



Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Administration

AGENDA ITEM: Bill No. 3037-24 - Authorization of a Real Estate Purchase Contract for the Sale of City Property on the Southside of Church Street – 2nd Reading

REQUESTED BOARD ACTION:

A motion to approve Bill No 3037-24, authorizing the city of Smithville, Missouri real estate purchase contract and authorizing and approving certain documents in connection therewith. 2nd reading by title only.

BACKGROUND:

RFP #24-12 Sale of City-Owned Property in Downtown District – Southside of Church Street (“RFP #24-12”) includes the parcel of land northeast of the old Smithville Hospital on the southside of Church Street that is legally described in RFP #24-12 attached hereto (the “Property”). The Property is included within a redevelopment area created pursuant to the 110 Smithville Tax Increment Financing Plan. The Property is currently being used as a public parking lot.

The City awarded RFP #24-12 to 110 Smithville, LLC (the “Buyer”) and has been negotiating a Real Estate Purchase Contract with the Buyer (the “Real Estate Contract”).

Associated with the Real Estate Contract, the City will execute with the Buyer the Escrow Agreement (the “Escrow Agreement”), which provides for the following:

1. The Buyer will create a blocked account with their lender containing \$195,000 to be used solely for the construction of the New Street Parking, and will provide proof of such blocked account. If the New Street Parking is not completed by the competition date, the Buyer will forgo \$195,000 of Reimbursable Project Costs, plus interest.
2. The Buyer will deposit \$294,000 into an escrow account to be held by the City to be used solely for the construction of the Donated Parking Improvements. The City will disburse moneys within this account for payment of those costs. If the Buyer does not complete the improvements, the City will utilize these funds for the completion of the construction of the Donated Parking Improvements.

PREVIOUS ACTION:

No prior Board of Aldermen action.

POLICY ISSUE:

The sale of land complies with the Comprehensive Plan, and is in conformance with the 110 Smithville Tax Increment Financing Plan previously approved by the City.

FINANCIAL CONSIDERATIONS:

None anticipated.

ATTACHMENTS:

- | | |
|---|--|
| <input 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 checked="" type="checkbox"/> Other: RFP and Bid Response | |

AN ORDINANCE AUTHORIZING THE CITY OF SMITHVILLE, MISSOURI REAL ESTATE PURCHASE CONTRACT AND AUTHORIZING AND APPROVING CERTAIN DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, the City of Smithville, Missouri (the "City") owns real property located in the Downtown District of the City (the "Property"); and

WHEREAS, the City has issued RPF # 24-12 Sale of City-Owned Property in the Downtown District, soliciting sealed proposals to purchase the Property as surplus City-owned property (the "RFP"); and

WHEREAS, in response to the RFP, 110 Smithville, LLC (the "Developer") delivered a Proposal Response Form and bid for the Property (the "Response"); and

WHEREAS, based on the Developer's response and bid as set forth in the Response, the City deemed the Developer the successful bidder under the terms of the RFP; and

WHEREAS, the Board of Aldermen of the City further finds and determines that it is necessary and desirable in connection with the sale of the Property that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided.

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

Section 1. Approval of the City Documents. The Real Estate Purchase Contract (the "Real Estate Contract") is hereby approved in substantially the form submitted to and reviewed by the City on the date hereof, with such changes therein as are required by the City's legal counsel and approved by the officers of the City, said officer's execution thereof to be conclusive evidence of the approval thereof.

Section 2. Execution of Documents. The City is hereby authorized to enter into, and the Mayor, the City Administrator and the City Clerk are hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, the Real Estate Contract and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and the Real Estate Contract.

Section 3. Further Authority. The City shall, and the officials and agents of the City, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and the Real Estate Contract, and to carry out, comply

with and perform the duties of the City with respect to the Real Estate Contract, to make alterations, changes or additions in the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed that they may approve, and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its passage by the Board of Aldermen and approval by the Mayor.

PASSED by the Board of Aldermen, and **APPROVED** by the Mayor, of the City of Smithville, Missouri, this 20th day of August, 2024.

(SEAL)

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

First Reading: 08/06/2024

Second Reading: 08/20/2024

REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT (the “**Contract**”) is made by and between

the **CITY OF SMITHVILLE, MISSOURI**, a municipal corporation and fourth-class city of the State of Missouri (“**City**”), and

110 SMITHVILLE, LLC, a Missouri limited liability company (“**Buyer**”),

dated as of the date on which either party last signs this Contract as dated beneath the parties’ signature (the “**Effective Date**”).

BACKGROUND:

A. City owns the real property located in the Downtown District of the City in Clay County, Missouri, described as follows (the “**Property**”):

All of Lots 3 and 4, Block 3, ORIGINAL TOWN OF SMITHVILLE, a subdivision in Smithville, Clay County, Missouri, EXCEPT the East 10 feet thereof. [TO BE CONFIRMED BY SURVEY]

B. Pursuant to the authority of Missouri law, City has issued **RFP # 24-12 Sale of City-Owned Property in the Downtown District** soliciting sealed proposals to purchase the Property as surplus City-owned Property, a copy of which is attached to and by this reference incorporated into this Contract as **Exhibit A** (the “**RFP**”).

C. In response to the **RFP**, Buyer delivered a detailed Proposal Response Form and bid for the Property, a copy of which is attached to and by this reference incorporated into this Contract as **Exhibit B** (the “**Buyer’s Response**”)

D. Based on Buyer’s response and bid as set forth in the Buyer’s Response, City deemed Buyer the successful bidder under the terms of the **RFP**.

AGREEMENTS:

In consideration of the Purchase Price (defined below), the facts recited above, the mutual covenants and agreements set forth in this Contract, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by each of them, City and Buyer agree as follows:

1. Contract Documents. The Contract between City and Buyer consists of this Contract, incorporating the RFP and the Buyer’s Response. City and Buyer agree that in the event of a conflict in the interpretation of the contract documents, the terms within the contract documents shall be construed or given binding effect in the following order: this Contract, the RFP, the Buyer’s Response.

2. Sale of Property; Condition. City agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from City, for the price and upon and subject to the terms, conditions and provisions set forth in this Contract.

3. Purchase Price and Earnest Money Deposit. The purchase price (“**Purchase Price**”) for the Property is \$15,054.00 and the additional consideration as discussed in Section 4 herein, which Buyer agrees to pay as follows:

(a) \$300.00 in good funds, to be deposited by Buyer within one business day after the Effective Date in the insured trust or escrow account of **Coffelt Land Title, Inc.** 9574 N McGee, Kansas City, Missouri 64155 (the “**Title Company**”), to be held by the Title Company without interest as an earnest money deposit (the “**Earnest Money Deposit**”); and

(b) the balance of \$14,754.00 by federal wire transfer of funds or other certified funds at Closing (defined below), adjusted at Closing for credits, prorations closing costs and any other adjustments set forth in this Contract and approved by the City and the Buyer.

4. Additional Consideration. As additional consideration for the sale of the Property, the Buyer agrees to the following:

(a) Buyer will pave and restripe the undeveloped west half of Parcel #06517000502000, excluding the existing parking lot, to create at least thirty-nine (39) new public parking spaces (the “**Donated Parking Improvements**”), to be constructed in a manner acceptable and approved by the City. Subject to an Escrow Agreement attached hereto as **Exhibit D**, Buyer will deposit \$294,000 to be held in escrow for the completion of the Donated Parking Improvements.

(b) City will have use of all approximately thirty-nine (39) additional improved street parking spaces on Church Street and Mill Street (the “**New Street Parking**”), to be constructed in a manner acceptable and approved by the City in conformance with the TIF Plan. Subject to an Escrow Agreement attached hereto as **Exhibit D**, Buyer will deposit \$195,000 in a blocked account specifically for the completion of the New Street Parking.

(c) City will have access to both Donated Parking Improvements and New Street Parking no later than August 1, 2026.

(d) The terms of this Paragraph 4 will survive the recording of the Deed and will not merge with the deed conveying the Property to Buyer.

5. Closing; Possession. Subject to all the terms of this Contract, this transaction will be closed (the “**Closing**”) at the office of the Title Company on September 30, 2024 (the “**Closing Date**”), or a prior date mutually agreed to by the parties, and possession of the Property will be delivered to Buyer upon Closing. An executed copy of this Contract will be delivered to the Title Company by City and will constitute the instructions to the Title Company to complete the Closing.

