



City of Smithville, Missouri
Board of Aldermen – Regular Session Agenda
7:00 p.m. Tuesday, August 20, 2024
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 YouTube page](#).

Public Comment can be made in person or via Zoom, if by Zoom please email your request to the City Clerk at 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**
 - August 6, 2024, Board of Aldermen Work Session Minutes
 - August 6, 2024, Board of Aldermen Regular Session Minutes
 - **Finance Report**
 - Finance Report for July 2024
 - **Resolution 1392, Camp Host Contract Renewal**

A Resolution Authorizing the renewal of an agreement with Janet Terry and Chris Dunkin for camp host services at Smith's Fork Campground.
 - **Resolution 1393, Amending the Employee Handbook**

A Resolution amending the Employee Handbook to add section 12-7 Paid Parental Leave.

Join Zoom Meeting
<https://us02web.zoom.us/j/86540782654>

Meeting ID: 865 4078 2654
Passcode: 625651

REPORTS FROM OFFICERS AND STANDING COMMITTEES

4. **Committee Reports**
 - Planning and Zoning Commission
5. **City Administrator's Report**

ORDINANCES & RESOLUTIONS

6. **Bill No. 3035-24, Re-Adopt the Code of Ethics – 2nd Reading**

An Ordinance re-adopting the Code of Ethics to comply with Missouri Ethics Commission standards. 2nd reading by title only
7. **Bill No. 3036-24, Real Estate Purchase Contract for the Sale of City Property on the Northside of Church Street – 2nd Reading**

An Ordinance authorizing the City of Smithville, Missouri real estate purchase contract and authorizing and approving certain documents in connection therewith. 2nd reading by title only.

- 8. Bill No. 3037-24, Real Estate Purchase Contract for the Sale of City Property on the Southside of Church Street – 2nd Reading**
An Ordinance authorizing the City of Smithville, Missouri real estate purchase contract and authorizing and approving certain documents in connection therewith. 2nd reading by title only.
- 9. Resolution 1394, Site Plan – Montessori Academy Expansion**
A Resolution authorizing site plan approval for construction of a 5,109 ft² addition to the Montessori Academy at 14450 North 169 Highway, Suite B.
- 10. Resolution 1395, Award Bid Commercial Street Sidewalks**
A Resolution awarding Bid No. 24-16 to Legacy Underground Construction for 2024 Commercial Avenue pedestrian improvements in an amount not to exceed \$898,658 and authorize a force account of \$100,000.
- 11. Resolution 1396, Agreement with GBA for Bridge Street Roundabout Design**
A Resolution authorizing the Mayor to sign an agreement with GBA for engineering services for a roundabout at the intersection of East First Street and North Bridge Street and authorizing GBA to proceed with Phase A.

OTHER MATTERS BEFORE THE BOARD

- 12. 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.
- 13. 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.
- 14. Adjourn**





Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Administration/Finance/Parks

AGENDA ITEM: Consent Agenda

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:

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 - August 6, 2024, Board of Aldermen Work Session Minutes
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SUMMARY:

Voting to approve would approve the Board of Aldermen minutes, finance report and Resolutions.

PREVIOUS ACTION:

N/A

POLICY ISSUE:

N/A

FINANCIAL CONSIDERATIONS:

N/A

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 checked="" type="checkbox"/> Minutes |
| <input checked="" type="checkbox"/> Other: Finance Report | |

**SMITHVILLE BOARD OF ALDERMEN
WORK SESSION**

August 6, 2024 5:30 p.m.
City Hall Council Chambers and Via Videoconference

1. Call to Order

Mayor Boley, present, called the meeting to order at 5:30 p.m. A quorum of the Board was present: Melissa Wilson, Marv Atkins, Dan Hartman, Kelly Kobylski and Leeah Shipley. Ron Russell joined the meeting at 5:31 p.m.

Staff present: Cynthia Wagner, Gina Pate, Chuck Soules, Chief Lockridge, Jack Hendrix, Rick Welch and Linda Drummond.

Economic Development Committee present: Alicia Neth, Pat Luce, Adam Royds, Carol Noecker, John Wallace and Erika Winston. Steve Langley joined the meeting at 5:46 p.m.

2. Board of Aldermen and Economic Development Committee Joint Discussion

Gina Pate, Assistant City Administrator, provided a brief background on what the Economic Development Committee have been working on. She noted that over the past year the Economic Development Committee (EDC) has reviewed the City's Strategic Plan and Comprehensive Plan to look over goals and priorities that they wanted to focus on. They focused on the Strength in Business and Economic Development Pillar which is a key area in both plans. They have assigned different areas of interest through marketing, tourism and also industrial development by having committee members looking at where industrial areas are able to be developed in Smithville. They have had many discussions about goals, and they are here tonight to talk about some of the actions and accomplishments that they have had so far. The committee is seeking any feedback from the Board on whether they should be working on anything else.

Alicia Neth, Economic Development Committee Chair, summarized some of their accomplishments so far. They have discussed murals for downtown, hosted the MU Extension who gave them guidance and a toolkit to use that they turned over to the Smithville Main Street District. They prioritized updating the City's Economic Development page on the website with more information. They provided brochures campers at Smith's Fork Campground with a QR code that takes them to the landing page on the City's website to help drive them to the local amenities. The City has partnered with the Chamber of Commerce to host lunch and learns. The City is currently scheduling the South Employment Overlay District engagement meeting which is really exciting.

Alicia noted that they have their upcoming goals, a creative marketing campaign strategy for tourism and development, review the need of personnel or a vendor to provide marketing services for the City, review opportunities to leverage the lake for economic development, explore Short Term Rentals (STR) visitor data and the website development to continue to make it a one stop shop for tourism and development. Alicia noted that the EDC was looking for a little more guidance if

there is anything that they should be working on in the short and long-term in addition to our upcoming goals and action items. They also wanted to get the Board of Aldermen's vision over the next two to 10 years so they can make sure that they are focusing on the same thing that Board sees for the City in the future.

Adam Royds noted that Alicia spoke about marketing strategy and at the next EDC meeting he is going to bring up leveraging the immigrant business owners and find out if they know people interested in the World Cup. He explained that he had already spoken with the owners of Donut Palace to see if they knew of anyone that might be going to the World Cup and they knew of two. Adam noted that the EDC will need to decide whether they want to do a targeted or a broad-based marketing campaign or if they want to try to actually target certain demographics to bring them over for the World Cup.

Mayor Boley noted that he has a briefing on August 3 on the World Cup. He noted that it is something we should be focusing on for the short-term. He explained that we should think of ways that the region will be leveraging the World Cup because they will be thinking transportation. We should be thinking about a place for people to get on the interim transit, such as the school or Smithville Market Place. Somewhere people will be able to park to and get on the interim transit here.

Alderman Hartman, also a member of the EDC, noted that they were trying to align and measure through the Comprehensive Plan is the metrics. He said that one of the items they will be discussing is a software program that would allow them to have some metrics measured.

Gina explained that they have been looking into the company Placer AI. It is similar to Replica but instead of replicating the data it is actually real time. She believes there might be a 48-hour delay for us to see the data on our dashboard. It would give us the opportunity to really drill down into individual businesses of what kind of demographics, where people are coming from to visit Smithville, where they are staying, are they going to other places. We would have the ability to make a geo area and could map Main Street District, we could map other business districts throughout Smithville, we could do the lake and capture more out of City limit data. To be able to help drive people into Smithville to visit places and other amenities. It would help us get more specific in the categories. Replica's included gas stations and grocery stores in the same category as retail and that did not give us a clear picture of actual retail data. Placer AI will be a lot more granular and useful for EDC and the City in general. Gina noted that you can also view traffic patterns which will be helpful for potential grant applications in the future. It will provide how people are coming to Smithville and why.

Alderman Hartman noted that he heard a statistic that by the time a 13-year-old today has used their cell phone there is over 78 million data points on that 13-year-old. He noted that this is now just part of our life.

Gina added the disclaimer that the Placer AI is all aggregate, so we do not see anyone's individual information.

Mayor Boley noted that when we set the direction for the Strategic Plan six years ago it was with data driven decision making. Mayor Boley added that he appreciated them serving on the EDC. He noted that EDC and the Parks and Recreation Committee are advisory to the Board of Aldermen and the advice the committees provide is valuable. He said that he does appreciate having joint meetings. Mayor Boley noted that it is getting close to updating the Strategic and Comprehensive Plans and asked that the committee start thinking about who to pull into those conversations. He explained that it is a citizen-based Strategic Plan and not the Board of Aldermen and we need to invite as many residents, schools and civic groups to participate.

Adam noted that as we are coming up on the review of the Strategic and Comprehensive Plans there are parts that definitely need to be redone.

Mayor Boley explained that it is not a review it will be writing a new one.

Adam said that the Smithville Main Street District identified the need to change the idea of a downtown oasis. They found that is way too subjective because everyone's idea of an oasis is different.

Mayor Boley noted that the defined area of the oasis is the area between Heritage Park and the dam and maintaining that area natural. He explained that it is the community oasis and not the downtown oasis.

Adam suggested using something other than oasis.

Mayor Boley noted that oasis was the term accepted by the community present five years ago during the strategic planning process.

Mayor Boley asked if the checklists and the format of the Strategic and Comprehensive Plans helped provide the EDC with a road map.

Gina noted that one of the things that the EDC discussed were the longer-term priorities. She asked if the Board wanted them to start working on them now and focus on those as a higher priority or work through the shorter-term priorities first.

