size and access requirements.



400.200.B.3 Guidelines for review of a conceptual development plan for a Planned Development Overlay District, the Commission shall consider the requirements in the site plan review provisions in Section 400.390 through 400.440 when evaluating the following:

a. Topography; to ensure the site is suitable for development, and buildings are located and arranged in appropriate areas.

**Development placement specifically encapsulates the existing drainage areas into the proposed retention pond areas. The estimated layout specifically separates the residential and the commercial areas on either side of the power easement, and leaves significant green space between this development and the adjacent single family. The plan would move the B-3 zoning from the east portion of the project area to the 169 frontage (currently A-1) and down-zone the current B-3 to R-3.**

b. Parking; to ensure the proposed development contains an adequate amount of parking and is located in an appropriate area or adequately screened. Generally, the parking should conform to the required number of spaces appropriate to the development type as contained in Section 400.470. The Commission may allow a deviation from these parking requirements should the applicant show an adequate amount of parking exists.

**Development is laid out in a fashion to meet the site plan requirements and includes sufficient parking as shown on Page 1 of the submittal. Any minor variations to building size could impact the required parking, but in no event will a tenant be able to increase a building footprint or change a use without adjusting parking to meet these requirements.**

c. Setbacks; to ensure buildings provide for adequate light, air, and privacy protection by providing appropriate proportion between buildings, and adequate separation between buildings and adjoining properties.

**Development leaves ample spacing between the proposed buildings, as well as the existing facilities, and leaves ample buffer from the single family properties to the east.**

d. Architecture; to ensure the architectural theme is compatible and consistent throughout the project and is reasonably compatible with surrounding developments.

**The Development is without tenants and seeks to create the overall look of the development without limiting potential tenants. Therefore, this Conceptual plan will require independent site plan reviews of each proposed building, and must meet the site plan requirements in existence at the time of construction, in particular only to the buildings. All other elements are identified and required as show herein.**

e. Site plan; to ensure the location and arrangement of buildings, signs and other structures are appropriate for the site, existing and proposed streets, drives and public ways are arranged appropriately and to ensure site drainage has been adequately addressed.

**Development prepared and submitted a Stormwater Study and has agreed to construct the required detention structures when the project begins.**

f. Landscaping; to ensure the development provides adequate landscaping to provide a pleasant environment, to enhance the building's appearance, to ensure existing significant trees are adequately protected.

**The Development has a large abundance of existing vegetation on the east and north, but much of it is of limited quality. Much of the buffer areas from the single family properties to the east will remain intact or converted into detention areas for stormwater protection. As stated, each separate building will be required to complete the site plan review process, and the landscaping and all other review matters will be addressed at that time.**

g. Any other feature or issue associated with the State zoning and planning enabling legislation or the Comprehensive Plan for the City of Smithville for which the Commission feels is appropriate and relevant to the development of the site.

**Development will include significant off-site traffic improvements that are still being reviewed by MODOT. The traffic study indicates that**

**multiple turn lane improvements, a future traffic light scenario at 144<sup>th</sup> St. and other adjacent road improvements will be needed. The exact scope and timing of those items will be addressed in a development agreement and incorporate all of MODOT requirements. To the extent this is a Conceptual plan, the exact locations of streets and access points is subject to change in accordance with the MODOT review and further engineering review.**

**STAFF RECOMMENDATION:**

Staff recommends APPROVAL of the proposed Conceptual plan based upon adherence to the conditions contained in this report, and specifically includes the following recommended findings as contained in 400.200.B.4:

1. That the Commission has reviewed the conceptual development plan with consideration of the issues contained in Subsection (B)(3) above; and
2. That the conceptual development plan is in conformance with the comprehensive land use plan and other appropriate Sections of the Code of Ordinances; and
3. That the conceptual development plan provides for an organized and unified system of land use intensities which are compatible with the surrounding areas; and
4. That the proposed development adequately protects the health, safety and general welfare of future and existing residents and property owners in and around the development.

Respectfully Submitted,

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Director of Development



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Development

**AGENDA ITEM:** Bill No. 2939-22 McBee's Coffee & Carwash Conceptual Plan Approval  
– second reading by title only.

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**RECOMMENDED ACTION:**

A motion to approve Bill No. 2939-22 for second reading by title only for McBee's Coffee & Carwash Conceptual Plan approval.

**SUMMARY:**

Approving this ordinance would create an overlay district at property located at the southeast corner of Highway 169 and Richardson Street to allow a new commercial subdivision to be called McBee's Coffee & Carwash.

**BACKGROUND:**

This project is on 3.1 acres at the southeast corner of 169 Hwy and Richardson Street. The current zoning of the property is B-3. The proposed overlay district included in the conceptual plan is to allow minor variances from the standard B-3 district requirements concerning size, layout and access to lots as well as other bulk, height and setback requirements. The proposal would allow the 3.1-acre lot to be subdivided into two separate lots that are smaller than the minimum lot size in B-3. The conceptual plan process allows the concerns related to lot access points, sign size and locations, as well as the additional traffic from two businesses on the 3.1 acres versus one business on the same sized lot to be properly addressed.

As in other similar conceptual plans, approval here will not subdivide the property, but simply authorizes the subdivision of land to occur in the future under the conceptual plan's variations from the standard B-3 district. That subdivision process is the method by which any on or off-site infrastructure improvements will be addressed, including traffic matters. Staff is now working with the applicant to complete the traffic impact assessment and will include those obligations into the land subdivision process.

**PREVIOUS ACTION:**

N/A

**POLICY ISSUE:**

Comprehensive Plan Development

**FINANCIAL CONSIDERATIONS:**

No budgetary impact

**ATTACHMENTS:**

- ☒ Ordinance
- ☐ Resolution
- ☒ Staff Report
- ☐ Other:

- ☐ Contract
- ☒ Plans
- ☐ Minutes

**AN ORDINANCE APPROVING A CONCEPTUAL ZONING PLAN FOR MCBEE'S COFFEE & CARWASH ON CERTAIN LANDS LOCATED IN THE CITY OF SMITHVILLE, MISSOURI, UNDER THE AUTHORITY GRANTED BY THE CODE OF ORDINANCES OF THE CITY OF SMITHVILLE, MISSOURI**

**WHEREAS**, The City of Smithville received an application for a Conceptual Plan approval on B-3 land at the southeast corner of 169 Highway and Richardson Street; and

**WHEREAS**, public notice was properly advertised in the Courier Tribune; and

**WHEREAS**, adjoining property owners were properly notified by certified mail; and

**WHEREAS**, a public hearing was held before the Planning Commission on April 12, 2022;

**WHEREAS**, the Commission adopted the findings recommended in the Staff Report and recommended approval of the McBee's Coffee & Carwash Conceptual Plan.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, THAT;**

Section 1. Having received a recommendation from the Planning Commission, and proper notice having been given and public hearing held as provided by law, and under the authority of and subject to the provisions of the zoning ordinances of the City of Smithville, Missouri, by a majority council vote, the zoning classification(s) or district(s) of the lands legally described hereby are changed as follows:

The property legally described as:

Smithville Library Heights, Tract A

is hereby designated B-3P with the addition of the McBee's Coffee & Carwash Conceptual Plan as approved by the Planning Commission on April 12, 2022.

Section 2. Upon the taking effect of this ordinance, the above zoning changes shall be entered and shown upon the "Official Zoning Map" previously adopted and said Official Zoning Map is hereby reincorporated as a part of the zoning ordinance as amended.

Section 3. This ordinance shall take effect and be in full force from and after its passage according to law.

PASSED THIS 17<sup>th</sup> DAY OF MAY, 2022

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Mayor

ATTEST:

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City Clerk

1<sup>st</sup> reading 05/03/2022

2<sup>nd</sup> reading 05/17/2022





April 7, 2022

Conceptual Plan Approval of Clay County Parcel Id # 05-909-00-03-011.00

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Application for a Conceptual Plan Approval – McBee's Coffee & Carwash

Code Sections:

400.200 et seq.      Planned Development Overlay District

Property Information:

Address:                      Richardson St. and 169 SE Corner

Owner:                        Jolarub LLC

Current Zoning:            B-3

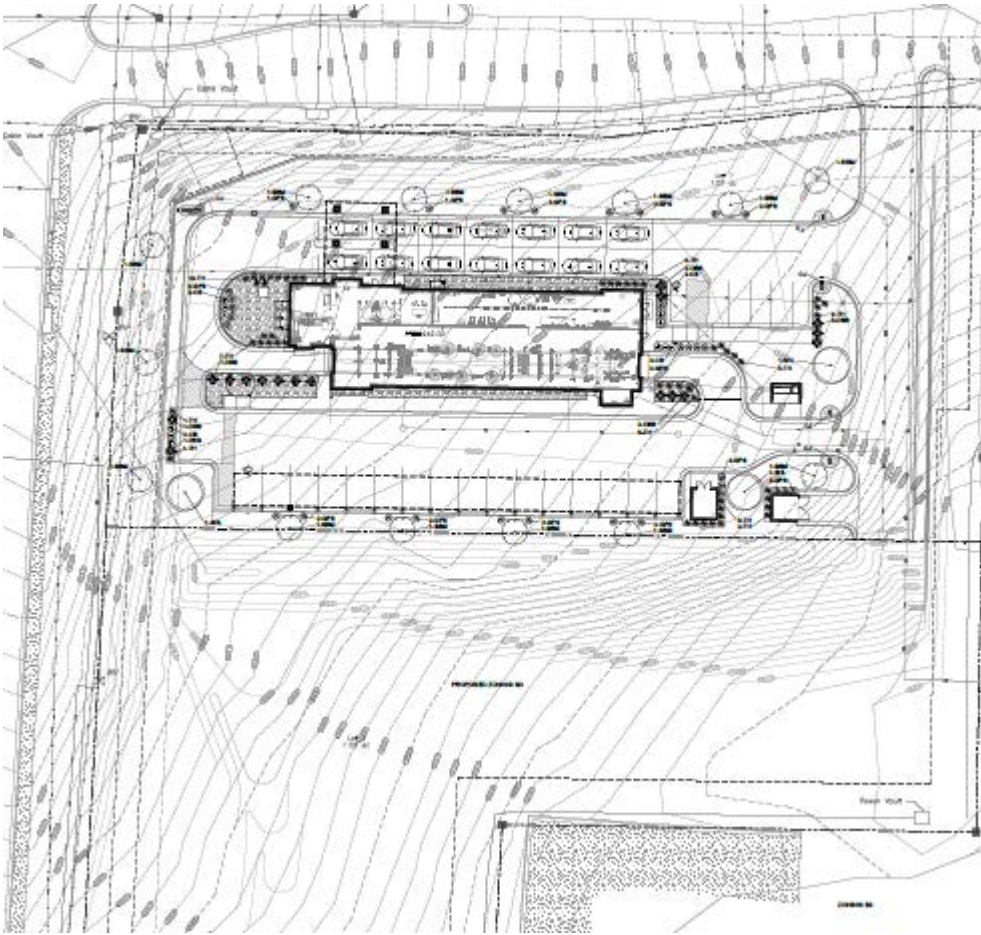
Public Notice Dates:

1st Publication in Newspaper:      March 24, 2022

Letters to Property Owners w/in 185':      March 28, 2022

GENERAL DESCRIPTION:

The property is currently Tract A, Smithville Library Heights. The proposed conceptual plan is to divide this 3.1 acre parcel into two separate commercial lots ranging in size from 1.52 to 1.58 acres with variances to the minimum lot size for B-3 districts. Access to the lots would be through 2 combined access points, one on Richardson St. (McBee's primary) and one on 169 (undeveloped lot primary). Bot access points would interconnect with shared access points.



400.200.B.3 Guidelines for review of a conceptual development plan for a Planned Development Overlay District, the Commission shall consider the requirements in the site plan review provisions in Section 400.390 through 400.440 when evaluating the following:

a. Topography; to ensure the site is suitable for development, and buildings are located and arranged in appropriate areas.

**Development placement will ultimately include a retaining wall to separate the hotel lot to the south from access into this project, but grading is overall minimum.**

b. Parking; to ensure the proposed development contains an adequate amount of parking and is located in an appropriate area or adequately screened. Generally, the parking should conform to the required number of spaces appropriate to the development type as contained in Section 400.470. The Commission may allow a deviation from these parking requirements should the applicant show an adequate amount of parking exists.

**Development is laid out in a fashion to meet the site plan requirements on both lots. The proposed drive thru carwash is the only definitive project, and exceeds the minimum parking standards. The remaining**

lot has no definitive use/building, so no calculations can be made.  
**There exists sufficient land to address parking and that lot development will require Site Plan Review to address all aspects.**

c. Setbacks; to ensure buildings provide for adequate light, air, and privacy protection by providing appropriate proportion between buildings, and adequate separation between buildings and adjoining properties.

**Development leaves ample spacing between the proposed buildings, as well as the existing facilities.**

d. Architecture; to ensure the architectural theme is compatible and consistent throughout the project and is reasonably compatible with surrounding developments.

**The Development includes only one tenant currently and seeks to create the overall look of the development without limiting potential tenants. The carwash facility complies with the current site plan regulations and future development of lot 2 must comply with site plan requirements in existence at the time of development. All other elements are identified and required as show herein.**

e. Site plan; to ensure the location and arrangement of buildings, signs and other structures are appropriate for the site, existing and proposed streets, drives and public ways are arranged appropriately and to ensure site drainage has been adequately addressed.

**Development prepared and submitted a Stormwater Study and has agreed to construct the required detention structures when the project begins.**

f. Landscaping; to ensure the development provides adequate landscaping to provide a pleasant environment, to enhance the building's appearance, to ensure existing significant trees are adequately protected.

**The Development will include landscaping as shown on the submitted plans for the car wash site, and the vacant lot 2 will be required to comply with regulations in place at the time of development.**

g. Any other feature or issue associated with the State zoning and planning enabling legislation or the Comprehensive Plan for the City of Smithville for which the Commission feels is appropriate and relevant to the development of the site.

**Development will include a contribution to the installation of a traffic light at the 169 & Richardson intersection. Developer submitted a Traffic Update to the Richardson Street Plaza Study which indicated that a light met two of the traffic warrants at the intersection NOW, and that further traffic would reach the levels of other warrants, so a light was needed. This development contribution will be subject to a development agreement to be completed prior to Final Plat submittal.**

STAFF RECOMMENDATION:

Staff recommends APPROVAL of the proposed Conceptual plan based upon adherence to the conditions contained in this report, and specifically includes the following recommended findings as contained in 400.200.B.4:

1. That the Commission has reviewed the conceptual development plan with consideration of the issues contained in Subsection (B)(3) above; and
2. That the conceptual development plan is in conformance with the comprehensive land use plan and other appropriate Sections of the Code of Ordinances; and
3. That the conceptual development plan provides for an organized and unified system of land use intensities which are compatible with the surrounding areas; and
4. That the proposed development adequately protects the health, safety and general welfare of future and existing residents and property owners in and around the development.

Respectfully Submitted,

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Director of Development

project synopsis:

Governing Municipality: Smithville, Missouri

Governing Code: 2018 International Building Code

Project Manager / Point of Contact: Johnathon R. Phillips, AIA  
Davidson Architecture & Engineering  
4301 Indian Creek Parkway  
Overland Park, Kansas 66207  
p: 913.451.9390

Owner: McBee Coffe 'N' Carwash, Inc.  
103 Industrial Parkway  
Gallatin, MO 64640

Civil Engineer: Hilary Zerr, PE  
Davidson Architecture & Engineering  
4301 Indian Creek Parkway  
Overland Park, Kansas 66207  
p: 913.451.9390

Site Area: McBee's: 66,475 sq. ft. (1.52 acres +/-)  
Vacant: 69,136 sq. ft. (1.58 acres +/-)

Building Area: 5,794 sq. ft.

Proposed Zoning: B-3

Proposed Imperv. Area: 35,949 sq. ft. (0.82 acres +/-) 54.1%  
Proposed Green Space: 30,526 sq. ft. (0.70 acres +/-) 45.9%

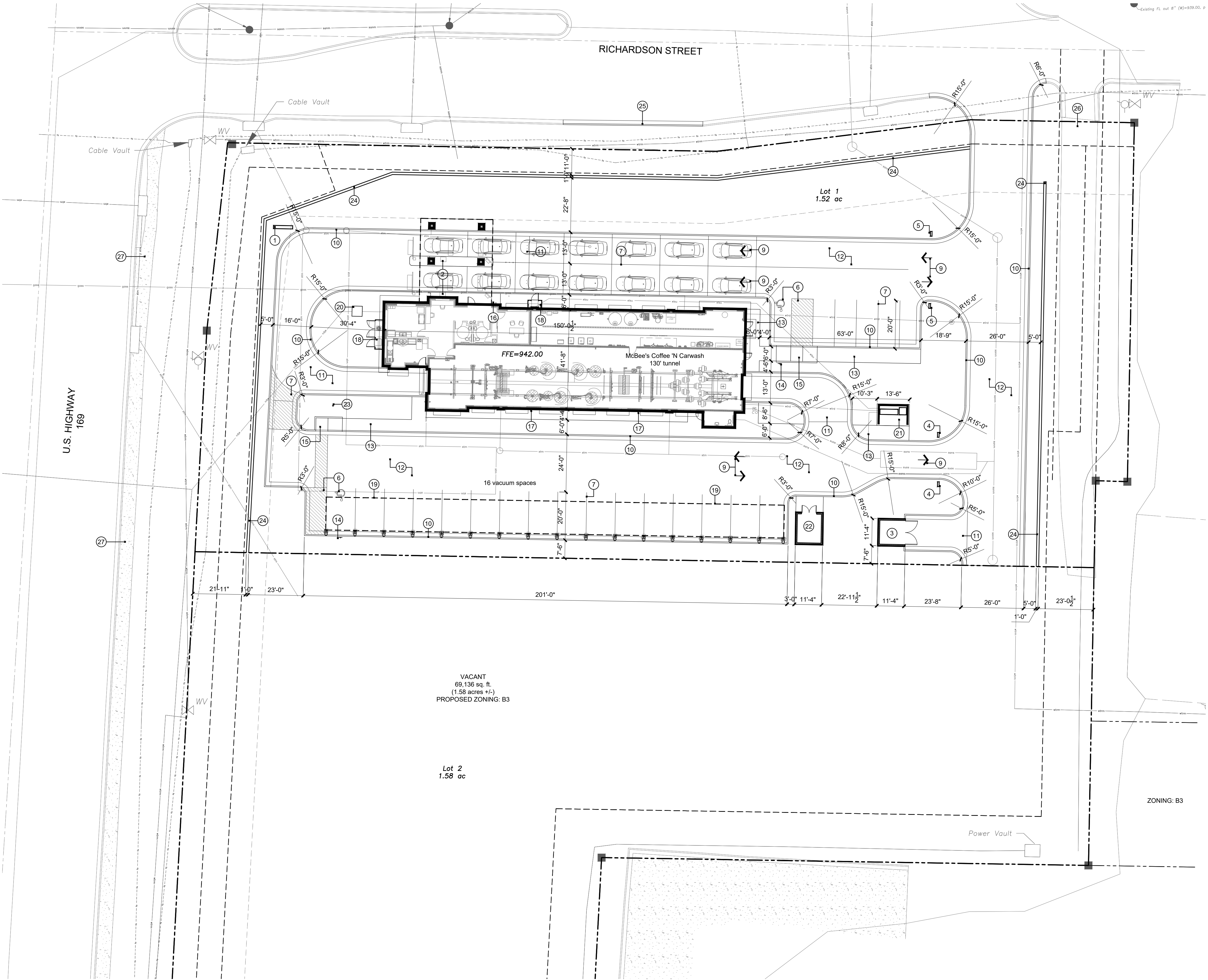
Parking: 15 standard vacuum bays  
1 handicap vacuum bay  
5 standard employee spaces  
1 handicap employee space  
Total = 22 spaces provide

general notes:

- All construction shall conform to the standards and specifications of Smithville, Missouri.
- The general contractor shall contact all utility companies prior to the start of construction and verify the location and depth of any utilities that may be encountered during construction.
- The contractor shall field verify exist. surface & subsurface ground conditions prior to start of construction.
- Slopes shall maintain a maximum 3:1 slope.
- The contractor shall be responsible for obtaining all required permits, paying all fees, and otherwise complying with all applicable regulations governing the project.
- General contractor and all subcontractors must register with the Building Department before issuance of permit.
- Energy code requirements and inspections are to be performed by a third party inspector, supplied by General Contractor and/or owner. The City will not perform energy related inspections, however, documentation is required to verify compliance of the energy code requirements.
- Place silt fence per civil for erosion control.
- Provide a temporary gravel access drive to prevent mud from being deposited onto the adjacent road.
- Prior to installing any structure on a public storm sewer, the contractor shall submit shop drawings for the structure(s). Installation shall not occur until drawings have been approved by public works.
- Prior to installing, constructing, or performing any work on the public storm sewer line (including connecting to the storm system) contact the city for inspection of the work. Contact must be made at least 48 hours prior to the start of work.
- Connections to the public storm sewer between structures will not be permitted.
- All exterior utility services shall be painted to match the primary building color.
- Prior to final inspection, the general contractor shall meet with the Smithville Fire Department to designate fire lane and fire lane sign locations to be installed per Fire Department direction and requirements.
- A Knox Box will be installed on the front of the building facing the street or road.
- Caulk joint at perimeter of building around sidewalk. Color to match building colors. GC shall take care not to seal any exterior finish drainage elements.

construction notes: (##)

- Monument sign per detail 2/A3.2. Footing by GC and sign by signage supplier. GC shall install electrical per electrical drawings.
- Pay station equipment by others. Footings by GC and equipment by supplier. GC shall install electrical per electrical drawings.
- Trash enclosure per detail 1/A1.2.
- Directional sign (THANK YOU / DO NOT ENTER) per detail 1/A3.2.
- Directional sign (WELCOME) per detail 1/A3.2.
- ADA parking stall per civil drawings.
- 4" solid white striping typ.
- Light pole and base per electrical drawings.
- White thermoplastic directional markings per detail.
- Furnish and install standard depth concrete curb and gutter per civil drawings.
- Concrete paving to meet Geotechnical specifications and per civil drawings.
- Asphalt paving to meet Geotechnical specifications and per civil drawings.
- New concrete sidewalk per civil.
- Handicap parking sign per detail on A1.3.
- Accessible ramp at sidewalk per civil.
- Furnish and install a Knox Box at 60" a.f.g. for fire department access. Contact Fire Marshal for ordering information and to coordinate location prior to installation.
- Downspout to tie into storm system per civil drawings.
- Furnish and install mechanical screen per details on sheet A1.2.
- Vacuum canopy above per vacuum equipment supplier.
- Approximate transformer location per electrical drawings.
- Furnish and install self contained dog wash unit, vending machine and canopy enclosure provided by owner supplied vendor. GC shall install concrete pad and utilities as required per vendor requirement.
- Vacuum turbine enclosure per detail 5/A1.2.
- Furnish and install 30' flag pole with direct ground mounted up-light per electrical drawings.
- Retaining wall and guard rail along top of wall per civil drawings.
- Install new concrete curb and patch pavement as required per civil drawings.
- Existing gravel access drive to remain.
- Existing public sidewalk to remain.



1 | site plan  
scale: 1" = 20'-0"



sheet number

**A1.1**

drawing type  
rezoning

project number  
21072-13

a new development for

**McBee's Coffee 'N' Carwash**

Highway 169 and Richardson

Smithville, Missouri 64081

date  
03.11.2022  
drawn by  
DAE  
checked by  
DAE  
revisions





## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Bill No. 2940-22, An Ordinance authorizing the Mayor to sign an agreement with Missouri Highways and Transportation Commission

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**RECOMMENDED ACTION:**

Motion to approve Bill No. 2940-22, authorizing the Mayor to sign an agreement with Missouri Highways and Transportation Commission.

**SUMMARY:**

The City was awarded an 80% not to exceed \$500,000 Transportation Alternatives Program Grant to construct a six-foot wide sidewalk on the east side of Commercial Street from Smithville School District property to the downtown.

The total project cost is approximately \$900,000 (which includes \$150,000 for engineering).

The project schedule anticipates bid opening in December 2023.

**PREVIOUS ACTION:**

**POLICY ISSUE:**

Pedestrian accessibility and safety  
Safe Routes to School

**FINANCIAL CONSIDERATIONS:**

This project is planned in the CIP.

**ATTACHMENTS:**

- ☒ Ordinance
- ☐ Resolution
- ☒ Staff Report
- ☐ Other:

- ☒ Contract
- ☐ Plans
- ☐ Minutes



**BILL NO. 2940-22**

**ORDINANCE NO.**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A TRANSPORTATION ALTERNATIVES FUNDS PROGRAM AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR PEDESTRIAN IMPROVEMENTS ON COMMERCIAL STREET**

**WHEREAS**, the City received funding from the Transportation Alternatives Funds Program for pedestrian improvements on Commercial Street from Smithville School District property to Meadow Street; and

**WHEREAS**, the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Smithville (hereinafter, "City") desire to enter into an agreement, the purpose of the Agreement is to grant the use of such transportation enhancement funds to the City.

**NOW THEREFORE BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:**

Section 1. That the Mayor is authorized and directed to execute an agreement with the Missouri Highways and Transportation Commission Municipal Agreement for pedestrian improvements on Commercial Street from Smithville School District property to Meadow Street, in the City of Smithville.

Section 2. This ordinance shall take effect and be in full force from and after its passage according to law.

PASSED THIS 7th DAY OF JUNE, 2022

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

First Reading: 05/17/2022  
Second Reading: 06/07/2022

CCO Form: FS25  
Approved: 04/95 (MGB)  
Revised: 03/17 (MWH)  
Modified:

CFDA Number: 20.205  
CFDA Title: Highway Planning and Construction  
Award name/number: TAP – 3302(435)  
Award Year: 2023  
Federal Agency: Federal Highway Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
TRANSPORTATION ALTERNATIVES FUNDS  
PROGRAM AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Smithville, Missouri (hereinafter, "City").

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The United States Congress has authorized, in Fixing America's Surface Transportation Act (FAST); 23 U.S.C. §101, §106 and §213; SAFETEA-LU §1404 funds to be used for transportation alternatives activities. The purpose of this Agreement is to grant the use of such transportation enhancement funds to the City.

(2) LOCATION: The transportation alternatives funds which are the subject of this Agreement are for the project at the following location:

This project, TAP-3302(435), includes a 6-foot pedestrian sidewalk on Commerical St. from Smithville school district property north to Meadow St. in Downtown Smithville, MO. The project will include sidewalk, ADA access, grading, curb and gutter and pavement/pavement repair. The general location of the project is shown on attachment marked "Exhibit A" and incorporated herein by reference.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is



within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City. The City may not be eligible for future Transportation Alternatives Funds if the City does not meet the reasonable progress policy.

(4) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(5) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(6) COMMISSION REPRESENTATIVE: The Commission's **Kansas City's District Engineer** is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may

designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(7) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, *et seq.*), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, *et seq.*). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (7) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(8) ASSIGNMENT: The City shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(9) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(10) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the City with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the City.

(11) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the Federal Highway Administration (FHWA) and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(12) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and

the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(13) ACQUISITION OF RIGHT OF WAY: With respect to the acquisition of right of way necessary for the completion of the project, City shall acquire any additional necessary right of way required for this project and in doing so agrees that it will comply with all applicable federal laws, rules and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended and any regulations promulgated in connection with the Act. However, upon written request by the City and written acceptance by the Commission, the Commission shall acquire right of way for the City. Upon approval of all agreements, plans and specifications by the Commission and by the FHWA, the Commission will file copies of said plans in the office of the County clerk: and proceed to acquire by negotiation and purchase or by condemnation any necessary right of way required for the construction of the improvement contemplated herein. All right of way acquired by negotiation and purchase will be acquired in the name of City, and the City will pay to grantors thereof the agreed upon purchase prices. All right of way acquired through condemnation proceedings will be acquired in the name of the State of Missouri and subsequently released to the City. The City shall pay into court all awards and final judgments in favor of any such condemnees. The City shall also reimburse the Commission for any expense incurred by the Commission in acquiring said right of way, including but not limited to the costs of surveying, appraisal, negotiation, condemnation, and relocation assistance benefits. Unless otherwise agreed to in writing the Commission shall have the final decision regarding the settlement amount in condemnation.