6. “As-Is” Purchase. Buyer is purchasing the Property **AS IS, WHERE IS, IN ITS PRESENT CONDITION, WITH ALL FAULTS**, patent and latent, and, only except as otherwise expressly stated in this Contract, without any representations or warranties by City or on behalf of City. Buyer represents to City that Buyer knows, has examined and investigated or will, under the provisions of this Contract, examine and investigate to the full satisfaction of Buyer, the physical nature and condition, including environmental condition, of the Property; and agrees that neither City nor any of City’s elected officials, officers, employees, agents, or other representative of City has, except as expressly stated in this Contract, made any representation, promise or warrant whatsoever regarding the Property or any part thereof, including without limiting the generality of the foregoing, any representation as to the physical nature or condition, including environmental condition thereof, restrictions thereon, the value or the financial prospect therefor, its suitability for a particular purpose, or the availability of utilities and access to the Property; and agrees that Buyer executing, delivering, and/or

performing this Contract, does not, except as expressly set forth in this Contract, rely upon any statement or information to whomever made or given, directly or indirectly, verbally or in writing, by City or any party purporting to act or speak on behalf of the City. By accepting the deed to the Property at Closing, Buyer shall be deemed to have waived, released, forever discharged from, and agreed not to sue City, its elected officials, officers, employees, agents, or other representative of City, or their respective heirs, personal representatives, successors and assigns, for, any and all claims, actions, suits and proceedings of whatever kind or nature arising out of, as a result of or in connection with the physical or financial condition of the Property or any improvements thereon.

7. Title Insurance; Survey. As soon after the Effective date as reasonably possible, City will cause the Title Company to deliver to Buyer a title insurance commitment (the “**Title Commitment**”) for an extended ALTA Owner’s Policy in the amount of the Purchase Price (the “**Title Policy**”), along with a copy of any exception documents listed in Schedule B of the Title Commitment. If Buyer desires to obtain a survey of the Property (a “**Survey**”), Buyer will order the Survey not later than 5 days after the Effective Date, and Buyer assumes responsibility for paying for the Survey. The final legal description will be confirmed by the Survey. Buyer will have 20 days after receipt of the Title Commitment (the “**Objection Period**”) in which to notify City in writing of any reasonable objections Buyer has regarding any matters shown or referred to in the Title Commitment or the Survey. Any matters which are stated in the Title Commitment or disclosed by the Survey and to which Buyer does not object within the Objection Period will be deemed to be permitted exceptions to the status of City’s title (the “**Permitted Exceptions**”). Regarding items to which Buyer does object within the Objection Period, City will have 30 days after receipt of Buyer’s written notice of objections to cure such objections (“**Title Cure Period**”). If such matters are not corrected within the Title Cure Period, or if City and Buyer have not agreed to extend the Title Cure Period by amending this Contract, Buyer's sole remedy will be to either accept such title as City is able to deliver, without diminution to the Purchase Price, or to terminate this Contract by written notice to City within 5 days after the expiration of the Title Cure Period. If Buyer does not deliver the notice of termination to City within such 5 days, Buyer will be deemed to have irrevocably waived all objections to title to the Property which were disclosed by the Title Commitment or the Survey, all such matters will be deemed to be Permitted Exceptions, and this Contract will remain in full force and effect and the parties will proceed to close this transaction according to the terms of this Contract. If Buyer delivers a notice of termination of the Contract within 5 days after the expiration of the Title Cure Period, the Earnest Money Deposit will be returned to Buyer and neither party will have any further obligation under this Contract, except as to any obligations that are to survive termination under the express terms of this Contract. Nothing in this Contract will be construed to require City to bring any action or proceeding or otherwise to incur any expense to cure any title or survey objections under the terms of this Contract.

8. Prorations; Closing Costs. As a government entity, City is not subject to general state, county and city taxes and installments of special assessments assessed against its property. To the extent general taxes or assessments are levied or assessed against the property post-Closing, they shall be the sole responsibility of Buyer.

(a) City will pay:

- (i) all expenses in connection with the payment of any encumbrances and recording costs to release any encumbrances which City elects or is obligated to release or satisfy by the terms of this Contract,
 - (ii) City's attorneys' fees, and
 - (iii) The cost of the Title Commitment.
- (b) Buyer will pay:
- (i) all charges for the Title Policy, except for the cost of the Title Commitment, including for extended coverage and endorsements,
 - (ii) costs of recording the deed and any loan documents related to financing arranged by Buyer,
 - (iii) the cost of any Survey or survey update Buyer obtains,
 - (iv) Buyer's attorneys' fees,
 - (v) any escrow and closing fees charged by the Title Company,
 - (vi) Buyer's expenses for tests and inspections, and
 - (vii) any other costs or obligations Buyer has incurred with respect to the property or the purchase transaction.

Otherwise, all expenses accrued prior to and on the Closing Date with respect to the Property shall be paid by City, and all expenses with respect to the Property accruing after the Closing Date shall be paid by Buyer. The agreements of City and Buyer set forth in this Section shall survive the Closing or any termination of this Contract.

9. Physical Inspection.

(a) Buyer may, for a period of up to 30 days after the Effective Date (the "**Inspection Period**"), at Buyer's cost and expense, cause such engineering and physical tests, inspections, and examinations to be made by firms designated by Buyer with respect to the elevations, topography, soil conditions, storm water drainage, environmental matters (including a Phase I and a Phase II environmental audit), availability of utilities, and all other matters regarding the condition of the Property (collectively, the "**Inspections**") as Buyer deems reasonably appropriate. Buyer and its designees may enter the Property to perform the Inspections and will be given access to City's records and personnel at such times and to the extent reasonably necessary to the Inspections. Buyer shall provide at least 48 hours prior notice (by telephone or email) to the City Administrator, or to any other party whom the City may designate, of any proposed entry or inspection of any Property.

(b) Buyer will cause all results and reports (collectively the "**Inspection Results**") with respect to the Inspections to be completed and delivered to Buyer prior to the expiration of the Inspection Period. If any of the Inspection Results disclose conditions or other matters reasonably unacceptable to Buyer, then Buyer will have the right to terminate this Contract by giving notice to City of its election to do so at any time within the Inspection Period and shall deliver to City along with such notice a copy of any report demonstrating the reasonably unacceptable condition or matter. If Buyer timely gives such notice to terminate this Contract, the Earnest Money Deposit will be returned to Buyer and, except as to any obligations that are to survive termination under the express terms of this Contract, neither party will have any further obligation or liability to the other under this Contract. If Buyer does not timely give such notice to terminate this Contract, then Buyer will be deemed to have waived its right to terminate under this paragraph and thereafter will not have the right to do so.

(c) Buyer agrees, at its sole cost and expense, to repair any damage to the Property arising from the Inspections, including such repairs as are necessary to restore the Property to its original condition prior to the Inspections, and agrees to indemnify and hold harmless City from and against all liability, loss, damages, and expenses (including reasonable attorneys' fees) for death, bodily injury, personal injury, property damage, or otherwise, arising from or related to the performance of the Inspections by Buyer or its agents, contractors or designees, all such obligation to survive the termination of this Contract, notwithstanding any contrary provision in this Contract. Any defense conducted by Buyer of any such claims, actions, damages, liability, and expense will be conducted by attorneys chosen by City, and approved by the Buyer, and such approval shall not be unreasonably conditioned or withheld, and Buyer will be liable for the payment of any and all court costs, expenses of litigation, reasonable attorneys' fees and any judgment that may be entered therein.

(d) Prior to Buyer entering the Property to conduct the Inspections, Buyer shall, at Buyer's sole cost and expense, obtain and maintain, or shall cause each of its agents, contractors and designees to obtain, and deliver to City certificates of insurance evidencing, the following insurance coverage: commercial liability insurance, from an insurer licensed to do business in the State of Missouri, in an amount not less than the then-current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri (which for calendar year 2023 is equal to \$3,258,368 for all claims arising out of a single accident or occurrence and \$488,755 for any one person in a single accident or occurrence). Such policy or policies shall name City as an additional insured party, which insurance shall provide coverage against any claim for personal injury or property damage caused by Buyer or its agents, contractors, designees or employees or contractors in connection with any Inspections.

10. Buyer's Acknowledgment, Representations and Warranties. Buyer represents that Andrew Hood is duly authorized to execute this Contract on behalf of Buyer. Buyer further acknowledges, represents, and warrants that it is familiar with its obligation (pursuant to the terms of the **RFP**) to complete the construction of the Donated Parking Improvements and the New Street Parking.