Mayor Boley noted that the Planning and Zoning Commission has done a good job of working on the longer-term priorities. He suggested the community art, the business retention visits, focusing on community education and community engagement would be priority for the EDC.

Alicia noted that they had a good meeting with two of the higher ups of Meritas (St. Luke's) here in Smithville to discuss their future thoughts on the Emergency Room (ER) that is no longer being used. She said that they suggested to them using that space as an urgent care facility. They also gave them Carol Noecker's information and suggested working with the High School to get some type of lab tech classes in that space.

Alderman Atkins asked if there has been any discussion on the airport redevelopment.

Mayor Boley clarified that the airport redevelopment is the \$3 billion bond issue that Kansas City passed not an airport here in Smithville.

Gina noted that they have discussed doing marketing at the airport. She said that the marketing campaign that they will begin working on will help with that.

Alderman Atkins asked if they had thought about the school kids providing the art on a rotating basis.

Carol Noecker noted that the students providing the art had been a big part of their conversation, whether to pay an artist or bring in the high schoolers in. She said that there is an art teacher at the High School that has been trained on how to do a client project with students and is interested in doing a project. Carol noted that they are hoping to be able to get something going this year.

Adam explained that they were discussing having the students create the art, but the Missouri Extension told them they need to pay artists. He said that they preferred that they do a call for artists. Adam explained that they are going off of their recommendation since they have been working with them and they gave them the toolkit. The Missouri Extension said that they needed to get public feedback, so Adam went to Hot Summer Nights and surveyed some of the people attending. He had four or five statements about the lake, the theme "Lake Life", public art, do you agree or disagree. He had 17 participate last weekend and they were all in agreement. Adam noted that so far a "Lake Life" themed mural is surveying well. He will be doing the survey through the month of August, then collating the data and sending it to Elena at Missouri Extension and then seeing what they need to do next. They hope to have something ready to begin by next spring.

Carol explained that since the students would be doing this during the school year they are thinking of doing something that can be installed either inside or outside, even partnering with local businesses. Maybe doing something in pieces so they can do the work and then can install it.

Alderman Russell asked if they had considered asking for feedback from the brochure placed at Smith's Fork Campground, such as asking people for feedback on what places they visited while here, what they thought the City should have that they would enjoy.

Gina noted that she liked the idea of getting feedback from the visitors.

Steve Langley noted that he understood the Missouri Extension wanting the funding for the art but would like to see the students incorporated also.

Alicia noted that they had definitely touched on using both artist and students at their meetings for the mural.

Mayor Boley asked what acreage amount was needed for a truck stop.

John Wallace explained it was generally eight to twelve acres depending on how many fueling stations.

Alicia said that having a truck stop would be beneficial especially during harvest season.

John explained that what people do not realize is the amount of volume that these types of stations can do. He said that it is not uncommon for a single location to do \$70 to \$100 million a year in retail and would be a large tax contributor to the city.

Alderman Hartman noted that we are up to 12 or more STR's in Smithville and a lot of those individuals shop and dine locally. He said it is because we do not have a large hotel. Alderman Hartman suggested gathering the data, such as Air DNA, or talking to management companies that do that. He said that information would be important because there is some economic vitality there.

Gina noted that she had a meeting with a property management group for short term rentals and they shared with her more information about why people are staying in Airbnb's. Surprisingly, a lot are visiting family or going to a specific event or for work. Gina said that she was surprised to hear to most of the people staying at the STR's were not coming here for the lake. Gina noted that after talking to them we have discussed doing a business catalog, so she will work with Erika Winston at the Chamber to put a booklet together to put in the STR's that lists things to do in Smithville that would just stay at the property to help get those visitors to visit our amenities.

Adam asked if there was any way to gather data to find out the demand of the STR's and use that to see if there is a demand for a hotel.

Mayor Boley explained that we do not have a tax incentive for a hotel. Developers can go three miles down the road and get tax incentives. We do not have the available land that is zoned for it or the infrastructure for it. Hotels use a lot of water and sewer and right now the City does not have enough sewer capacity for a hotel.

Adam asked if the EDC should even be thinking about a hotel for the longer term and instead focus more on the STR's.

Mayor Boley said maybe focus more on the campground. Think about whether to focus more on the glamping crowd or the workforce crowd.

Adam noted that this was good information for EDC, and they can start focusing more on the campground, STR's and the possibility of tiny homes. John noted that there is a fairly large amount of land near the water tower south and west of town.

Mayor Boley asked if he were referring to the South Overlay District that is a conceptual plan to say what we would like to see in that area. It is not an area that

is ready to be developed. He explained that we need the plan in place and that will take time.

Alderman Wilson suggested that EDC consider marketing the STR's at the golf course. She said that the golf course gets a lot of calls when they bring in these golfers that come in for a long weekend asking where they can stay. She suggested putting marketing information about things to do here locally at the golf course.

Mayor Boley asked Gina to get the golf course the QR code that they use at the campground.

Gina explained that she is ordering more and will be putting them out twice a year so they will be refreshed with the seasons. She said she will reach out to the golf course.

Cynthia thanked the EDC for all their efforts and for taking the time to meet with the Board this evening.

3. Discussion of Combined Water and Wastewater Fund

Rick Welch, Finance Director, presented the FY2025 proposed utility rate adjustments.

Utility Rate Adjustment – Review Process

June 2024 – Utility Rate Model Update

July 2024 – Staff Review

August 2024 – Review with Board of Aldermen

October 2024 – Approval of Utility Rate Adjustments

Developing the Combined Water and Wastewater (CWWS) Fund Budget

Utility rate adjustments are necessary to fund the following items:

- Ongoing Water & Sewer “Pay-As-You-Go” (Cash Funded) Capital Improvement Projects Recommended from Water and Wastewater Master Plans.
- Future Water & Sewer Debt Financed Projects (WTP & WWTP Plant Expansion Projects) Recommended from Water and Wastewater Master Plans.
- Increased Expenses for Operational Maintenance and Repairs for the CWWS System.
- Equipment Upgrades (Water Master Plant Update, Wastewater Master Plant Update and Plant Renewal, Sewer Jetter Machine, Wet Well Wizard, and Chemical Building Lighting and Windows Replacement).

Five Year CIP – CWWS Fund

Capital Improvement Project Name	FY 2025	FY 2026	FY 2027	FY2028	FY2029
West Bypass of the 144th Street Lift Station (Construction)	\$2,200,000	-	-	-	-
144 th Street Lift Station (Construction)	\$100,000	-	-	-	-
144 th Street Lift Station Federal Earmark	-\$1,500,000				
Smith's Fork Force Main (Construction)	\$600,000	-	-	-	-
Owens Branch Gravity Line Phase #1, Line #1 (Engineering)	\$200,000	-	-	-	-
Maple Ave & River Crossing (12" Waterline) (50% of Construction)	\$700,000	-	-	-	-
Stonebridge Lift Station (Engineering)	\$30,000	-	-	-	-
Stonebridge Lift Station (Construction With SSD Cost Sharing)	\$1,300,000	-	-	-	-
Water Plant Improvements (Construction)	\$1,400,000	-	-	-	-
McDonalds/Central Bank Lift Station (Engineering)	\$100,000	-	-	-	-
Grand Total (Net Cost)	\$5,130,000	\$0	\$0	\$0	\$0

Five Year CIP – CWWS Fund - continued

Capital Improvement Project Name	FY 2025	FY 2026	FY 2027	FY2028	FY2029
Interconnect Mains at 144 th /169 Highway/Major Mall (S2, Construction)	-	\$55,000	-	-	-
Highway 92 & Commercial Waterline (Engineering)	-	\$150,000	-	-	-
Smith's Fork Park Waterline (Construction)	-	\$170,000	-	-	-
Owens Branch Gravity Line Phase #1, Line #1 (Construction)	-	\$1,150,000	-	-	-
Highway 92 & Commercial Waterline (Construction)	-	\$300,000	-	-	-
Owens Branch Gravity Line Phase #1 and #3, Line #2 (Engineering)	-	\$1,000,000	-	-	-
McDonalds/Central Bank Lift Station (Construction)	-	\$500,000	-	-	-
Grand Total (Net Cost)	\$5,130,000	\$3,325,000	\$0	\$0	\$0

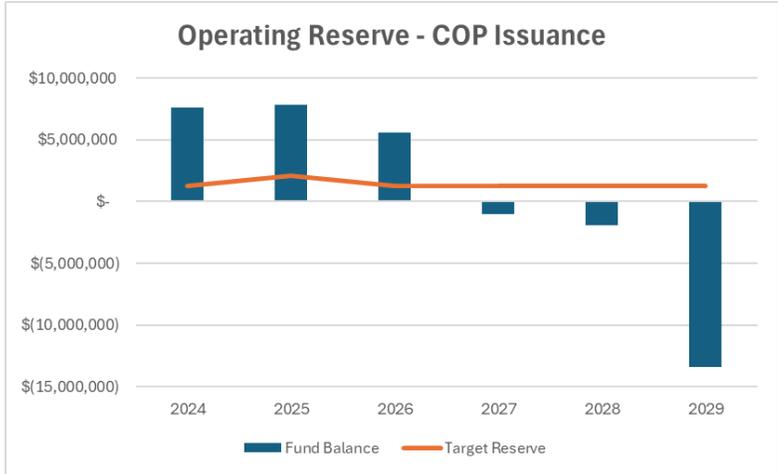
Five Year CIP – CWWS Fund – continued

Capital Improvement Project Name	FY 2025	FY 2026	FY 2027	FY2028	FY2029
Owens Branch Gravity Line Phase #1, Line #3 (Construction)	-	-	\$2,000,000	-	-
Wastewater Treatment Plant Expansion (Engineering)	-	-	\$1,050,000	-	-
Owens Branch Gravity Line Phase #1, Line #2 (Construction)	-	-	\$2,500,000	-	-
Water Plant Expansion (Engineering)	-	-	\$2,100,000	-	-
Additional Water and Wastewater Project Funding	-	-	-	\$2,000,000	-
Wastewater Treatment Plant Expansion (Construction)	-	-	-	-	\$3,000,000
Water Plant Expansion, Phase I (Construction)	-	-	-	-	\$7,500,000
Additional Water and Wastewater Project Funding	-	-	-	-	\$2,000,000
Grand Total (Net Cost)	\$5,130,000	\$3,325,000	\$7,650,000	\$2,000,000	\$12,500,000

* Projects with a **GREEN** background are new to the 5 Year CIP.