(14) MAINTENANCE OF DEVELOPMENT: The City shall maintain the herein contemplated improvements without any cost or expense to the Commission. All maintenance by the City shall be done for the safety of the general public and the esthetics of the area. In addition, if any sidewalk or bike trails are constructed on the Commission's right-of-way pursuant to this Agreement, the City shall inspect and maintain the sidewalk or bike trails constructed by this project in a condition reasonably safe to the public and, to the extent allowed by law, shall indemnify and hold the Commission harmless from any claims arising from the construction and maintenance of said sidewalk or bike trails. If the City fails to maintain the herein contemplated improvements, the Commission or its representatives, at the Commission's sole discretion shall notify the City in writing of the City's failure to maintain the improvement. If the City continues to fail in maintaining the improvement, the Commission may remove the herein contemplated improvement whether or not the improvement is located on the Commission's right of way. Any removal by the Commission shall be at

the sole cost and expense of the City. Maintenance includes but is not limited to mowing and trimming between shrubs and other plantings that are part of the improvement.

(15) PLANS: The City shall prepare preliminary and final plans and specifications for the herein improvements. The plans and specifications shall be submitted to the Commission for the Commission's review and approval. The Commission has the discretion to require changes to any plans and specification prior to any approval by the Commission.

(16) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are **not** reimbursable costs. The federal share for this project will be 80 percent not to exceed \$500,000. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(17) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. The City shall repay any progress payments which involve ineligible costs.

(18) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(19) PERMITS: The City shall secure any necessary approvals or permits from any federal or state agency as required for the completion of the herein improvements. If this improvement is on the right of way of the Commission, the City must secure a permit from the Commission prior to the start of any work on the right of way. The

permits which may be required include, but are not limited to, environmental, architectural, historical or cultural requirements of federal or state law or regulation.

(20) INSPECTION OF IMPROVEMENTS AND RECORDS: The City shall assure that representatives of the Commission and FHWA shall have the privilege of inspecting and reviewing the work being done by the City's contractor and subcontractor on the herein project. The City shall also assure that its contractor, and all subcontractors, if any, maintain all books, documents, papers and other evidence pertaining to costs incurred in connection with the Transportation Enhancement Program Agreement, and make such materials available at such contractor's office at all reasonable times at no charge during this Agreement period, and for three (3) years from the date of final payment under this Agreement, for inspection by the Commission, FHWA or any authorized representatives of the Federal Government and the State of Missouri, and copies shall be furnished, upon request, to authorized representatives of the Commission, State, FHWA, or other Federal agencies.

(21) CREDIT FOR DONATIONS OF FUNDS, MATERIALS, OR SERVICES: A person may offer to donate funds, materials or services in connection with this project. Any donated funds, or the fair market value of any donated materials or services that are accepted and incorporated into this project shall be credited according to 23 U.S.C. §323.

(22) DISADVANTAGED BUSINESS ENTERPRISES (DBE): The Commission will advise the City of any required goals for participation by disadvantaged business enterprises (DBEs) to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(23) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(24) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(25) FINAL AUDIT: The Commission may, in its sole discretion, perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(26) OMB AUDIT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the

audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(27) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by City on \_\_\_\_\_(DATE).

Executed by Commission on \_\_\_\_\_(DATE).

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF SMITHVILLE, MISSOURI

\_\_\_\_\_  
Title \_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

ATTEST:

ATTEST:

\_\_\_\_\_  
Secretary to the Commission

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to Form:

Approved as to Form:

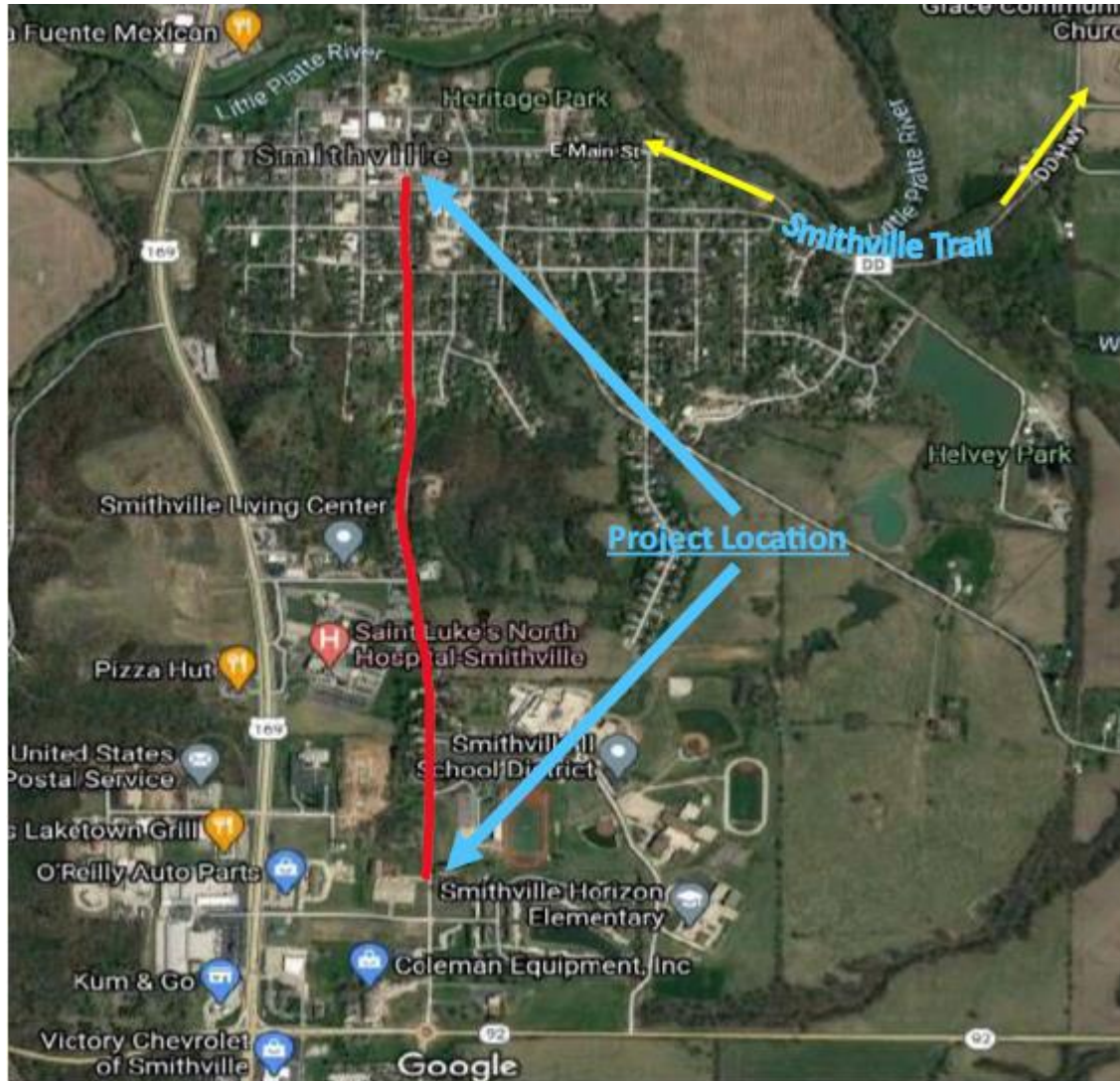
\_\_\_\_\_  
Commission Counsel

\_\_\_\_\_  
Title \_\_\_\_\_

Ordinance No \_\_\_\_\_



Exhibit A - Location of Project



## Exhibit B – Project Schedule

Project Description: This project, TAP-3302(435), includes a 6-foot pedestrian sidewalk on Commerical St. from Smithville school district property north to Meadow St. in Downtown Smithville, MO. The project will include sidewalk, ADA access, grading, curb and gutter and pavement/pavement repair.

<b>Task</b>	<b>Date</b>
Date funding is made available or allocated to recipient	10/1/2022
Preliminary and Right-of-Way Plans Submittal (if Applicable)	5/1/2023
Plans, Specifications & Estimate (PS&E) Submittal	9/1/2023
Plans, Specifications & Estimate (PS&E) Approval	11/1/2023
Advertisement for Letting	1/1/2023
Bid Opening	12/1/2023
Construction Contract Award or Planning Study completed <b>(REQUIRED)</b>	8/1/2024

Exhibit C - Required Contract Provisions  
Federal-Aid Construction Contracts

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

### ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

### II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

**2. EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

**3. Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

**4. Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

**5. Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurance Required by 49 CFR 26.13(b):**

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

**11. Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

## **2. Withholding**

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## **3. Payrolls and basic records**

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.



(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and trainees**

##### **a. Apprentices (programs of the USDOL).**

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

##### **b. Trainees (programs of the USDOL).**

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.**

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

**3. Withholding for unpaid wages and liquidated damages.** The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

## VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

## **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

## **X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

### **1. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

\* \* \* \* \*

## **2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **2. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

\* \* \* \* \*

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

\* \* \* \* \*

**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Administration

**AGENDA ITEM:** Bill No. 2941-22 Funding Agreement with 110 Smithville, LLC

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### **REQUESTED BOARD ACTION:**

Approval of Bill No. 2941-22 , Funding Agreement (the "Agreement") with 110 Smithville, LLC (the "Developer") relating to consideration of the 110 Smithville Tax Increment Financing Plan (the "Plan") for the property located on the southwest corner of West Main Street and North Mill Street.

### **SUMMARY:**

The developer approached the City regarding development of the property located on the Southwest corner of West Main Street and North Mill Street. Since acquisition of the property, the developer, staff and Economic Development Counsel, Gilmore & Bell have been in discussions regarding the proposed project and to ensure proper information and timelines relating to review of the project and incentive requests were transparent to the developers. Earlier this month, the City received the Plan from the Developer. Gilmore & Bell and staff have reviewed the plan and have submitted comments requesting additional information to the Developer.

In order to facilitate review of the Plan, a Funding Agreement provides funds for the legal services completed by Gilmore & Bell, financial advisory services provided by Piper Sandler and Co. and other necessary costs associated with ensuring the evaluation, review and consideration of the Plan. Upon the execution of the Agreement, the Developer will provide a deposit of \$20,000 to the City to be held in a separate account to be used for these services. As costs for services are incurred, the Developer will be invoiced to provide additional funding to maintain a minimum of \$20,000 in the account.

### **PREVIOUS ACTION:**

### **POLICY OBJECTIVE:**

Click or tap here to enter text.

### **FINANCIAL CONSIDERATIONS:**

The Funding Agreement provides funds for costs associated with review of the Plan submitted.

### **ATTACHMENTS:**

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Ordinance | <input checked="" type="checkbox"/> Contract |
| <input type="checkbox"/> Resolution           | <input type="checkbox"/> Plans               |
| <input type="checkbox"/> Staff Report         | <input type="checkbox"/> Minutes             |
| <input type="checkbox"/> Other:               |  |



**AN ORDINANCE APPROVING A FUNDING AGREEMENT FOR  
THE 110 SMITHVILLE TAX INCREMENT FINANCING PLAN.**

**WHEREAS**, the City is a fourth-class city and political subdivision of the State of Missouri, incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri, with its legislative power residing in the Board of Aldermen; and

**WHEREAS**, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 through 99.865 of the Revised Statutes of Missouri (the "**TIF Act**"), the City has been requested to consider a tax increment financing plan (the "**TIF Plan**") to fund the redevelopment of property generally located the southwest corner of West Main Street and North Mill Street in the City (the "**Redevelopment Area**"), and will commence the public hearing process before the Tax Increment Financing Commission of the City of Smithville, Missouri for consideration of the TIF Plan; and

**WHEREAS**, 110 Smithville, LLC (the "**Developer**") is working with the City to develop a plan to provide for the funding of certain improvements of the development, in accordance with the TIF Act, Missouri law and applicable City Code requirements; and

**WHEREAS**, Developer may also request that the City approve a community improvement district ("**CID**") for the project (the Developer's requests related to the project approval and CID approval are collectively referenced herein as the "**Application**"); and

**WHEREAS**, in order for the City to fully consider and evaluate the Application, the City will need to engage consultants to review, evaluate, process and consider the sources of public and private funding for the proposed Redevelopment Area and CID and the experience of the Developer to complete the project contemplated; and

**WHEREAS**, the City does not have a source of funds to pay for costs incurred for additional legal, financial and other consultants or for direct out-of-pocket expenses and other costs resulting from services to review, evaluate, process and consider the Application, including but not limited to the engagement of the legal services of Gilmore & Bell, P.C. ("**Bond Counsel**") to provide legal services for the City and the engagement of Piper Sandler & Co. to provide municipal advisory services for the City; and

**WHEREAS**, the City desires developers who request assistance from the City in a public-private partnership or through the use of economic incentive tools to demonstrate the financial ability to allow for the full and fair evaluation by the City of all development proposals and requests for economic incentives from the City; and

**WHEREAS**, in order for the City to fully consider and evaluate the Application, the Developer seeks to deposit funds with the City to be used by the City to pay for the City's expenses necessary to perform a full evaluation of the Application; and

**WHEREAS**, the City and the Developer desire to enter into a Funding Agreement (the "**Funding Agreement**") to provide for the payment and funding of the expenses.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

**Section 1. Approval of Agreement.** The Funding Agreement by and between the City and the Developer, in substantially the form attached hereto as **Exhibit A** incorporated herein by reference, are hereby approved and the Mayor is hereby authorized to execute the agreement on behalf of the City.

**Section 2. Further Authority.** The Mayor, the City Administrator, and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 3. Effective Date.** This Ordinance shall take effect and be in full force from and after its passage and adoption by the Board of Alderman and approval by the Mayor.

**PASSED** by the Board of Aldermen, and **APPROVED** by the Mayor, of the City of Smithville, Missouri, this \_\_\_\_ day of May 2022.

(SEAL)

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

First Reading: 05/17/2022

Second Reading: 06/07/2022

EXHIBIT A  
TO ORDINANCE NO. \_\_\_\_\_

**FUNDING AGREEMENT**

## FUNDING AGREEMENT

This **FUNDING AGREEMENT** ("**Funding Agreement**") is entered into this \_\_\_\_ day of May, 2022, between the **CITY OF SMITHVILLE, MISSOURI** (the "**City**"), and **110 SMITHVILLE, LLC**, a Missouri limited liability company (the "**Developer**," and collectively with the City and the Developer being the "**Parties**").

## RECITALS

**WHEREAS**, the City is a fourth-class city and political subdivision of the State of Missouri, incorporated and exercising governmental functions and powers pursuant to the Constitution and the Revised Statutes of the State of Missouri, with its legislative power residing in the Board of Aldermen; and

**WHEREAS**, the Developer is a Missouri limited liability company and is authorized to conduct business in the State of Missouri; and

**WHEREAS**, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Section 99.800 through 99.865 of the Revised Statutes of Missouri (the "**TIF Act**"), the City has been requested to consider a tax increment financing plan (the "**TIF Plan**") to fund the redevelopment of property generally located the southwest corner of West Main Street and North Mill Street in the City (the "**Redevelopment Area**"), and will commence the public hearing process before the Tax Increment Financing Commission of the City of Smithville, Missouri for consideration of the TIF Plan; and

**WHEREAS**, Developer is working with the City to develop a plan to provide for the funding of certain improvements of the development, in accordance with Missouri law and applicable City Code requirements; and

**WHEREAS**, Developer may also request that the City approve a community improvement district ("**CID**") for the Project (the Developer's requests for the TIF projects approval and CID approval are collectively referenced herein as the "**Application**"); and

**WHEREAS**, in order for the City to fully consider and evaluate the Application, the City will need to engage consultants to review, evaluate, process and consider the sources of public and private funding for the proposed Redevelopment Area and CID and the experience of the Developer to complete the project contemplated; and

**WHEREAS**, the City does not have a source of funds to pay for costs incurred for additional legal, financial and other consultants or for direct out-of-pocket expenses and other costs resulting from services to review, evaluate, process and consider the Application, including, but not limited to the engagement of the legal services of Gilmore & Bell, P.C. ("**Bond Counsel**") to provide legal services for the City and the engagement of Piper Sandler & Co. to provide municipal advisory services for the City; and

**WHEREAS**, the City desires developers who request assistance from the City in a public-private partnership or through the use of economic incentive tools to demonstrate the financial ability to

allow for the full and fair evaluation by the City of all development proposals and requests for economic incentives from the City; and

**WHEREAS**, in order for the City to fully consider and evaluate the Application, the Developer seeks to deposit funds with the City to be used by the City to pay for the City's expenses necessary to perform a full evaluation of the Application.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services to be Performed by the City.** The City shall:
  - A. Prepare or consult with the Developer on the preparation and consideration of an application in accordance with applicable State law for the requested public funding methods, give all notices, make all publications and hold hearings as required by State law and other applicable laws;
  - B. Provide necessary staff, legal, financial, and planning assistance to evaluate, process and consider the Application and the public funding sources;
  - C. If the Developer's requested actions are approved, provide the necessary staff and legal, financial and planning assistance to prepare and negotiate a definitive agreement between the Developer and the City for the implementation of the proposed public funding sources requested in the Application;
  - D. If a development agreement is entered into, provide the necessary staff, legal, financial and planning assistance to implement and administer the TIF Plan, the CID and any contract executed to provide for the operation and administration of the approved public funding tools; and
  - E. Engage appropriate outside consultants and attorneys to carry out the tasks described above.
2. **Initial Deposit.** The City acknowledges receipt of \$20,000 (the "**Deposit**") from the Developer upon the execution of this Funding Agreement. The City shall disburse the Deposit as set forth in **Section 4** and shall bill the Developer pursuant to **Section 3** to re-establish the Deposit so that there is always a minimum cash balance of \$20,000 available, from which additional disbursements may be made as required.
3. **Additional Funding.**

A. The City shall submit an itemized statement for actual expenses incurred to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City in accordance with this Funding Agreement. Such statements shall be submitted on a regular periodic basis, but no more often than monthly. Developer shall pay the City the amounts set forth on such statements (the "**Additional Funds**") within thirty (30) days of receipt thereof. If such funds are not so received, the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed twenty-four percent (24%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Funding Agreement pursuant to **Section 6**. Developer shall supply the Additional Funds in a timely manner so that City activities may continue without interruption.

B. The City and the Developer agree that the Developer shall reimburse the City for its administrative expenses and actual out-of-pocket expenses necessary to perform the City's obligations hereunder, including the fees and expenses of Bond Counsel and the fees and expenses of Piper Sandler & Co., as municipal advisors, and other consultants as approved according to this paragraph. The City shall advise the Developer in writing if it intends to utilize the services of any other consultant to perform its obligations under the terms of this Funding Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected. If the Developer, in writing, within five (5) business days from receipt of the City's notice, objects to either the consultant named or the service to be performed, the City and the Developer shall negotiate in good faith to resolve the Developer's objections. If the Parties cannot agree on the consultant to be used or the service to be performed, the City shall have no obligation to perform that service under the terms of this Funding Agreement and the Developer shall have no obligation to pay for such service under the terms of this Funding Agreement.

C. The Deposit and all Additional Funds shall be treated as funds that may be reimbursed from TIF revenues generated by the TIF Plan, provided that the TIF Plan is approved, and the Developer and the City enter into a development agreement which provides for such reimbursement.

D. Before a vote by the Board of Aldermen for approval or disapproval of the Application, including the TIF Plan, approval of a redevelopment agreement with the Developer or approval of a CID or any other measure associated the Application, the Developer shall deposit with the City, upon notice from the City, sufficient Additional Funds to pay all outstanding expenses incurred hereunder and replenish the amount on deposit with the City as provided in **Section 2**.

4. **Disbursement of Funds.** The Deposit and any Additional Funds will be held in escrow pending disbursement as provided herein. The City shall disburse the Deposit and Additional Funds for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Funding Agreement as payment for such expenses become due. Upon reasonable notice, the City shall make its records available for inspection by Developer for such disbursements.

5. **Project Administration.** In addition to the services set forth in **Section 1**, the City may be required to provide services from time to time for the continuing administration of the funding mechanisms that are approved as part of the Application, and any contracts entered into in furtherance of the Application. Upon appropriate itemization, the City shall be reimbursed by the Developer for actual meeting expenses and other expenses that are reasonable or incidental to the general operations of the City and its consultants with respect to administration of such funding mechanisms, and any contracts entered into in furtherance of the Application. The provisions of this section shall apply until such time as the City and the Developer execute an agreement which provides for the termination of this Funding Agreement and the terms and conditions under which the City's ongoing services shall be funded. It is anticipated that, if approved, any such agreement will include provisions necessary for reimbursement of such funds to the Developer.

6. **Termination of this Funding Agreement.**

A. **Termination by the City.** In the event the Developer fails to perform any of its obligations herein, the City may terminate this Funding Agreement, and any other agreement between the parties, at its sole discretion if the Developer fails to cure the default within ten (10) days after written notice to the Developer of the default. Termination by the City shall also terminate any duties and obligations of the City with respect to this Funding Agreement, including, but not limited to, the City's processing of the Application. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

B. **Termination by the Developer.** The parties hereto acknowledge that the Developer may determine to abandon the Application. Upon written notice of abandonment by the Developer, this Funding Agreement shall terminate, and the City may terminate any other agreement between the parties. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

C. **Mutual Termination.** The parties agree that if at anytime an agreement regarding the Application is not reached, either party may terminate this Funding Agreement. Upon such termination, the Deposit and any Additional Funds shall be disbursed as set forth in paragraph D of this Section.

D. **Wrap-up after early termination.** Upon termination pursuant to paragraphs A, B or C of this Section, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Funding Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement with the Developer. Upon such termination, in the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable hereunder, the Developer shall reimburse the City as set forth in **Section 3**. After termination of this Funding Agreement pursuant to paragraphs A, B or C of this Section, any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by the City, or reimbursed to the City, shall be returned to the Developer.

E. Termination by Consolidation into a Development Agreement. Unless otherwise terminated as provided in paragraphs A, B or C of this **Section 6**, this Funding Agreement shall stay in full force and effect until it is specifically terminated as set forth in an agreement between the City and Developer, and thereafter the terms and conditions of the agreement shall provide for the continued funding arrangements by Developer with respect to the Application.

7. **Notice.**

Any notice, approval, request or consent required by or asked to be given under this Funding Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

Anna Mitchell, Assistant City Administrator  
City Administrator's Office  
City of Smithville, Missouri  
107 West Main Street  
Smithville, MO 64089

With a copy to:

Megan Miller  
Gilmore & Bell, P.C., Suite 1100  
2405 Grand Blvd.  
Kansas City, Missouri 64108

To Developer:

110 Smithville, LLC

With a copy to:

Andrew Lonard  
Levy Craig Law Firm  
4520 Main Street, Suite 1600  
Kansas City, Missouri 64111

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.



8. **City Requirements and Prior Approval.** The Developer agrees to comply with all applicable laws and City ordinances, including, but not limited to, the City's zoning ordinances, subdivision regulations and all planning or infrastructure requirements related to the development of any property. The Developer agrees that execution of this Funding Agreement in no way constitutes a waiver of any requirements of applicable City ordinances or policies with which the Developer must comply and does not in any way constitute prior approval of any future proposal for development. The Developer acknowledges that the City may not lawfully contract away its police powers and that approval of any zoning, subdivision and similar development applications cannot be contractually guaranteed. This Funding Agreement does not alter or diminish the City's ability to exercise its legislative discretion to consider any application in accordance with all applicable laws with respect to the development of any property.

9. **Legal Representation.** The Developer understands and acknowledges that this arrangement is an accommodation to the Developer in which the City's special legal counsel is not providing legal representation to the Developer and that no attorney-client relationship between the Developer and the City's special legal counsel shall exist by any reason including, but not limited to, the Developer's payment of the City's expenses under this Funding Agreement. Developer further understands that legal counsel paid pursuant to this Funding Agreement is legal counsel for the City and acknowledges the duties of confidentiality and loyalty to the City.

10. **Subsequent Developers.** In the event the City selects another developer of record pursuant to a request for proposals, the City shall require the subsequent developer to assume all obligations of the Developer under this Funding Agreement as of the date that the subsequent developer is designated as the developer of record and to reimburse the Developer for its expenditures under this Funding Agreement.

11. **Assignment.** This Funding Agreement may not be assigned by any party without the prior written consent of the other party. No assignment, unless specifically provided for in such consent, shall relieve the assigning party of any liability pursuant to this Funding Agreement. This Funding Agreement shall be binding upon the parties and their successors and permitted assigns.

The parties hereto have caused this Funding Agreement to be executed by their duly authorized representatives the day and year first above written.

**CITY OF SMITHVILLE, MISSOURI**

By: \_\_\_\_\_  
Damien Boley, Mayor

(SEAL)

ATTEST:

\_\_\_\_\_  
Linda Drummond, City Clerk

**110 SMITHVILLE, LLC**

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

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

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



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Approve Bill No. 2942-22, Approving a Replacement Easement with United States of America Corps of Engineers on water pipeline and pumping station

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**RECOMMENDED ACTION:**

A motion to approve Bill No. 2942-22.

**SUMMARY:**

The Raw Water Pump Station is located at the base of the Smithville Lake and Dam. The City is currently in the process of rebuilding the Raw Water pump station to ensure sufficient water supply to the City, adding additional pumping capacity, adding additional control valves, installing copper ion generator for eradication of zebra mussels and getting the pump station out of the flood plain. In order to connect to the new location of the pump station and minimize bypass pumping a new easement on the Corps property is needed.

**PREVIOUS ACTION:**

**POLICY ISSUE:**

Facility / Infrastructure Maintenance

**FINANCIAL CONSIDERATIONS:**

There is no cost for this easement

**ATTACHMENTS:**

- ☒ Ordinance
- ☐ Resolution
- ☐ Staff Report
- ☐ Other:

- ☒ Contract
- ☐ Plans
- ☐ Minutes

**BILL NO. 2942-22**

**ORDINANCE NO.**

**AN ORDINANCE APPROVING AN EASEMENT FOR WATER PIPELINE AND PUMPING FACILITY IN SUPPORT OF WATER SUPPLY STORAGE BETWEEN THE CITY OF SMITHVILLE, MISSOURI, AND THE UNITED STATES OF AMERICA REGARDING THE EASEMENT NO. DACW41-2-22-0001 AS A REPLACEMENT TO EASEMENT NO. DACW41-2-12-0016 FOR THE USE OF CORPS OF ENGINEERS PROPERTY TO EXPAND, IMPROVE, REPAIR AND REVISE THE EXISTING WATER SUPPLY AND PUMPING FACILITIES.**

WHEREAS, Section 70.220 R.S.Mo states in part "*Political subdivisions may cooperate with . . . the United States . . . may contract and cooperate with . . . with a duly authorized agency of the United States, . . . 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 made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision.*

WHEREAS the City of Smithville and the United State of America (Army Corps of Engineers) have previously entered an easement, for Water Pipeline And Pumping Facility In Support Of Water Supply Storage purposes for a term of twenty-five years (25), beginning April 8, 2008, and ending April 4, 2033, Easement No. DACW41-2-12-0016.

WHEREAS the City of Smithville and The United States of America want to extend the term not to exceed twenty-five (25) more years beginning March 15, 2022 and to expand the easement for long term use and temporary construction purposes to expand, improve, repair and revise the water pipeline and pumping facility in support of water supply storage and in support of the Water Supply Contract, Contract No. DACW41-73-C-0007 between the parties dated August 30, 1972, allowing Smithville to obtain water supply from Smithville Lake, by way of .

WHEREAS The form of said proposed agreement, attached hereto as **Ordinance Exhibit 1** is incorporated herein by reference and is known as Easement No. DACW41-2-22-0001.