11. Closing. The following will be deposited with the Title Company on or before the Closing Date:

- (a) City will deposit or cause to be deposited:
 - (i) The Deed, in the form of the attached **Exhibit C**, or a form otherwise reasonably acceptable to the Buyer, subject to the reservations and conditions set forth in the RFP and to the Permitted Exceptions (together with such other instruments as may be required by local law in connection with the conveyance of real property), duly executed and acknowledged.
 - (ii) A closing statement prepared by the Title Company and executed by City.
 - (iii) Such other documents and instruments as City is able to deliver as the Title Company may reasonably require to complete the transaction and issue the Title Policy in conformance with the terms of this Contract.
- (b) Buyer will deposit or cause to be deposited:
 - (i) By federal wire transfer of funds or other certified funds, an amount equal to the balance of the Purchase Price (as adjusted pursuant to the terms of this Contract).

- (ii) Evidence of the blocked account designated only for the construction of the New Street Parking.
- (iii) Evidence of wire for the deposit of \$294,000.00 to be held by the City.
- (iv) Such documents and instruments as the Title Company may reasonably require evidencing the due organization and valid existence of Buyer and its authority to enter into and fulfil its obligations under this Contract.
- (v) A closing statement prepared by the Title Company and executed by Buyer; and
- (vi) Such other instruments as are required by this Contract and/or as are reasonably necessary or appropriate to consummate the sale contemplated by this Contract.

(c) Upon receipt of all of the documents and funds described in Paragraph (b), above, the Title Company will (i) record the Deed; (ii) disburse funds as shown in City's closing statement; (iii) deliver to Buyer the Title Policy, the original Deed, as recorded, and a copy of Buyer's closing statement executed Buyer; and (iv) deliver to City a photocopy of the Deed, as recorded, and a copy of City's closing statement.

12. Default. City or Buyer shall be in default under this Contract if either fails to comply with any material covenant, agreement or obligation within any time limits required by this Contract.

(a) If City defaults, including being unable to deliver title to the Property as contemplated by this Contract, Buyer will have the option as Buyer's sole remedy and relief, to take such title as City can give, or of terminating this Contract, in which event the Earnest Money Deposit will be returned by the Title Company to Buyer.

(b) If Buyer defaults, City may, as City's sole remedy and relief hereunder, terminate this Contract and thereupon be entitled to receive the Earnest Money Deposit as liquidated damages (and not as a penalty). City and Buyer have made the above provision for liquidated damages because it would be difficult to calculate on the Effective Date, the amount of actual damages for such breach, and that these sums represent reasonable compensation to City for such breach.

13. Notice. All notices required under this Contract and all approvals and other communications required or permitted to be given hereunder, must be in writing and be hand-delivered, delivered by courier (guarantying next day delivery), delivered by facsimile transmission to the number herein, emailed, or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to City:

Cynthia Wagner and Gina Page,
Smithville City Hall
107 West Main Street,
Smithville, Missouri 64089

Email: cwagner@smithvillemo.org; gpate@smithvillemo.org

With copy to:

Kuhlman, Reddoch and Sullivan PC
Suite 200
1201 W. College
Liberty, Missouri 64068
Attn: John Reddoch

Email: johnr@krsr.net

Gilmore & Bell, P.C.
2405 Grand Boulevard
Suite 1100
Kansas City, Missouri 64108
Attn: Megan Miller

Email: mmiller@gilmorebell.com

If to Buyer:

110 Smithville, LLC
106 West Main Street
Smithville, Missouri 64089
Attn: Eric Craig

With copy to:

Levy Craig Law Firm
4520 Main Street, Ste. 400
Kansas City, Missouri 64111
Attn: Andrew Lonard

Email: AWL@levycraig.com

Any notice will be deemed given 2 days after the date such notice is mailed as provided above, or on the day of hand-delivery or facsimile transmission.

14. Governing Law. This Contract will be governed by and construed in accordance with the laws of the State of Missouri. Any action regarding or arising out of the terms and conditions of this Contract shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other, and the parties submit to such jurisdiction and venue.

15. Binding Effect. This Contract will be binding upon and, subject to the provisions of Section 16 below regarding assignment, inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns.

16. Brokers. Buyer represents and warrants to City that it has had no dealings with any broker or agent in connection with this transaction. Buyer agrees to indemnify and hold City harmless from any cost or expense (including commissions due or claimed to be due by any licensed real estate broker), including reasonable attorneys' fees, arising from the failure of Buyer's

representation in the preceding sentence, which obligation will survive Closing or termination of this Contract.

17. Assignment. Buyer may not assign or transfer Buyer's rights or obligations under this Contract without City's consent, which may be withheld or delayed at City's sole discretion. No assignment of this Contract by Buyer shall release Buyer of Buyer's obligations to City under this Contract.

18. Entire Agreement; Modifications. This Contract contains the entire agreement between City and Buyer and there are no other terms, conditions, promises, understandings, statements, or representations, express or implied, concerning the sale contemplated hereunder. No alteration, change or modification of this Contract will be effective unless made in writing and executed by City and Buyer.

19. Time of Performance. If the time for performance of any obligations or satisfaction of any condition hereunder falls on a Saturday, Sunday or a day which is a Missouri state or federal holiday, the time for performance of such obligations or satisfaction of such condition shall be extended to the next day which is not a Saturday, Sunday or Missouri state or federal holiday.

20. Waiver. The waiver by either party of any term, covenant, or condition of this Contract shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Contract can be waived except by the written consent of the party granting the waiver, and forbearance or indulgence by either party in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by the other party.

21. Condition Precedent; Counterparts. This Contract shall be null and void and of no effect unless and until the City has, by Ordinance or Resolution passed by the City Board of Aldermen, obtained the authority to enter this Contract. This Contract may be executed in separate counterparts, each of which will be deemed to be an original and all of which, collectively, will be deemed to constitute one and the same Contract. Any signatures to counterparts may be delivered by facsimile or other electronic transmission, and such signatures shall have the same force and effect as originals. If counterparts of this Contract are not executed and delivered by all the parties and a fully executed counterpart delivered to Buyer on or before 10 Days after the City has by Ordinance or Resolution passed by the City Board of Aldermen obtained the authority to enter this Contract, this Contract shall be null and void.

[Remainder of page intentionally left blank. Signature page(s) to follow.]

SIGNATURES:

IN WITNESS WHEREOF, the parties have caused this this Contract to be executed as of the Effective Date.

City:

CITY OF SMITHVILLE, MISSOURI

By: _____
Damien Boley, Mayor

Date:

Attest:

By: _____
Linda Drummond, City Clerk

Date:

Buyer:

110 SMITHVILLE, LLC

By: _____

Printed Name:

Title:

Date:

EXHIBIT A TO REAL ESTATE PURCHASE CONTRACT

THE RFP

EXHIBIT B TO REAL ESTATE PURCHASE CONTRACT

Buyer's Response and Bid

EXHIBIT C TO REAL ESTATE PURCHASE CONTRACT

MISSOURI SPECIAL WARRANTY DEED

THIS MISSOURI SPECIAL WARRANTY DEED, is made _____, 2024, by and between

CITY OF SMITHVILLE, MISSOURI,

a municipal corporation and fourth-class city of the State of Missouri

107 West Main Street,

Smithville, Missouri 64089

“Grantor”, and

110 SMITHVILLE, LLC,

a Missouri limited liability company

106 West Main Street

Smithville, Missouri 64089

“Grantee”

WITNESSETH, THAT GRANTOR, in consideration of the sum of Ten Dollars, and other good and valuable consideration paid to Grantor by Grantee (the receipt and sufficiency of which is hereby acknowledged) does by these presents, **SELL and CONVEY** unto Grantee, its successors and assigns, that certain real estate situated in the County of Clay, and State of Missouri, described as:

[TO BE CONFIRMED BY SURVEY]

All of Lots 3 and 4, Block 3, ORIGINAL TOWN OF SMITHVILLE, a subdivision in Smithville, Clay County, Missouri, EXCEPT the East 10 feet thereof.

EXCEPT: any access, entry, water, sewer, gas, electric, utility, drainage, culvert, channel, maintenance, or other easement heretofore granted to or reserved by Grantor; and

SUBJECT TO: (a) liens, encumbrances, easements, restrictions, reservations, declarations, and other agreements and matters of record, if any, (b) taxes and assessments, general and special, if any; and (c) rights of the public in and to the parts thereof in streets, roads, or alleys, if any.