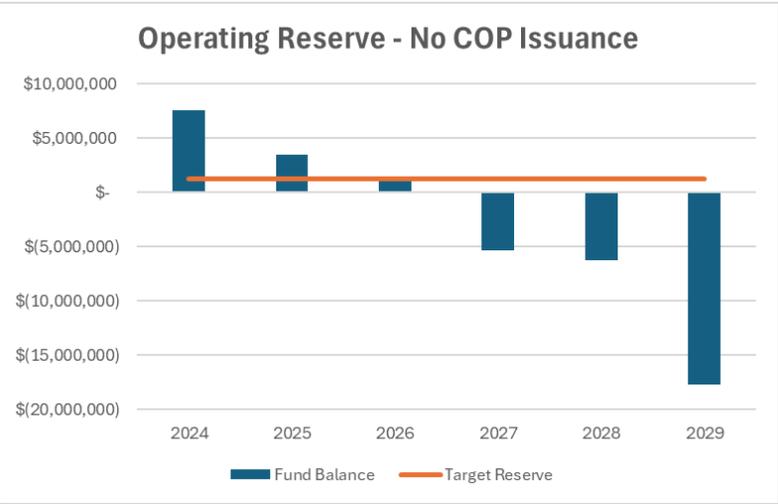
Projects with a **RED** background expenditures past the 5 Year CIP.

CWWS Cashflow – COP Issuance
No Rate Increase



Cashflow with issuance of COP debt, but no rate increase helps maintain a fund balance above the target reserve until FY27. Model does not include an annual rate adjustment of 15% to both water and wastewater, which was recommended in the rate study.

**CWWS Cashflow – COP Issuance
No Rate Increase**



Cashflow without issuance of COP debt and no rate increase helps maintain a fund balance above the target reserve through FY25. Model does not include an annual rate adjustment of 15% to both water and wastewater, which was recommended in the rate study.

Proposed Changes – Water Fixed Rates

Water Rates	FY2024	FY2025 (Proposed)
Monthly Water Fixed Charge (3/4" and 1" Residential Meter)	\$14.70 / Month	\$16.91 / Month
<i>Senior</i> Monthly Water Fixed Charge (3/4" and 1" Residential Meter)	\$12.50 / Month	\$14.38 / Month*

15% Proposed Increase on the Monthly Water Fixed Charge.
*Senior Rate reflects a 15% discount from the regular rate.

Proposed Changes – Water Volume Rates

Water Rates	FY2024 (Current)	FY2025 (Proposed)
Monthly Water Volume Charge	\$10.40 Per 1,000 Gallons Used	\$11.96 Per 1,000 Gallons Used
Wholesale Water Rate	\$6.21 Per 1,000 Gallons Used	\$7.14 Per 1,000 Gallons Used

15% Proposed Increase on the Monthly Water Volume Charge (Including Wholesale Rate at Which Water is Sold to PWSD #8)

Proposed Changes – Wastewater Fixed Rates

Wastewater Rate	FY2024 (Current)	FY2025 (Proposed)
Monthly Wastewater Fixed Charge (3/4" and 1" Residential Meter)	\$21.19 / Month	\$24.37 / Month
<i>Senior</i> Monthly Wastewater Fixed Charge (3/4" and 1" Residential Meter)	\$18.01 / Month	\$20.71 / Month*

15% Proposed Increase on the Monthly Wastewater Fixed Charge

*Senior Rate reflects a 15% discount from the regular rate.

Proposed Changes – Wastewater Fixed Rates

Wastewater Rate	FY2024 (Current)	FY2025 (Proposed)
Monthly Wastewater Fixed Charge (3/4" and 1" Residential Meter)	\$21.19 / Month	\$24.37 / Month
<i>Senior</i> Monthly Wastewater Fixed Charge (3/4" and 1" Residential Meter)	\$18.01 / Month	\$20.71 / Month*

15% Proposed Increase on the Monthly Wastewater Fixed Charge

*Senior Rate reflects a 15% discount from the regular rate.

Proposed Changes – Wastewater Volume Rates

Wastewater Rate	FY2024 (Current)	FY2025 (Proposed)
Monthly Wastewater Volume Charge	\$8.84 Per 1,000 Gallons Used	\$10.17 Per 1,000 Gallons Used

15% Proposed Increase on the Monthly Wastewater Volume Charge

Proposed Changes – Water Fixed Rates

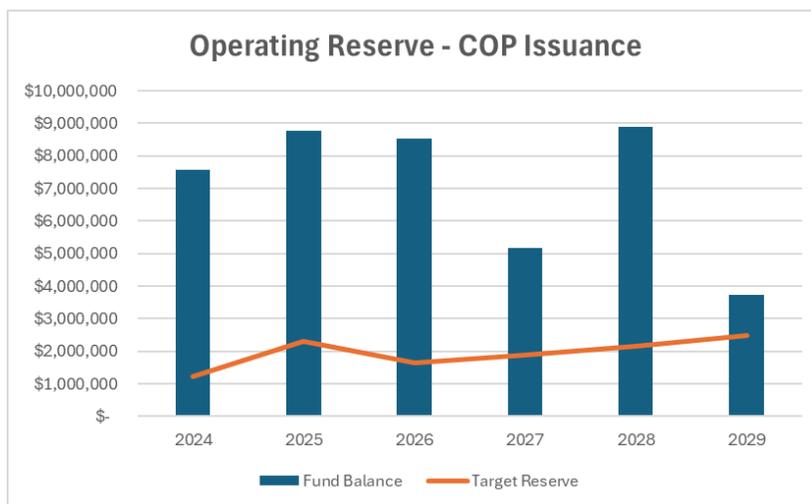
Non-Resident (Outside City Limit) Customers	FY2024	FY2025 (Proposed)
Sewer Only (Outside City Limit) Customers	\$81.68	\$92.61
Water Only (Outside City Limit) Customers	\$22.05 / Month + \$15.60 / 1,000 Gallons	\$25.37 / Month + \$17.94 / 1,000 Gallons
Water Only (Outside City Limit) Customers – Senior Discount	\$18.74 / Monthly + \$15.60 / Gallons	\$21.56 / Monthly + \$17.94 / Gallons

This Rate is Set By City Ordinance No. 3208-23, Section 705.040.

Ricked explained that these are the fixed charges and the fixed based on volume charges.

Cynthia noted that the fixed charges apply to all utility accounts.

CWWS Cashflow – Rate Increase and COP Issuance



Cashflow with proposed rate increase and COP issuance helps maintain a fund balance well above the target reserve of 20% of operating revenues.

Model assumes ongoing rate adjustments of 15%, per rate study, for water and wastewater rates each year.

Alderman Wilson asked how the CIP projects flow if the privatization does happen.

Rick explained that currently we have the CIP projects prioritized based on the needs that have to happen. He noted that we have to operate as if we are not going to privatize.

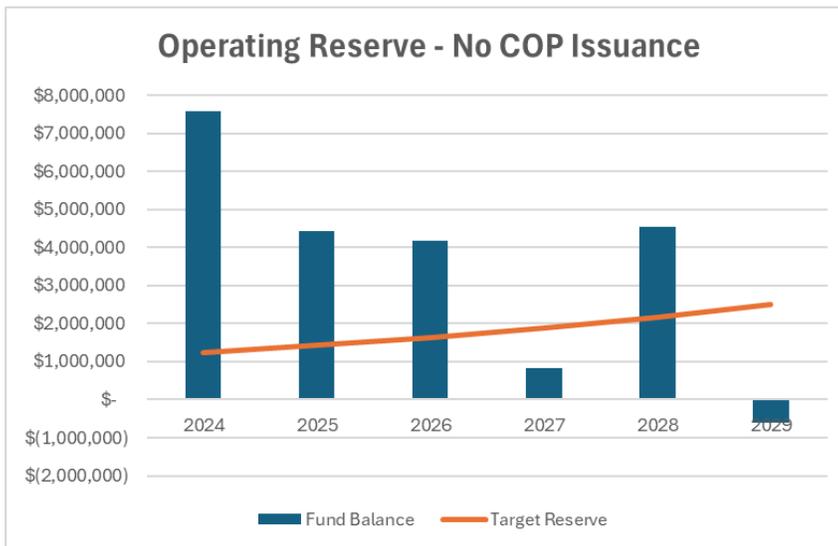
Cynthia explained that the CIP projects presented here are the priority projects based on cash flow. She noted that we know that we have significant needs and costly expansions that are necessary to the system in order to provide services and also ongoing maintenance costs. Cynthia explained that one of the reasons we are reviewing privatization as a possibility is to help with that cash flow. Another reason is because in 2018, when we initiated the utility rate study and every year since we

have been looking at double digit increases to take care of and finance those enhancements to the system and also the ongoing maintenance. Cynthia added that she wanted everyone to understand that our water and wastewater utilities are funded through user charges. She noted that one of the things that has helped us is the grant and federal funding that we have applied for and received. There are no tax dollars (sales or property taxes) that support the utilities. Exactly zero Smithville tax dollars go into the water and wastewater funds.