WHEREAS the Secretary of the Army acting for and on behalf of the United States of America has agreed to said requested easement modification.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:**

Pursuant to the authority of Section 70.220 R.S.Mo., the Mayor is authorized and directed to sign and execute on behalf of the City of Smithville the Easement for Water Pipeline and Pumping Facility in Support of Water Supply Storage in the form of **Ordinance Exhibit A** attached hereto.

PASSED THIS 7 DAY OF JUNE, 2022

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

First Reading: 05/17/2022

Second Reading: 06/07/2022

DEPARTMENT OF THE ARMY  
EASEMENT FOR WATER PIPELINE AND PUMPING FACILITY  
IN SUPPORT OF  
AN AGREEMENT FOR WATER SUPPLY STORAGE  
DACW41-73-C-0007  
LOCATED AT  
SMITHVILLE LAKE  
CLAY COUNTY, MISSOURI

**THIS EASEMENT** is made on behalf of the **UNITED STATES OF AMERICA** (the "United States"), between the **SECRETARY OF THE ARMY**, acting by and through the Real Estate Contracting Officer, Real Estate Division, U.S. Army Engineer District, Kansas City District, hereinafter referred to as the "Grantor", under and by virtue of the authority vested in the said Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, and pursuant to **DACW41-73-C-0007** between the parties hereto, hereinafter referred to as the "Water Supply Storage Agreement", with an effective date of September 1, 1972, entered into under the authority of the Water Supply Act of 1958, as amended (43 U.S.C. § 390b), Flood Control Act of 1965 (Public Law 298, 89th Congress), Section 6 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), and **City of Smithville**, the municipal corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, with its principal office at 107 W. Main Street, Smithville, Missouri 64089, hereinafter referred to as the "Grantee."

**NOW, THEREFORE:**

The Grantor, for good and valuable consideration set forth below, the receipt and sufficiency of which are hereby acknowledged, upon and subject to the terms and conditions set forth in this easement, does hereby grant and convey to the Grantee:

a perpetual and assignable easement and right-of-way in, on, over, and across the land described in **Exhibit A**, attached hereto and made a part hereof, hereinafter referred to as the "Premises," for the location, construction, operation, maintenance, repair, and replacement of an underground 24 inch water pipeline and raw water intake structure, and pumping facility to hereinafter referred to as the "Facilities," having been determined not to include more land than is necessary for the easement.

**EASEMENT NO. DACW41-2-22-0010**  
**Replaces No. DACW41-2-12-0016**

a temporary easement and right-of-way in, on, over, and across, the land described in **Exhibit B**, attached hereto and made a part hereof, for a period not to exceed 36 months beginning March 15, 2022 , for use by the Grantee and its representatives, agents, and contractors as a work area, including the right to move, store, and remove equipment and supplies, erect and remove temporary structures, and perform any other work necessary and incident to the construction of the Facilities, having been determined not to include more land than is necessary for the easement; hereinafter collectively referred to as the "Premises."

All right, title, and interest in and to the Facilities constructed on the Premises by the Grantee shall remain in the Grantee and shall not merge. The Grantor shall make no claim of title during the term of this easement to the Facilities or any portion thereof.

**THIS EASEMENT** is granted subject to the following terms and conditions:

**1. CONSIDERATION**

The consideration for the grant of this easement is the construction, operation, maintenance, repair, and replacement of the Facilities for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

**2. NOTICES**

a. All correspondence and notices to be given pursuant to Condition 17, RELOCATION OF FACILITIES, and Condition 18, TERMINATION, of this easement shall be in writing and addressed, if to the Grantee, to City of Smithville, 107 West Main Street, Smithville, Missouri 64089 and, if to the Grantor, to the U.S. Army Engineer District, Kansas City District, Attn: Chief, Real Estate Division, 601 East 12<sup>th</sup> Street, Kansas City, Missouri 64106-2824, or as may from time to time otherwise be directed by the parties.

b. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery. Use of an express delivery service will not substitute for this requirement.

c. General correspondence and other communications, other than the said notices, do not have to be sent certified mail, return receipt requested.

**3. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "Real Estate Contracting Officer," "Grantor," or "Chief, Real Estate Division"

shall include their duly authorized representatives. Any reference to "Grantee" shall include its assignees, transferees, and their duly authorized representatives.

#### **4. SUPERVISION BY THE GRANTOR**

The construction, operation, maintenance, repair, or replacement of the Facilities shall be performed at no cost or expense to the United States and subject to the approval of the Grantor. Upon the completion of any of the aforementioned activities, the Grantee shall immediately restore the Premises to the satisfaction of the Grantor. The use and occupation of the Premises for the purposes herein granted shall be subject to such rules and regulations as the Grantor prescribes in writing from time to time and the terms and conditions of the Water Supply Storage Agreement.

#### **5. APPLICABLE LAWS AND REGULATIONS**

The Grantee shall comply with all applicable Federal, state, county, and municipal laws, ordinances, and regulations wherein the Premises are located.

#### **6. WATER SUPPLY STORAGE AGREEMENT**

a. The Grantee shall comply with the terms and conditions of the Water Supply Storage Agreement as a condition of this easement.

b. The granting of this easement does not expressly or by implication authorize the utilization of reservoir storage space for water supply purposes, or the withdrawal or increase in withdrawal of surplus water, from Smithville Lake Project.

#### **7. OPERATION OF FACILITIES**

a. The Grantee shall operate the Facilities and all electrical equipment shall be installed, operated, and maintained in compliance with all applicable Federal, state, county, and municipal laws, ordinances, and regulations including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the U.S. Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

b. Any electrical service to submerged motors or those located above water shall be by means of a sealed, waterproof, multiple conductor cable with controls and switches located on land. The location of such motors and the electrical feeders shall be clearly marked to be visible to boaters and swimmers. Additionally, signs warning "DANGER-HIGH VOLTAGE-Unauthorized Access Prohibited" shall be erected to be visible from the land and water approaches to the equipment.



## **8. CONDITION OF PREMISES**

The Grantee acknowledges that it has inspected the Premises, knows the condition, and understands that the easement is granted without any representation or warranties whatsoever and without any obligation on the part of the Grantor.

## **9. INSPECTION AND REPAIRS**

The Grantee shall inspect the Facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by the Grantor to repair any such defects.

## **10. PROTECTION OF UNITED STATES PROPERTY**

The Grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Grantee under this easement and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to the Grantor or, at the election of the Grantor, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to the Grantor.

## **11. RIGHT TO ENTER**

The right is reserved to the Grantor to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, to flood the Premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the Premises as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the Grantor, the United States, or any officer, agent, or employee thereof.

## **12. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by the Grantor, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions, terms, and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the Grantee.

### **13. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

### **14. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements as well as established access routes for roadways and utilities located on the Premises. The Grantor will coordinate the proposed grant of any new easement or route in, on, over, or across the Premises with the Grantee and easements will not be granted which, in the opinion of the Grantor, will interfere with the Grantee's use of the Premises.

### **15. REQUIRED SERVICES**

The Grantee shall furnish through the Facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates offered by the Grantee for similar service.

### **16. RELOCATION OF FACILITIES**

In the event all or any portion of the Premises occupied by the Facilities shall be needed by the United States, or in the event the existence of the Facilities is determined to be detrimental to governmental activities, the Grantee shall from time to time, upon notice to do so, and as often as so notified, remove the Facilities to such other location on the Premises as may be designated by Grantor. In the event the Facilities shall not be removed or relocated within ninety (90) calendar days after such notice, the Grantor may cause such relocation at the sole expense of the Grantee.

### **17. TERMINATION**

a. This easement may be terminated by the Grantor upon thirty (30) calendar days written notice to the Grantee if the Grantor shall determine that the right-of-way hereby granted interferes with the use or disposal of the Premises by the United States, or it may be revoked by the Grantor for failure of the Grantee to comply with any or all of the conditions of this easement; for non-use for a period of two (2) years; or for abandonment.

b. This easement may be terminated if the Grantee fails to comply with the terms and conditions of, or is in default under, the Water Supply Storage Agreement. In addition, if the Water Supply Storage Agreement is terminated, expires, or becomes void, then this easement may be terminated by the Grantor.

## **18. SOIL AND WATER CONSERVATION**

The Grantee shall maintain, in a manner satisfactory to the Grantor, all soil and water conservation structures that may be in existence upon the Premises at the beginning of or that may be constructed by the Grantee during the term of this easement. The Grantee shall take appropriate measures to prevent or control soil erosion within the Premises and any soil erosion occurring within or outside the Premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by the Grantor.

## **19. ENVIRONMENTAL PROTECTION**

a. Within the limits of its legal power, the Grantee shall protect the Premises against pollution of its air, ground, and water. The Grantee shall promptly comply with any laws, regulations, orders, notices, or instructions affecting the activity hereby authorized if and when issued by the U.S. Environmental Protection Agency, or any Federal, state, interstate, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous substance within the Premises is strictly prohibited. Such regulations, orders, notices, or instructions in effect or prescribed by the U.S. Environmental Protection Agency or any Federal, state, interstate, or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, state, and local laws and regulations. The Grantee must obtain approval in writing from the Grantor before any pesticides or herbicides are applied to the Premises.

c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

## **20. HISTORIC PRESERVATION**

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the

Premises, the Grantee shall immediately notify the Grantor and protect the site and material from further disturbance until the Grantor gives clearance to proceed.

## **21. NON-DISCRIMINATION**

a. The Grantee shall not discriminate against any person or persons upon the basis of race, creed, color, age, sex, handicap, disability, national origin or religion in the use and occupancy of the Premises.

b. The Grantee shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794); and all requirements imposed by or pursuant to the regulations of the Department of Defense in 32 CFR Part 195; Department of Defense Directive 5500.11; Department of Defense Directive 1020.1; and Army Regulation 600-7.

## **22. RESTORATION**

On or before the expiration or termination of this easement, the Grantee shall, without expense to the United States, and within such time as the Grantor may indicate, remove said facilities and restore the Premises to the satisfaction of the Grantor. In the event the Grantee shall fail to remove said facilities and restore the Premises, the Grantor shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

## **23. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. Section 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the Premises.

## **24. DESCRIPTION**

Upon the completion of construction and satisfactory restoration of the temporary easement area, the Grantee, will provide as-built drawings and description. This easement will be amended to correct the description based on the as-built drawings and description. The right-of-way herein granted shall be limited to the area

actually occupied by the pipeline/facilities with rights of ingress and egress for installation, operation and maintenance.

## **25. DETERMINATION REGARDING EXECUTIVE ORDER 13658**

Any reference in this section to “prime contractor” or “contractor” shall mean the Lessee and any reference to “contract” shall refer to the Lease.

a. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

b. Minimum Wages. (1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on [www.wdol.gov](http://www.wdol.gov) (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage

obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

c. Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

d. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

e. The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

f. Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

g. Payroll Records. (1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and

transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s)
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

h. The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

i. Certification of Eligibility. (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has

an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

k. Anti-retaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

l. Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the



procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

m. Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

n. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

## **26. DETERMINATION REGARDING EXECUTIVE ORDER 13706**

Any reference in this section to “prime contractor” or “contractor” shall mean the Lessee and any reference to “contract” shall refer to the Lease.

a. *Executive Order 13706.* This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

b. *Paid Sick Leave.* (1) The contractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the prime contractor or

any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The contractor shall additionally allow accrual and use of paid sick leave as required by Executive Order 13706 and 29 CFR part 13. The contractor shall in particular comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract.

(2) The contractor shall provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. The contractor shall provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken.

(3) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

c. *Withholding.* The contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

d. *Contract Suspension/Contract Termination/Contractor Debarment.* In the event of a failure to comply with Executive Order 13706, 29 CFR part 13, or this clause, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

e. The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and a contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and 29 CFR part 13.

f. Nothing in Executive Order 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13706 and 29 CFR part 13.

g. *Recordkeeping.* (1) Any contractor performing work subject to Executive Order 13706 and 29 CFR part 13 must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (xv) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and Social Security number of each employee;
- (ii) The employee's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid (including all pay and benefits provided);
- (iv) The number of daily and weekly hours worked;
- (v) Any deductions made;
- (vi) The total wages paid (including all pay and benefits provided) each pay period;
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2);
- (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;
- (ix) Dates and amounts of paid sick leave taken by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and 29 CFR part 13 as described in §13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);
- (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3);
- (xi) Any records reflecting the certification and documentation a contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee;

(xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave;

(xiii) The relevant covered contract;

(xiv) The regular pay and benefits provided to an employee for each use of paid sick leave; and

(xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2)(i) If a contractor wishes to distinguish between an employee's covered and non-covered work, the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(ii) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to 29 CFR 13.5(a)(i) or (iii), the contractor must keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor.

(3) In the event a contractor is not obligated by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA's minimum wage and overtime requirements, and the contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (1)(d) of this section to keep records of the employee's number of daily and weekly hours worked.

(4)(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family

relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their respective implementing regulations, or any other applicable law.

h. The contractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts.

i. *Certification of Eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management Web site, <http://www.SAM.gov>.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. *Interference/Discrimination.* (1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring an employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

(2) A contractor may not discharge or in any other manner discriminate against any employee for:

(i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and 29 CFR part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 and 29 CFR part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 and 29 CFR part 13; or

(iv) Informing any other person about his or her rights under Executive Order 13706 and 29 CFR part 13.

k. *Waiver.* Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

l. *Notice.* The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

m. *Disputes concerning labor standards.* Disputes related to the application of Executive Order 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the

**EASEMENT NO. DACW41-2-22-0010**  
**Replaces No. DACW41-2-12-0016**

meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**27. SPECIAL CONDITIONS**

a. That the right-of-way hereby granted shall not occupy more land than is reasonably necessary for such purpose, as determined by the said officer, and in no event shall exceed a width of Fifteen Feet **(15')** on each side of the center line thereof.

b. In the event this Easement is renewed by a similar instrument, then **RESTORATION** Condition hereof, will not be applicable.

c. No transformers shall be located on the Premises which contain Polychlorinated Biphenyls (PCB's).

d. Water Supply Contract DACW41-73-C-0007 attached as Exhibit C.

e. This easement supercedes **DACW41-2-12-0016** which was granted to the City of Smithville for a Twenty-Five (25) year term beginning April 5,2008 and ending April 4, 2033.

**EASEMENT NO. DACW41-2-22-0010**  
**Replaces No. DACW41-2-12-0016**

**THIS EASEMENT** is not subject to Title 10, United States Code, Section 2662, as amended.

**IN WITNESS WHEREOF**, the Grantor has caused this easement to be executed in its name by the Real Estate Contracting Officer, U.S. Army Engineer District, Kansas City District, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**UNITED STATES OF AMERICA**

\_\_\_\_\_  
Matt W. Bosky  
Chief, Management & Disposal Branch  
Real Estate Contracting Officer

**THIS EASEMENT** is also executed by the Grantee this \_\_\_\_ day of \_\_\_\_\_, 2022.

**BY: CITY OF SMITHVILLE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title



**CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_ (Name), certify that I am the  
\_\_\_\_\_ (Title) of **City of Smithville**, that  
\_\_\_\_\_ (signator of outgrant) who signed the foregoing  
instrument on behalf of the grantee was then \_\_\_\_\_ (title of signator  
of outgrant) of **City of Smithville**. I further certify that the said officer was acting within  
the scope of powers delegated to this governing body of the grantee in executing said  
instrument.

**City of Smithville**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Clerk or Appropriate Official

AFFIX SEAL

**ACKNOWLEDGMENT**

STATE OF MISSOURI    )  
                                  )ss  
COUNTY OF JACKSON )

**BEFORE ME**, a Notary Public in and for Jackson County, personally appeared **Mr. Matt W. Bosky**, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the said instrument by authority of the Secretary of the Army, for the purposes therein expressed as the act and deed of the United States.

**GIVEN** under my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

(Seal)

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**EASEMENT NO. DACW41-2-22-0010**  
**Replaces No. DACW41-2-12-0016**

**Exhibit A**

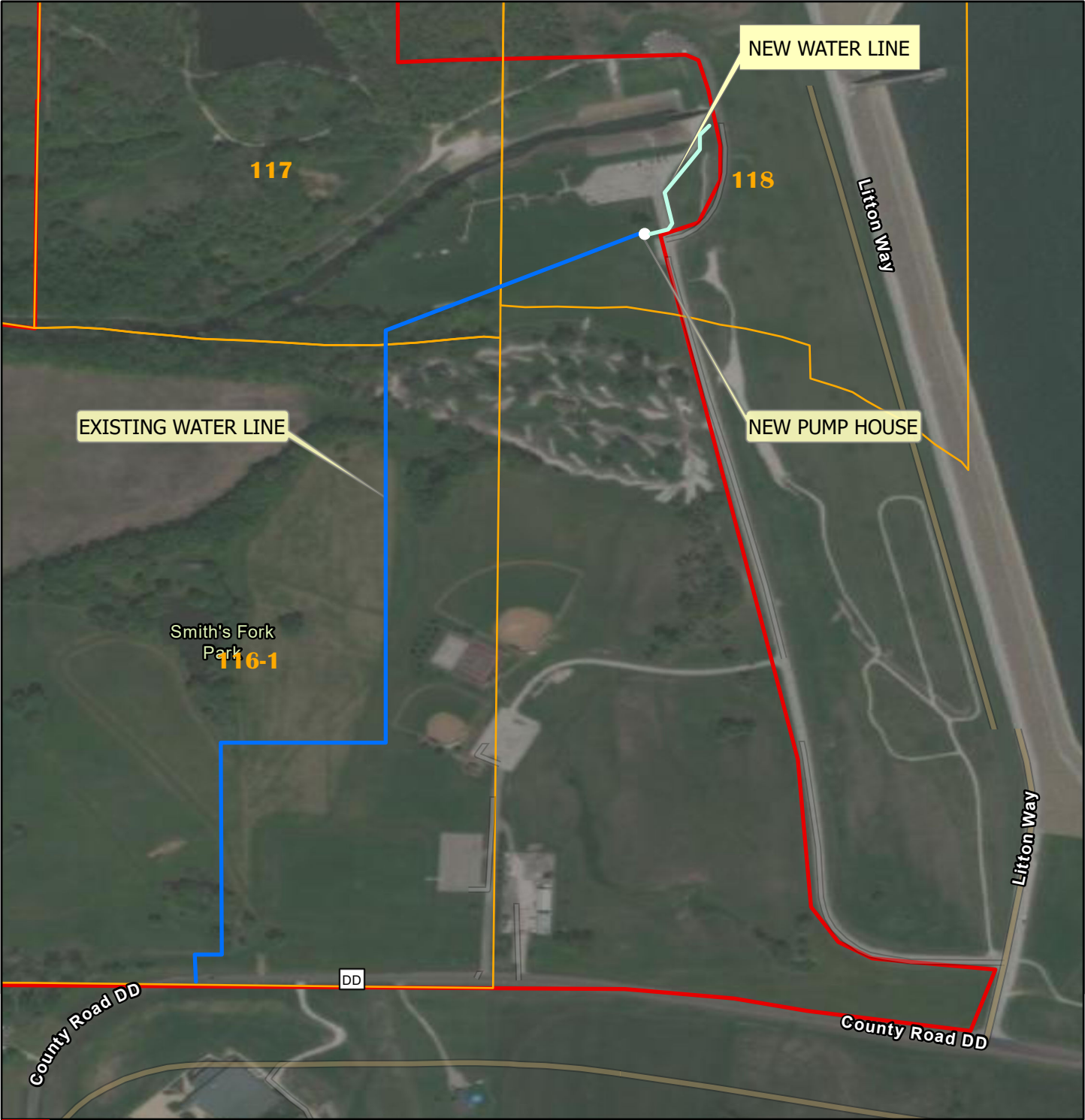
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**Exhibit B**

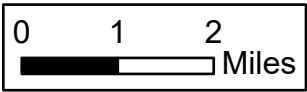
<<legal description of temporary work area>>

**Exhibit C**

<<water supply agreement DACW41-73-C-0007>>



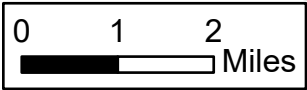
SM\_OUTGRANTS selection  
Tracts selection



**SMITHVILLE LAKE**  
**CLAY COUNTY, MISSOURI**  
**CITY OF SMITHVILLE**  
**TRACT NO: 116-1, 117, 118**  
**S: 13, T: 53N, R: 32W**  
**0.2 ACRES**



-  SM\_OUTGRANTS selection
-  Tracts selection



**SMITHVILLE LAKE**  
**CLAY COUNTY, MISSOURI**  
**CITY OF SMITHVILLE**  
**TRACT NO: 116-1**  
**S: 13, T: 53N, R: 32W**  
**0.06 ACRES**

City of Smithville  
Authorization 89  
Raw Water Pump Station

**ATTACHMENT "A"**

**WATER LINE EASEMENT(1)**

A tract of land being within the U.S. Government Reservation, Smithville Lake, Missouri in the Southwest Quarter of Section 13, Township 53 North, Range 33 West, Clay County, Missouri, more particularly described as follows:

Commencing at the southwest corner of Southwest Quarter of said Section 13; thence N00°01'38"W, along the west line thereof, 113.68 feet; thence departing said west line, N89°58'22"E, 1676.24 feet to the Point of Beginning; thence N09°35'54"W, 98.64 feet; thence N80°23'50"E, 86.00 feet; thence S09°35'54"E, 114.86 feet; thence S67°30'00"W, 77.51 feet; thence N26°54'31"W, 35.10 feet to the Point of Beginning.

Containing in all 10,537 square feet, more or less.

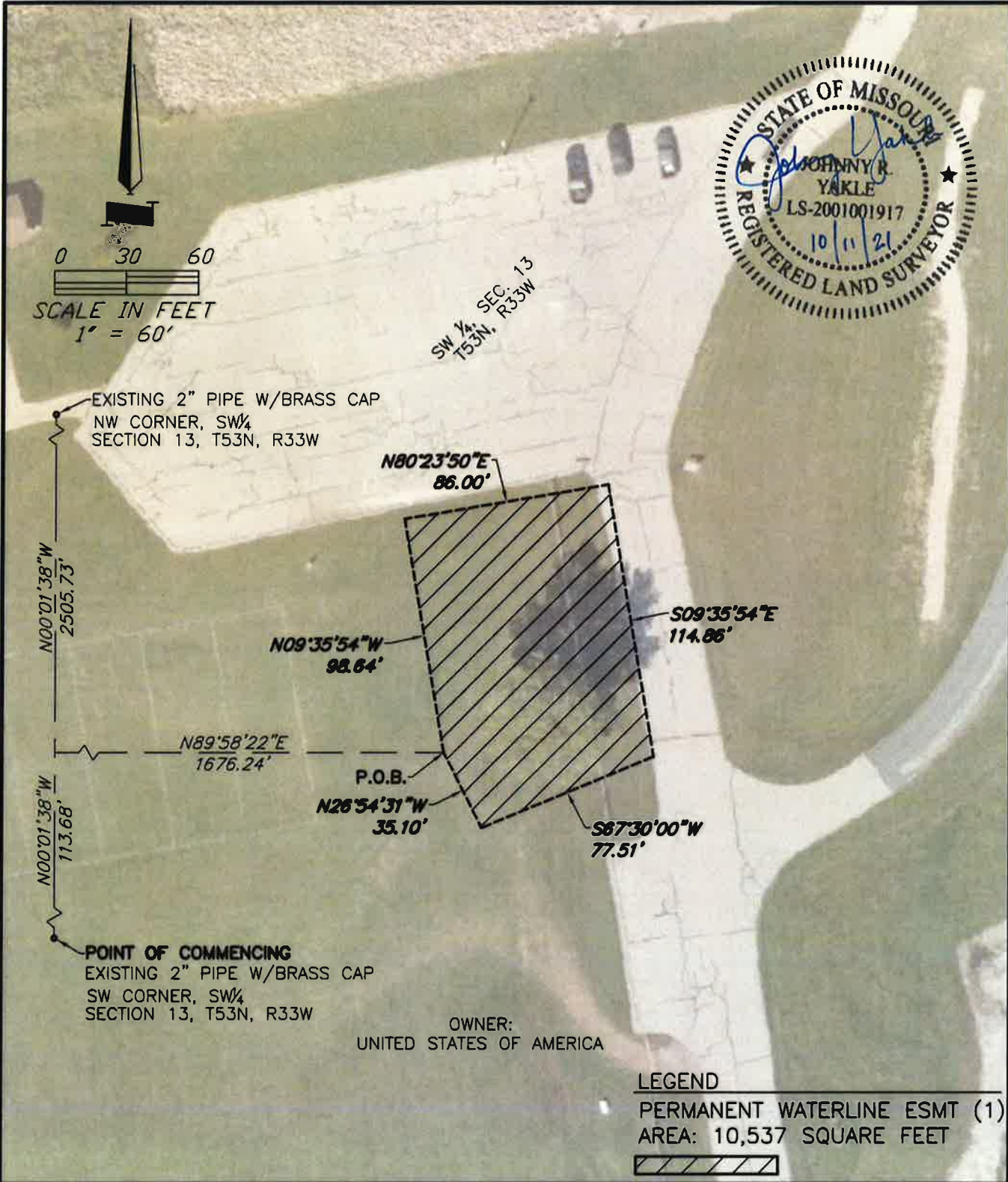
(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

*I hereby certify this description was prepared  
by me or under my direct supervision.*

Johnny Yakle, MO LS No.2001001917  
HDR Engineering  
10450 Holmes Road  
Kansas City, Mo. 64131  
(816)360-2700







HDR ENGINEERING, INC.  
10450 HOLMES RD. STE 600, KANSAS CITY, MO  
64131-3471 - PH:816-360-2700  
MO. CERTIFICATE OF AUTHORITY NO. #000856

**EXHIBIT**  
**PERMANENT WATERLINE ESMT (1)**  
OWNER: UNITED STATES OF AMERICA



107 WEST MAIN ST  
SMITHVILLE, MO 64089

TBS  
JRY

City of Smithville  
Authorization 89  
Raw Water Pump Station

**ATTACHMENT "A"**

**WATER LINE EASEMENT(2)**

A strip of land 20 feet in width being within the U.S. Government Reservation, Smithville Lake, Missouri in the Southwest Quarter of Section 13, Township 53 North, Range 33 West, Clay County, Missouri, said strip lying 10 feet on both sides of, parallel with and adjacent to the following described centerline:

Commencing at the southwest corner of Southwest Quarter of said Section 13; thence N00°01'38"W, along the west line thereof, 164.78 feet; thence departing said west line, N89°58'22"E, 1754.84 feet to the Point of Beginning; thence N80°24'06"E, 33.87 feet; thence N32°07'39"E, 19.67 feet; thence N12°52'21"W, 69.18 feet; thence N32°07'39"E, 186.37 feet; thence N09°37'39"E, 30.05 feet; thence N32°07'24"E, 50.00 feet to the Point of Termination.

Said strip containing in all 7,783 square feet, more or less.