TO HAVE AND TO HOLD the described premises, with all and singular the rights, privileges, appurtenances, and immunities thereto belonging or in anywise appertaining to the premises, unto the Grantee and Grantee’s successors and assigns, forever; Grantor hereby covenanting that, other than as set forth in Smithville **RFP** 24-12, the said premises are free and clear from any encumbrance done or suffered by Grantor; and that it will warrant and defend the title to the said premises unto Grantee, and to Grantees successors and assigns forever, against the lawful claims and demands of all persons claiming under Grantor, except as provided above.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed by its duly authorized officer the day and year first above written.

GRANTOR:
CITY OF SMITHVILLE, MISSOURI

By: _____
Damien Boley, Mayor

STATE OF MISSOURI)
) **SS.**
COUNTY OF CLAY)

On this ____ day of _____ 2024, before me, a Notary Public in and for said State, appeared **Damien Boley**, to me personally known, who being by me personally sworn did say that he is the Mayor of the **CITY OF SMITHVILLE MISSOURI**, a municipal corporation and fourth-class city of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said city, and that said instrument said instrument was signed and sealed on behalf of said city by authority of its Board of Aldermen, and acknowledged 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 _____, _____, the day and year last above written.

Printed Name:
Notary Public in and for said State

My Commission Expires:

EXHIBIT D TO REAL ESTATE PURCHASE CONTRACT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT dated as of [_____, 2024] (“Agreement”), by and between the **CITY OF SMITHVILLE, MISSOURI**, a fourth-class city, and political subdivision organized and existing under the laws of the State of Missouri (the “City”) and **110 SMITHVILLE, LLC**, a Missouri limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the City has issued RFP #24-12 Sale of City-Owned Property in the Downtown District soliciting sealed proposals to purchase the Property as surplus City-owned Property (the “RFP”), and in response, the Developer delivered a detailed response dated March 7, 2024, that included an Alternative Proposal (the “Developer’s Response”); and

WHEREAS, within the Developer’s Response, the Developer agreed to pave and stripe the west half of Parcel #06517000502000, excluding the existing parking lot, to create at least thirty-nine (39) new public parking spaces (the “Donated Parking Improvements”) estimated to cost \$294,000; and

WHEREAS, the Developer also agreed to create approximately thirty-nine (39) additional improved street parking spaces on Church Street and Mill Street (the “New Street Parking,” together with the Donated Parking Improvements, the “Project”) estimated to cost \$195,000; and

WHEREAS, the City and the Developer entered into a Real Estate Contract dated [_____, 2024] (the “Real Estate Contract”) which includes the Donated Parking Improvements and New Street Parking as part of the consideration, in addition to a cash payment of \$15,054.00 for the conveyance by special warranty deed (“Deed”) of property described as follows; *All of Lots 3 and 4, Block 3, ORIGINAL TOWN OF SMITHVILLE, a subdivision in Smithville, Clay County, Missouri, EXCEPT the East 10 feet thereof* (the “Property”) [**TO BE CONFIRMED BY SURVEY**]; and

WHEREAS, the Real Estate Contract and the sale of the Property is conditioned upon assurances that the Donated Parking Improvements and the New Street Parking will be constructed.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. Definitions. The following terms shall have the following meanings as used in this Agreement:

a. **"Cure Period"** means a period of thirty (30) days after written notice is given of a Breach, as defined in Section 6 of this Agreement, during which time the Developer may cure the Breach, provided, however, that if the Breach is one that cannot reasonably be cured within said 30 days, the City may permit such additional time as may reasonably be required to cure such Breach, provided that the Developer diligently and faithfully pursues such cure.

b. **"Force Majeure Condition"** means a condition by reason of which the construction of the of the Project is prevented or materially impeded through no fault of the Developer, due to acts of God, extreme and extraordinary weather conditions, strikes, lockouts, labor troubles, inability to procure materials, failure of power, extreme and extraordinary governmental delay, pandemics, riots or other events

or circumstances beyond such party's control; provided, however that the Developer shall provide written notice to the City of the existence of the condition reasonably promptly after first becoming aware of the condition.

2. The Project. Developer agrees to complete the Project in accordance with the RFP and Developer's Response. Developer shall be responsible for any costs for the completion of the Project. The Developer shall obtain temporary certificates of occupancy, or equivalent approvals for the Project ("Certificates of Occupancy") on or before August 1, 2026 ("Completion Date"). On or before the Completion Date, the Project will be in acceptable condition for its intended use, and available for such use, as may be reasonably determined by the City (the "Condition").

3. Extensions Due to Force Majeure Conditions. The time limit for the Completion Date of the Project as set forth in **Section 2** may be extended due to any Force Majeure Condition if the Developer notifies the City of the existence of such condition as set in this Section. The extension of time for the Completion Date of the Project shall be for the period of any delay or delays caused or resulting from any Force Majeure Condition applicable to the Project; provided, however, the Developer must notify the City of the existence of such delaying event within forty five (45) days after the commencement of such Force Majeure Condition, which notice to the City shall include documentation or other information reasonably necessary to establish the existence of the Force Majeure Condition and an estimate of the approximate period of delay to be created by that event. The Developer's failure to provide such notice and documentation shall eliminate the waiver of default due to such delaying event created in this Section.

4. New Street Parking Blocked Account. Developer agrees that the Project construction budget (attached hereto as **Exhibit B**) designates \$195,000 to be used for the construction of the New Street Parking. Developer agrees that the construction loan agreement for the Project will include a blocked account, which may be used only for the construction of the New Street Parking and no other purpose, until the New Street Parking portion of the Project is completed. Developer will provide proof of the blocked account designated only for construction of the New Street Parking, upon full execution of the construction loan agreement for the Project. Notwithstanding anything in the Tax Increment Financing Redevelopment Agreement between the City and Developer dated August 15, 2023 (the "Redevelopment Agreement") to the contrary, in the event the New Street Parking is not completed by the Completion Date, the Developer shall forgo \$195,000 of Reimbursable Project Costs (as defined by the Redevelopment Agreement) from the Asphalt and Landscaping line item of the Project Budget attached to the Redevelopment Agreement as Exhibit C, plus interest thereon from the Completion Date equal to 8% per month until completed.

5. Donated Parking Improvements Account.

a. The Developer has deposited the amount of \$294,000.00 with the City (the "Deposit"). Such Deposit shall be held by the City in an interest-bearing account, subject to disbursement at the direction of or with the approval of the City (the "Escrow Account"). All funds held in the Escrow Account shall be used for the construction of the Donated Parking Improvements, and no other purpose.

b. In the event the Developer does not complete the Donated Parking Improvements by the Completion Date, the Deposit shall be used by the City for the completion of the Donated Parking Improvements. Further, to facilitate the completion of the Donated Parking Improvements, the City shall submit itemized statements for actual expenses incurred to complete the Donated Parking Improvements. The City shall disburse the moneys for payment of such costs from the Escrow Account until the funds have been depleted from the Escrow Account and the Developer will thereafter be responsible to pay the amounts set forth on such statements within 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. Developer shall supply these additional funds in a timely manner so that City activities may continue without interruption.

c. Disbursements from the from the Escrow Account will be authorized, as necessary, by the City for such purposes upon receipt of a disbursement request in substantially the form attached hereto as **Exhibit A** (“Disbursement Request”). Upon receipt of an executed and complete Disbursement Request (together with supporting invoice), the City shall have 15 calendar days to inform the Developer of any inadequacy of the Disbursement Request. If such 15-day time period passes without such notification, the City shall be deemed to have accepted the Disbursement Request and disburse funds from the Escrow Account to the Developer for the costs of the Donated Parking Improvements.

d. Upon completion of the Donated Parking Improvements and the issuance of the Certificate of Occupancy for the Donated Parking Improvements, any amount remaining in the Escrow Account shall be dispersed to the Developer.

6. Breach; Cure Period. If the Condition is not met on or before the Completion Date, as such Completion Date may be extended as a result of Force Majeure Conditions as provided in Section 3, a breach (“Breach”) of the Condition shall be deemed to have occurred. If the City reasonably determines that a Breach has occurred, the City shall provide written notice to Developer and the Developer shall have the right to cure the Breach within the Cure Period.

7. Default; Remedies. If a Breach is not Cured within the Cure Period, the Developer shall be in Default. Upon Default by Developer, the City shall have the right, but not the obligation, to institute such proceedings as may be necessary or desirable in the City’s sole opinion to compensate the City for any damages resulting from all breaches by the Developer, including, but not limited to, proceeding for breach of contract, damages, or specific performance.