Alderman Hartman appreciated Cynthia reiterating that and added that businesses pay a higher amount and if they are a new business they have to pay impact fees.

Cynthia added that not only new businesses, but also new larger volume service pay the impact fees. Residential areas we look at the impact to the system and those fees are included as part of the calculus. Cynthia explained that we have not used the impact fees collected we have saved them because they need to be used for the expansion of the system based on the impact of those new systems.

CWWS Cashflow – Rate Increase and No COP Issuance



Cashflow with proposed rate increase and no COP issuance helps maintain a fund balance FY27, when the target reserve is not met.

Model assumes ongoing rate adjustments of 15%, per rate study, for water and wastewater rates each year.

Mayor Boley noted that as we have looked at this over the last five years we have always had a dip that we have never actually hit because bill come in late, projects are delayed, interest rates, etc. He said that yes this is hypothetical, but we have never gotten close.

Cynthia added that two years ago we were seeing a dip and were looking at the COP issuance for the 144th Street project since then that project has change in scope and now has that federal earmark funding that helps us with cash flow. Cynthia noted that we are not saying that we will not need the issuance of COP later, this just saves us the debt costs of issuance of COPs right now. This is a fund that staff continues to watch and monitor.

Mayor Boley noted that we also had the same scenario when we did the raw water pump station and the sewer improvements at Smith’s Fork. We were going to have

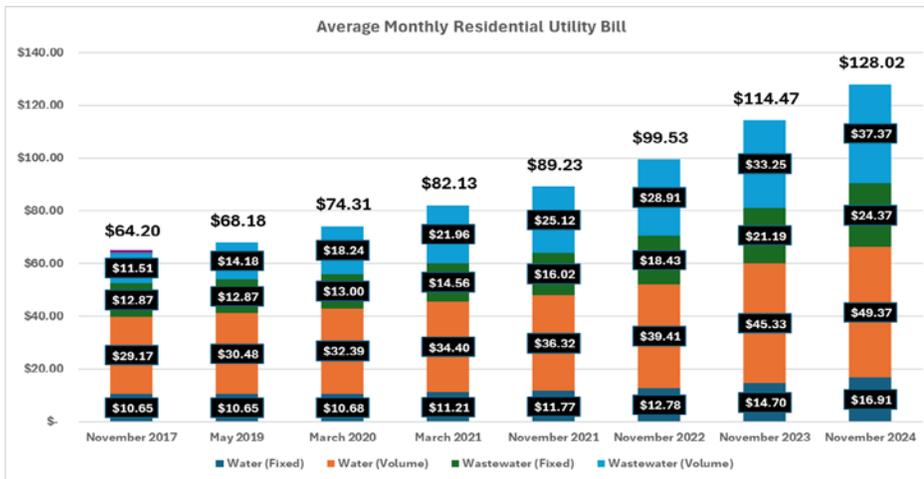
to do the issuance of COPs but did not have to because we received federal funding. He noted that staff works hard to obtain grant funding but there is no guarantee we will receive them.

Cynthia noted that this is also based on the assumption of significant rate increases and to maintain the system that is what is required.

Mayor Boley noted that over the past few years the cost of materials and chemicals has gone up significantly.

Cynthia added that the cost of engineering and design continues to go up as well.

**Average Monthly Utility Bill
Water and Wastewater Only**

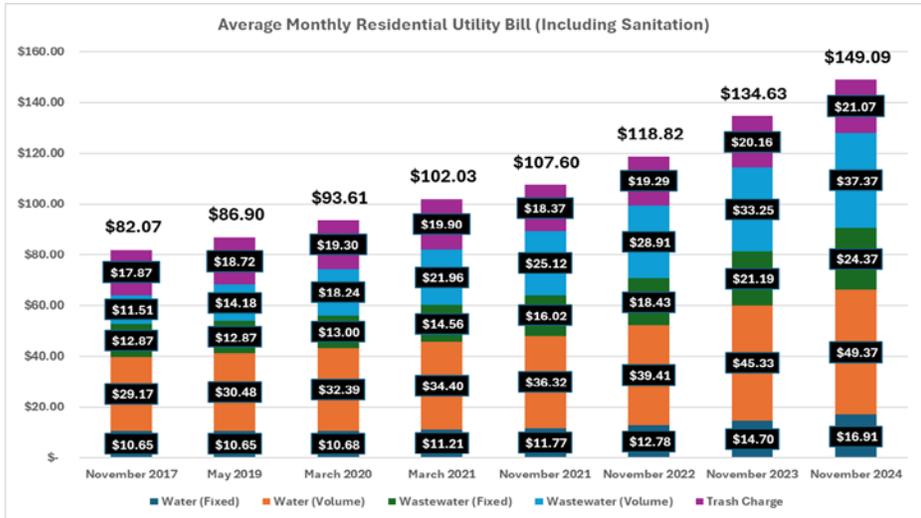


Water Usage Assumption: 4,128 Gallons.

Wastewater Usage Assumption: 3,675 Gallons.

Mayor Boley noted that when we did the rate study the Board wanted to focus on usage charges because they wanted to encourage conservation of water to not have to expand the system.

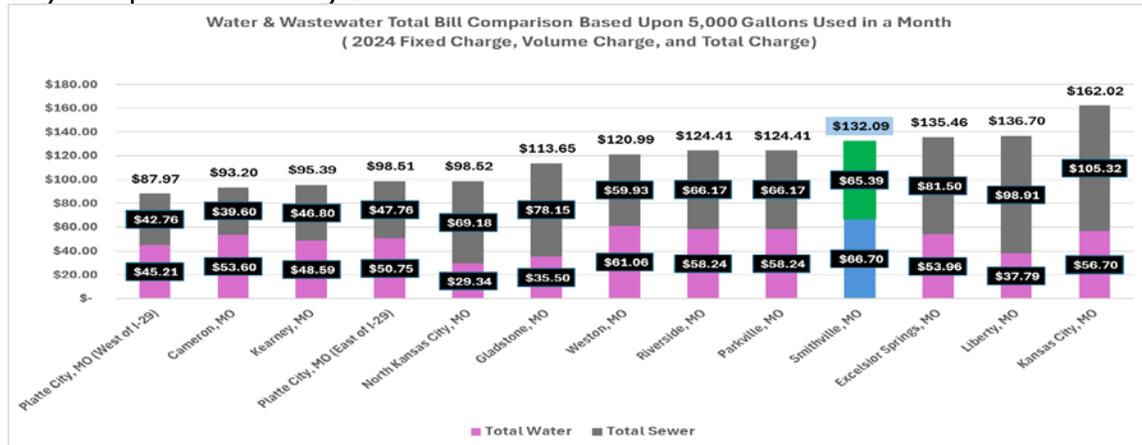
**Average Monthly Utility Bill
Including Trash**



Water Usage Assumption: 4,128 Gallons.

Wastewater Usage Assumption: 3,675 Gallons.

City Comparison – Utility Bills



Alderman Russell asked why our wastewater was so high.

Cynthia explained that this is all based on the same amount of usage 5,000 gallons.

Rick explained that on the chart the top color is sewer, and the bottom color is water.

Alderman Wilson asked how many of the cities used in this comparison have their own water and wastewater facilities.

Rick said that there is probably a third to fifty percent that do.

Alderman Wilson noted that it would be nice to know how many cities have their own as we do the comparison of keeping our system inhouse versus selling it.

FY2025 Budget Process Schedule

- FY2025 Operating Budget and 5 Year CIP Review: 1st Discussion (August 20)

- FY2025 Operating Budget and 5 Year CIP Review: 2nd Discussion - If Needed (September 3)
- Public Hearing for Sewer Rates as Required by Missouri State Statute (October 1)
- FY2025 Operating Budget on 1st Reading (October 1)
- Adopt Water & Wastewater Utility Rates by Board Resolution (October 15)
- Adopt the FY2025 Operating and Capital Budget on 2nd Reading (October 15)

Alderman Hartman noted that if you use it you have to pay for it.

Alderman Russell said that he understands the rising cost of everything and inflation, but the increase of rates is a sore subject. He noted that the capital projects is a primary driver of the proposed rate adjustment. Alderman Russell believes that there are several capital projects that we could look at pushing further out and scale back to spending only \$3 million a year on projects and not doing the 15% rate increase.

Rick asked if he was suggesting that the capital improvement projects be capped at \$3 million a year for 2025, 2026, 2027 and 2028.

Alderman Russell said yes, and he know that the projects change in priority, but to look at what projects could be pushed out further and not have to raise the rates.

Alderman Wilson explained that part of the reason we are having to do the rate increases now is because of exactly what Alderman Russell is suggesting: pushing projects out further. Alderman Wilson explained that has been done for the last 20 years that she has lived here and why we are in the situation that we are in now. She said she did not know that it would be a good thing to push projects out further.

Alderman Russell said that since he has lived here that is what he has heard. That the City pushed out everything and did not fix anything and that is what has gotten us were we are today. He said that we need to see what needs fixed now and fix it right not just using a band-aid. He said he would just like the Board to look at where we could cut back on the capital improvement projects.