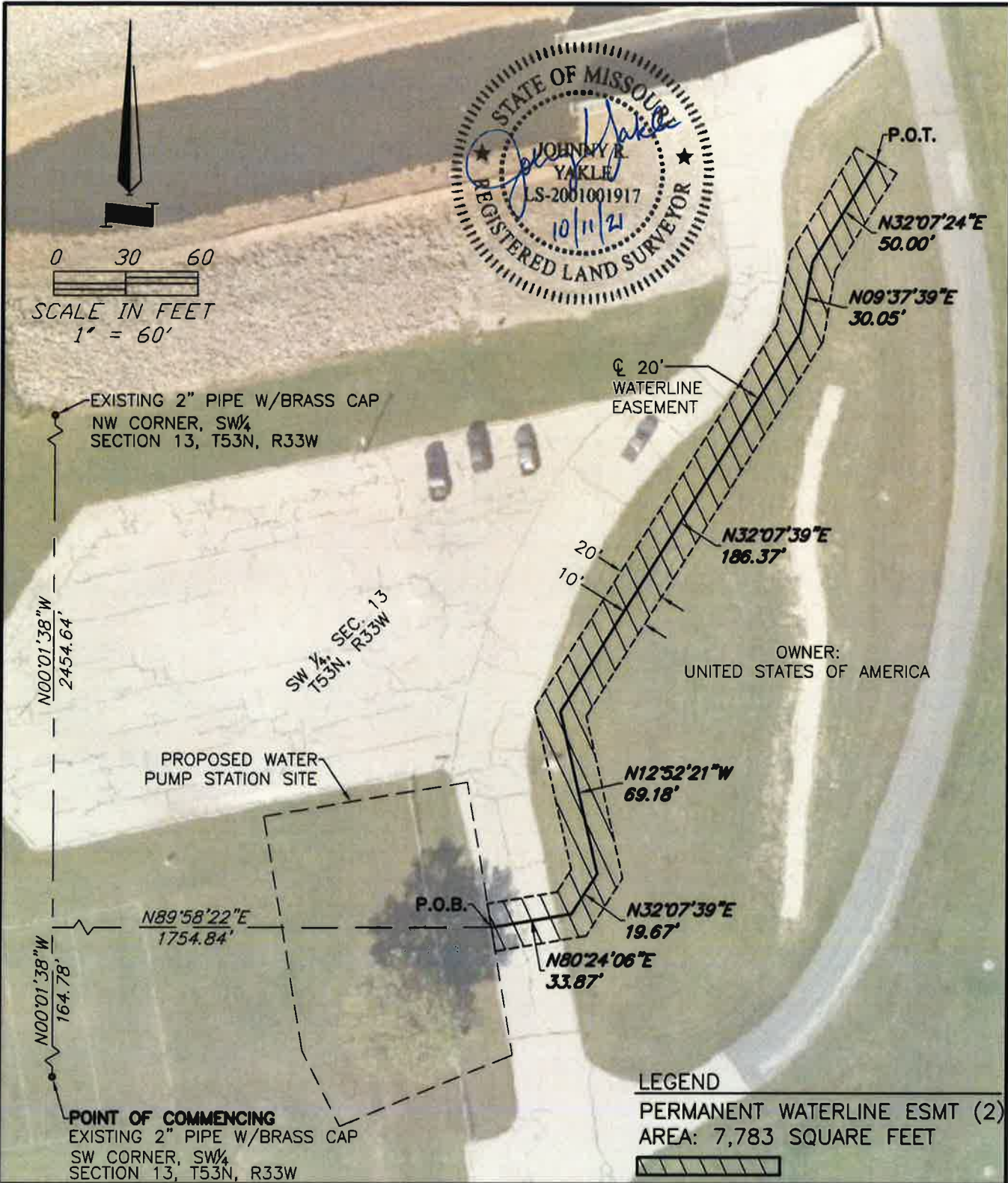
(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

*I hereby certify this description was prepared  
by me or under my direct supervision.*

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(816)360-2700







HDR ENGINEERING, INC.  
10450 HOLMES RD. STE 600, KANSAS CITY, MO  
64131-3471 - PH:816-360-2700  
MO. CERTIFICATE OF AUTHORITY NO. #000856

**EXHIBIT**  
**PERMANENT WATERLINE ESMT (2)**

OWNER: UNITED STATES OF AMERICA



107 WEST MAIN ST  
SMITHVILLE, MO 64089

TBS  
JRY

City of Smithville  
Authorization 89  
Raw Water Pump Station

**ATTACHMENT "A"**

**WATER LINE EASEMENT(3)**

A strip of land 35 feet in width being within the U.S. Government Reservation, Smithville Lake, Missouri in the Southwest Quarter of Section 13, the Northwest Quarter of Section 24 and the Southwest Quarter of Section 24 in Township 53 North, Range 33 West, Clay County, Missouri, said strip lying 17.5 feet on both sides of, parallel with and adjacent to the following described centerline:

Commencing at the southwest corner of Southwest Quarter of said Section 13; thence N00°01'38"W, along the west line thereof, 98.03 feet; thence departing said west line, N89°58'22"E, 1684.17 feet to the Point of Beginning; thence S67°30'00"W, 758.28 feet; thence S00°00'00"E, 1755.83 feet; thence N90°00'00"W, 843.45 feet; thence S00°00'00"E, 647.00 feet; thence N90°00'00"W 156.14 feet; thence S00°26'02"W, 51.04 feet to the south line of the Southwest Quarter of Section 24; thence continue S00°26'02"W, 160.00 feet to the northerly right of way line of Missouri State Highway DD, and the Point of Termination.

Said strip containing in all 3.51 acres, more or less.

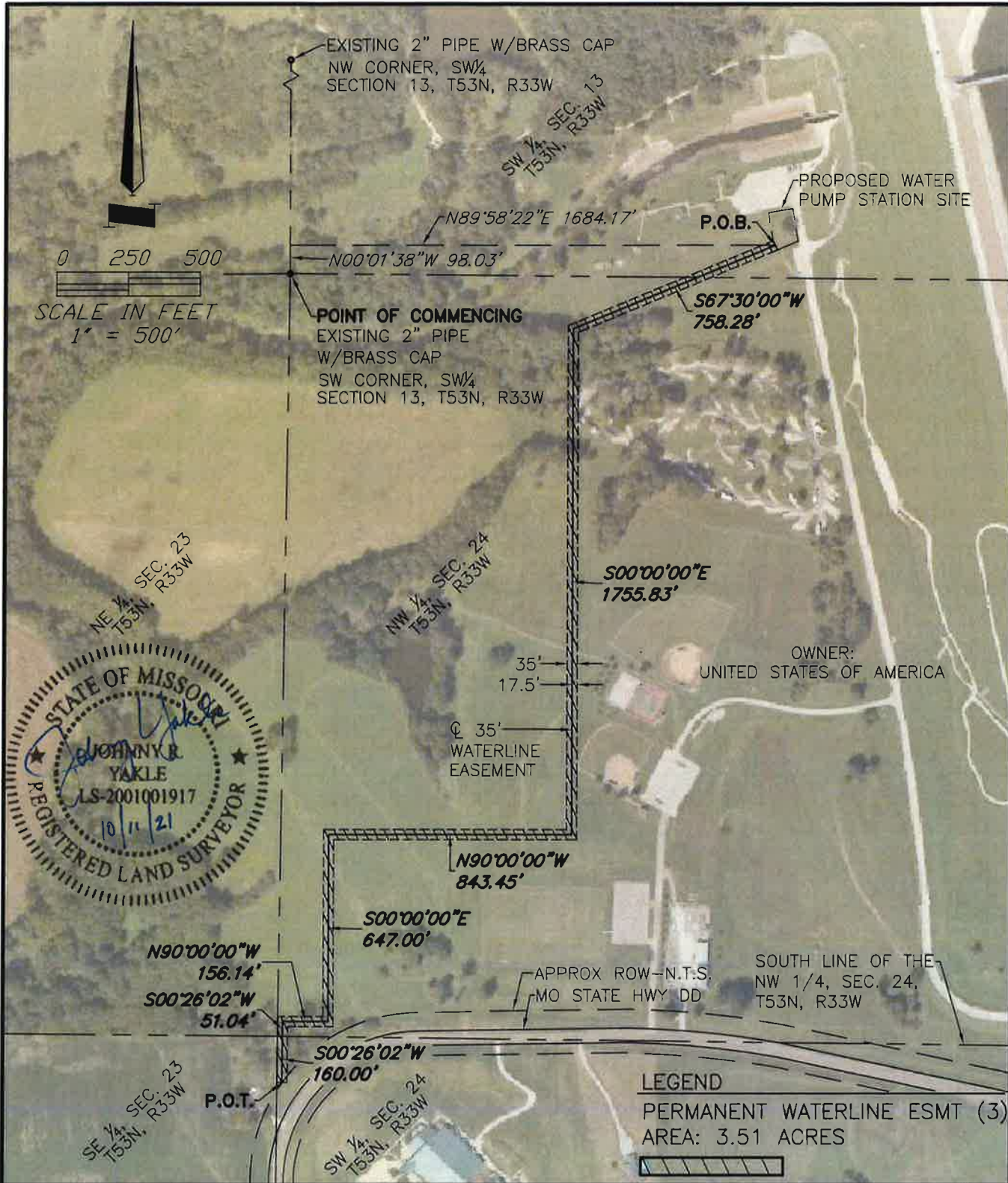
(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

*I hereby certify this description was prepared  
by me or under my direct supervision.*

Johnny Yakle, MO LS No.2001001917  
HDR Engineering  
10450 Holmes Road  
Kansas City, Mo. 64131  
(816)360-2700







HDR ENGINEERING, INC.  
10450 HOLMES RD. STE 600, KANSAS CITY, MO  
64131-3471 - PH:816-360-2700  
MO. CERTIFICATE OF AUTHORITY NO. #000856

**EXHIBIT**  
**PERMANENT WATERLINE ESMT (3)**

OWNER: UNITED STATES OF AMERICA



107 WEST MAIN ST  
SMITHVILLE, MO 64089

TBS  
JRY

City of Smithville  
Authorization 89  
Raw Water Pump Station

**ATTACHMENT "A"**

**SEWER EASEMENT**

A strip of land 15 feet in width being within the U.S. Government Reservation, Smithville Lake, Missouri in the Northwest Quarter of Section 24, Township 53 North, Range 33 West, Clay County, Missouri, said strip lying 7.5 feet on both sides of, parallel with and adjacent to the following described centerline:

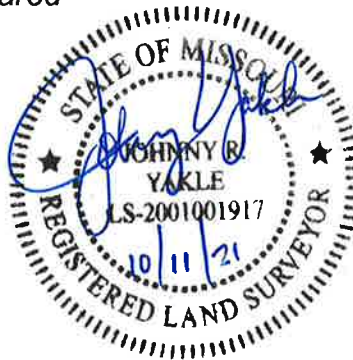
Commencing at the northwest corner of Northwest Quarter of said Section 24; thence S00°44'04"W, along the west line thereof, 570.30 feet; thence departing said west line, S89°15'56"E, 1008.46 feet to the Point of Beginning; thence N90°00'00"E, 5.62 feet; thence N30°39'42"E, 71.00 feet; thence N00°00'00"E, 110.00 feet to the Point of Termination.

Said strip containing in all 2,799 square feet, more or less.

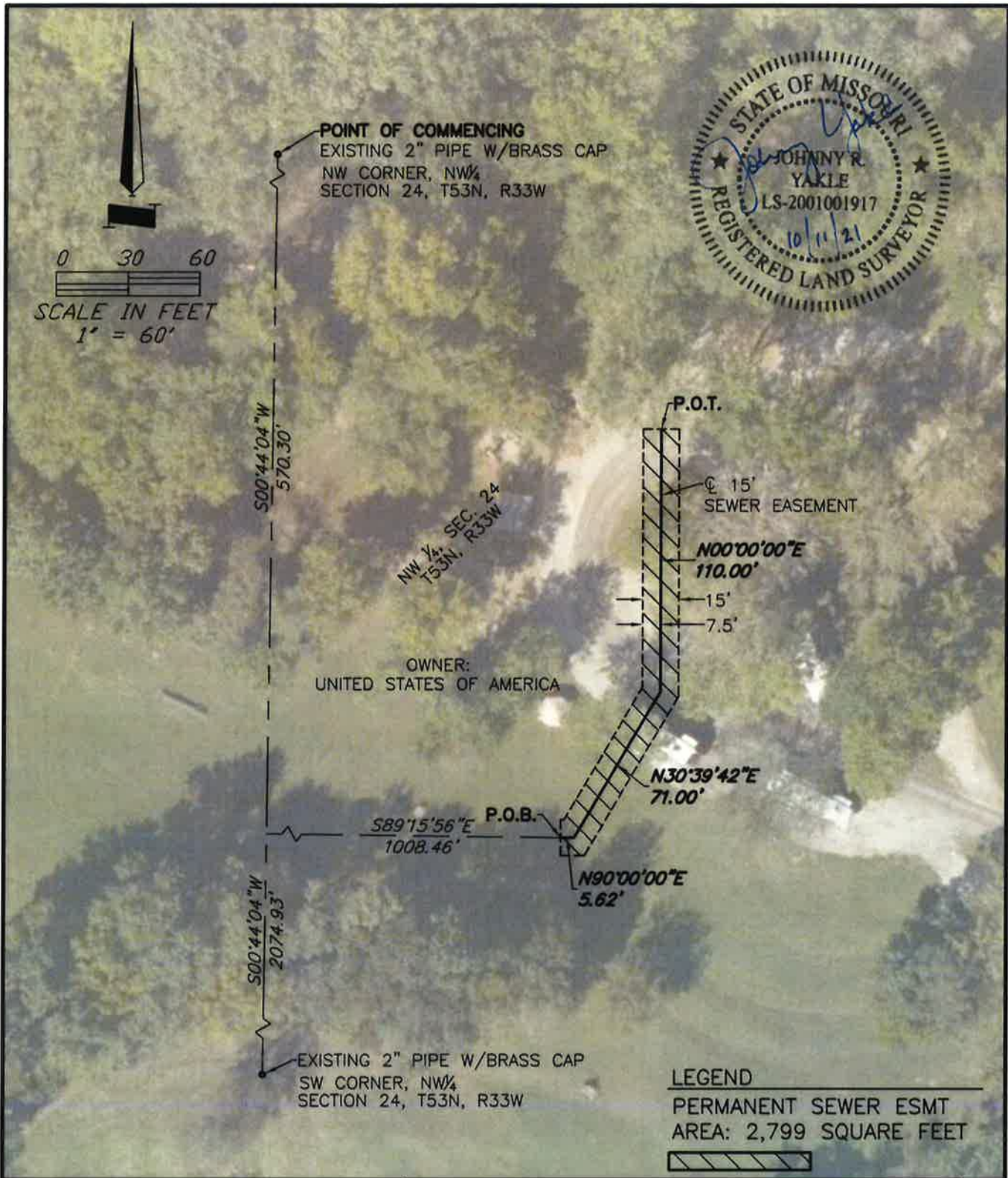
(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

*I hereby certify this description was prepared  
by me or under my direct supervision.*

Johnny Yakle, MO LS No.2001001917  
HDR Engineering  
10450 Holmes Road  
Kansas City, Mo. 64131  
(816)360-2700







HDR ENGINEERING, INC.  
10450 HOLMES RD. STE 600, KANSAS CITY, MO  
64131-3471 - PH:816-360-2700  
MO. CERTIFICATE OF AUTHORITY NO. #000856

**EXHIBIT**  
**PERMANENT SEWER ESMT**  
OWNER: UNITED STATES OF AMERICA



**SMITHVILLE**  
missouri  
THRIVING AHEAD

107 WEST MAIN ST  
SMITHVILLE, MO 64089

TBS  
JRY

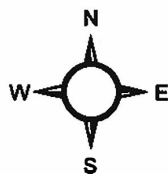


# SMITHVILLE LAKE



## Legend

- Pipeline
- Tracts
- Corps Boundary
- PLSS



SMITHVILLE LAKE, MISSOURI CITY  
OF SMITHVILLE, MISSOURI  
Raw water pipeline  
TRACT NOs. 116-1, 117 & 118  
S-13 & 33, T-53N, R-33W; 3.90 acres  
Clay County, Missouri

**Legal Description**

**DESCRIPTION:**

A strip of land 35 feet in width, lying within the U.S. Government Reservation, Smithville Lake, Missouri, situated in the SE¼SW¼ of Section 13, and the W¼NW¼, the NW¼NE¼NW¼, and the NW¼NW¼SW¼ of Section 24, all in Township 53 North, Range 33 West of the Fifth Principal Meridian, Clay County, Missouri, and lying varying widths on each side of the following described line:

Commencing at a point on the north line of the SW¼ of said Section 24, said point being 15 feet east of the northwest corner of said SW¼; thence S 0°26'10" W, approximately 160 feet to the northerly right-of-way line of Missouri State Highway Route DD, said point being the point of beginning of the strip of land herein described; thence returning on the last described course with a width of 20 feet on the right and 15 feet on the left, approximately 208.52 feet; thence with a width of 15 feet on the right and 20 feet on the left N 90° E, 156.16 feet; thence with a width of 20 feet on the right and 15 feet on the left, N 0° E, 652 feet; thence continuing with the same width N 90° E, 843.45 feet; thence continuing with the same width N 0° E, 1755 feet; thence continuing with the same width N 67°30' E, 865 feet; thence continuing with the same width N 22°30' E, 295 feet; thence continuing with the same width N 13°30' E, 75 feet; containing 3.90 acres, more or less.

Contract . DACW41-73-C-0007

CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND  
THE CITY OF SMITHVILLE, MISSOURI  
FOR  
WATER STORAGE SPACE IN SMITHVILLE LAKE, MISSOURI

THIS CONTRACT, entered into 72 AUG 30, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Contracting Officer executing this contract, and the city of Smithville, Missouri (hereinafter called the "User"):

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1965 (Public Law 298, 89th Congress), authorized the construction, operation, and maintenance of the Smithville Lake on Little Platte River, Missouri (hereinafter called the "Project"); and

WHEREAS, the User desires to contract with the Government for the use of storage included in the Project for municipal and industrial water supply, and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended (43 U.S.C. 390b); and

WHEREAS, the User is empowered so to contract with the Government and is vested with all necessary powers for accomplishment of the purposes of this contract, including those required by Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b);

NOW, THEREFORE, the Government and the User agree as follows:

ARTICLE 1 - Water Storage Space.

(a) Project Construction. The Government, subject to the directions of Federal law and any limitations imposed thereby, shall design and construct the Project so as to include therein space for the storage of water by the User.

(b) Rights of User.

(1) The User shall have the right to utilize an undivided 7.83 percent (estimated to contain 8,000 acre-feet after adjustment for sediment deposits) of the total storage space in the Project between elevations 864.2 feet above mean sea level and 836.3 feet above mean sea level, which total storage space is estimated to contain 102,200 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for present and anticipated future demand or need for municipal and industrial water supply. Twenty-five percent (an estimated 2,000 acre-feet) of the space which User has a right to utilize is for present use water storage and 75.00 percent (an estimated 6,000 acre-feet) is for future use water storage.



(2) The User shall have the right to withdraw water from the lake, or to order releases to be made by the United States through the outlet works in the Dam, subject to the provisions of Article 1(c) and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appliances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Contracting Officer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the User, under the authority of and in accordance with the provisions of 10 U.S.C. 2669 and such other authority as may be required. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges herein granted.

(c) Rights Reserved. The Government reserves the right to maintain at all times a minimum downstream release of 8 cubic feet per second through the gates or spillway of the dam. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life or property.

(d) Quality or Availability of Water. The User recognizes that this contract provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the full responsibility to acquire in accordance with State laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this contract. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The User shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation, and maintenance of such installations and facilities.

ARTICLE 4 - Measurement of Withdrawals and Releases. The User agrees to furnish and install, without cost to the Government, suitable meters

or measuring devices satisfactory to the Contracting Officer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the Contracting Officer and shall be subject to Article 1(c). The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the User shall pay the following sums to the Government:

(a) Project Investment Costs.

(1) The User shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, the amounts stated below which, as shown in Exhibit A attached to and made a part of this contract, constitute the entire estimated amount of the construction costs, including interest during construction, allocated to the water storage right acquired by the User under this contract. The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance will be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of the Project is initiated, on the basis set forth in the Water Supply Act of 1958, as amended. Such interest rate at the time of negotiation of this contract is 3.649 percent. The User shall repay:

2.235 percent of the construction cost of specific water supply facilities, estimated at	\$27,267
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2.86 percent of the total Project joint-use construction costs, estimated at	\$1,023,637
--	-------------

Interest during construction, estimated at	<u>\$56,912</u>
--	-----------------

Total estimated amount of Project investment costs allocated to the water supply storage space provided under this contract.	\$1,107,816
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(2) The Project investment costs allocated to the storage space indicated in Article 1(b)(1) as being provided for present demand is currently estimated at \$298,890, on the basis of the costs presented in Exhibit A. The amount of the Project Investment costs allocated to the storage for present demand shall be paid in 50 consecutive annual installments, the first of which shall be due and payable within 30 days after the User is notified by the Contracting Officer that the Project

is completed and operational for water supply purposes. Payments thereafter will be due and payable on the anniversary date of the first payment. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage for present demand within 50 years.

(3) The amount of the Project investment costs allocated to the remaining portion of the storage space, that provided for future use, is currently estimated at \$808,926 on the basis of the costs presented in Exhibit A. No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the date the Project is operational for water supply purposes, unless all or a portion of such storage is used during this period. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of the Project investment costs allocated to the storage for future water supply which is not being used from the tenth (10th) year following the date the Project is operational for water supply purposes until the time when such storage is first used. The User may at its option pay the interest as it becomes due or allow the interest to accumulate until the storage is used. If this latter option is exercised, the interest will be compounded annually and added to the principal amount. When any portion of the storage for future water supply is used, payment in both principal and interest for the portion used must be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid balance as provided above, shall be paid within the life of the Project in not to exceed 50 consecutive annual installments beginning within 30 days after the date of first use of such portion.

(4) An estimated schedule of annual payments for the storage provided for present demand is attached as Exhibit B of this contract. The annual payments as provided therein shall be made until the actual construction costs of the Project are determined. When the actual construction costs of the Project are determined, the annual payments due thereafter will be adjusted to reflect any increase or decrease in the actual costs, including interest during construction, from the estimated amounts shown in Exhibit A. Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when use of such storage is started, and if based on estimated costs will be subject to revision when actual costs are known.

(5) If the User shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually at the rate provided above until paid. The amount charged on

payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue (31 to 60 days after the anniversary date), one month's interest shall be charged. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by the User.

(6) The User shall have the right at any time it so elects to prepay the indebtedness under this Article 5(a), in whole or in part, with accrued interest thereon to the date of such prepayment.

(b) Annual Operation, Maintenance, and Major Capital Replacement Costs. The User will be required to pay 2.235 percent of the annual experienced operation, maintenance, and major capital replacement costs of specific water supply facilities. In addition, the User shall pay 0.536 percent of the annual experienced joint-use operation, maintenance, and major replacement costs of the Project until such time as the storage for future water supply is used. As the storage provided for future water supply demands is used, the share of the annual experienced joint-use operation, maintenance, and major capital replacement costs, which the User will be required to pay in addition to the operation, maintenance, and major capital replacement costs of the specific water supply facilities, will be increased commensurate with the percentage of the water supply storage being used, up to a total of 2.144 percent of such costs.

ARTICLE 6 - Construction Cost Adjustments. All construction cost dollar amounts in this contract, including those in the appendices, are tentative only, based on the Government's best estimates. They will be adjusted upward or downward by the Contracting Officer when final construction costs become known, and the contract will be modified to reflect the adjustments.

ARTICLE 7 - Duration of Contract. This contract shall be effective when approved by the Secretary of the Army and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5(a) herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 U.S.C. 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

(a) The User shall continue payment of annual operation and maintenance costs allocated to water supply.

(b) The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation, or replacement of Project features which may be required to continue satisfactory operation of

the Project. Such costs will be established by the Contracting Officer. Repayment arrangements including schedules will be in writing and will be made a part of this contract.

(c) Upon completion of payments by the User as provided in Article 5(a) hereof, the Contracting Officer shall redetermine the storage space for municipal and industrial water supply, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the Project as may be necessary due to sedimentation. Such findings, and the storage space allocated to municipal and industrial water supply, shall be defined and described in an exhibit which will be made a part of this contract. Following the same principle, such reallocation of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

(d) The permanent rights of the User under this contract shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the Project, such rights may be continued subject to the execution of a separate contract, or additional supplemental agreement providing for:

(1) continued operation by the User of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2) terms which will protect the public interest; and

(3) effective absolvment of the Government by the User from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The User shall hold and save the Government, including its officers, agents, and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the features of appurtenances owned and operated by the User, provided, that this shall not be construed as obligating the User to hold and save the Government harmless from damages or liability resulting from the sole negligence of the Government or its officers, agents, or employees and not involving negligence on the part of User or its officers, agents, or employees.

ARTICLE 10 - Assignment. The User shall not transfer or assign this contract or any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this contract, without the approval of the Secretary of the Army, provided that, unless contrary to the public

interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the User and furnished to any third party or parties, nor any method of allocation thereof.

ARTICLE 11 - Officials Not to Benefit. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 12 - Covenant Against Contingent Fees. The User warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the User for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to add to the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimization of noise levels; (4) onsite and offsite disposal of waste and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

(a) In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 U.S.C. 276a et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); and Title 29, Code of Federal Regulations, Part 3.

(b) The User furnishes, as part of this contract, an assurance (Exhibit C) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 U.S.C. 2000d, et seq) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

ARTICLE 15 - Definitions.

- (a) Joint-use costs - The costs of features used for any two or more project purposes.
- (b) Project investment costs - The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.
- (c) Specific costs - The costs of project features normally serving only one particular project purpose.
- (d) Interest during construction - An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available to User for water storage.

ARTICLE 16 - Approval. This contract is subject to the written approval of the Secretary of the Army and shall not be binding until so approved.

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

THE UNITED STATES OF AMERICA

THE CITY OF SMITHVILLE, MISSOURI

By

W. A. Needham  
Colonel, Corps of Engineers  
District Engineer  
Contracting Officer

By

Harold Chance  
President of the City Council

Phyllis Edwards  
City Clerk

DATE

1 Sept 1972

DATE

August 28, 1972

APPROVED:

Robert F. Froehlike

By

Robert F. Froehlike  
Secretary of the Army

DATE

27 NOV 1972

Approved this 28 day of August, 1972

Frank Evans  
Mayor

## EXHIBIT A

## I - LAKE STORAGE

<u>Feature</u>	<u>Elevation</u> (ft., m.s.l.)	<u>Usable</u> <u>Storage*</u> (ac.-ft.)	<u>Percent of</u> <u>Conservation</u> <u>Storage</u>
Flood control	876.2 - 864.2	102,200	
Multipurpose storage	864.2 - 836.3	102,200	
Water supply		95,200	93.15
Smithville, Missouri (8.40% of water supply storage)		(8,000)	(7.83)
Initial (2.10% of water supply storage)		(2,000)	(1.96)
Future (6.30% of water supply storage)		(6,000)	(5.87)
Others		(87,200)	(85.32)
Water quality control		<u>7,000</u>	<u>6.85</u>
Total		204,400	100.00

\*Storage above elevation 836.3 remaining after 100 years sedimentation.



## EXHIBIT A--con.

## II - ALLOCATION OF ESTIMATED FIRST COST

	<u>First Cost</u>	<u>Percent of Joint-use</u>
Flood control (joint use)	\$18,588,217	51.9
Recreation	11,845,626	
Specific	\$7,004,750	
Joint-use	4,840,876	13.5
Water supply storage	13,406,156	
Specific	1,220,000	
Joint-use	12,186,156	34.1
Water quality control (joint use)	174,751	0.5
Road betterments (specific cost)	740,000	
Nonsponsored separable recreation lands	<u>305,250</u>	
Total	45,060,000	100.0

## EXHIBIT A--con.

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III - COSTS TO BE REPAYED BY THE USER  
FOR W. S. STORAGE

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## Initial use:

Cost of 2,000 acre-feet of water supply storage  
(2.10% x \$12,186,156)

\$255,909

Interest during construction at 3.649%  
(2.10% x \$653,932)

13,732

Cost of water supply pipe  
(2.235% x \$1,220,000)

27,267

Interest during construction at 3.649%  
(2.235% x \$88,699)1,982

Total Initial Use Cost

\$298,890

## Future use:

Cost of 6,000 acre-feet of water supply storage  
(6.30% x \$12,186,156)

767,728

Interest during construction at 3.649%  
(6.30% x \$653,932)41,198

Total Future Use Cost

\$808,926Total Initial and Future Use Cost to  
Smithville, Missouri

\$1,107,816

## EXHIBIT A—con.

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 IV - ALLOCATION OF ESTIMATED ANNUAL OPERATION,  
 MAINTENANCE AND MAJOR REPLACEMENT COSTS
 

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	Water Supply						
	Smithville, Missouri					FC, WQC, REC, F&WL	Total
<u>Item</u>	<u>Initial</u>	<u>Future</u>	<u>Total</u>	<u>Others</u>	<u>Subtotal</u>		
	\$	\$	\$	\$	\$	\$	
Specific cost	45*	0	45	1,955	2,000	326,000	328,000
Joint-use cost	761**	2,284***	3,045	33,200	36,245	105,755	142,000
Total	806	2,284	3,090	35,155	38,245	431,755	470,000

\*Based on 2.235 percent of specific cost allocated to water supply.