8. Termination of the Condition. The Condition shall terminate and cease to be of any further force or effect upon the date that the last required Certificate of Occupancy is issued for the Project. The Certificates of Occupancy for the Project shall be deemed to be conclusive evidence of termination of the Condition and shall release the Developer, and its successors in title, from all obligations under this Agreement.

9. Attorney’s Fees. Developer agrees to indemnify and hold City harmless from any costs or expenses, including paying reasonable attorneys’ fees, arising from the Developer’s breach or threatened breach of this Agreement, including but not limited to, the costs of enforcing this Agreement and the costs of obtaining an injunction, restraining order, or specific performance.

10. 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 Project. The Developer agrees that execution of this Agreement in no way constitutes a waiver of any requirements of applicable City ordinances with which the Developer must comply and does not in any way constitute prior approval of any 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 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. Prior to commencement of construction on the Project on public property and ending upon completion of the Project on public property, the Developer shall, or shall ensure that its contractors shall, maintain a payment bond in a form approved by the city attorney, in an amount equal to the costs of the Project on public property, conditioned upon the faithful performance of the provisions, terms and conditions of the construction contract. The payment bond shall name the City as an obligee and copies of certificates of such bond shall be delivered to the City.

11. Notices. All notices required under this Agreement and all other communications required or permitted to be given hereunder, must be in writing and be hand-delivered, delivered by courier (guarantying next day delivery), delivered by facsimile transmission to the number herein, emailed, or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to City:

Cynthia Wagner and Gina Page,
Smithville City Hall
107 West Main Street,
Smithville, Missouri 64089
Email: cwagner@smithvillemo.org; gpate@smithvillemo.org

With copy to:

Kuhlman, Reddoch and Sullivan PC
Suite 200
1201 W. College
Liberty, Missouri 64068
Attn: John Reddoch
Email: johnr@krsr.net

and

Gilmore & Bell, P.C.
2405 Grand Boulevard
Suite 1100
Kansas City, Missouri 64108
Attn: Megan Miller
Email: mmiller@gilmorebell.com

If to Developer:

110 Smithville, LLC
106 West Main Street
Smithville, Missouri 64089
Attn: Eric Craig

With copy to:

Levy Craig Law Firm
4520 Main Street, Ste. 400
Kansas City, Missouri 64111
Attn: Andrew Lonard
Email: AWL@levycraig.com

12. Non-Merger. All of the terms, condition, covenants, representations, warranties, and restrictions of this Agreement, which by their terms involve a performance of any act or obligation after delivery of the Deed to the Developer, shall survive closing and delivery of the Deed to the Developer; it being intended that no provision of this Agreement shall be deemed to be merged into any subsequent deed or conveyance of the Property from the City to the Developer, and such subsequent deed shall not be deemed to affect or impair the rights or obligations under this Agreement.

13. Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the City or the Developer to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

14. Assignment. This 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 Agreement. This Agreement shall be binding upon the parties and their successors and permitted assigns.

15. Applicable Law. This Agreement shall be governed by the applicable law of the State of Missouri.

[Remainder of page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers or elected officials and their corporate seals to be hereunder affixed and attested as of the date first above written.

CITY:

CITY OF SMITHVILLE, MISSOURI

(Seal)

By _____
Mayor

ATTEST:

City Clerk

DEVELOPER:

110 SMITHVILLE, LLC

By _____
Name: _____
Title: _____

FORM OF DISBURSEMENT REQUEST

Disbursement No. _____

Date: _____

DISBURSEMENT REQUEST

TO: CITY OF SMITHVILLE, MISSOURI (the “City”)

110 Smithville, LLC (the “Company”) hereby requests that a total of \$_____ be paid for the Donated Parking Improvements in accordance with this request and the Escrow Agreement (the “Escrow Agreement”) between the City and the Company dated [_____, 2024] in such amounts, to such payees and for such purposes as set forth on **Exhibit A** attached hereto.

We hereby state and certify that:

(i) the amounts requested are or were necessary and appropriate in connection with the construction and installation of the Donated Parking Improvements, have been properly incurred and are a proper charge against the Escrow Account, and have been paid, or are justly due to the persons whose names and addresses are stated above, and have not been the basis of any previous requisition from the Escrow Account,

(ii) as of this date, except for the amounts specified above, there are no outstanding statements which are due and payable for labor, wages, materials, supplies or services in connection with the construction and installation of the Donated Parking Improvements which, if unpaid, might become the basis of a vendors’, mechanics’, laborers’ or materialmen’s statutory or similar lien or any part thereof;

(iii) no part of the several amounts paid or due as stated above has been or is being made the basis for the withdrawal of any moneys from the Escrow Account in any previous or pending application for payment made pursuant to the Escrow Agreement;

(iv) all work has been performed in a good and workmanlike manner; and

(v) no defaults have occurred and are continuing under the Escrow Agreement.

110 SMITHVILLE, LLC

By: _____
Title:

Approved and Accepted:

CITY OF SMITHVILLE, MISSOURI

By: _____
Title:

EXHIBIT A TO DISBURSEMENT REQUEST

Amount

Payee and Address

Description

EXHIBIT B TO ESCROW AGREEMENT

CONSTRUCTION BUDGET

PROJECT BUDGET

Budget Item	Total Costs	Est. TIF Reimbursable Costs	Est. Private Debt & Equity
Land			
Land Purchased From City	\$23,243	\$0	\$23,243
Private Land Purchase	\$285,000	\$154,121	\$130,879
Land Value	\$308,243	\$154,121	\$154,122
Sitework/ Infrastructure			
Demolition	\$480,000	\$480,000	\$0
Utilities	\$150,000	\$150,000	\$0
Asphalt and Landscaping	\$300,000	\$300,000	\$0
Total Sitework	\$930,000	\$930,000	\$0
Hard Costs			
Building Construction	\$11,516,700	\$0	\$11,516,700
Initial Commercial Tenant Improvements	\$273,000	\$30,910	\$242,090
Total Construction Cost	\$11,789,700	\$30,910	\$11,758,790
Soft Costs			
Payoff Existing Debt	\$70,000	\$0	\$70,000
Architecture	\$242,000	\$0	\$242,000
Engineering	\$295,950	\$0	\$295,950
Permitting	\$50,000	\$0	\$50,000
Parkland Dedication Fees	\$0	\$0	\$0
Misc. Pre-Construction Costs (Inspect.)	\$50,000	\$0	\$50,000
Title and Survey	\$50,000	\$0	\$50,000
Legal (Including TIF)	\$125,000	\$0	\$125,000
Loan Origination Fee (Lender)	\$43,752.00	\$0	\$43,752
Loan Advisory Fee (Inc.TIF)	\$124,232.00	\$0	\$124,232
Interest Carry	\$689,092.00	\$0	\$689,092
Construction Period Taxes	\$15,000.00	\$0	\$15,000
Developer Fees	\$589,485.00	\$0	\$589,485
Total Soft Costs	\$2,344,511	\$0	\$2,344,511
Subtotal Project Cost	\$15,372,454	\$1,115,031	\$14,257,423
Contingency: 3%	\$461,174	\$0	\$461,174
Grand Total	\$15,833,628	\$1,115,031	\$14,718,597



Andrew W. Lonard
Plaza Office
Direct Dial: (816) 460-1805
Direct Fax: (816) 382-6605
awl@levycraig.com

March 7, 2024

Gina Pate
Assistant City Administrator
107 West Main Street
Smithville, Missouri, 64089
GPate@smithvillemo.org

Re: Bid Proposal of 110 Smithville, LLC: RFP #24-12: Sale of City-Owned Property
in Downtown District – Southside of Church Street (the “RFP”).

Our File No.: 10881.001

Dear Ms. Pate:

As you know, our firm is pleased to represent 110 Smithville, LLC (the “Bidder”). Enclosed please find our bid proposal to the RFP (the “Response”) for the property which is the subject of the RFP (the “Property”).

In response to Section III.A of the RFP, my firm will be the principal contact for the response, at the address, email, and phone listed above.

We acknowledge that if 110 Smithville, LLC is awarded the right to purchase the Property, the Property will be used in accordance with the terms and conditions of the RFP.