Rick explained that staff is constantly looking at this. This is a fluid project listing that we are working with and if we can do that we will definitely look at doing it. Rick noted that right now these priorities are immediate and the \$5.5 million for 2025 is where we stand.

Cynthia explained that we have moved projects and continue to review them. She noted that when the master plans were done the wastewater treatment plant expansion was to start in 2025/2026 and we continue to push those out. Cynthia noted that we have to be realistic, and we need to continue to serve the needs of the community. She explained that the CIP is not just about the growth. The CIP is also about the maintenance of the system. This year we have spent a significant amount on enhancements to the water treatment plant just so we can keep it functional. The older the systems are, the more expensive it is to maintain them.

Mayor Boley noted that this is all about the growth from the end of the 1980's until the beginning of the 2010's when we built the 33 pump stations that have caused the problems we have now.

Chuck Soules, Public Works Director, noted that the four big projects, 144th Street pump station is needed because we are reaching capacity at Hills of Shannon that will provide capacity for anything to the south. When Chuck first started with the City, Forest Oaks project was supposed to be starting but it cannot until the 144th Street Pump Station gets in. We put in the new pump station at Smith's Fork and now we need a new force main there because we have a four-inch line that only has a minimal amount of sewage pumping out of it and we have to get it replaced before it plugs up. At the river crossing there is one feed the north end of town and we need to get another water line across the river to make sure that we have a safe continuous volume of water going north and the School District is depending on the Stonebridge Lift Station. Chuck said that these are the projects scheduled for next year that are pushing the expenses up and they were supposed to begin this year but were pushed. Chuck explained that the water and wastewater plant expansion is more population driven. The wastewater plant is in good shape, and we are making the improvements needed to the water plant this year. We will continue to watch population growth to see when those expansions are needed.

Alderman Hartman noted that cost and availability of construction materials and engineering continues to go up. He said that he absolutely understands where Alderman Russell is coming from and would like to delay these projects. Alderman Hartman said that in delaying the projects now the cost of the materials and engineering could also be more than they are now. He said that there is no way to beat inflation.

Cynthia noted that staff does not want to bring 15% annual increases to the Board. She said that this is the most responsible way of moving forward so we are not digging a deeper hole.

Alderman Hartman said that staff will continue to crunch the numbers, and the Board will have to make those tough decisions that are not easy to make.

Cynthia noted that staff has and will continue to work very hard to try to secure federal funding for projects to help to push back the need for issuing COP's.

4. Discussion Schedule of Fees

Rick Welch, Finance Director, presented the FY2025 proposed changes to the Schedule of Fees.

Schedule of Fees – Review Process

June 2024 – Fee Comparison Research

July 2024 – Staff Review

August 2024 – Review with Board of Aldermen

October 2024 – Approval of Schedule of Fees

Administration Department

Occupational Licenses	FY2024	FY2025 (Proposed)
Annual Fee	\$50 (\$0 to \$100,000) \$75 (\$100,000.01 to \$150,000) \$100 (\$150,000.01 and Over)	\$75

Rick noted that we need to change the verbiage in the current Ordinance for this change.

Jack Hendrix, Development Director, explained that staff is looking for direction from the Board on a couple of issues with this Ordinance. The first is Section 610.020 is the license's required provision in our code.

Section 610.020 Licenses Required — Fees To Be Paid.

Every person, firm or corporation who shall maintain, operate or conduct any of the businesses or trades listed in Section 610.130 or exercise any of the privileges specified in this Section shall obtain a license to do so and pay the license fee or tax prescribed in Section 610.130. All license taxes or fees required in this Section shall be due and payable on the first day of December of each year and shall be delinquent on the 31st day of December each year. A late payment fee equal to ten percent (10%) of the required fee shall also be required for all payments received after the due date and shall additionally accrue additional penalties in the amount of one percent (1%) per month for each month or part thereof for payments received after such fees become delinquent.

Jack noted that the next one is Section 610.030 term of license and prorating of those fees.

Section 610.030 Terms Of Licenses — Prorating Of Fees.

The regular license period for the City of Smithville is from December 1 through November 30 of the following year and when any person shall apply for a new license or a renewal of an existing license from the City and the remaining period for which the business may be operated shall be less than twelve (12) months, the license fee shall be as follows: If such license shall run more than one (1) month and less than six (6) months, then the license fee charged shall be one-half (1/2) the license fee charged for the full twelve (12) months. If such period be more than six (6) months and less than nine (9) months, then the license fee charged shall be three-fourths (3/4) of the license fee charged for the full twelve (12) months. If such period is for more than nine (9) months, then the license fee shall be the same as for twelve (12) months.

Jack explained that there is language inside the Ordinance is language that was added sometime in the 2000's that says, "any person shall apply for a new license or a renewal of an existing license". He noted that little addition effectively means that every bit of the previous section on late fees goes away, and it encourages people to not renew their licenses until after 90 days. That not only allows them not to pay the late fees it allows them to pay less. This then triggers the City to have to go out and do enforcement, which could potentially mean shutting down businesses.

Jack explained that in order to correct this scenario and restore the late fees provision would be to delete that language.

Mayor Boley asked if the language might have been added for seasonal businesses.

Jack said that he could not find anything in the minutes that explained why this language was added.

Cynthia noted that one of the reason that staff would like to clean up the language is because we are not really enforcing it at this time because it is hard to enforce. The recommendations that staff is bringing forward is more grounded in reality.

Mayor Boley noted that state statute language changed for home-based businesses and also for businesses that do not have customers that come in.

Jack explained that we have a list of those approved businesses.

Mayor Boley explained that if you have multiple LLC's because you have multiple rental properties you do not have to have multiple business licenses.

Jack explained that you can have one business being issued the license, but they could have multiple DBA's underneath it is doing the same type of business.

Jack asked for direction from the Board on whether they would delete the renewal language, delete the other provision related to late fees or something that the Board would like to come up with. Jack explained that the simplest solution would be to delete the renewal. He noted that one of the reasons why this is important is because we are in the process of upgrading to the content manager software that will require us to update all of our applications. This information will need to go into the forms to make them easier to understand.

Cynthia clarified that the content manager software is an upgrade to our financial software. This will give us the ability to have online applications and online renewals. Staff is working on implementation of business licenses this year.

Mayor Boley noted that one of the things that we struggle with is people getting their mail so it would be nice to have this capability.

Alderman Wilson said that it sounded like the cleanest thing would be to remove the section that Jack is suggesting.

Alderman Hartman added that he concurs with Alderman Wilson.

Jack noted that another item that will need to be changed is the cost contained in the Ordinance and he suggested that be cleaned up by saying "per the schedule of fees as approved by the Board of Aldermen".

Police Department

Hourly Services	FY2024	FY2025 (Proposed)
Sergeant Hourly Services – 4 Hours Minimum	N/A	\$80

- Hour minimum excludes the School Districts, not the rate.
- Sergeant is mandatory when officer needs of 5 or more are required.

Rick noted that at this time Festiville is the only event that this would affect.

Chief Lockridge noted that this is just for larger events. Right now, the only one that we have is Festiville, but he said that he could see in the near future having more events of this size where we will need five or more officers on scene and the need for a sergeant onsite to actually manage everything. Chief explained that Festiville started requesting a sergeant’s presence about three years ago.

Alderman Wilson asked if the \$80 was an hour and if it was the norm for the region.

Chief Lockridge said that it was \$80 an hour. He explained that was building off the same calculation was use for the officers and extrapolate it in conjunction with the sergeant’s wage.

Cynthia explained that Hancock allows us to charge our costs not what is comparable.

Development Department

Zoning	FY2024	FY2025 (Proposed)
Rezoning - Residential	\$250	\$250
Rezoning – All Others	\$250	\$250
Site Plan Review Application	\$250	\$250
Conditional Use Permit	\$500 + Individual Projection Requirements	\$500 + Individual Projection Requirements

No change – Added to Schedule of Fees

Multiphase Subdivisions	FY2024	FY2025 (Proposed)
Minor Plats	\$25	\$35
Single-Phase Subdivisions	\$350 + \$2.00 / Lot	\$500

Mayor Boley asked if the changes to these were for the staff time and then for the subdivision making it easier with a flat fee.

Jack explained that for the rezoning there are actually two rates, and it is not what we are charging. The charge for residential is \$125 and staff spends about \$250 in man hours, so we are proposing a \$250 fee. Jack explained that for the site plan review we charge \$75 and staff spends \$250 worth of time.

Alderman Russell asked what we are charging now if not the \$250.

Jack said the correct current charge is:

Rezoning - Residential	\$125
Rezoning – All Others	\$175
Site Plan Review Application	\$75

Conditional Use Permit - a deposit and then pay for the individual projections

Jack explained that the minor plat is a fairly simple review but more than \$25 staff time. The subdivision prices are going up based on the average of staff time.

Alderman Wilson asked if all of rezoning is going to be \$250, will it be necessary to break them out or can they all be grouped together as rezoning.

Jack explained that rezoning was listed like that was because it does have the different fees now and he did not catch the mistake.

Alderman Wilson asked that once approved it would just be rezoning \$250.

Jack said it would.