\*\*Based on 2.10 percent of joint-use cost allocated to water supply.

\*\*\*Based on 6.30 percent of joint-use cost allocated to water supply.

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 V - ESTIMATED ANNUAL CHARGES TO USER FOR INITIAL  
 USE OF WATER SUPPLY STORAGE SPACE
 

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Interest and amortization of cost of water supply feature  
 (0.042244 x \$298,890) = \$12,626

0.536% of the actual joint-use cost of operation, maintenance  
 major replacement cost for the preceding fiscal year;  
 computed as follows:

761  
 142000 x 100 = 0.536% Estimated annual amount 761

2.235% of the actual specific cost of operation, maintenance,  
 and major replacement for the preceding fiscal year 45

Total \$13,432

INTEREST RATE = 0.036490  
 INITIAL PRINCIPAL = \$ 298890.

YEAR	PAYMENT \$	INTEREST \$	BALANCE \$
			286264.00
1	12626	10445.77	284083.77
2	12626	10366.22	281823.99
3	12626	10283.76	279481.75
4	12626	10198.29	277054.04
5	12626	10109.70	274537.74
6	12626	10017.88	271929.62
7	12626	9922.71	269226.33
8	12626	9824.07	266424.40
9	12626	9721.83	263520.23
10	12626	9615.85	260510.08
11	12626	9506.01	257390.09
12	12626	9392.16	254156.25
13	12626	9274.16	250804.41
14	12626	9151.85	247330.26
15	12626	9025.08	243729.34
16	12626	8893.68	239997.02
17	12626	8757.49	236128.51
18	12626	8616.33	232118.84
19	12626	8470.02	227962.86
20	12626	8318.36	223655.22
21	12626	8161.18	219190.40
22	12626	7998.26	214562.66
23	12626	7829.39	209766.05
24	12626	7654.36	204794.41
25	12626	7472.95	199641.36
26	12626	7284.91	194300.27
27	12626	7090.02	188764.29
28	12626	6888.01	183026.30
29	12626	6678.63	177078.93
30	12626	6461.61	170914.54
31	12626	6236.67	164525.21
32	12626	6003.52	157902.73
33	12626	5761.87	151038.60
34	12626	5511.40	143924.00
35	12626	5251.79	136549.79
36	12626	4982.70	128906.49
37	12626	4703.80	120984.29
38	12626	4414.72	112773.01
39	12626	4115.09	104262.10
40	12626	3804.52	95440.62
41	12626	3482.63	86297.25
42	12626	3148.99	76820.24
43	12626	2803.17	66997.41
44	12626	2444.74	56816.15
45	12626	2073.22	46263.37
46	12626	1688.15	35325.52
47	12626	1289.03	23988.55
48	12626	875.34	12237.89
49	12626	446.56	0.
50	12684.45		

EXHIBIT C - ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE  
DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

THE CITY OF SMITHVILLE, MISSOURI

(hereinafter called "Applicant-Recipient")

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 Code of Federal Regulations Part 300, issued as Department of Defense Directive 5500.11, 28 December 1964) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by this Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant-Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Development

**AGENDA ITEM:** Resolution 1063, Final Plat McBee's Corner Subdivision

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### **RECOMMENDED ACTION:**

A motion to approve Resolution 1063 – Final Plat McBee's Corner Subdivision.

### **SUMMARY:**

The final plat would create two lots at the southeast corner of Richardson Street and 169 Highway.

### **BACKGROUND:**

This land was submitted for conceptual plan approval and a final plat at the April Planning and Zoning Commission meeting. The Conceptual plan was recommended for approval and sent to the Board on May 3, 2022. The Commission postponed the hearing on the Plat document until the May 10 Planning and Zoning Commission meeting. The Board approved first reading of the conceptual plan's ordinance at its May 3 meeting, and second reading approval on May 17 is a condition precedent to approval of the actual plat presented here.

Prior to the April Commission hearing, the applicant was provided the recently completed traffic impact study performed on the Richardson Street Plaza project in late 2021 and asked to update that study with its' own traffic impact data. The applicant timely submitted its report, which included the applicants' engineers recommendations as to his clients' contribution to a traffic light to be installed by others. The plat was postponed to allow further clarification on the traffic impacts caused by delays in the review of that impact. After a completed review, the City's engineers proposed certain comments that would change the traffic impact presented by the applicant. The applicant's traffic engineer then provided an updated recommended contribution which incorporated the City's comments, which slightly changed the total traffic this project would add to the intersection. That traffic amount was just over 8% of the total traffic. Since the Richardson Street Plaza project would have contributed just slightly less (7+%) traffic and its' contribution to the traffic light was 25% of MODOT's estimated cost, staff submitted the same requirement to the applicant in the form of a completed development agreement. The applicant submitted to the Planning Commission that their obligation to the traffic light should be an amount closer to its' engineers recommendation given its 8% of the total traffic in the intersection. The Commission voted 6-1 to approve the plat with the City's suggested amount in the Development agreement.

**PREVIOUS ACTION:**

The Conceptual Plan was First Read on May 3rd, and is on the agenda for Second reading on May 17th. That Conceptual Plan approval is required to be completed prior to Final Plat approval.

**POLICY ISSUE:**

The Comprehensive Plan calls for commercial development in this area.

**FINANCIAL CONSIDERATIONS:**

None

**ATTACHMENTS:**

☐ Ordinance

☒ Resolution

☒ Staff Report

☐ Contract

☒ Plans

☐ Minutes

## **RESOLUTION 1063**

### **A RESOLUTION APPROVING A FINAL PLAT FOR MCBEE'S CORNER SUBDIVISION**

**WHEREAS**, the applicant submitted a conceptual plan and final plat for approval to be heard by the Planning Commission on April 12, 2022.

**WHEREAS**, the plan and plat were advertised in the Courier Tribune newspaper and notices were sent to adjoining landowners for that April 12, 2022 meeting, but the Final Plat approval was postponed to May 10, 2022; and;

**WHEREAS**, the City identified certain public improvements necessary for the plat and incorporated all of the improvements or contributions into a Development Agreement and:

**WHEREAS**, the Planning Commission recommended approval of the proposed Final Plat with the condition that the Development Agreement be executed and completed prior to releasing the plat for recording, and;

**WHEREAS**, the subject property on Tract A, Smithville Library Heights subdivision was given approval for a Conceptual Plan by a second reading of Bill No. 2939-22 by the Board of Aldermen on May 17, 2022, that was a condition precedent to this Final Plat Approval, and;

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF  
THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

**THAT THE FINAL PLAT OF MCBEE'S CORNER SUBDIVISION IS HEREBY  
APPROVED WITH THE FOLLOWING CONDITIONS:**

**THE PLAT SHALL NOT BE RELEASED FOR RECORDING UNTIL ALL ITEMS  
CONTAINED IN THE DEVELOPMENT AGREEMENT WITH THE APPLICANT  
HAVE BEEN COMPLETED AND HAVE BEEN BONDED FOR PERFORMANCE  
OR MAINTENANCE BONDS IN ACCORDANCE WITH THE CODE.**

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17<sup>th</sup> day of May, 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk





May 6, 2022

Single Phase Final Plat for Clay County Parcel Id # 05-909-00-03-011.00

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Application for a Plat Approval – McBee’s Corner Final Plat– 2 lots

Code Sections:

425.285.A.4

Single Phase Final Plat Approval

Property Information:

Address:

Richardson St. and 169 SE Corner

Owner:

Jolarub, LLC

Current Zoning:

B-3

Public Notice Dates:

1st Publication in Newspaper:

March 24, 2022

Letters to Property Owners w/in 185’:

March 28, 2022

#### GENERAL DESCRIPTION:

The property is currently Tract A, Smithville Library Heights subdivision. This Final Plat is the same as the Conceptual Plan document reviewed in the April Commission hearing. Approval of this plat is conditional to that plan approval due to the lot size and frontage variations, as well as certain sign size and location variants. This development was submitted with both stormwater and Traffic studies to address the impact of both upon the area.



*account for the slight grade to the south. Sufficient detention areas are provided per the submitted storm report, and the final construction plans must be approved prior to construction on any lot.*

(2) A minimum amount of grading on both cut or fill and preservation of good trees and other desirable natural growth. *Again, grading of the development is limited to level the areas in the lots to account for slight grade, and there are no trees or other desirable natural growth to preserve.*

(3) A good grade relationship with the abutting streets, preferably somewhat above the street. *Each lot will have access through the development in accordance with an approved Conceptual Plan using a private drive throughout. Initial development of a car wash site will have access from the east end of the lot from Richardson St. and includes a shared access drive with lot 2. A development agreement on this project requires that development of Lot 2 also include a shared access drive in the event a second access is granted onto 169 Highway.*

(4) Adequate lot width for the type or size of dwellings contemplated, including adequate side yards for light, air, access, and privacy. *Yes.*

(5) Adequate lot depth for outdoor living space. *N/A.*

(6) Generally regular lot shapes, avoiding acute angles. *Yes.*

(7) Adequate building lots that avoid excessive grading, footings, or foundation walls. *Yes.*

d. The plat contains lot and land subdivision layout that is consistent with good land planning and site engineering design principles. *Yes.*

e. The location, spacing and design of proposed streets, curb cuts and intersections are consistent with good traffic engineering design principles. *There are no new public roadways considered, but improvements to 169 and Richardson will be partially funded by this development in accordance with its' impact on the intersection. (The intersection already meets the MODOT warrants for a traffic light). This particular project used the traffic study for Richardson Street Plaza northeast of the 169 intersection as the basis for its additional data. Both developments have nearly the same amount of traffic into the Intersection of Richardson St. and 169 Highway. With this equal traffic impact, the city has placed equal obligations on assisting funding for a traffic light at the intersection.*

f. The plat is served or will be served at the time of development with all necessary public utilities and facilities, including, but not limited to, water, sewer, gas, electric and telephone service, schools, parks, recreation and open space and libraries. *Yes, the development will be extending a waterline from the north and connecting with an existing waterline that travels west across Lot 2, which will be abandoned, and the easement vacated when complete. The existing sewer line to the north will be extended*

*south through lot 1 and leave a connection point for Lot 2 as well. Sidewalks already exist on the west and north of the project area.*

g. The plat shall comply with the stormwater regulations of the City and all applicable storm drainage and floodplain regulations to ensure the public health and safety of future residents of the subdivision and upstream and downstream properties and residents. The Commission shall expressly find that the amount of off-site stormwater runoff after development will be no greater than the amount of off-site stormwater runoff before development. ***The proposed development meets this standard.***

h. Each lot in the plat of a residential development has adequate and safe access to/from a local street. ***N/A***

i. The plat is located in an area of the city that is appropriate for current development activity; it will not contribute to sprawl nor to the need for inefficient extensions and expansions of public facilities, utilities and services. ***Yes.***

j. If located in an area proposed for annexation to the City, the area has been annexed prior to, or will be annexed simultaneously with plat approval. ***Annexed.***

k. The applicant agrees to dedicate land, right-of-way, and easements, as may be determined to be needed, to effectuate the purposes of these regulations and the standards and requirements incorporated herein. ***Yes, the plat includes the required dedications, and a development agreement ensures traffic impact costs are provided.***

l. All applicable submission requirements have been satisfied in a timely manner. ***Yes.***

m. The applicant agrees to provide additional improvements, which may include any necessary upgrades to adjacent or nearby existing roads and other facilities to current standards and shall include dedication of adequate rights-of-way to meet the needs of the City's transportation plans. **The development will be responsible for a portion of the cost to install a traffic light at 169 Highway and Richardson St. that matches the contribution of Richardson Street Plaza's requirements.**

#### STAFF RECOMMENDATION:

Staff recommends APPROVAL of the proposed Final Plat based upon adherence to the conditions contained in this report, including executing the Development Agreement.

Respectfully Submitted,

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Director of Development

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **MCBEE COMPANIES LLC AND/OR JOLARUB, LLC**, ("Developer") and **THE CITY OF SMITHVILLE, MISSOURI**, a Missouri Corporation ("City") as follows:

**WHEREAS**, Developer plans on developing its proposed subdivision known as McBee's Corner located generally east of US 169 and south of Richardson St. and being proposed to contain 2 commercial lots; and

**WHEREAS**, the Developer desires to create a Conceptual Plan for said commercial development; and

**WHEREAS**, the City will make certain requirements for off and on site improvements if said land is sought to be developed as a commercial subdivision; and

**WHEREAS**, it is in the best interest of both parties to enter into an agreement as to what improvements will be required of Developer; and

**WHEREAS**, this Agreement is necessary to provide for the safety, health and general welfare of the public and to provide for the orderly development of City.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The terms of this agreement apply to the following property and all portions thereof

now known as MCBEE'S CORNER, the legal description of which is Smithville Library Heights, Tract A.

2. It is recognized that the development will require extension of waterlines from Richardson St. to create a new connection to the existing line that exits the water tower area in order to abandon the existing waterline that bisects the proposed Lot 2 of the new subdivision. The developer agrees to install a new 12" waterline from the existing 12" waterline on Richardson St. to the existing supply line at the water tower and abandon the existing 8" supply line that leaves the water tower and travels west to a waterline on 169. All such construction will be after construction plans are approved and notice to proceed is issued by the City. Upon successful completion of the construction of the waterline, and abandonment of the existing line, the City hereby agrees to abandon the waterline easement on Lot 2 where the abandoned portion of the line is located.

3. That the City and the Developer recognize the need to construct a sewer extension from the north side of Richardson St., southerly to a point inside the boundaries of the proposed lot 2 of the subdivision. All such construction will be after construction plans are approved and notice to proceed is issued by the City.

4. That the City and the Developer recognize the need for certain off-site improvements to the adjacent roads as a direct result of the subdivision of land into the proposed subdivision. As a result of the Developer's traffic study, which added additional data to a traffic study completed in 2021 for the same intersection, it was shown that the Richardson St./169 intersection currently met some of MODOT's traffic

warrants for a new stop light to be installed and that the additional traffic from the proposed development would exacerbate the existing conditions and also meet additional traffic MODOT warrants. As a result of a discussion with MODOT by the parties in the adjacent development, a funding path forward was suggested to be the best option. The Developers traffic data and the other development's traffic data indicated an nearly equal amount of traffic into the intersection. As a result, the parties do hereby agree that the Developer will match the contribution of the adjacent development and contribute 25% of the currently projected construction costs of a stop light at the intersection. The current estimate is \$400,000.00 for total construction cost. The Developer shall pay to the City the sum of \$100,000.00 prior to recording the subdivision plat to be held in escrow by the city solely for improvements to the 169 & Richardson St. intersection. It is understood that the City will work with MODOT to provide funding to assist in the construction of the stop lights, including contributions this and additional development to the northwest and potentially from other governmental entities that impact the intersection. Upon payment of said funds, the Developer shall have no further obligation to contribute funds for said stop light construction.

5. The parties agree and understand that currently only Lot 1 is intended to immediately begin construction on Lot 1 and that the access to streets for Lot 1 is on Richardson St. The parties further agree and understand that there may be a future request for an addition access point onto 169 from Lot 2 and that if and when that request is made, there must be another traffic impact report by that owner/developer

to identify the need for turn lane from 169. It is also understood that any such access to said lot 2 will be limited to a right-in, right-out configuration and an additional shared access easement from this access that traverses Lot 2 and connects with the current shared access easement on Lot 1.

6. The parties agree that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City Ordinances with which Developer must comply and does not in any way constitute prior approval of any future proposal for development.

7. All work agreed to be performed by Developer in this Agreement shall be done only after receiving written notice from City to proceed. The notice to proceed shall not be given by the City until a final plat of McBee's Corner subdivision has been approved by the City and final construction plans have been approved. The recording of said plat shall only occur in accordance with city ordinances and this agreement.

8. In the event of default in this Agreement by either party, it is agreed that either party shall be entitled to equitable relief to require performance by the other party as well as for any damages incurred by the breach, including reasonable attorney fees.

9. This Agreement shall constitute the complete agreement between the parties and any modification hereof shall be in writing subject to the approval of both parties.



10. Any provision of this Agreement which is not enforceable according to law will be severed and the remaining provisions shall be enforced to the fullest extent permitted by law.

11. The undersigned represent that they each have the authority and capacity from the respective parties to execute this agreement.

12. This agreement shall not be effective until: (1) approved by Resolution duly enacted by the Board of Aldermen of Smithville, Missouri.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement on the date first above written.

**THE CITY OF SMITHVILLE, MISSOURI**

**ATTEST:**

By \_\_\_\_\_  
**Mayor**

\_\_\_\_\_

**JOLARUB, LLC/MCBEE COMPANIES**

By \_\_\_\_\_  
**Managing Member**

STATE OF MISSOURI     )  
                                      ) ss.  
COUNTY OF CLAY        )

On the \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared Damien Boley, to me known, and who, being by me duly sworn, did say that he is the Mayor of Smithville, Missouri, and said instrument was signed and sealed on behalf of said City by authority of its Board of Aldermen and said Mayor acknowledges said instrument to be the free act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Clay County, Missouri, on the day and year last written above.

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

My Commission Expires:

\_\_\_\_\_  
STATE OF MISSOURI       )  
                                      ) ss.  
COUNTY OF CLAY       )

On this \_\_\_\_ day of \_\_\_\_\_, 2021, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, to me known, and who, being by me duly sworn, did say that he/she is the managing Member of Jolarub, LLC / McBee Companies, LLC, and said instrument was signed and sealed on behalf of said Jolarub, LLC / McBee Companies, LLC by authority of its Board and he/she acknowledges said instrument to be the free act and deed of said Jolarub, LLC / McBee Companies, LLC

Jolarub, LLC / McBee Companies, LLC

\_\_\_\_\_  
Member

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Clay County, Missouri, on the day and year last written above.

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

My Commission Expires:

\_\_\_\_\_



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Public Works - Street

**AGENDA ITEM:** Resolution 1064 - Adoption of Transportation Master Plan

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### **REQUESTED BOARD ACTION:**

A motion to approve Resolution 1064 – Adoption of Transportation Master Plan (TMP).

### **SUMMARY:**

The TMP sets the course for transportation in Smithville for the next 10 to 20 years. It outlines a future vision for community mobility and infrastructure, establishes guiding principles for network planning and investment and provides recommendations for achieving this vision. This plan builds on the work of recent planning efforts including the Strategic Vision, Comprehensive Plan and Parks and Recreation Master Plan. It is the result of collaboration and input from staff, elected officials and citizens.

The project scope included developing guidelines for complete streets, Safe Routes to Schools corridors, functional classification, North/South and East/ West connectivity, access management, connectivity with trails and a prioritized project list.

A Steering Committee was established with members of the Board, public, chamber, school district and staff. MODOT and MARC were also involved.

The project began in March 2021 public involvement included

- Pop-Up Event at Price Chopper in June
- online survey for 3 months, June – September
  - 401 surveys collected
  - promoted on Facebook and Nextdoor
  - 3,108 people reached
- presented a DRAFT to Board on March 3, 2022
- March 4 – 31, 2022: website live for residents to access the plan and provide feedback
- May 3, 2022 Board discussion of comments received

The plan can be found on the PW website at: [Transportation Master Plan](#)

### **PREVIOUS ACTION:**

The Board approved Resolution 889 authorizing the contract on March 2, 2021 with Toole Design

**POLICY ISSUE:**

Infrastructure / asset management  
Capital improvement Program  
Transportation

**FINANCIAL CONSIDERATIONS:****ATTACHMENTS:**

- |  |                                   |
|--|-----------------------------------|
| <input type="checkbox"/> Ordinance                     | <input type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution         | <input type="checkbox"/> Plans    |
| <input type="checkbox"/> Staff Report                  | <input type="checkbox"/> Minutes  |
| <input checked="" type="checkbox"/> Other: Master Plan |                                   |

## RESOLUTION 1064

### A RESOLUTION ADOPTING THE CITY OF SMITHVILLE TRANSPORTATION MASTER PLAN

**WHEREAS**, a Transportation Master Plan ensures that City infrastructure and services can meet the demands of population and economic growth; and

**WHEREAS**, the purpose of a TMP is to help Smithville make decisions, implement policies, and develop programs that will improve mobility for residents and visitors of all ages, abilities, and backgrounds for all user groups including walkers, bicyclists, transit users, freight, and motor vehicles.

**WHEREAS**, the Board of Aldermen entered into a contract with Toole Design to complete a comprehensive Transportation Master Plan including guidelines for complete streets, Safe Routes to Schools corridors, functional classification, North/South and East/ West connectivity, access management, connectivity with trails and a prioritized project list.

### **NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

That the Transportation Master Plan dated April 2022 is hereby

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17<sup>th</sup> day of May, 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Parks and Recreation

**AGENDA ITEM:** Resolution 1065 – Special Event Permit – Smithville Lake Festival

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**RECOMMENDED ACTION:**

A motion to approve Resolution 1065 approving a Special Event Permit to the Smithville Festival Committee for Smithville Lake Festival 2022.

**SUMMARY:**

This action was on the agenda for the May 3, 2022 Meeting. The Board had questions regarding the details of the event including road closures and vendor placement. Staff meet with Smithville Festival Committee Chairman, Barbara Lamb and the event and parade route map have been updated. Members of the festival committee will be present at the meeting to answer any remaining questions the Board may have.

Approval of this item will issue a Special Event Permit to the Smithville Festival Committee (Chairman, Barbara Lamb) for Smithville Lake Festival to be held at Courtyard Park on June 16, 17 and 18, 2022.

The requested permit will allow the participants to have alcohol (open container) at the event. The event coordinators have requested that the event run from 5:00 p.m. to 12:00 a.m. on Friday (June 17), from 10:00 a.m. to 12:00 a.m. Saturday (June 18). The committee has also requested closure of Main Street, Bridge Street and Church Street from 12 noon on Friday (June 17) through 12:00 a.m. on Saturday (June 18).

Per City Ordinance 600.070 (G &H) the Board of Aldermen may grant a Special Event Permit to allow drinking in public. Alcohol will be contained within a "Beer Garden" area at the courtyard.

The event coordinators have applied for and obtained State Alcohol licensing. All businesses/committees selling alcohol are required to have City and State Alcohol licenses.

**PREVIOUS ACTION:**

Special Event Permits have been approved for this event in the past (2019, 2020 and 2021).

**POLICY ISSUE:**

n/a

**FINANCIAL CONSIDERATIONS:**

None

**ATTACHMENTS:**

- ☒ Ordinance
- ☒ Resolution
- ☐ Staff Report
- ☒ Other: Application

- ☐ Contract
- ☐ Plans
- ☐ Minutes

## **RESOLUTION 1065**

### **A RESOLUTION APPROVING A SPECIAL EVENT PERMIT FOR THE SMITHVILLE FESTIVAL COMMITTEE FOR SMITHVILLE LAKE FESTIVAL 2022 AT COURTYARD PARK ON THURSDAY, FRIDAY AND SATURDAY JUNE 16, 17 AND 18, 2022.**

**WHEREAS**, the Smithville Festival Committee, LLC has submitted an application with all required fees and documentation; and,

**WHEREAS**, licensed businesses will supply the food and beverages for a fee to the participants in a Beer Garden tent at Courtyard Park using their state and city licenses to sell alcohol; and,

**WHEREAS**, the applicant has submitted a map of the area and will monitor the area that will allow open consumption of alcohol in accordance with city code; and,

**WHEREAS**, Smithville police officers will assist in providing security at the event.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

**THAT A SPECIAL EVENT PERMIT BE ISSUED TO THE SMITHVILLE FESTIVAL COMMITTEE FOR SMITHVILLE LAKE FESTIVAL 2022 TO BE HELD JUNE 16, 17 AND 18, 2022 IN ACCORDANCE WITH THE PLAN APPROVED BY THE CHIEF OF POLICE.**

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17<sup>th</sup> day of May 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk



Insert Logo

CITY OF SMITHVILLE  
107 West Main Street  
Smithville, MO 64089

Date Submitted 7-14-2021  
Application # 1  
Date Approved \_\_\_\_\_  
Permit # \_\_\_\_\_

## SPECIAL EVENT APPLICATION

Thank you for choosing the City of Smithville for your event. Staff looks forward to working with you in ensuring a quality event and protecting the public health, safety, and welfare of event participants and the public at large. In order to do so, the City requires that all events must be approved prior to the event. Please complete and return the following special event application to City Hall at the address above. Thank you again for choosing Smithville. Please refer to the **Application Information** and corresponding sections in the **Event Rules and Conditions** to answer most questions.

### 1. EVENT INFORMATION:

Event Name: Smithville Lake Fest / Parade  
Event Location: Courtyard Event Tier: 2  
Detailed event description (additional room on next page or sheet may be attached): See next page  
Estimated attendance: 0 - 1,000  
Event Date(s) and Times: June 16/17 & 18, 2022  
Set up date/time: 5pm (Fri) Cleanup finished date/time: June 18 12pm

### 2. APPLICANT / CONTACT INFORMATION:

#### Applicant(s)

Name: Barbara Lemb  
Organization: Smithville Festville Committee  
Address: Po Box 15  
City, State, Zip: Smithville, MO 64089  
Phone: 805-2290 Fax: \_\_\_\_\_  
Emergency #: \_\_\_\_\_  
E-mail: blamb4@att.net

#### Alternative Contact

Name: \_\_\_\_\_  
Phone: 816-805-2230

#### Property Owner(s), if not applicant or City

Name: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Emergency #: \_\_\_\_\_  
E-mail: \_\_\_\_\_

#### Alternative Contact

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

Detailed event description continued (Attach additional sheet if necessary): \_\_\_\_\_

\* See old Application - Attached

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### 3. EVENT TYPE:

Run ☐ Walk ☐ Parade/  
March ☒ Bike  
Race/Tour ☐ Street Fair ☐ Concert ☐ Film ☐ Festival ☒ Other: ☐ \_\_\_\_\_

### 5. SITE PLAN

Where do you plan to have your event? Courtyard Park: ☒ Other Public Property: \_\_\_\_\_

The site plan should be a detailed narrative and/or map including a description of the event set up, such as event entry and exit, temporary restrooms, first aid, start/finish lines, inflatables, and a timeline of your event. Please write this description in the space provided below or attach the description as a Word document. Explain Your Site Plan (Attach additional sheet if necessary): \_\_\_\_\_

See Map

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## 6. PARKING PLAN

Do you have sufficient on street/lot parking at your event space? Yes: X No: \_\_\_\_\_

If No: Additional Parking and Shuttle Routes need to be approved by the City. Explain Your Parking Plan (Attach additional sheet if necessary): \_\_\_\_\_

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## 7. PUBLIC INFORMATION:

If applicable, surrounding businesses that will be impacted by the event must be notified no later than 14 days prior to the event. How will you notify neighbors/businesses of your event? Explain (Attach additional sheet if necessary): Let Alyssa Know

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## 8. CANCELLATION NOTICE:

How will you notify participants if your event is cancelled with 48 hours of event day? Explain (Attach additional sheet if necessary): \_\_\_\_\_

Facebook

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## 9. SECURITY PLAN:

Describe your security plan, including crowd control, internal security, and venue safety. Specify if you would like to hire off-duty police support. (Attach additional sheet if necessary): \_\_\_\_\_

Have requested Police presence

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#### 10. RESTROOM PLAN:

Describe your restroom/restroom cleaning plan. At least three restrooms must be provided for each estimated 500 attendees. Specify if you would like to hire city staff support (Attach additional sheet if necessary): \_\_\_\_\_

3 porta Johns

#### 11. CLEAN UP PLAN:

Describe your clean-up plan, including trash removal and recycling containers. Specify if you would like to hire city staff support. (Attach additional sheet if necessary): \_\_\_\_\_

Volunteer

#### 12. FIRST AID PLAN:

Describe your First Aid Plan. (Attach additional sheet if necessary): \_\_\_\_\_

1 Friday -> 4 officer 5-12pm (update)  
2 Saturday -> 4 officer 5-12pm

#### 13. UTILITY CONNECTIONS

Do you want to have a utility connection/s at your event? Yes: ☒ No: \_\_\_\_\_

If Yes: How Many Electric Pedestals? \_\_\_\_\_

If Yes: How Many Water Hookups? Maybe

Additional Utility Requests (Attach additional sheet if necessary): \_\_\_\_\_

#### 14. ROADWAY AND PARKING LOT CLOSURES:

Will you require a roadway closure? Yes: ☒ No: \_\_\_\_\_

If Yes: Explain (Attach additional sheet if necessary): \_\_\_\_\_

See Map

15. OTHER STAFF SUPPORT:

Do you desire to hire city staff for other duties? Yes: X No: \_\_\_\_\_

If Yes: Please Explain (Attach additional sheet if necessary): \_\_\_\_\_

Will need City City Staff 1 hour on Sat. Morn

16. SIGNAGE:

Do you want to also have advertising signage for your event on private property? Yes: X No: \_\_\_\_\_

If Yes: Attach a Sign Permit Application

17. SPECIAL ITEMS:

Are you serving alcohol?..... Yes: X No: \_\_\_\_\_ (If Yes, see the Alcohol Guidelines)

Are you having amplified music?..... Yes: X No: \_\_\_\_\_ (If Yes, complete question 18 on pg. 13)

Will you have food/sales vendors?..... Yes: X No: \_\_\_\_\_ (If Yes, complete question 20 on pg. 15-16)

18. AMPLIFIED SOUND / PERFORMANCE LIST

If you plan to have amplified sound, provide a tentative list of performers, performance type, music genre, performance times, and duration. Include non-live prerecorded sound/music. The complete performance list is due 7 days before the event (Attach additional sheet if necessary):

1. Yes
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

## VENDOR MAP

---

Please map the planned vendors at your event (Attach additional sheet if necessary):

(May be depicted on site plan)

see map

## LEGAL

---

I have read and understand the Event Rules and Conditions and Application Information Guide. I will abide by these terms and fees associated with my event.