In addition to the attached Proposal Response Form, below is a complete list of the items submitted as a response:

- 1) Exhibit A: Name, title, street address, email address, and telephone number, for the principal contact concerning the Response, as well as a list of all persons authorized to make representations for the Bidder.
- 2) Exhibit B: Statement of Qualifications and experience.
- 3) Exhibit C: Legal Disclosure.
- 4) Exhibit D: Detailed RFP Response and Proposal. This document will address all issues raised in the RFP and contains a complete proposal for the use of the Property.
- 5) Exhibit E: Purchase Price Proposal

A PROFESSIONAL CORPORATION

PLAZA OFFICE
4520 MAIN STREET, STE. 400
KANSAS CITY, MO 64111
816-474-8181
816-471-2186 FAX

NORTH OFFICE
4151 N. MULBERRY DRIVE, STE. 205
KANSAS CITY, MO 64116
816-454-7474
816-454-3525 FAX

KANSAS OFFICE
8101 COLLEGE BLVD, STE. 100
OVERLAND PARK, KS 66210
913-831-6900
913-831-7156 FAX

LEVY CRAIG LAW FIRM

A PROFESSIONAL CORPORATION

March 7, 2024

Page 2

Thank you for the opportunity to bid, and we look forward to answering any questions about the Response.

Sincerely,

LEVY CRAIG LAW FIRM

A Professional Corporation



Andrew W. Lonard

A PROFESSIONAL CORPORATION

PLAZA OFFICE

4520 MAIN STREET, STE. 1600
KANSAS CITY, MO 64111
816-474-8181
816-471-2186 FAX

NORTH OFFICE

4151 N. MULBERRY DRIVE, STE. 205
KANSAS CITY, MO 64116
816-454-7474
816-454-3525 FAX

KANSAS OFFICE

8101 COLLEGE BLVD, STE. 100
OVERLAND PARK, KS 66210
913-831-6900
913-831-7156 FAX

RFP #24-12 Sale of City-Owned Property
in the Downtown District – Southside of Church Street
PROPOSAL RESPONSE FORM

Name of Company or Individual (Print Name) submitting the Proposal.

110 Smithville, LLC, a Missouri limited liability company (the “Company”)

If submitted by an agent Print the Name of the Agent Submitting RFP.

Andrew Lonard, Attorney, Levy Craig Law Firm

Acknowledgment, **110 Smithville, LLC**, a Missouri limited liability company has read and reviewed the RFP and attached specifications.

I state the **Company** hereby offer meets or exceeds all requirements. All other required information must be attached.

THE COMPANY:

Smithville 110, LLC,
a Missouri limited liability company

106 West Main Street

Smithville, Missouri 64089

Tax ID No. 85-4246689

AUTHORIZED PERSON:

Andrew Lonard,
Levy Craig Law Firm



Attorney for Company

Email address: awl@levycraig.com

[End of Proposal Response Form - Remainder of page intentionally left blank.]

EXHIBIT A

Name, title, street address, email address, and telephone number for the principal contact concerning the Response, as well as a list of all persons authorized to make representations for the Bidder - RFP #24-12.

All persons listed below are authorized to make representations for the Bidder.

PRINCIPAL CONTACT FOR DEVELOPER/BIDDER:

Andrew W. Lonard
4520 Main Street, Ste. 400
Kansas City, MO 64111
Email: awl@levycraig.com
Phone: (816) 460-1805

Daniel Yoza
4520 Main Street, Ste. 400
Kansas City, MO 64111
Email: dyoza@levycraig.com
Phone: (816) 460-1847

FINANCIAL ADVISOR FOR DEVELOPER/BIDDER:

Don Coleman II
10108 NW 74th St
Weatherby Lake, MO 64152
Email: don.coleman@pulsedevgroup.com
Phone: (913) 205-2938

DEVELOPER/BIDDER:

Eric Craig
106 West Main Street
Smithville, Missouri 64089
Email: ericscraig@gmail.com
Phone: 816- 726-8565

Carlos Lepe
12575 NW 79th Street
Parkville, MO 64152
Email: carlos@pulsedevgroup.com
Phone: 816-365-1479

[End of Exhibit A - Remainder of page intentionally left blank.]

EXHIBIT B

STATEMENT OF QUALIFICATIONS AND EXPERIENCE - RFP #24-12

Understanding that the anticipated ability of the Bidder to timely construct, and thereafter maintain and operate the Property as a parking lot in accordance with the terms and conditions of the RFP, we are pleased to introduce the development team for this project.

Smithville 110 Smithville, LLC, (“Bidder”) is a limited liability company in good standing with the State of Missouri. On August 1, 2023, the City of Smithville approved a TIF Plan for a redevelopment district (the “TIF Project”) that includes the Property. Bidder currently owns two of the five parcels within the redevelopment district.

The members of Bidder are Carlos Lepe, Adam Tholen, Drew Hood, and Eric Craig. Pulse Development and Management is the public facing “Doing Business As” (D.B.A.) name for CAD Management, LLC (the “Pulse Group”), which is a limited liability company in good standing with the State of Missouri. The name for CAD Management, LLC was derived from the first names of the partners, Carlos Lepe, Adam Tholen, and Drew Hood. Adding Eric Craig as a local partner with deep ties to the City of Smithville, and Scott Ruther as a minority partner completed the ownership group for the Bidder.

Since the Pulse Group and Bidder share common ownership, Bidder will bring all the experience and ability of the Pulse Group to the TIF Project.

Pulse Group General Qualifications and Experience

The Pulse Group has worked on real estate projects for 12 years. Collectively they have been involved in rehabbing and/or building roughly three thousand dwelling units including apartment buildings, town homes, and single-family homes in the greater Kansas City area.

The Pulse Group has owned and developed over 200,000 SF of mixed-use retail and commercial property in Westport in Kansas City, Missouri, and various other parcels of land in the Kansas City metro area. They are currently developing approximately ninety single family homes in Smithville, Missouri. They recently sold a 254-unit apartment complex in Kansas City, Kansas that was a remarkably successful major remodel. The Pulse Group own numerous smaller rental properties.

The Pulse Group owns land in the Smithville area that will ultimately support development of several hundred more single family units and townhomes. They recently completed a 34-unit single family project in Smithville. Mr. Craig is also the listing broker for the various developments.

Pulse Group Qualifications and Experience - Parking Lots

The TIF Project will require that the owner purchase, develop and maintain parking for the tenants in the Property and customers who come to the commercial space. The parking lots will also accommodate public parking in cooperation with the City of Smithville.

Having developed and managed thousands of multifamily units and over 200,000 square feet of commercial and retail space, the management team for Pulse Group has had experience building, maintaining, and managing thousands of parking spaces. The management team has owned many parking lots and thousands of surface parking spaces serving their properties, tenants, commercial customers, and the general public across the Kansas City area. They have also managed parking garages including a 5-level, 700-space structure serving the Westport Entertainment district in Kansas City. They have owned and managed free residential parking lots as well as pay-to-park and permit-only garages and surface lots.

[End of Exhibit B - Remainder of page intentionally left blank.]

EXHIBIT C

LEGAL DISCLOSURE - RFP #24-12

In response to Section III.A of the RFP, there are no judgments, bankruptcies, legal proceedings, or conflicts of interest related to projects the respondent has developed, owned, or has a substantial ownership interest in.

[End of Exhibit C - Remainder of page intentionally left blank.]

EXHIBIT D
DETAILED RFP RESPONSE AND PROPOSAL - RFP #24-12

110 Smithville, LLC (the “Bidder”) is excited to submit this response (the “Response”) to RFP #24-12 (the “RFP”): Sale of City-Owned Property in Downtown District – Southside of Church Street (the “Property”).

Alternative Proposal:

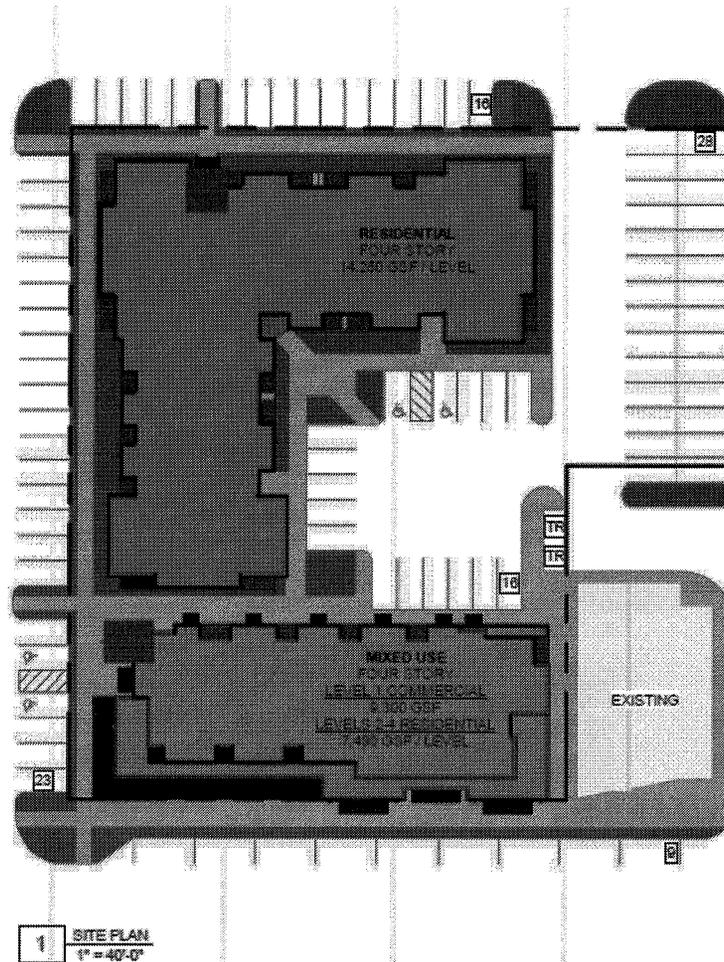
Bidder is aware that parking is of paramount importance to the City. On August 1, 2023, the City of Smithville approved a TIF Plan (the “TIF Plan”) for a redevelopment district (the “TIF Project”) that includes the Property.