Parks and Recreation Department

Youth Recreation Program Fees	FY2024	FY2025 (Proposed)
Little Hoopster League	N/A	\$55 / Child
Adult Recreation Program Fees	FY2024	FY2025 (Proposed)
Gravel Grinder Bike Race – All Lengths	Fee Set on Annual Basis	Removed
Pickle Ball	N/A	Fee Set on Annual Basis

Adult Non-Sport Programming	N/A	Fee Set on Annual Basis
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Parks and Recreation Department (continued)

Event Application Fee & Staffing Service Fee	FY2024	FY2025 (Proposed)
Parade Fee (Paid By Parade Organizer)*	\$100 / Parade + \$200 Damage Deposit	\$100 / Parade + \$200 Damage Deposit

* Parade and special event fees are waived for the Smithville R-II School District and Smithville Main Street District.

The \$200 damage deposit must still be paid for all parade applicants.

Previously stated: Parade fees are waived for parades organized by the Smithville R-II School District. The \$200 damage deposit must still be paid for all parade applicants (including the School).

Alderman Russell asked if there Gravel Grinder was not going to be held any longer.

Mayor Boley noted that it would no longer be an event put on by the City.

Facility Rental Discounts	FY2024	FY2025 (Proposed)
City Employee Rental (facilities and programs)	50% Discount + Required Deposit	50% Discount + Required Deposit

Previously Stated: City Employee Rental (Senior Center, Shelters, Green Spaces: During Non-Peak Rental Times)

Finance Department

Services Fees and Charges	FY2024	FY2025 (Proposed)
Online Credit Card Processing Fee	2.50% + \$1.25	2.50% + \$1.25

Public Works (Utilities)

Other Impact / Connection Fees	FY2024	FY2025 (Proposed)
Stonebridge Connection Fee	N/A	\$3,900 Per GPM (total, no additional sewer impact fees)

Alderman Russell asked for an explanation of this.

Chuck explained that the existing customers in the drainage basin of the Stonebridge Lift Station are going to have sewer service when we hook it back up. The undeveloped lots will be paying their share based on the gallons per minutes of how they develop. For instance, if it is a restaurant they will pay a little than if it is a house. Chuck does not believe there are any homes slated for that area. Chuck explained that they figured how much it was costing to build the lift station, how much per gallon and then calculated the capacity. He added that the School District is participating in it because they will be connecting to it, so staff will bring forward an MOU with the School District that they will pay \$100,000 for their connection to the lift station.

Alderman Russell asked if it was a one-time fee.

Chuck said it will be a one-time sewer impact fee but there will still be water impact fees.

Water Services	Water Services	Utility Billing Services Deposit
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Heading Change Only

Stormwater Fees & Miscellaneous Fees	FY2024	FY2025 (Proposed)
Stormwater (Sump Pump) Service Charge	\$20 / Month	\$20 / Month

Descriptive Change Only

Rick explained that if someone has a sump pump that is hooked to the sewer they are charged this fee. If someone has a sump pump and it discharged into the yard there is no charge. If a customer has the stormwater service charge on their bill and knows that it is being discharged into the yard they can contact the City and have it inspected to have the fee removed.

Mayor Boley asked if we could do something to get the remainder of the sump pumps that are connected to our sewer removed.

Chuck explained that there was a big move in the utility world with the NRDS permits coming around to give customers time to have their sump pumps checked to make sure they were not connected to the sewer. He said it was his understanding that Smithville had already checked the residents of the people that would let them verify whether their sump pumps were connected or not.

Alderman Hartman asked if we could send letters to the remaining customers that have not had there resident checked for the sump pump reminding them they should and could have that fee removed from their bill.

Cynthia noted that staff will work on a “Did You Know” to get the information out.

Residential Water Fees	FY2024	FY2025 (Proposed)
Water Meter Service Charge (3/4" Meter)	\$14.70	\$16.91
Water Meter Service Charge (3/4" Meter) – Senior Rate	\$12.50	\$14.38
Water Usage Rate	\$10.40 / 1,000 Gallons	\$11.96 / 1,000 Gallons

Residential Wastewater Fees	FY2024	FY2025 (Proposed)
Wastewater Meter Service Charge (3/4" Meter)	\$21.19	\$24.37
Wastewater Meter Service Charge (3/4" Meter) – Senior Rate	\$18.01	\$20.71
Wastewater Usage Rate	\$8.84 / 1,000 Gallons	\$10.17 / 1,000 Gallons

Commercial Water Fees	FY2024	FY2025 (Proposed)
Water Meter Service Charge (3/4" Meter)	\$14.70	\$16.91
Water Usage Rate	\$10.40 / 1,000 Gallons	\$11.96 / 1,000 Gallons

Commercial Wastewater Fees	FY2024	FY2025 (Proposed)
Wastewater Meter Service Charge (3/4" Meter)	\$21.19	\$24.37
Wastewater Usage Rate	\$8.84 / 1,000 Gallons	\$10.17 / 1,000 Gallons

Non-Resident (Outside City Limit) Customers	FY2024	FY2025 (Proposed)
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Sewer Only (Outside City Limit) Customers	\$81.68	\$92.61
Water Only (Outside City Limit) Customers	\$22.05 / Monthly + \$15.60 / Gallons	\$25.37 / Monthly + \$17.94 / Gallons
Water Only (Outside City Limit) Customers – Senior Discount	\$18.74 / Monthly + \$15.60 / Gallons	\$21.56 / Monthly + \$17.94 / Gallons

This Rate is Set By City Ordinance No. 3208-23, Section 705.040.

Sanitation Fees

Trash & Recycling Fees	FY2024	FY2025 (Proposed)
Regular Residential Trash & Recycling	\$20.16	\$21.07
Regular Residential Trash & Recycling – Senior Discount	\$16.40	\$17.91

Rick explained that the sanitation fee also covers the Household Hazardous Waste events, bulky item pick-ups, E-waste events and the City's customer service.

Cynthia noted that taxes do not support sanitation rates. She explained that there are three components for the sanitation bill. One is the contract the City has with GFL, one is the Household Hazardous Waste through MARC that allows our residents to participate at no cost throughout the metropolitan area and the third is to maintain a fund balance to continue to have sufficient funds in that fund to be able to pay GFL for the additional services that they provide the City.

Mayor Boley noted that the reality is there is a few residents that do not pay their bills but we still have to pay GFL every month.

Ron asked how much the Household Hazardous Waste fee is.

Rick explained that it is based on \$1.13 per capita per person. He said that he went back over the last few years and MARC has not raised the rate more than two or three percent.

Alderman Russell asked if there was a discount for seniors for the Household Hazardous Waste.

Mayor Boley explained that the Household Hazardous Waste charges were per capita the number of household is not taken into consideration.

Rick noted that the senior discount is 15% less than the standard regular rate for sanitation services.

Cynthia explained that the City does not get a senior rate from GFL we get a contractual amount. Staff works GFL to come up with the rate then figure the 15% discounted rate for the senior rate.

Cynthia also explained the charge for the Household Hazardous Waste is based on a per capita basis on just the population of the City of Smithville. It does not matter if you are a senior or not. It is calculated as part of our overall cost to develop the rate.

Cynthia noted that staff is working with GFL for additional cardboard recycling bins at more sites which will also be included in the sanitation fee.

FY2025 Budget Process Schedule

- FY2025 Operating Budget and 5 Year CIP Review: 1st Discussion (August 20)
- FY2025 Operating Budget and 5 Year CIP Review: 2nd Discussion - If Needed (September 3)
- Public Hearing for Sewer Rates as Required by Missouri State Statute (October 1)
- FY2025 Operating Budget on 1st Reading (October 1)
- Adopt Water & Wastewater Utility Rates by Board Resolution (October 15)
- Adopt the FY2025 Operating Budget on 2nd Reading (October 15)

Cynthia noted that this is the final piece information and providing work session information for development of the budget that staff will be bringing forward to the Board for discussion at the August 20 work session.

5. Adjourn

Alderman Atkins moved to adjourn. Alderman Hartman seconded the motion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared the Work Session adjourned at 7:21 p.m.

Linda Drummond, City Clerk

Damien Boley, Mayor

**SMITHVILLE BOARD OF ALDERMEN
REGULAR SESSION**

August 6, 2024 7:00 p.m.
City Hall Council Chambers and Via Videoconference

1. Call to Order

Mayor Boley, present, called the meeting to order at 7:26 p.m. following the Work Session. A quorum of the Board was present: Marv Atkins, Melissa Wilson, Kelly Kobylski, Leeah Shipley, Ronald Russell and Dan Hartman.

Staff present: Cynthia Wagner, Gina Pate, Chuck Soules, Chief Lockridge, Rick Welch, Jack Hendrix and Linda Drummond.

2. Pledge of Allegiance lead by Leevi Shipley

3. Consent Agenda

• **Minutes**

- July 16, 2024, Board of Aldermen Special Session Minutes
- July 16, 2024, Board of Aldermen Work Session Minutes
- July 16, 2024, Board of Aldermen Regular Session Minutes

Alderman Atkins moved to approve the consent agenda. Alderman Hartman seconded the motion.

No discussion.

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

REPORTS FROM OFFICERS AND STANDING COMMITTEES

4. Committee Reports

Alderman Hartman reported on the July 24, Economic Development Committee meeting. They prepared for the joint Board of Aldermen and Economic Development Committee discussion that was held during the work session this evening.

5. City Administrator’s Report

Cynthia Wagner noted that her report stands as provided. Cynthia also reminded the Board of the Mid America Regional Council’s “How to Accomplish Your Agenda as an Elected Official” training on August 8, at 4:00 p.m.

Alderman Wilson thanked City staff for their quick response in repairing the damage on Eagle Parkway due to the 169 Highway detour.