\_\_\_\_\_ Event coordinator

\_\_\_\_\_ Date



# LAKE FEST PARADE MAP



**EVENT PARKING**



**RESTROOMS (4 total)**



**BEER SALES**



**POPCORN**

1

**SENIOR CENTER**

2

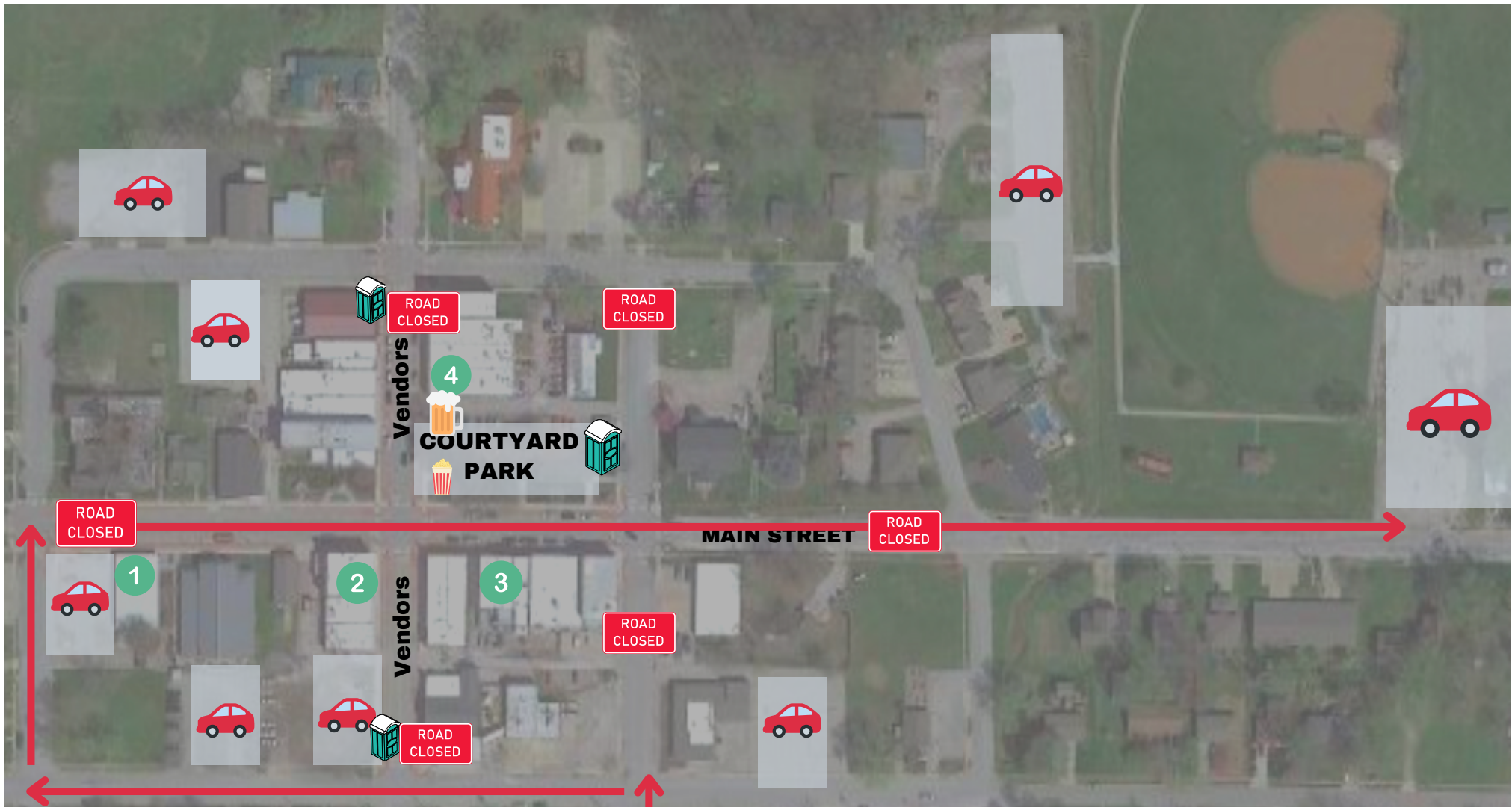
**CORNERSTONE COFFEE**

3

**CHOPS BBQ**

4

**HUMPHREY'S BAR & GRILL**



**June 18 - Lake Fest Parade Route - 11 AM Start**

**Start at High School - End at Heritage Park**

**Meadow and Mill Roads will be closed 30 mins before, as Police Request**

# Smithville Police Department

## Request for Off-Duty Officers

Date of Request: 07/14/2021  
Date of Event: June 17-18, 2022 Address of Event: 100 East Main (Courtyard)  
Number Expected to Attend: 1,000 (Depending on event, 1 officer for every 100 in attendance/commander discretion)  
Number of Officers Requested: 2 Beginning Time: See below Ending Time: 12:00 midnight  
Will Alcohol Be Served? ☒ YES ☐ NO 6/17 - 5:00 pm - midnight  
6/18 - noon - midnight  
Type of Event (i.e. Wedding Reception, Large Party, Community Event, Concert, Site Security, etc.)  
Smithville Lake Festival

Job Description (i.e. Parking Lot Security, Building Security, Event Security, Traffic Control, etc.)

event security

Rate of Pay-\$45/hour (3 Hour Minimum)

REQUESTOR: ☒ Personal ☐ Business

Name of Requestor: Barbara Lamb-Smithville Festival Committee

Address: Po Box 15, Smithville, Mo 64089

Contact Name: Barbara Lamb Phone #: 816-805-2290 Email: blamb4@att.net

After-Hours Contact: Allison Lamb Phone #: 816-805-2230

### INSURANCE REQUIREMENT:

Business requestors hiring off-duty Smithville Officers for security work shall carry the statutory limits for Workers Compensation Insurance and a minimum of \$500,000 general liability insurance coverage.

The requestor has provided a copy of the general liability insurance certificate. ☒ YES ☐ NO

Description of Business Activity: Insurance will be provided when obtained.

Are there any potential concerns or threats to your event or the attendees? ☐ YES (explain) ☒ NO

Approving Commander

Radio #

Date

Time



# Public Facility Use Permit Application

REQUIRED INFORMATION	TODAY'S DATE 07/14/2021		APPLICANT NAME Smithville Festival Committee	
	CATEGORY <input type="radio"/> I <input type="radio"/> II <input checked="" type="radio"/> III <input type="radio"/> IV <input type="radio"/> V		CONTACT NAME Barbara Lamb	
	ADDRESS PO Box 15			
	CITY Smithville		STATE Mo	ZIP 64089
	PHONE 816-805-2290		ALTERNATE PHONE 816-805-2230	
FACILITY INFORMATION	E-MAIL ADDRESS blamb4@att.net			
	PERMIT TYPE <input type="radio"/> INDOOR <input checked="" type="radio"/> OUTDOOR <input checked="" type="radio"/> PARADE <input checked="" type="radio"/> SPECIAL EVENT <input type="radio"/> SPORTS FIELD <input type="radio"/> BLOCK PARTY			
	FACILITY Downtown/Courtyard		EVENT DATE June 17 + 18, 2022	
	EXPECTED ATTENDANCE 1,000	START TIME June 17 @ 5 pm	END TIME June 18 @ 12 midnight	
	OTHER REQUIREMENTS <input checked="" type="checkbox"/> ADVERTISING <input checked="" type="checkbox"/> ALCOHOL <input checked="" type="checkbox"/> CONCESSIONS <input checked="" type="checkbox"/> INSURANCE <input checked="" type="checkbox"/> STREET CLOSINGS <input checked="" type="checkbox"/> SECURITY <input checked="" type="checkbox"/> VENDORS			
SIGNATURE	I, the undersigned, both individually and on behalf of the above named applicant, certify that we have received and read the rules, regulations and requirements outlined in the Public Facilities Use Policy. I do hereby agree that we will abide by the policies governing the use of this facility and will be responsible for any damages to the facility, furniture, or equipment caused by our occupancy of the premises. I understand that falsification of any information related to this application will result in immediate termination of our event.			
	SIGNATURE Barbara Lamb		DATE 07/14/2021	
	PRINTED NAME AND TITLE (IF APPLICABLE) Barbara Lamb, Secretary			
OFFICE USE ONLY	PERMIT #		DEPOSIT	
	APPROVAL		RENTAL FEE	
	RELEASE		OTHER FEES	
	REFUND		TOTAL	

**Public Facility Use Permit Application  
Attachment C – Special Event Application**

CHAIR	SPECIAL EVENT CHAIR RESPONSIBLE FOR CONDUCT OF EVENT <b>Barbara Lamb</b>		
	PHONE <b>816-805-2290</b>	ALTERNATE PHONE <b>816-805-2230</b>	ALTERNATE PHONE

SPECIAL EVENT INFORMATION	NAME OF EVENT <b>Smithville Lake Festival</b>			
	DATE OF EVENT <b>June 16, 17 + 18, 2022</b>			
	START TIME <b>June 16 @ 5pm</b>		END TIME <b>June 18 @ midnight</b>	
	# OF SPECTATORS <b>1,000</b>	# OF PARTICIPANTS	# OF ANIMALS	# OF VEHICLES

SITE PLAN	EVENT ORGANIZATION (DESCRIBE IN DETAIL AND DRAW OR ATTACH A MAP)
	<p>This is the second annual Lake Festival, a community favorite. This festival will be promoted to visitors + residents. The festival will provide a variety of activities for all ages. We will food a craft vendors, a parade, a children's area, live entertainment, pageants + a variety of other events.</p> <p>We respectfully request an exception to the noise ordinance from 11pm to midnight on both nights of the event.</p> <p>We also request the city's additional trash cans be brought downtown from Smith's Fork by noon on Friday, June 17, 2022, for the event.</p>

SIGNATURE	SIGNATURE <b>Barbara Lamb</b>	DATE <b>07/14/2021</b>
	PRINTED NAME AND TITLE (IF APPLICABLE) <b>Barbara Lamb, Secretary</b>	

**Public Facility Use Permit Application  
Attachment B – Parade Application**

CHAIR	PARADE CHAIR RESPONSIBLE FOR CONDUCT OF PARADE			
	Charlene Bruce			
	PHONE	ALTERNATE PHONE	ALTERNATE PHONE	
	816-805-6080	816-805-2290	816-805-2230	
PARADE INFORMATION	NAME OF EVENT			
	Smithville Lake Festival Parade			
	DATE OF EVENT			
	June 18, 2022			
	START TIME		END TIME	
	11:00 am		12:00 pm	
	PARADE START POINT		PARADE TERMINATION POINT	
	# OF SPECTATORS	# OF PARTICIPANTS	# OF ANIMALS	# OF VEHICLES
	1200	75	Approx. 10	40
ROUTE	ROUTE TO BE TRAVELED (DESCRIBE IN DETAIL AND DRAW OR ATTACH A MAP)			
	Parade route is TBD. Once known, an updated map will be provided.			
SIGNATURE	PORTION OF THE WIDTH OF THE STREETS THE PARADE WILL OCCUPY (INCLUDE IF THE RIGHT-OF-WAY AND SIDEWALK WILL BE IN USE BY SPECTATORS)			
	Parade will use full width of city streets. Spectators will occupy sidewalks.			
SIGNATURE	SIGNATURE			DATE
	Barbara Lamb			07/14/2021
	PRINTED NAME AND TITLE (IF APPLICABLE)			
	Barbara Lamb, Secretary			

**Public Facility Use Permit Application  
Attachment F – Insurance**

CONTACT	NAME OF SPONSORING ORGANIZATION <i>Smithville Festival Committee</i>		PHONE <i>816-865-2290</i>
	ADDRESS <i>Po Box 15</i>		
	CITY <i>Smithville</i>	STATE <i>Mo</i>	ZIP <i>64089</i>

THE UNDERSIGNED is an authorized representative of the event sponsor (hereinafter Name of Event Sponsor referred to as "the Sponsor Organization") IN CONSIDERATION of being given the opportunity to sponsor this event (hereinafter referred to as "the Event"), THE SPONSOR ORGANIZATION:

1. HEREBY COVENANTS NOT TO SUE AND RELEASES, WAIVES, DISCHARGES AND INDEMNIFIES the Releasees ("Releasees" are defined as the City of Smithville and its respective officials, agents and employees) from all liability against any and all claims and causes of action for injury, death, disease, related in any manner to the Event;
2. IN THE ABSENCE OF PROVIDING PROOF OF INSURANCE COVERAGE, the Sponsor Organization further acknowledges that the City of Smithville is not sponsoring nor otherwise involved in the administration of the Event, and the Sponsor assumes responsibility for claims associated with its operation or administration.

THE SPONSOR ORGANIZATION expressly agrees that the foregoing Special Event Release and Hold Harmless Agreement is intended to be as broad and inclusive as is permitted by the law of the State of Missouri and that if any portion of this Special Event Release and Hold Harmless Agreement is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

THE UNDERSIGNED, ON BEHALF OF THE SPONSOR ORGANIZATION, HAS CAREFULLY READ AND VOLUNTARILY SIGNS THE SPECIAL EVENT RELEASE AND HOLD HARMLESS AGREEMENT, and further agrees that no oral representations, statements or inducements apart from the foregoing written agreement have been made.

SIGNATURE OF LEGALLY AUTHORIZED REPRESENTATIVE <i>Barbara Lamb</i>	DATE <i>07/14/2021</i>
PRINTED NAME OF LEGALLY AUTHORIZED REPRESENTATIVE <i>Barbara Lamb</i>	TITLE <i>Secretary</i>

*Proof of insurance will be provided once it is obtained.*

Public Facility Use Permit Application  
Attachment G – Alcohol Application

CONTACT	LICENSED INDIVIDUAL OR COMPANY PROVIDING SERVICE		PHONE
	Smithville Festival Committee		816-805-2240
	NAME OF ON-SITE CONTACT		PHONE
	Barbara Lamb		816-805-2230
	ADDRESS		
EVENT INFORMATION	506 Liberty Road		
	CITY	STATE	ZIP
	Smithville	MO	64089
	EXPECTED ATTENDANCE		NUMBER OF SERVERS
	1,000		
SIGNATURE	AREA WHERE ALCOHOL WILL BE SERVED (DESCRIBE IN DETAIL AND DRAW OR ATTACH A MAP)		
	Alcohol will be served on the courtyard within barricaded areas. IDs will be checked prior to the sale of alcohol to determine if individuals can legally purchase alcohol. Anyone purchasing alcohol will be required to wear a wristband after the ID check.		
	SIGNATURE		DATE
	Barbara Lamb		07/14/2021
	PRINTED NAME		TITLE
Barbara Lamb		Secretary	

**Public Facility Use Permit Application  
Attachment H – Security Application**

CONTACT	LICENSED INDIVIDUAL OR COMPANY PROVIDING SERVICE <i>Smithville Police Department</i>		PHONE <i>816-532-3897</i>
	NAME OF ON-SITE CONTACT <i>Barbara Lamb</i>		PHONE <i>816-805-2290</i>
	ADDRESS <i>506 Liberty Road</i>		
	CITY <i>Smithville</i>	STATE <i>MO</i>	ZIP <i>64089</i>
	EXPECTED ATTENDANCE <i>1,000</i>		NUMBER OF SECURITY PERSONNEL
	DESCRIPTION OF SECURITY PERSONNEL ATTIRE <i>The officers being used are required to be in uniform &amp; patrol within the barricaded areas. Generally, an officer will only be needed when alcohol is served.</i>		
SIGNATURE	SIGNATURE OF LEGALLY AUTHORIZED REPRESENTATIVE <i>Barbara Lamb</i>		DATE <i>07/14/2021</i>
	PRINTED NAME OF LEGALLY AUTHORIZED REPRESENTATIVE <i>Barbara Lamb</i>		TITLE <i>Secretary</i>

**Public Facility Use Permit Application  
Attachment I – Street Closing Application**

<b>CONTACT</b>	PERSON/TRAFFIC CONTROL COMPANY RESPONSIBLE FOR STREET CLOSINGS		
	Barbara Lamb		
	PHONE	ALTERNATE PHONE	ALTERNATE PHONE
	816-805-2290	816-805-2230	

<b>STREET INFORMATION (ATTACH ADDITIONAL SHEETS IF NECESSARY)</b>	DESCRIBE STREET CLOSINGS IN DETAIL AND DRAW OR ATTACH A MAP		
	Barricades will be provided by Johnny Viebrock. Streets will be closed at noon on Friday, June 17, 2022. Barricades will be placed at Main & Mill intersection but monitored to allow vendors in & out on Friday. Please see map for barricaded areas. No sidewalks will be closed in these areas. Streets will be closed in these areas & will reopen when they are properly cleaned.		
	STREET TO BE CLOSED BETWEEN	CROSS STREET 1	AND CROSS STREET 2
	see description above & attached map		
	REASON FOR CLOSING		
	Smithville Lake Festival		
	# OF TRAFFIC LANES CLOSED	# OF SIDEWALKS CLOSED	# OF STREET BLOCKS CLOSED
	DATE/TIME STREET CLOSED		DATE/TIME STREET REOPENED
	June 17, 2022 @ noon		June 19, 2022 by 6 am
STREET TO BE CLOSED BETWEEN		CROSS STREET 1	
REASON FOR CLOSING			
# OF TRAFFIC LANES CLOSED	# OF SIDEWALKS CLOSED	# OF STREET BLOCKS CLOSED	
DATE/TIME STREET CLOSED		DATE/TIME STREET REOPENED	

<b>SIGNATURE</b>	SIGNATURE	DATE
	Barbara Lamb	07/14/2021
	PRINTED NAME AND TITLE (IF APPLICABLE)	
	Barbara Lamb, Secretary	



# LAKE FEST EVENT MAP



**EVENT PARKING**



**RESTROOMS (4 total)**



**FOOD TRUCK**



**BEER SALES**



**POPCORN**

1

**SENIOR CENTER**

2

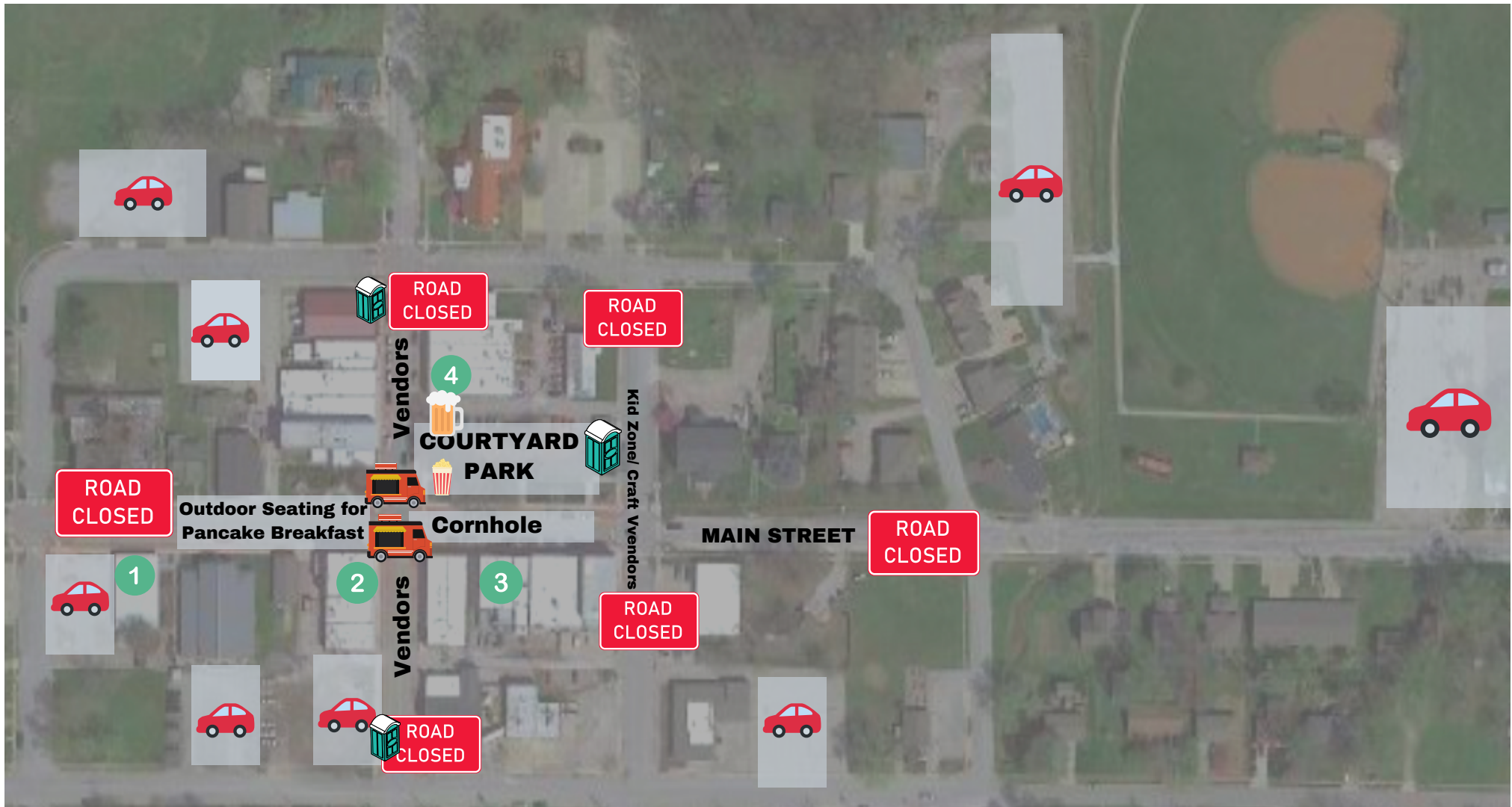
**CORNERSTONE COFFEE**

3

**CHOPS BBQ**

4

**HUMPHREY'S BAR & GRILL**



**JUNE 16 - PAGENT NIGHT - STARTS AT 5:00 PM**

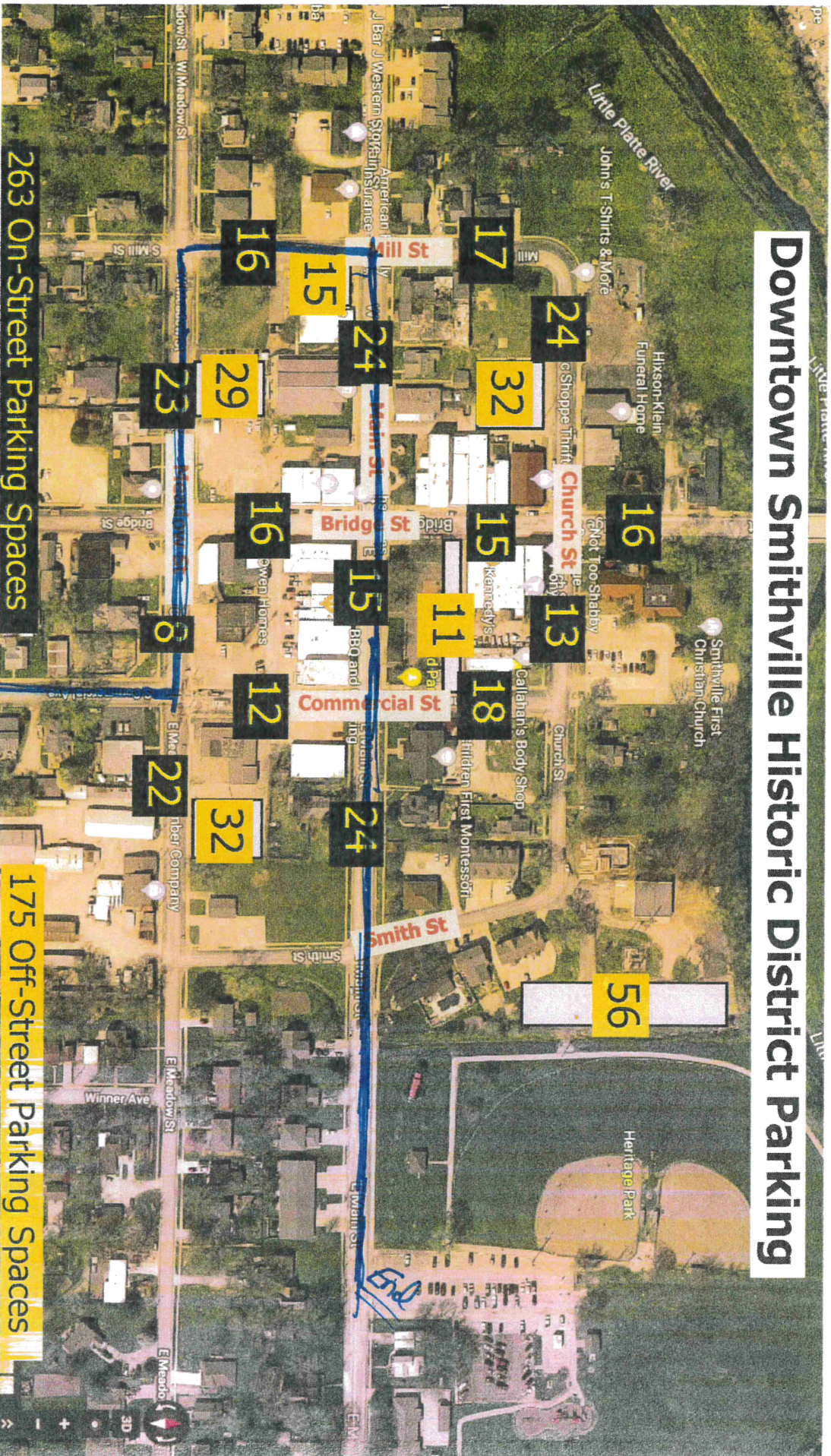
**JUNE 17 - LITTLE MR. & MRS. SMITHVILLE / BAND - STARTS AT 5:00 PM / BEER SALES BEGIN**

**JUNE 18 - LAKE FEST PARADE, MUSIC, AND VENDORS**



# Smithville Lake Festival - 2022

## Downtown Smithville Historic District Parking



263 On-Street Parking Spaces

175 Off-Street Parking Spaces

Start from High School

Parade starts at 11am June 18 2022.  
Main Street already barricaded from Mill to Smith.  
Meadow & Mill will be closed @ 8am





## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Parks and Recreation, Police

**AGENDA ITEM:** Resolution 1066 – Temporary Liquor License – Barbara Lamb

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**RECOMMENDED ACTION:**

A motion to approve Resolution 1066, issuing a Temporary Liquor License to Barbara Lamb, doing business as Smithville Lake Festival Committee for Smithville Lake Festival on June 17 and 18, 2022 at Courtyard Park.