The TIF Plan shows a portion of the multifamily housing building and two small parking lots on the Property. A handful of the parking spaces will be in a small lot surrounded by the building to be used exclusively for the building and twenty-six extra parking spaces which are close to the building. See depictions of the project overlay and proposed site plan below:

Project overlay:



Proposed site plan:



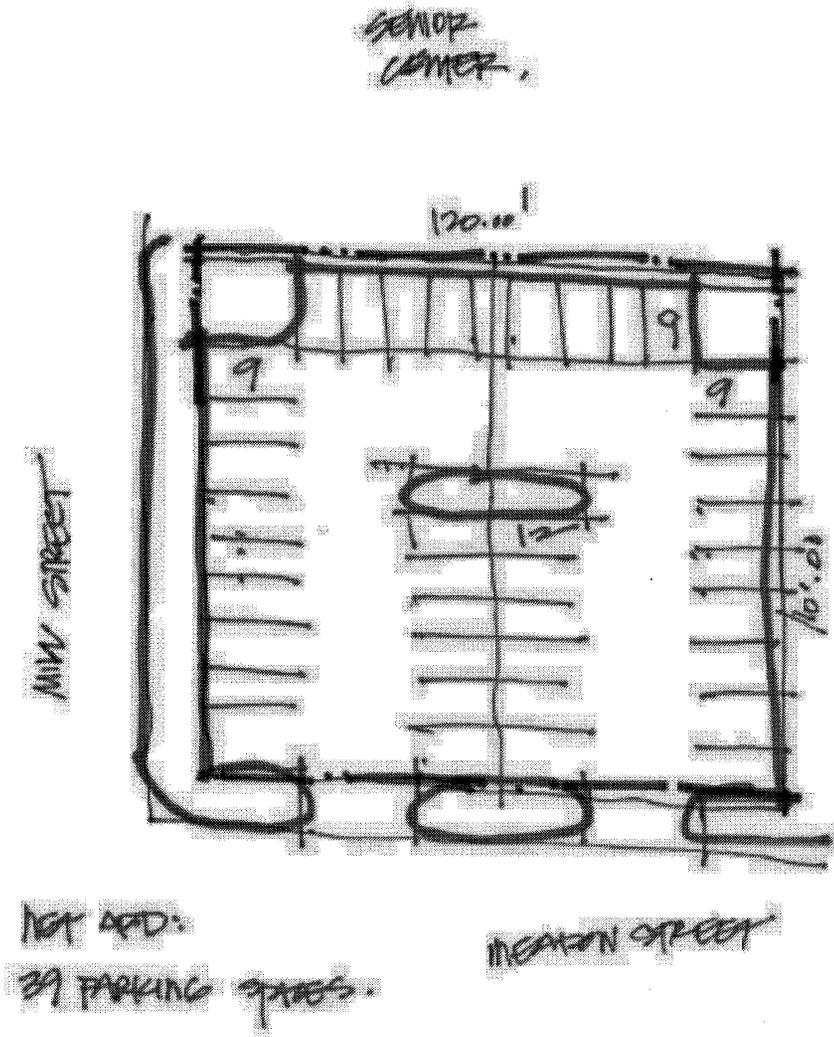
Bidder believes that simply restricting part of the parking portion of the project to always remain parking will not serve either the City’s or the Bidder’s purposes. Bidder would like to offer an alternative proposal that will both satisfy City’s parking concerns and allow the Bidder to use the Property as private parking in conformance with the TIF Plan, as described below (the “Alternative Proposal”).

In exchange for removing the reversion language in the RFP, Real Estate Contract, and Deed (the “Conveyance Documents”), Bidder offers to pave and restripe the undeveloped west half of the City property at the corner of Mill and Meadow street (the west half of Parcel # 05617000502000, excluding the existing parking lot) to create approximately thirty-nine new public parking spaces (the “Donated Improvements”).

Additionally, as depicted on proposed site plan above, the TIF Project will also create thirty-nine additional improved street parking spaces on Church street and Mill street (the “New Street Parking”). On or before August 1, 2026, the City will have the use of all of the New Street Parking. Some portions of the New Street Parking will be complete prior to this date.

The City would continue to own and maintain the Donated Improvements. The projected date to complete the Donated Improvements is on or before August 1, 2026. A depiction of the Donated Improvements is below:

The Donated Improvements:



Bidder constructing a total of seventy-eight additional public parking spaces should alleviate all parking concerns associated with the TIF Project in the Downtown area.

Responses to Requirements of the RFP:

Requirement 1:

“The City desires to sell the Property with a restriction that the Property remain available for use as a parking lot as described on Exhibit 2 by the successful bidder (the “Purchaser”), its customers or tenants, including use of a portion of the Property for non-parking uses, including building structures as described on Exhibit 2.”

Response 1:

If awarded the right to purchase the Property, pursuant to the plans presented in the TIF Plan as part of the TIF Project, a portion of the Property will be used to construct the multifamily building, and the remainder will be used for tenant parking. Bidder agrees that all parking will be in conformance with the Minimum Parking Lot Requirements in Exhibit 2 to the extent they apply to private parking lots.

Requirement 2:

“The Property, legally described on Exhibit 1 attached hereto, is being sold "as is" without any representation as to its current condition for the limited future purpose of improving and maintaining a parking lot and constructing buildings on portions of the Property. The sale will be upon the condition that a parking lot be constructed, and thereafter maintained and operated pursuant to the terms and specifications set forth in this Request for Proposals (the “RFP”).”

Response 2:

Bidder acknowledges and agrees that the Property is being sold as-is without any representation as to its current condition.

Bidder acknowledges and agrees to the limited future purpose of improving and maintaining a parking lot and constructing buildings on portions of the Property. If the Alternative Proposal is accepted by the City, the language “for the limited future purpose of improving and maintaining a parking lot and constructing buildings on portions of the Property” should be removed.

Bidder acknowledges and agrees that any improvements will be constructed, and thereafter maintained and operated pursuant to the terms and specifications set forth in the RFP, as may be modified by this Response.

Requirement 3:

“If the parking lot is not *timely constructed, maintained, and operated pursuant to the terms and conditions of this RFP* [emphasis added] the ownership of the Property shall revert back to the City. Such reversion shall not relieve the Purchaser of responsibility for any liability for damages caused by the Purchaser prior to such reversion even if the liability or damages are not discovered until after the reversion.”

Response 3:

Construction will begin on the Property later this summer. The projected date to complete parking improvements on the Property is on or before May 31, 2025. This schedule projection will be subject to construction delays and other unforeseen project delays. Keeping this projected schedule will be deemed “timely” for purposes of the RFP.

If the Alternative Proposal is accepted by the City, the second sentence concerning reversion of the Property in Requirement 3 should be removed. However, if it is not accepted, Bidder acknowledges and agrees that the Property will be constructed, maintained, and operated

pursuant to the terms and specifications set forth in the RFP and may be reverted back to the City if such terms and specifications are violated and that it is not relieved of responsibility for any liability for damages caused by the Bidder prior to such reversion even if the liability or damages are not discovered until after the reversion.

Requirement 4:

“All bidders for the Property submitting a bid recognize and agree that the contract for sale is in *fee simple determinable* [emphasis added]. The Property is and will be subject to all applicable rules, regulations, and procedures attendant with regard to the building/construction and maintenance of the parking lot in accord with the specifications set forth in **Exhibit 2**. Such parking lot is to be built, and continually thereafter maintained and operated as a parking lot on the Property as described in **Exhibit 2**, subject to the terms herein and in any subsequent real estate purchase contract or deed.”