ORDINANCES & RESOLUTIONS

6. Bill No. 3034-24, Amendment to Schedule VII – Stop Signs – 2nd Reading

Alderman Atkins moved to approve Bill No. 3034-24, amending Schedule VII - Stops Signs of the Municipal Code Ordinances. 2nd reading by title only. Alderman Hartman seconded the motion.

No discussion.

Upon roll call vote:

Alderman Hartman - Aye, Alderman Kobylski - Aye, Alderman Atkins – Aye,
Alderman Wilson - Aye, Alderman Shipley – Aye, Alderman Russell - Aye.

Ayes –6, Noes – 0, motion carries. Mayor Boley declared Bill No. 3034-24 approved.

7. Bill No 3035-24, Re-Adopt the Code of Ethics – 1st Reading

Alderman Atkins moved to approve Bill No. 3035-24, re-adopting the Code of Ethics to comply with Missouri Ethics Commission standards. 1st reading by title only. Alderman Hartman seconded the motion.

Alderman Russell said that he did not see any changes and asked what the changes were.

Cynthia explained that there are no changes. We adopt this every two years per the Missouri Ethics Commission.

Upon roll call vote:

Alderman Atkins - Aye, Alderman Russell - Aye, Alderman Shipley – Aye,
Alderman Kobylski - Aye, Alderman Hartman – Aye, Alderman Wilson - Aye.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Bill No. 3035-24 approved first reading.

8. Bill No. 3036-24, Real Estate Purchase Contract for the Sale of City Property on the Northside of Church Street – 1st Reading

Alderman Atkins moved to approve Bill No. 3036-24, authorizing the city of Smithville, Missouri real estate purchase contract and authorizing and approving certain documents in connection therewith. 1st reading by title only. Alderman Hartman seconded the motion.

No discussion.

Upon roll call vote:

Alderman Russell- No, Alderman Wilson - Aye, Alderman Hartman – Aye,
Alderman Atkins - Aye, Alderman Kobylski – Aye, Alderman Shipley - Aye.

Ayes – 5, Noes – 0, motion carries. Mayor Boley declared Bill No. 3036-24 approved first reading.

9. Bill No. 3037-24, Real Estate Purchase Contract for the Sale of City Property on the Southside of Church Street – 1st Reading

Alderman Atkins moved 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. 1st reading by title only. Alderman Hartman seconded the motion.

No discussion.

Upon roll call vote:

Alderman Shipley - Aye, Alderman Wilson - No, Alderman Kobylski – Aye,
Alderman Russell - No, Alderman Hartman – Aye, Alderman Atkins - Aye.

Ayes –4, Noes – 2, motion carries. Mayor Boley declared Bill No. 3037-24 approved first reading.

10. Resolution 1390, Renewing Contract for Internet Services

Alderman Atkins moved to approve Resolution 1390, renewing the contract with AT&T for internet services. Alderman Hartman seconded the motion.

No discussion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Resolution 1390 approved.

11. Resolution 1391, Approve Payment to Double Tree Construction

Alderman Atkins moved to approve Resolution 1391, approving the payment to Double Tree Construction for repairs to a fire line on Bridge Street. Alderman Hartman seconded motion.

No discussion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared Resolution 1391 approved.

OTHER MATTERS BEFORE THE BOARD

12. Public Comment

None

13. New Business from the Floor

None.

14. Adjourn.

Alderman Hartman moved to adjourn. Alderman Wilson seconded the motion.

Ayes – 6, Noes – 0, motion carries. Mayor Boley declared the regular session adjourned at 7:32 p.m.

Linda Drummond, City Clerk

Damien Boley, Mayor

FY 2024 BUDGET - FINANCIAL UPDATE

7/31/2024

FYE 2024 projections have been adjusted for CIP projects that will carry forward to FY25, including revenue reimbursements and COP issuance

REVENUES, BY FUND	FYE 2023 ACTUAL	FYE 2024 BUDGET	FYE 2024 YTD	FYE 2024 PROJECTION	
GENERAL FUND	6,569,620	6,266,986	5,276,244	6,674,967	84.19%
CAPITAL IMPROVEMENT SALES TAX FUND	760,910	1,240,750	576,021	762,742	46.43%
DEBT SERVICE FUND	354,845	357,830	-	357,830	0.00%
TRANSPORTATION SALES TAX FUND	667,453	1,168,950	529,175	682,217	45.27%
COMBINED WATER/WASTEWATER SYSTEMS FUND	6,104,757	10,683,600	4,687,514	6,618,941	43.88%
SOLID WASTE FUND (FORMALLY SANITATION FUND)	869,446	938,757	690,430	920,573	73.55%
SPECIAL ALLOCATION FUND	822,525	868,446	750,746	868,446	86.45%
PARK & STORMWATER SALES TAX FUND	760,303	933,750	574,618	752,156	61.54%
VEHICLE AND EQUIPMENT REPLACEMENT FUND	290,443	374,398	373,851	373,851	99.85%
COMMONS CID FUND	400,909	396,592	271,806	396,592	68.54%
AMERICAN RESCUE PLAN ACT FUND	19,959	-	-	-	
	17,621,171	23,230,059	13,730,404	18,408,315	59.11%

EXPENDITURES, BY FUND	FYE 2023 ACTUAL	FYE 2024 BUDGET	FYE 2024 YTD	FYE 2024 PROJECTION	
GENERAL FUND	6,043,547	7,100,790	5,555,109	7,406,812	78.23%
CAPITAL IMPROVEMENT SALES TAX FUND	479,629	1,906,340	181,054	418,340	9.50%
DEBT SERVICE FUND	343,040	351,333	262,420	351,333	74.69%
TRANSPORTATION SALES TAX FUND	534,904	1,699,140	555,132	739,140	32.67%
COMBINED WATER/WASTEWATER SYSTEMS FUND	6,638,976	15,704,620	3,460,529	5,937,039	22.04%
SOLID WASTE FUND (FORMALLY SANITATION FUND)	857,468	931,805	693,298	924,397	74.40%

SPECIAL ALLOCATION FUND	760,675	1,179,800	634,781	1,179,800	53.80%
PARK & STORMWATER SALES TAX FUND	105,968	1,021,000	461,834	618,577	45.23%
VEHICLE AND EQUIPMENT REPLACEMENT FUND	311,047	423,547	360,487	465,487	85.11%
COMMONS CID FUND	212,186	413,916	224,961	413,916	54.35%
AMERICAN RESCUE PLAN ACT FUND	711,474	-	141,689	-	
	16,998,914	30,732,291	12,531,293	18,454,841	40.78%



Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Parks and Recreation

AGENDA ITEM: Resolution 1392, Camp Host Agreement Renewal

REQUESTED BOARD ACTION:

Motion to approve Resolution 1392, authorizing renewal of an agreement with Janet Terry and Chris Dunkin for camp host services at Smith's Fork Campground.

SUMMARY:

RFQ #22-22 was posted on September 16, 2022. This RFQ was posted for the purpose of entering into an agreement for Camp Host Services at Smith's Fork Campground for the initial period of March 31, 2023, to October 31, 2023. One submission was received and reviewed by a committee comprised of Parks and Recreation Director Matt Denton, Parks Maintenance Crew Leader Chase Stewart and Recreation Manager Alex Threlkeld. The one submission was invited for an interview and Janet Terry and Chris Dunkin were selected by the committee as the most qualified bid.

Once selected, the pricing submitted of \$2,500 per month was found to be reasonable and appropriate for camp host services.

Resolution 1142 awarded the bid of the camp host to Janet Terry and Chris Dunkin on November 1, 2023, for the April 1 to October 31, 2023, season, with the option to renew for three additional seasons at the option of the City. On August 28, 2023, the BOA approved the option to renew the contract for their second season. The 2025 season would be the last season on their contract and this contract will go back out to bid before the 2026 camping season.

Janet Terry and Chris Dunkin have completed their second year of Camp Host Services for the City of Smithville. Staff and patrons alike have noticed improved appearance and cleanliness of the campground and the restroom facilities. Customer satisfaction has been great. We have received multiple compliments, letters, and emails stating how great both are and how well they keep the shower house clean.

Staff recommend exercising the third and final option to renew their agreement for the 2025 camping season.

POLICY OBJECTIVE:

This contract extension supports the Enhanced Recreation and Connecting Pillar of the Strategic Plan, specifically the action step of building recreation as an economic driver.

FINANCIAL CONSIDERATIONS:

Click or tap here to enter text.

ATTACHMENTS:

- Ordinance
- Resolution
- Staff Report
- Other:

- Contract - Original
- Plans
- Minutes

RESOLUTION 1392

**A RESOLUTION AUTHORIZING THE RENEWAL OF AN AGREEMENT
WITH JANET TERRY AND CHRIS DUNKIN FOR CAMP HOST
SERVICES AT SMITH'S FORK CAMPGROUND**

WHEREAS, the Board of Aldermen of the City of Smithville, Missouri desires to provide the citizens of Smithville and campground patrons with a full-time camp host at Smith's Fork Campground; and

WHEREAS, The City of Smithville contracted with Janet Terry and Chris Dunkin for such services on November 1, 2022, for the April 1 to October 31, 2023 season and the contract may be renewed for three additional seasons at the option of the City; and

WHEREAS, both parties wish to renew the third and final option of the contract; and

WHEREAS, the contract provides annual renewal at the City's option for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI:

THAT the Board of Aldermen for the City of Smithville, Missouri hereby directs the Mayor to execute a renewal of the agreement with Janet Terry and Chris Dunkin for Camp Host Services at Smith's Fork Park beginning April 1, 2025, and ending October 31, 2025.