**SUMMARY:**

Approval of this item would issue a Temporary Liquor License to Barbara Lamb, doing business as Smithville Festival Committee, to be part of the Smithville Lake Festival Beer Garden located at Courtyard Park on June 17 and 18, 2022.

Chief Lockridge has completed a background check on Ms. Lamb. There were no findings to prevent issuing a liquor license.

Requested Licenses: Temporary Permit.

This license will be effective June 17 and 18, 2022 (pending all State license requirements).

**PREVIOUS ACTION:**

Ms. Lamb has been issued a permit for this event in the past (August 6, 2019 and July 7, 2020 and June 26, 2021).

**POLICY ISSUE:**

n/a

**FINANCIAL CONSIDERATIONS:**

n/a

**ATTACHMENTS:**

☐ Ordinance

☒ Resolution

☐ Staff Report

☐ Other:

☐ Contract

☐ Plans

☐ Minutes

**RESOLUTION 1066**

**A RESOLUTION ISSUING A TEMPORARY LIQUOR LICENSE TO  
BARBARA LAMB FOR OPERATION OF THE SMITHVILLE LAKE FESTIVAL  
2022 BEER GARDEN ON JUNE 17 AND 18, 2022**

**WHEREAS**, Barbara Lamb has completed the required application, and;

**WHEREAS**, Chief Lockridge has completed a background check, and;

**WHEREAS**, the background check did not reveal anything to prevent approval of a City liquor license.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF  
THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

**THAT A TEMPORARY LIQUOR LICENSE WILL BE ISSUED TO BARBARA  
LAMB, FOR OPERATION OF THE BEER GARDEN AT COURTYARD PARK  
UNDER THE SPECIAL EVENT PERMIT APPROVED FOR SMITHVILLE  
LAKE FESTIVAL 2022 ON JUNE 17 AND 18, 2022.**

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17<sup>th</sup> day of May 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

Insert Logo

CITY OF SMITHVILLE  
107 West Main Street  
Smithville, MO 64089

Date Submitted 7-14-2021  
Application # 1  
Date Approved \_\_\_\_\_  
Permit # \_\_\_\_\_

## SPECIAL EVENT APPLICATION

Thank you for choosing the City of Smithville for your event. Staff looks forward to working with you in ensuring a quality event and protecting the public health, safety, and welfare of event participants and the public at large. In order to do so, the City requires that all events must be approved prior to the event. Please complete and return the following special event application to City Hall at the address above. Thank you again for choosing Smithville. Please refer to the **Application Information** and corresponding sections in the **Event Rules and Conditions** to answer most questions.

### 1. EVENT INFORMATION:

Event Name: Smithville Lake Fest / Parade  
Event Location: Courtyard Event Tier: 2  
Detailed event description (additional room on next page or sheet may be attached): See next page  
Estimated attendance: 0 - 1,000  
Event Date(s) and Times: June 16/17 & 18, 2022  
Set up date/time: 5pm (Fri) Cleanup finished date/time: June 18 12pm

### 2. APPLICANT / CONTACT INFORMATION:

#### Applicant(s)

Name: Barbara Lemb  
Organization: Smithville Festville Committee  
Address: Po Box 15  
City, State, Zip: Smithville, MO 64089  
Phone: 805-2290 Fax: \_\_\_\_\_  
Emergency #: \_\_\_\_\_  
E-mail: blamb4@att.net

#### Alternative Contact

Name: \_\_\_\_\_  
Phone: 816-805-2230

#### Property Owner(s), if not applicant or City

Name: \_\_\_\_\_  
Organization: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Emergency #: \_\_\_\_\_  
E-mail: \_\_\_\_\_

#### Alternative Contact

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

Detailed event description continued (Attach additional sheet if necessary): \_\_\_\_\_

\* See old Application - Attached

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### 3. EVENT TYPE:

Run ☐ Walk ☐ Parade/  
March ☒ Bike  
Race/Tour ☐ Street Fair ☐ Concert ☐ Film ☐ Festival ☒ Other: ☐ \_\_\_\_\_

### 5. SITE PLAN

Where do you plan to have your event? Courtyard Park: ☒ Other Public Property: \_\_\_\_\_

The site plan should be a detailed narrative and/or map including a description of the event set up, such as event entry and exit, temporary restrooms, first aid, start/finish lines, inflatables, and a timeline of your event. Please write this description in the space provided below or attach the description as a Word document. Explain Your Site Plan (Attach additional sheet if necessary): \_\_\_\_\_

See Map

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## 6. PARKING PLAN

Do you have sufficient on street/lot parking at your event space? Yes: X No: \_\_\_\_\_

If No: Additional Parking and Shuttle Routes need to be approved by the City. Explain Your Parking Plan (Attach additional sheet if necessary): \_\_\_\_\_

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## 7. PUBLIC INFORMATION:

If applicable, surrounding businesses that will be impacted by the event must be notified no later than 14 days prior to the event. How will you notify neighbors/businesses of your event? Explain (Attach additional sheet if necessary): Let Alyssa Know

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## 8. CANCELLATION NOTICE:

How will you notify participants if your event is cancelled with 48 hours of event day? Explain (Attach additional sheet if necessary): \_\_\_\_\_

Facebook

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## 9. SECURITY PLAN:

Describe your security plan, including crowd control, internal security, and venue safety. Specify if you would like to hire off-duty police support. (Attach additional sheet if necessary): \_\_\_\_\_

Have requested Police presence

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#### 10. RESTROOM PLAN:

Describe your restroom/restroom cleaning plan. At least three restrooms must be provided for each estimated 500 attendees. Specify if you would like to hire city staff support (Attach additional sheet if necessary): \_\_\_\_\_

3 porta Johns

#### 11. CLEAN UP PLAN:

Describe your clean-up plan, including trash removal and recycling containers. Specify if you would like to hire city staff support. (Attach additional sheet if necessary): \_\_\_\_\_

Volunteer

#### 12. FIRST AID PLAN:

Describe your First Aid Plan. (Attach additional sheet if necessary): \_\_\_\_\_

1 Friday -> 4 officer 5-12pm (update)  
2 Saturday -> 4 officer 5-12pm

#### 13. UTILITY CONNECTIONS

Do you want to have a utility connection/s at your event? Yes: X No: \_\_\_\_\_

If Yes: How Many Electric Pedestals? \_\_\_\_\_

If Yes: How Many Water Hookups? Maybe

Additional Utility Requests (Attach additional sheet if necessary): \_\_\_\_\_

#### 14. ROADWAY AND PARKING LOT CLOSURES:

Will you require a roadway closure? Yes: X No: \_\_\_\_\_

If Yes: Explain (Attach additional sheet if necessary): \_\_\_\_\_

See Map

15. OTHER STAFF SUPPORT:

Do you desire to hire city staff for other duties? Yes: X No: \_\_\_\_\_

If Yes: Please Explain (Attach additional sheet if necessary): \_\_\_\_\_

Will need City City Staff 1 hour on Sat. Morn

16. SIGNAGE:

Do you want to also have advertising signage for your event on private property? Yes: X No: \_\_\_\_\_

If Yes: Attach a Sign Permit Application

17. SPECIAL ITEMS:

Are you serving alcohol?..... Yes: X No: \_\_\_\_\_ (If Yes, see the Alcohol Guidelines)

Are you having amplified music?..... Yes: X No: \_\_\_\_\_ (If Yes, complete question 18 on pg. 13)

Will you have food/sales vendors?..... Yes: X No: \_\_\_\_\_ (If Yes, complete question 20 on pg. 15-16)

18. AMPLIFIED SOUND / PERFORMANCE LIST

If you plan to have amplified sound, provide a tentative list of performers, performance type, music genre, performance times, and duration. Include non-live prerecorded sound/music. The complete performance list is due 7 days before the event (Attach additional sheet if necessary):

1. Yes
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_



## VENDOR MAP

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Please map the planned vendors at your event (Attach additional sheet if necessary):

(May be depicted on site plan)

see map

## LEGAL

---

I have read and understand the Event Rules and Conditions and Application Information Guide. I will abide by these terms and fees associated with my event.

\_\_\_\_\_ Event coordinator

\_\_\_\_\_ Date

# LAKE FEST PARADE MAP



**EVENT PARKING**



**RESTROOMS (4 total)**



**BEER SALES**



**POPCORN**

1

**SENIOR CENTER**

2

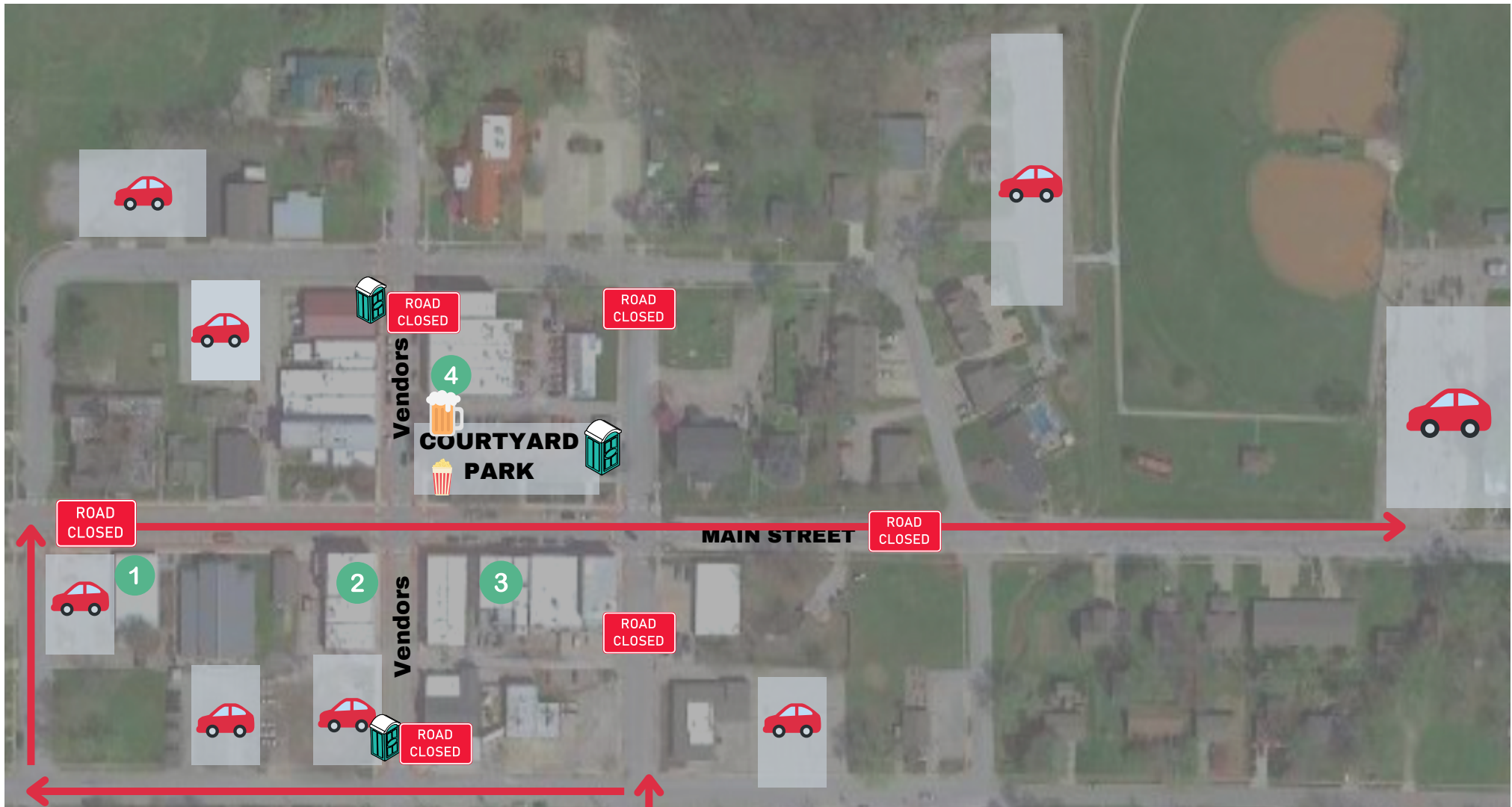
**CORNERSTONE COFFEE**

3

**CHOPS BBQ**

4

**HUMPHREY'S BAR & GRILL**



**June 18 - Lake Fest Parade Route - 11 AM Start**

**Start at High School - End at Heritage Park**

**Meadow and Mill Roads will be closed 30 mins before, as Police Request**

# Smithville Police Department

## Request for Off-Duty Officers

Date of Request: 07/14/2021  
Date of Event: June 17-18, 2022 Address of Event: 100 East Main (Courtyard)  
Number Expected to Attend: 1,000 (Depending on event, 1 officer for every 100 in attendance/commander discretion)  
Number of Officers Requested: 2 Beginning Time: See below Ending Time: 12:00 midnight  
Will Alcohol Be Served? ☒ YES ☐ NO 6/17 - 5:00 pm - midnight  
6/18 - noon - midnight  
Type of Event (i.e. Wedding Reception, Large Party, Community Event, Concert, Site Security, etc.)  
Smithville Lake Festival

Job Description (i.e. Parking Lot Security, Building Security, Event Security, Traffic Control, etc.)

event security

Rate of Pay-\$45/hour (3 Hour Minimum)

REQUESTOR: ☒ Personal ☐ Business

Name of Requestor: Barbara Lamb-Smithville Festival Committee

Address: Po Box 15, Smithville, Mo 64089

Contact Name: Barbara Lamb Phone #: 816-805-2290 Email: blamb4@att.net

After-Hours Contact: Allison Lamb Phone #: 816-805-2230

### INSURANCE REQUIREMENT:

Business requestors hiring off-duty Smithville Officers for security work shall carry the statutory limits for Workers Compensation Insurance and a minimum of \$500,000 general liability insurance coverage.

The requestor has provided a copy of the general liability insurance certificate. ☒ YES ☐ NO

Description of Business Activity: Insurance will be provided when obtained.

Are there any potential concerns or threats to your event or the attendees? ☐ YES (explain) ☒ NO

Approving Commander

Radio #

Date

Time

# Public Facility Use Permit Application

REQUIRED INFORMATION	TODAY'S DATE 07/14/2021		APPLICANT NAME Smithville Festival Committee	
	CATEGORY <input type="radio"/> I <input type="radio"/> II <input checked="" type="radio"/> III <input type="radio"/> IV <input type="radio"/> V		CONTACT NAME Barbara Lamb	
	ADDRESS PO Box 15			
	CITY Smithville		STATE Mo	ZIP 64089
	PHONE 816-805-2290		ALTERNATE PHONE 816-805-2230	
FACILITY INFORMATION	E-MAIL ADDRESS blamb4@att.net			
	PERMIT TYPE <input type="radio"/> INDOOR <input checked="" type="radio"/> OUTDOOR <input checked="" type="radio"/> PARADE <input checked="" type="radio"/> SPECIAL EVENT <input type="radio"/> SPORTS FIELD <input type="radio"/> BLOCK PARTY			
	FACILITY Downtown/Courtyard		EVENT DATE June 17 + 18, 2022	
	EXPECTED ATTENDANCE 1,000	START TIME June 17 @ 5 pm	END TIME June 18 @ 12 midnight	
	OTHER REQUIREMENTS <input checked="" type="checkbox"/> ADVERTISING <input checked="" type="checkbox"/> ALCOHOL <input checked="" type="checkbox"/> CONCESSIONS <input checked="" type="checkbox"/> INSURANCE <input checked="" type="checkbox"/> STREET CLOSINGS <input checked="" type="checkbox"/> SECURITY <input checked="" type="checkbox"/> VENDORS			
SIGNATURE	I, the undersigned, both individually and on behalf of the above named applicant, certify that we have received and read the rules, regulations and requirements outlined in the Public Facilities Use Policy. I do hereby agree that we will abide by the policies governing the use of this facility and will be responsible for any damages to the facility, furniture, or equipment caused by our occupancy of the premises. I understand that falsification of any information related to this application will result in immediate termination of our event.			
	SIGNATURE Barbara Lamb		DATE 07/14/2021	
	PRINTED NAME AND TITLE (IF APPLICABLE) Barbara Lamb, Secretary			
OFFICE USE ONLY	PERMIT #		DEPOSIT	
	APPROVAL		RENTAL FEE	
	RELEASE		OTHER FEES	
	REFUND		TOTAL	

**Public Facility Use Permit Application  
Attachment C – Special Event Application**

CHAIR	SPECIAL EVENT CHAIR RESPONSIBLE FOR CONDUCT OF EVENT		
	Barbara Lamb		
	PHONE	ALTERNATE PHONE	ALTERNATE PHONE
	816-805-2290	816-805-2230	

SPECIAL EVENT INFORMATION	NAME OF EVENT			
	Smithville Lake Festival			
	DATE OF EVENT			
	June 16, 17 + 18, 2022			
	START TIME		END TIME	
June 16 @ 5pm		June 18 @ midnight		
	# OF SPECTATORS	# OF PARTICIPANTS	# OF ANIMALS	# OF VEHICLES
	1,000			

SITE PLAN	EVENT ORGANIZATION (DESCRIBE IN DETAIL AND DRAW OR ATTACH A MAP)
	<p>This is the second annual Lake Festival, a community favorite. This festival will be promoted to visitors + residents. The festival will provide a variety of activities for all ages. We will food a craft vendors, a parade, a children's area, live entertainment, pageants + a variety of other events.</p> <p>We respectfully request an exception to the noise ordinance from 11pm to midnight on both nights of the event.</p> <p>We also request the city's additional trash cans be brought downtown from Smith's Fork by noon on Friday, June 17, 2022, for the event.</p>

SIGNATURE	SIGNATURE	DATE
	Barbara Lamb	07/14/2021
PRINTED NAME AND TITLE (IF APPLICABLE)		
Barbara Lamb, Secretary		

**Public Facility Use Permit Application  
Attachment B – Parade Application**

<b>CHAIR</b>	PARADE CHAIR RESPONSIBLE FOR CONDUCT OF PARADE			
	Charlene Bruce			
	PHONE	ALTERNATE PHONE	ALTERNATE PHONE	
	816-805-6080	816-805-2290	816-805-2230	
<b>PARADE INFORMATION</b>	NAME OF EVENT			
	Smithville Lake Festival Parade			
	DATE OF EVENT			
	June 18, 2022			
	START TIME		END TIME	
	11:00 am		12:00 pm	
	PARADE START POINT		PARADE TERMINATION POINT	
	# OF SPECTATORS	# OF PARTICIPANTS	# OF ANIMALS	# OF VEHICLES
	1200	75	Approx. 10	40
<b>ROUTE</b>	ROUTE TO BE TRAVELED (DESCRIBE IN DETAIL AND DRAW OR ATTACH A MAP)			
	Parade route is TBD. Once known, an updated map will be provided.			
<b>SIGNATURE</b>	PORTION OF THE WIDTH OF THE STREETS THE PARADE WILL OCCUPY (INCLUDE IF THE RIGHT-OF-WAY AND SIDEWALK WILL BE IN USE BY SPECTATORS)			
	Parade will use full width of city streets. Spectators will occupy sidewalks.			
	SIGNATURE			DATE
	Barbara Lamb			07/14/2021
	PRINTED NAME AND TITLE (IF APPLICABLE)			
	Barbara Lamb, Secretary			

**Public Facility Use Permit Application**  
**Attachment F – Insurance**

CONTACT	NAME OF SPONSORING ORGANIZATION <i>Smithville Festival Committee</i>		PHONE <i>816-865-2290</i>
	ADDRESS <i>Po Box 15</i>		
	CITY <i>Smithville</i>	STATE <i>Mo</i>	ZIP <i>64089</i>

THE UNDERSIGNED is an authorized representative of the event sponsor (hereinafter Name of Event Sponsor referred to as "the Sponsor Organization") IN CONSIDERATION of being given the opportunity to sponsor this event (hereinafter referred to as "the Event"), THE SPONSOR ORGANIZATION:

1. HEREBY COVENANTS NOT TO SUE AND RELEASES, WAIVES, DISCHARGES AND INDEMNIFIES the Releasees ("Releasees" are defined as the City of Smithville and its respective officials, agents and employees) from all liability against any and all claims and causes of action for injury, death, disease, related in any manner to the Event;
2. IN THE ABSENCE OF PROVIDING PROOF OF INSURANCE COVERAGE, the Sponsor Organization further acknowledges that the City of Smithville is not sponsoring nor otherwise involved in the administration of the Event, and the Sponsor assumes responsibility for claims associated with its operation or administration.

THE SPONSOR ORGANIZATION expressly agrees that the foregoing Special Event Release and Hold Harmless Agreement is intended to be as broad and inclusive as is permitted by the law of the State of Missouri and that if any portion of this Special Event Release and Hold Harmless Agreement is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

THE UNDERSIGNED, ON BEHALF OF THE SPONSOR ORGANIZATION, HAS CAREFULLY READ AND VOLUNTARILY SIGNS THE SPECIAL EVENT RELEASE AND HOLD HARMLESS AGREEMENT, and further agrees that no oral representations, statements or inducements apart from the foregoing written agreement have been made.

SIGNATURE OF LEGALLY AUTHORIZED REPRESENTATIVE

*Barbara Lamb*

DATE

*07/14/2021*

PRINTED NAME OF LEGALLY AUTHORIZED REPRESENTATIVE

*Barbara Lamb*

TITLE

*Secretary*

*Proof of insurance will be provided once it is obtained.*

**Public Facility Use Permit Application  
Attachment G – Alcohol Application**

CONTACT	LICENSED INDIVIDUAL OR COMPANY PROVIDING SERVICE Smithville Festival Committee		PHONE 816-805-2240
	NAME OF ON-SITE CONTACT Barbara Lamb		PHONE 816-805-2230
	ADDRESS 506 Liberty Road		
	CITY Smithville	STATE MO	ZIP 64089
	EXPECTED ATTENDANCE 1,000		NUMBER OF SERVERS
EVENT INFORMATION	AREA WHERE ALCOHOL WILL BE SERVED (DESCRIBE IN DETAIL AND DRAW OR ATTACH A MAP) Alcohol will be served on the courtyard within barricaded areas. IDs will be checked prior to the sale of alcohol to determine if individuals can legally purchase alcohol. Anyone purchasing alcohol will be required to wear a wristband after the ID check.		
	SIGNATURE Barbara Lamb		DATE 07/14/2021
SIGNATURE	PRINTED NAME Barbara Lamb		TITLE Secretary



**Public Facility Use Permit Application  
Attachment H – Security Application**

CONTACT	LICENSED INDIVIDUAL OR COMPANY PROVIDING SERVICE <i>Smithville Police Department</i>		PHONE <i>816-532-3897</i>
	NAME OF ON-SITE CONTACT <i>Barbara Lamb</i>		PHONE <i>816-805-2290</i>
	ADDRESS <i>506 Liberty Road</i>		
	CITY <i>Smithville</i>	STATE <i>MO</i>	ZIP <i>64089</i>
	EXPECTED ATTENDANCE <i>1,000</i>		NUMBER OF SECURITY PERSONNEL
	DESCRIPTION OF SECURITY PERSONNEL ATTIRE <i>The officers being used are required to be in uniform &amp; patrol within the barricaded areas. Generally, an officer will only be needed when alcohol is served.</i>		
SIGNATURE	SIGNATURE OF LEGALLY AUTHORIZED REPRESENTATIVE <i>Barbara Lamb</i>		DATE <i>07/14/2021</i>
	PRINTED NAME OF LEGALLY AUTHORIZED REPRESENTATIVE <i>Barbara Lamb</i>		TITLE <i>Secretary</i>

**Public Facility Use Permit Application  
Attachment I – Street Closing Application**

<b>CONTACT</b>	PERSON/TRAFFIC CONTROL COMPANY RESPONSIBLE FOR STREET CLOSINGS		
	Barbara Lamb		
	PHONE	ALTERNATE PHONE	ALTERNATE PHONE
	816-805-2290	816-805-2230	

<b>STREET INFORMATION (ATTACH ADDITIONAL SHEETS IF NECESSARY)</b>	DESCRIBE STREET CLOSINGS IN DETAIL AND DRAW OR ATTACH A MAP		
	Barricades will be provided by Johnny Viebrock. Streets will be closed at noon on Friday, June 17, 2022. Barricades will be placed at Main & Mill intersection but monitored to allow vendors in & out on Friday. Please see map for barricaded areas. No sidewalks will be closed in these areas. Streets will be closed in these areas & will reopen when they are properly cleaned.		
	STREET TO BE CLOSED BETWEEN	CROSS STREET 1	AND CROSS STREET 2
	see description above & attached map		
	REASON FOR CLOSING		
	Smithville Lake Festival		
	# OF TRAFFIC LANES CLOSED	# OF SIDEWALKS CLOSED	# OF STREET BLOCKS CLOSED
	DATE/TIME STREET CLOSED		DATE/TIME STREET REOPENED
	June 17, 2022 @ noon		June 19, 2022 by 6 am
STREET TO BE CLOSED BETWEEN		CROSS STREET 1	
REASON FOR CLOSING			
# OF TRAFFIC LANES CLOSED	# OF SIDEWALKS CLOSED	# OF STREET BLOCKS CLOSED	
DATE/TIME STREET CLOSED		DATE/TIME STREET REOPENED	

<b>SIGNATURE</b>	SIGNATURE	DATE
	Barbara Lamb	07/14/2021
PRINTED NAME AND TITLE (IF APPLICABLE)		
Barbara Lamb, Secretary		