Response 4:

If the Alternative Proposal is accepted by the City, the second sentence concerning fee simple determinable in Requirement 4 should be removed. As stated in Responses 2 and 3, the portion that contains the building will have no parking at all. The small amount of parking left on the Property it will be designated private. However, to the extent this clause applies to the Property, Bidder acknowledges the fee simple determinable requirement. In the interest of simplicity and clarity of the real estate conveyance, Bidder proposes that the conveyance of the Property be completed with a simple warranty deed, and separate recorded use restriction declaration. Fee simple determinable is a less often used legal mechanism in modern times and may raise legal ambiguities for the City, the Bidder, and potential lenders. Use restriction declarations are very often used in modern times and often enforced by courts. Bidder would be happy to submit a proposed form of use restrictions declaration. Yet, the Alternative Proposal is rejected and a deed in fee simple determinable the preferred form of conveyance, Bidder will comply with this requirement.

Bidder acknowledges that Property is and will be subject to all applicable rules, regulations, and procedures attendant with regard to the building/construction and maintenance of the parking lot in accord with the specifications set forth in Exhibit 2.

Requirement 5 - I. Site Information

“The Property is included within a redevelopment area pursuant to the 110 Smithville Tax Increment Financing Plan (the “TIF Plan”) on file with the City. The Property must be developed in conformance with the TIF Plan.”

Response 5:

Bidder acknowledges and agrees that the Property will be developed in conformance with the TIF Plan.

Requirement 6 - I. Site Information (continued)

“The Property is currently zoned B-4. Section 400.170 of the City Code provides the precise language of generally allowed uses. *The Property must be used*

as a parking lot as described herein, including use of a portion of the Property for non-parking uses, including building structures, or it will automatically revert back to ownership by the City[emphasis added]. The Property will need to be developed and maintained in accordance with the specifications set forth in Exhibit 2 attached hereto or as otherwise agreed to in writing by the City.”

Response 6:

Bidder acknowledges and agrees that the Property is currently zoned B-4. Section 400.170 of the City Code will comply with all zoning requirements.

See Responses 2, 3, and 4 for a discussion of the non-parking use of the Property. If the Alternative Proposal is accepted by the City, the italicized language in this Requirement 6 should be removed.

As stated in Response 1, Bidder will comply with the Minimum Parking Lot Requirements in Exhibit 2 to the extent they apply to private parking lots.

Requirement 7 - II. Evaluation & Selection:

“After selection by the Board of Alderman, within 30 days the City will present the successful bidder a real estate purchase contract in substantially the form attached hereto in **Exhibit 3**. The successful bidder will have 10 days, or as otherwise agreed by the Board of Aldermen in writing, to execute the contract.

The City may also request additional information from respondents at any time prior to final approval of a selected respondent to clarify (but not substantially change the bid as submitted). The City reserves the right to reject any or all of the responses.

All submittals shall become the property of the City, and, after the selection process, will be a public record.”

Response 7:

Bidder acknowledges and agrees to all of the provisions in Section II. Evaluation & Selection. Bidder will respond as quickly as practicable to all requests for information. Subject to a final review of the contract attached in Exhibit 3 once the bid is awarded and the terms of the sale are finalized, Bidder will execute the contract within 10 day of award.

Requirement 8 - V. Terms & Conditions:

Response 8:

Bidder acknowledges and agrees to the terms of Section V of the RFP, Terms and Conditions. The bid form was used; it was attached to this application with the cover letter.

Requirement 9 - Exhibit 2 - Minimum Parking Lot Requirements:

“Responses should include the ability of the Bidder/Purchaser to include EV-Capable and EV-Ready parking spaces, as defined below, and the number of EV-

Capable and EV-Ready parking spaces the Bidder/Purchaser intends to consider including. The City agrees to work with the Bidder/Purchaser in exploring additional funding to allow for including EV-Capable and EV-Ready parking spaces to be more financially feasible.

- o EV-CAPABLE SPACE. A dedicated parking space with electrical panel capacity and space for a branch circuit dedicated to the EV parking space that is not less than 40-ampere and 208/240-volt and equipped with raceways, both underground and surface mounted, to enable the future installation of electric vehicle supply equipment. For two adjacent EV-Capable spaces, a single branch circuit is permitted.

- o EV-READY SPACE. A designated parking space which is provided with a dedicated branch circuit that is not less than 40-ampere and 208/240-volt assigned for electric vehicle supply equipment terminating in a receptacle or junction box located in close proximity to the proposed location of the EV parking space. For two adjacent EV-Ready spaces, a single branch circuit is permitted.”

Response 9:

Bidder acknowledges and agrees to the terms of Exhibit 2 to the RFP, Minimum Parking Lot Requirements, including the striping, ADA, lighting, vehicle overhang, drainage study, pavement and subgrade specifications, striping, and maintenance requirements.

With respect to the EV-Capable and EV-Ready parking spaces requirements quoted above, Bidder acknowledges and agrees to these requirements and has the ability to comply with them, provided that an appropriate power source is currently available on the Property to comply with these requirements. Additionally, Bidder will accept City’s collaboration on completing this requirement. Bidder will explore all available avenues to complete this requirement, including collaborating with third party charging vendors. Bidders agreement to this requirement does not promise, grant, or guarantee that any EV-charging stations will be free or that the City will be able to control the price of vehicle charging offered to the general public.

Requirement 10 - Exhibit 3 - Real Estate Purchase Contract:

Response 10:

Bidder acknowledges and agrees to the terms of Exhibit 3 to the RFP, Sample Real Estate Purchase Contract, with the following notations:

2. Sale of Property; Condition; Reverter, 9. Buyer’s Acknowledgment, Representations and Warranties, and Exhibit C to Real Estate Purchase Contract.

Bidder acknowledges and agrees to the terms of the Real Estate Purchase Contract. However, see Response 4 for a discussion of Bidder’s position that a warranty deed with a separate recorded use restriction declaration would be a more appropriate form of conveyance. Upon

request, Bidder would be happy to provide a form of warranty deed and recordable use restriction declarations for review.

If the Alternative Proposal is accepted by the City, Sections 2 and 9 of the Real Estate Purchase Contract should be revised to remove the reversion language, and Exhibit C should be replaced with a Special Warranty Deed without the reversion language.

[End of Exhibit D - Remainder of page intentionally left blank.]

EXHIBIT E

Purchase Price for RFP #24-12

The Property is currently a paved parking lot without marked stalls or curb stops and is in need of maintenance and repair. On August 1, 2023, the City of Smithville approved a TIF Plan for a redevelopment district (the “TIF Project”) that includes the Property. It is the Bidder’s plan to construct a multifamily residential building and approximately twenty-six parking spaces on the Property and the neighboring hospital property as part of the TIF Project.

As part of the alternative proposal described in detail in Exhibit D (The “Alternative Proposal”), Bidder is also offering to pave and restripe the undeveloped west half of the City property at the corner of Mill and Meadow street and to construct thirty-nine additional improved street parking spaces on Church and Mill street.

Since the Alternative Proposal adds additional public parking at Bidder’s expense, Bidder believes that the City should consider the price in light of both the purchase price, and the value of the Alternative Proposal to the public.

1) Purchase Price:

Bidder will offer the following purchase price for delivery to the City upon delivery of the deed to the Property to Bidder.

Lots 3 and 4, Block 3 (.36 acres) - Parcel ID 05617000300200

Total cash offer: **\$15,054**

2) Value of Alternative Proposal

- a. Bidder will pave and stripe the City west half of the property at the corner of Mill and Meadow street (Parcel # 05617000502000, excluding the existing parking lot) to create approximately thirty-nine new public parking spaces (the “Donated Improvements”). The Donated Improvements will be completed on or before August 1, 2026. The cost of these improvements is estimated to be **\$294,000**.
- b. As part of the TIF Project, Bidder will create thirty-nine additional improved street parking spaces on Church Street and Mill Street (the “New Street Parking”). On or before August 1, 2026, the City will have the use of all of the New Street Parking. The cost of the New Street Parking is estimated to be **\$195,000**.

3) Total Value

The cash offer of **\$15,054**, plus the Donated Improvements **\$294,000**, plus the value of the value of the New Street Parking **\$195,000**, equals:

Total Value of Bid **\$ 504,054**.

[End of Exhibit E - Remainder of page intentionally left blank.]