# LAKE FEST EVENT MAP



**EVENT PARKING**



**RESTROOMS (4 total)**



**FOOD TRUCK**



**BEER SALES**



**POPCORN**

1

**SENIOR CENTER**

2

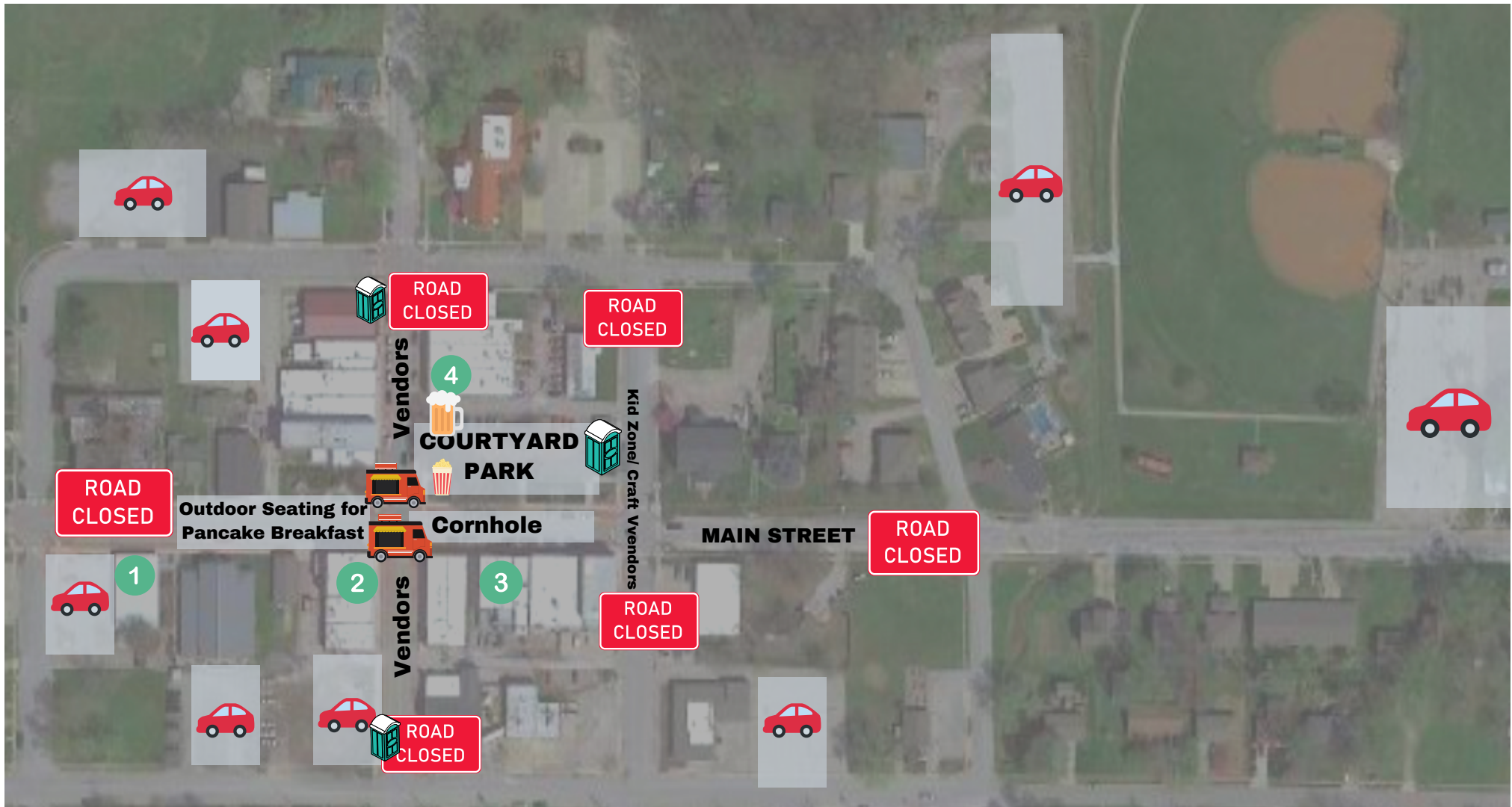
**CORNERSTONE COFFEE**

3

**CHOPS BBQ**

4

**HUMPHREY'S BAR & GRILL**



**JUNE 16 - PAGENT NIGHT - STARTS AT 5:00 PM**

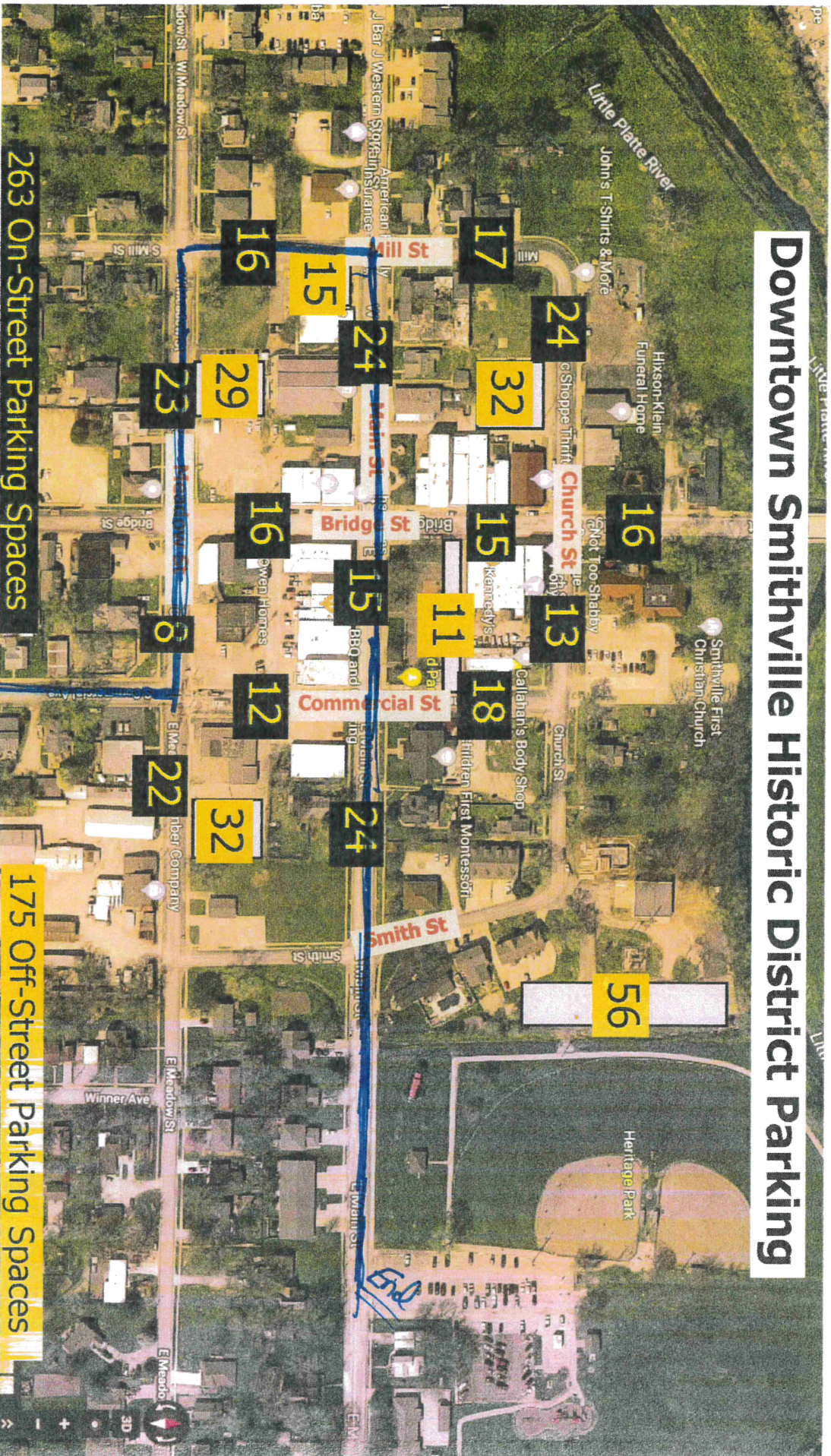
**JUNE 17 - LITTLE MR. & MRS. SMITHVILLE / BAND - STARTS AT 5:00 PM / BEER SALES BEGIN**

**JUNE 18 - LAKE FEST PARADE, MUSIC, AND VENDORS**



# Smithville Lake Festival - 2022

## Downtown Smithville Historic District Parking



263 On-Street Parking Spaces

175 Off-Street Parking Spaces

Start from High School

Parade starts at 11 am June 18 2022.  
Main Street already barricaded from Mill to Smith.  
Meadow & Mill will be closed @ 8 am



## **600.070 (G & H )**

### *G. Drinking In Public Places Prohibited.*

1. For purposes of this Section, the term "public place" shall mean any public street, highway, alley, sidewalk, thoroughfare or other public way of the City, or any parking lot, except in those areas above granted a special event permit.
2. No person shall drink or ingest any intoxicating liquor or non-intoxicating beer in or on any public place.
3. No person shall possess or have under his/her control any unsealed glass, bottle, can or other open container of any type containing any intoxicating liquor or non-intoxicating beer while in or upon any public place.
4. No person shall possess or have under his/her control any unsealed glass, bottle, can or other open container of any type containing any intoxicating liquor or non-intoxicating beer while within or on any motor vehicle while the same is being operated upon, or parked or standing in or upon any public place. Any person operating a motor vehicle shall be deemed to be in possession of an open container contained within the motor vehicle he/she has control of whether or not he/she has actual physical possession of the open container.

### *H. Special Event Permit.* The Board of Aldermen may grant a special event permit for purposes as identified in Section 600.070(G)(1), above, and under the following conditions:

1. An application must be filed with the Chief of Police that describes the applicant's name and business or interest in the event; the name(s) and contact information of any or all liquor license holders who will be involved in such event; the public street, highway, alley, sidewalk, thoroughfare or other public way of the City, or any parking lot to be included in the event area; the beginning and ending time of such event, and the telephone contact of the person in charge of and present at the event.
2. The estimated number of participants in the event shall be provided to the Chief of Police, and the applicant shall pay all costs of security needed as a result of the event to ensure compliance.

[1] Editor's Note: Former Section 600.070, which derived from RSMo. §§311.280, 311.340, 311.600, 311.330, 311.310, 312, 400; Ord. No. 2255-04 §1, 3-16-2004, was repealed 6-21-2011 by Ord. No. 2790-11 §1.



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2021

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Approve Resolution 1067 authorizing Menke Excavation to complete sewer main repairs in the amount of \$11,147.50

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### **REQUESTED BOARD ACTION:**

A motion to approve Resolution 1067, authorizing sewer main repairs.

### **SUMMARY:**

In 1995, a 4" force main was installed to service the First Park Subdivision. When the couple existing business and the Fire Department located along Park Drive, individual services to an 8" main on Highway 169 were installed rather than connecting to the force man for the industrial park. The 4" force main has never been in service.

CPC is currently progressing with the construction of their new facility in First Park. They connected to the 4" force main, however the force main does not hold pressure. City staff excavated where we believed the leak to be but cannot locate the leak. Since the line was installed in 1995, there is no tracer wire. We believe the main lies beneath the concreted area of the carwash. There are also a number of other utilities in the area.

The plan would be to move away from the other utilities and bore a new line under the street. This can be done relatively easily and the new line would have no joints. We would then connect to the main that runs along Highway 169.

CPC is already tied in and this work needs to be completed to provide the service. Menke Excavation can do this work and has successfully completed many projects for the City.

### **PREVIOUS ACTION:**

### **POLICY ISSUE:**

Maintaining infrastructure

### **FINANCIAL CONSIDERATIONS:**

Sufficient funds are in the Utilities operating budget to fund this project.

### **ATTACHMENTS:**

- ☐ Ordinance
- ☒ Resolution
- ☐ Staff Report

- ☐ Contract
- ☐ Plans
- ☐ Minutes

☒ Other: quote

## **RESOLUTION 1067**

### **A RESOLUTION AUTHORIZING MENKE EXCAVATING TO COMPLETE SEWER MAIN REPAIRS IN THE AMOUNT OF \$11,147.50**

**WHEREAS**, CPC of Missouri is constructing a facility in the First Park Subdivision and requires sanitary sewer services; and

**WHEREAS**, the existing force main is not serviceable; and

**WHEREAS**, time is of the essence to provide sanitary sewer service to this facility; and

**WHEREAS**, Menke Excavation has provided a bid to install a new force main in the amount of \$11,147.50.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF  
THE CITY OF SMITHVILLE, MISSOURI:**

**THAT** Menke Excavating is authorized to complete and install a new force main in First Park in an amount of \$11,147.50

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, this 17<sup>th</sup> day of May, 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk



**From:** Steve Menke dba <stevemenke@centurylink.net>

**Sent:** Sunday, May 1, 2022 8:56 PM

**To:** Bob Lemley <BLemley@smithvillemo.org>

**Cc:** Forest Watkins <forest.watkins@yahoo.com>; Chuck Soules <csoules@smithvillemo.org>

**Subject:** Raintree Lane and Park Drive estimates

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Bob

Listed below are the two bids you and Dave wanted. Let me know if you have any questions or concerns.

1. Park Drive

230 feet of 4" forced sewer main bored at Park Drive \$11,147.50

Boring will be subbed to Brad Lincoln or John Marshal.

Both bids include tracer wire and include all material and labor.

Estimate expires 5-25-22

Rock excavation, rock trenching, rock boring at time and material.

Utility relocation at time and material

Pipe bedding at 7.86 LF

Thank you for another opportunity to work for the City of Smithville.

MENKE EXCAVATING LLC

Steve Menke, Owner

[stevemenke@centurylink.net](mailto:stevemenke@centurylink.net)

(816) 214-7352

***"Moving earth and water with Precision"***



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2021

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Approve Resolution 1068 authorizing Menke Excavating to install a water line to the Raw Water Pump Station in an amount of \$12,928.

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**REQUESTED BOARD ACTION:**

A motion to approve Resolution 1068, authorizing installation of a water line.

**SUMMARY:**

Certain chemicals are added at the Raw Water Pump Station as we receive water from the lake and transfer the water to the Water Treatment Plant. A water service line is needed to supply water to the Raw Water Pump Station for the emergency shower and eye wash station. The previous pump station was serviced from the Campground, however when the Campground shuts down for the season the water line is shut off for winterization. When the Campground is winterized there is no water in case of an accident or to provide for an emergency eye wash station. This new waterline would be a separate line and will not be affected when the Campground is shut down.

We received a quote from Irvinbuilt, the contractor building the pump station for an amount of \$23,667. Staff also contacted Menke Excavating, who provided a cost of \$12,928.

**PREVIOUS ACTION:**

**POLICY ISSUE:**

Safety

**FINANCIAL CONSIDERATIONS:**

Sufficient funds exist in the utility operations and repair budget.

**ATTACHMENTS:**

- |  |                                   |
|--|-----------------------------------|
| <input type="checkbox"/> Ordinance               | <input type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution   | <input type="checkbox"/> Plans    |
| <input type="checkbox"/> Staff Report            | <input type="checkbox"/> Minutes  |
| <input checked="" type="checkbox"/> Other: quote |                                   |

## **RESOLUTION 1068**

### **A RESOLUTION AUTHORIZING MENKE EXCAVATING TO COMPLETE THE INSTALLATION OF A WATER LINE TO THE RAW WATER PUMP STATION IN THE AMOUNT OF \$12,928.**

**WHEREAS**, the City is constructing a new Raw Water Pump Station; and

**WHEREAS**, water service is needed for emergency shower and eye wash station; and

**WHEREAS**, Menke Excavation has provided a quote to install a water line to the Raw Water Pump Station in an amount of \$12,928.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF  
THE CITY OF SMITHVILLE, MISSOURI:**

**THAT** Menke Excavating is authorized to complete and install a water line to the Raw Water Pump Station in the amount of \$12,928.

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, this 17th day of May, 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

# Chuck Soules

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**From:** Steve Menke dba  
<stevemenke@centurylink.net>  
**Sent:** Sunday, March 13, 2022 7:17 PM  
**To:** Bob Lemley; Norm Wells; Chuck Soules  
**Cc:** Forest Watkins  
**Subject:** New water line under camp ground

TO: The City of Smithville  
LOCATION: Smith Forks Campground

New water service bored under campground for new water building.

Bore

420' of 1.5" poly pipe w/wire @ 17.00 = \$7,140.00

420' of 2" poly pipe w/wire @ 18.00 = \$7,560.00

Open cut trenching through the field

480' of 1.5" poly pipe w/wire @ 5.14 = \$2,467.20

480' of 2" poly pipe w/wire @ 5.75 = \$2,760.00

Live tap main set valve \$2,008.00

Set frost free Iowa hydrant for temp water \$600.00 (optional)

Note:

Open cut trenching through the campground would be at time and material.

Measurements were taken from satellite and may vary in length.

Utility relocation is at time and material.

MENKE EXCAVATING LLC



## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2021

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Res 1069 – Acknowledgement of Emergency Purchase

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### **REQUESTED BOARD ACTION:**

A motion to approve Resolution 1069, acknowledging an emergency purchase.

### **SUMMARY:**

The high service pumps send the treated water from the plant into the distribution system throughout the City. These pumps are critical to maintaining water service to our residents and should they fail then the City's ability to provide water to the community would be diminished.

During scheduled maintenance staff noted the Pump No. 2 was starting hard, having problems and not sounding right as they ramped up. It was decided to have Mid-America Pump remove the pump and make repairs, as an emergency repair. The Board approved this expenditure on April 4, 2022. Seals and bearings were replaced. Mid-America Pump is very familiar with these pumps and have done an excellent job in the past completing this work.

Mid America Pump has completed the work on Pump No. 2 and are ready to bring it back and reinstall. We are experiencing similar issues now with High Service Pump No. 1 and are recommending that when Mid-America Pump returns to re-install Pump No. 2 that they pull Pump No. 1. This will save time and mobilization. As we approach the hotter summer months, all these pumps need to be working correctly. If a bearing seizes up and we need to replace the motor with the current supply chain issues it could take months to get a new pump and delivery of water to the City could be affected. The estimated cost for repair of Pump No. 1 is \$13,999.11. The City Administrator has authorized emergency expenditure of funds and has advised the Board of this repair authorization. This action acknowledges the expenditure as an emergency expenditure.

### **PREVIOUS ACTION:**

### **POLICY ISSUE:**

Maintaining infrastructure

**FINANCIAL CONSIDERATIONS:**

Sufficient funds are available in the Utilities operating budget to fund this improvement.

**ATTACHMENTS:**

- ☐ Ordinance
- ☒ Resolution
- ☐ Staff Report
- ☒ Other: quote

- ☐ Contract
- ☐ Plans
- ☐ Minutes

## **RESOLUTION 1069**

### **A RESOLUTION ACKNOWLEDGING AN EMERGENCY PURCHASE WITH MID-AMERICA PUMP IN THE AMOUNT OF \$13,999.11**

**WHEREAS**, the City Administrator's purchasing authority is \$7,500, however in emergency situations, the City Administrator is authorized to make purchases that exceed that amount in order to expedite repairs or purchases for city needs; and,

**WHEREAS**, on April 4, 2022, the Board approved Resolution 1045 authorizing the repairs to High Service Pump No. 2 with Mid-America Pump; and

**WHEREAS**, Mid America Pump has completed the repairs to Pump No.2 and staff is recommending that upon reinstallation of Pump No. 2 that Mid-America is authorized to pull and make repairs to High Service Pump No. 1; and

**WHEREAS**, Mid-America Pump has provided a repair proposal in the amount of \$13,999.11

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF  
THE CITY OF SMITHVILLE, MISSOURI:**

**THAT** the Board acknowledges the emergency purchase with Mid-America Pump for an amount not to exceed \$13,999.11 to make repairs to High Service Pump No. 1.

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, this 17<sup>th</sup> day of May 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk



5600 Inland Drive  
Kansas City, Kansas 66106  
Phone 913-287-3900  
Fax 913-287-6641

## REPAIR PROPOSAL

SKP: **7432**  
Customer PO #:   
Prepared By #: **Brad Saul**  
Date: **3/10/2022**

Repair Estimate: **\$13,999.11**  
Replacement Price:   
Estimated Delivery:

### Customer Information

#### Bill To:

#### Contact Info:

#### Ship To:

Company Name: City of Smithville  
Address: 107 W. Main Street  
City: Smithville  
State/Zip Code: Missouri 64089-  
First Name: Bob  
Last Name: Lemley  
Phone: (816) 532-0070  
Fax: (816) 532-8331

Company:   
Address:   
City:   
State/Zip Code:

### Description of Problem

This is for repair of high service pump and motor #2 at the WTP.

\*\*pump and motor are being quoted prior to removal or inspection, there may be additional parts or machine work required once inspected\*\*

### Pump Information

Pump Make: **Aurora**  
Model: **413-BF 4X5X10B**  
Style: **Vertical split case pump**  
Pump RPM:   
Motor RPM: **3530**  
☒ Seal  
☐ Packing  
Serial No: **12-2213987**  
HP: **75**  
Voltage: **460**  
Coupling:

### Repair Description

Repair proposal to include:

- new rotating assembly
- new motor bearings
- wash, bake & surge test stator
- labor to remove the motor and rotating assembly
- labor to tear down and inspect the pump and motor
- labor to clean parts being reused, assemble equipment and test
- labor for installation and testing of the pump and motor
- MLS & Truck charges

\*\*Lead time on the rotating assembly is 4-6 weeks\*\*

\*\*Does not include freight or anything else not listed above, please see terms and conditions\*\*

### Application Information

Pumpage:   
Head:   
Flow:   
Temp:   
Viscosity:   
Specific Gravity:   
☐ Hazardous ☐ Rotation Left  
☐ MSDS ☐ Rotation Right

### Terms and Conditions

- 1 Freight Charges Not Included
- 2 Taxes Not Included
- 3 Expedite Fees Not Included
- 4 Payment Terms - Net 30
- 5 Warranty Period - 90 Days
- 6 Proposal Vaild for 30 Days
- 7 Teardown/Inspection/Field Service Hours/MLS will be charged if Equipment is Not Repaired or Replaced through Mid-America Pump





## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2021

**DEPARTMENT:** Public Works

**AGENDA ITEM:** Resolution 1070, Amending the Backfill Specifications in the City for new subdivisions

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**REQUESTED BOARD ACTION:**

A motion to approve Resolution 1070, amending the Backfill Specifications in the City for new subdivisions.

**SUMMARY:**

At the Board Work Session, staff discussed amendments to the backfill requirements for street excavations. The proposed specifications still require flowable fill in narrow trenches as contractors do not have equipment small enough to properly compact narrow trenches. We are recommending AB-3 for medium trenches, which is a base rock material that compacts very well. For large trenches / crossings the contractor can use the excavated material and compact in 6" -8" lifts. Unless the trench is backfilled with Flowable Fill strict compaction testing by an independent testing firm will be required to be approved by the City prior to placement of any curb and gutter or street surface. Refer to Staff Memo and Exhibit 1.

**PREVIOUS ACTION:**

In May of 2020, the City adopted the 2017 KC Metro APWA Construction Standards with recommended modifications including concrete and asphalt mix designs, pavement subgrade treatment, and backfilling of excavations / trenches under pavements to be flowable fill.

**POLICY ISSUE:**

Maintaining infrastructure

**FINANCIAL CONSIDERATIONS:**

[Click or tap here to enter text.](#)

**ATTACHMENTS:**

- ☐ Ordinance
- ☒ Resolution
- ☐ Staff Report
- ☒ Other: Staff report  
Exhibit 1

- ☐ Contract
- ☐ Plans
- ☐ Minutes

## **RESOLUTION 1070**

### **A RESOLUTION AMENDING THE BACKFILL SPECIFICATIONS WITHIN THE STREET FOR NEW SUBDIVISIONS**

**WHEREAS**, in May 2020, the City adopted the current version of the KC Metro American Public Works Association (APWA) construction standards with amendments; and

**WHEREAS**, one amendment was to require that all excavations within the street be backfilled with flowable fill; and

**WHEREAS**, through discussions with local developers, contractors, engineers and City staff, it is recommended to amend the flowable fill requirement for some larger excavations as detailed in Exhibit 1.

### **NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:**

That the backfill requirements for excavations in the street be completed in accordance with Exhibit 1.

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17<sup>th</sup> day of May 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

# EXHIBIT 1

## City of Smithville

### Excavation / Backfill Specifications

Engineer shall design subdivisions to minimize crossings / excavations in /under the street from back of curb to back of curb

	<u>Trench</u>	<u>Backfill Material</u>		<u>Placement</u>	<u>Compaction</u>	<u>Testing</u>
	Trench 0 - 24" wide	Flowable Fill	water service lines, grinder pump sewer service lines, force mains (assuming not more than 4ft deep)			
	Trenches less than 48" deep	Compacted AB-3 or MODot Type 1 or 5	Water mains	8" lifts	95%	test every lift each road crossing or every 50 ft of trench length
	Trench 24"- 48" wide	Flowable Fill or Aggregate Base Material AB-3 or MoDOT Type 1 of 5		8" lifts	95%	test every lift each road crossing or every 50 ft of trench length
	Wide Trench > 48"	Suitable Backfill		8" lifts	95%	test every lift each road crossing or every 50 ft of trench length

Developer / Contractor will have an approved testing firm on site during all compacted trench operations to perform compaction testing. Compaction test reports will be provided to City on weekly basis and at least one week prior to placing curbs or pavement for approval to proceed.





## Board of Alderman Request for Action

**MEETING DATE:** 5/17/2022

**DEPARTMENT:** Finance

**AGENDA ITEM:** Resolution 1071, Renewal of Contract for Collection Services with I.C. System, Inc.

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**REQUESTED BOARD ACTION:**

A motion to approve Resolution 1071, renewing a contract with I.C. System, Inc. for collection services.

**SUMMARY:**

On June 4, 2019, the City entered into an initial contract with I.C. System, Inc. for collection services. These collection services have allowed the City to enforce collection on delinquent accounts owed to the City, primarily for water, wastewater and trash/recycling provision.

While attempting to maximize the City's collections, it is critical that the objective be achieved without negative exposure to the City and with careful consideration of consumer's rights. In dealing with debtors, I.C. System, Inc. has conducted its collection business in a professional manner, which has preserved the dignity of the City and its relationship with its citizens. Furthermore, the City's commitment to a customer-focused process has been honored throughout the collection cycle. In the attached agreement, I.C. System, Inc. has decreased the debtor collection fee rate to 20% (down from 21% in the previous agreement). This rate continues to stand out as a competitive rate amongst collection services.

**PREVIOUS ACTION:**

The Board approved Resolution 701 to enter into a contract with I.C. System, Inc. for collection services from June 2019 through the end of May 2022.

**POLICY OBJECTIVE:**

Contract for collection services on delinquent utility accounts

**FINANCIAL CONSIDERATIONS:**

Collection services assist the City in recouping monies that would otherwise be unretrievable on delinquent utility accounts.

**ATTACHMENTS:**

- |  |  |
|--|--|
| <input type="checkbox"/> Ordinance             | <input checked="" type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Plans               |
| <input type="checkbox"/> Staff Report          | <input type="checkbox"/> Minutes             |
| <input type="checkbox"/> Other:                |  |

## **RESOLUTION 1071**

### **A RESOLUTION EXTENDING A CONTRACT FOR COLLECTION SERVICES**

**WHEREAS**, the City continues to enforce collections on delinquent accounts owed to the City; and

**WHEREAS**, I.C. System, Inc. has provided collection services to the City of Smithville for the past three years on delinquent accounts owed to the City, primarily for water, wastewater, and trash/recycling services; and

**WHEREAS**, I.C. System, Inc. has provided this service to the City with satisfactory performance while dealing with debtors in a professional manner; and

**WHEREAS**, the City wishes to extend a contract to I.C. System, Inc. for the continuation of collection services for an additional three years,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI:**

**THAT** is hereby awarded to I.C. System, Inc. and the Mayor is hereby authorized to execute an agreement for collection services.

**PASSED AND ADOPTED** by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 17<sup>th</sup> of May 2022.

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

**Amendment to**  
**CONTRACT AGREEMENT PERTAINING TO**  
**BID No. 19-12, RESOLUTION 701**

This Extension Amendment ("Amendment") to Premier Collect Agreement ("Contract") is entered into by and between City of Smithville, MO ("City") and I.C. System, Inc., a Minnesota corporation located at 444 Hwy 96 E, Saint Paul, MN 55127 ("Contractor").

**RECITALS**

- A. Contractor and City entered into Contract dated June 4, 2019.
- B. Contract has an end date of May 31, 2022.
- C. Contractor and City intend to extend the term of the Contract for three years.
- D. Contractor and City have agreed to lower the City's contingency fee from 21% to 20%.

NOW, THEREFORE, it is hereby agreed as follows:

- 1. The Contract end date is hereby extended to May 31, 2025.
- 2. The Contract section titled Contingency Charges is amended to read as follows:

**CONTINGENCY CHARGES**

20% less than 1 year/20% over 1 year

- 3. Except as expressly provided in this Amendment, all other terms and conditions of the Contract (including any amendments thereto) shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have caused this Amendment to be executed by their duly authorized agents as of the date written below ("Effective Date").

I.C. SYSTEM, INC.

By: 

Name: John Erickson, Jr.

Title: President and CEO

Date: May 12, 2022

CITY OF SMITHVILLE, MO

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

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

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

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