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

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

EXHIBIT 5

AGREEMENT

THIS AGREEMENT entered into this 1st day of November, 2022, by and between the **CITY OF SMITHVILLE, MISSOURI**, a Missouri Municipal Corporation ("City") and Janet Terry & Chris Dunkin, ("Camp Host"), as follows:

WHEREAS, the City desires to use retain the services of the Camp Host to provide certain services concerning camp hosting duties for the City's Smith's Fork Park, and

WHEREAS, the Camp Host desires to perform such services for the City at Smith's Fork Park; and,

WHEREAS, the City and let the contract for bids and Camp Host was the selected provider, and

WHEREAS, the Parties desire to enter into an agreement that contains the rights and responsibilities of each party for the services listed herein, and

NOW, THEREFORE, it is agreed as follows:

Term:

The initial term of the contract shall be for the 2023 season, which runs from March 31st to October 31st. This agreement may be renewed for additional seasons at the option of the City.

City's Responsibilities:

The City shall be responsible to provide the Camp Host with certain materials and supplies in accordance with the attached Scope of Services for the 2023 Smith's Fork Park Camp Host.

Camp Host's Responsibilities:

The Camp Host shall be responsible to provide Camp Hosting services in accordance with the attached Scope of Services for the 2023 Smith's Fork Park Camp Host.

General Contractual Terms:

1. The parties agree that this agreement shall constitute the sole agreement between the parties, subject to the attached Scope of Services.
2. The parties agree that in the event of a dispute, Missouri Law shall govern the resolution of such dispute, and that Venue for any court resolution is solely held in Clay County Missouri.
3. The parties agree that any amendments to this agreement must be in writing and signed by both parties in accordance with Missouri law (including Board of Aldermen approval) before such amendment is valid. If the parties agree to amend the Scope of Services, such amendment may be amended by a written change to such document, signed by both the Camp Host and the City's Administrator.

4. Both this agreement, and the Scope of Services are deemed by the parties to be jointly drafted, and no other presumptions shall be made concerning how the agreement and Scope of Services are to be construed by a Court of Law.

Termination of Contract:

1. The Camp Host may terminate this contract with 30 days' notice to City, but only in the event that the City has defaulted in the payment of sums due under this contract for a period of thirty days or more.
2. The City may terminate this contract with two-weeks' notice to the Camp Host for failure to comply with the contract and scope of services requirements. The City shall afford the Camp Host the opportunity correct deficiencies by providing notice indicating the specifications that are not being met and the opportunity to correct such deficiencies within one week. If the City has provided the one-week opportunity to correct, and the Camp Host fails to do so, or if the Camp Host has previously been provided notice on any other matter which requires correction and again fails to meet the specifications, the City may then terminate this agreement.

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

CITY OF SMITHVILLE, MISSOURI



Mayor Damien Boley

ATTEST:

By 

Linda Drummond, City Clerk

CAMP HOST



Janet Terry

Rich Duncan
Correction
Chris Dunkin



Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Administration

AGENDA ITEM: RES 1393, Adopting Changes to the Employee Handbook

REQUESTED BOARD ACTION:

A motion to approve Resolution 1393, amending the Employee Handbook to add section 12-7 Paid Parental Leave.

SUMMARY:

Following review by an employee committee and concurrence by the Board, one change to the employee handbook is recommended. This recommendation is addition of a Paid Parental Leave Policy. The City of Smithville is committed to a culture that helps its employees meet the demands of new parenthood. The City believes that providing paid time off for qualifying employees who are new parents provides time to nurture and bond with the newest member of the family and is linked to better infant health and development and increases the likelihood employees will return to work.

Staff worked with the City Attorney's office to recommend to the Board of Aldermen a policy to add to the Employee Handbook regarding Paid Parental Leave for qualifying city employees.

It is recommended to the Board that to qualify for such benefits, an employee must have applied for and been granted FMLA leave and have physically worked for the City for 1,250 hours in the year immediately preceding the birth of the employee's child or the placement within the employee's home of an adopted child. Paid leave and unpaid leave, including FMLA leave, are not included in the 1,250 hours calculation.

Section 12-7 is not intended to be a contract between the City and its employees and does not create contractual rights for employees.

PREVIOUS ACTION:

The Employee Handbook is reviewed and updated annually.

POLICY OBJECTIVE:

Adoption of the policy assists with ongoing employee recruitment and retention efforts.

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: Employee Handbook Redline version
Employee Handbook Clean version | |

RESOLUTION 1393

A RESOLUTION AMENDING THE CITY EMPLOYEE HANDBOOK TO ADD SECTION 12-7 PAID PARENTAL LEAVE

WHEREAS The City of Smithville is committed to a culture that helps its employees meet the demands of new parenthood. The City believes that providing paid time off for qualifying employees who are new parents provides time to nurture and bond with the newest member of the family and is linked to better infant health and development and increases the likelihood employees will return to work.

WHEREAS the City has asked the City Administrator and City Attorney's office to recommend to the Board of Aldermen a policy to add to the Employee Handbook regarding paid parental leave for qualified city employees.

WHEREAS the City Administrator and the City Attorney's office in open and public discussions with the Board of Alderpersons have made recommendations to the Board regarding such additions to the Employee Handbook.

WHEREAS it is recommended to the Board that to qualify for such benefits an employee must have applied for and been granted FMLA leave and have physically worked for the City for 1,250 hours in the year immediately preceding the birth of the employee's child or the placement within the employee's home of an adopted child. Paid leave and unpaid leave, including FMLA leave, are not included in the 1,250 hours calculation.

WHEREAS with all other provisions of the City Employee Handbook, **SECTION 12-7** is not intended to be a contract between the City and its employees and does not create contractual rights for employees.

II. RESOLUTION

Be it resolved by the City of SMITHVILLE Missouri that effective immediately **Section 12-7 Paid Parental Leave** is hereby adopted as the principles and procedures which should be followed by the City in the administration of the City's paid Parental Leave program. **Section 12-7 Paid Parental Leave** shall be inserted within the Employee Handbook and shall read as follows:

Section 12-7 Paid Parental Leave

The City of Smithville is committed to a culture that helps our employees meet the demands of new parenthood. The City believes that providing paid time off for qualifying employees who are new parents provides time to nurture and bond with the newest member of the family and is linked to better infant health and development and increases the likelihood employees will return to work. Therefore, it is City policy to

provide up to six (6) weeks of the employee's average pay as Paid Parental Leave (PPL) to qualified Employees.

To be eligible for Paid Parental Leave (PPL) an Employee must meet the following criteria:

- 1. Have applied for and been granted FMLA leave; and*
- 2. Have physically worked for the City for 1,250 hours in the year immediately preceding the birth of the employee's child or the placement within the employee's home of an adopted child. Paid leave and unpaid leave, including FMLA leave, are not included in the 1,250 hours calculation.*

Paid Parental Leave (PPL) will be subject to the following general requirements:

- 1. Eligible employees are entitled to take up to six (6) weeks of PPL in the 12-month period immediately following the birth of the employee's child or the placement within the employee's home of an adopted child.*
- 2. If both parents are City employees, each parent shall receive PPL, which may be taken concurrently, consecutively, or at different times.*
- 3. All PPL must be completed within one year after the date of birth or placement.*
- 4. Employees will be compensated at the employee's regular, base hourly rate of pay during the PPL.*
- 5. An employee on PPL will continue to accrue sick and vacation leave at the employee's normal accrual rate.*
- 6. If a holiday occurs during the employee's PPL, the employee will receive the holiday pay which shall not count toward the PPL usage.*
- 7. An employee may take PPL intermittently, provided the leave is taken in no less than one-week (40 hour) increments.*
- 8. All PPL leave taken shall reduce the total of eligible FMLA leave available by the amount of PPL taken. In other words, if PPL is taken for six (6) consecutive weeks, the employee will be eligible for six (6) fewer weeks of FMLA leave than was available prior to the use of the PPL.*
- 9. All eligible accruals including PPL must be used prior to going into non-pay status.*

Human Resources will be responsible for the approval of all PPL requests.

If employee requests leave for a reason that the employee believes qualifies under this PPL policy, the employee must comply with all City and Human Resources policies and procedures.

If an employee timely returns from PPL and used the leave for the stated purpose, the employee will be reinstated to the same position held when leave began, or to an

equivalent position with equivalent benefits, pay and other terms and conditions of employment.

The following conduct is strictly prohibited in relation to PPL:

- Engaging in fraud, misrepresentation or providing false information to obtain leave.*
- Failure to comply with the employee's obligations in accordance with city policy.*
- Failure to timely return from the leave.*
- Any conduct which would disqualify the Employee from eligibility for FMLA leave.*

Employees who engage in such conduct will be subject to loss of benefits, denial, or termination of PPL, and discipline up to and including termination.

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

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk



City Administrator's Report

August 15, 2024

September Meeting Schedule

Labor Day/September 3 Meeting

Due to the limited number of potential agenda items currently slated for the September 3 meeting, Mayor Boley has recommended that meeting be cancelled.

MML/September 17 Meeting

Several members of the Board of Aldermen will be attending the Missouri Municipal League Conference in mid-September and will be out of town for the September 17 meeting date. At Tuesday's meeting, we would like to discuss an alternative meeting date to ensure we have Board attendance at the meeting.

Setting the Property Tax Levy

As an upcoming part of the budget process, the Board of Aldermen will approve the Property Tax levy rate once the City receives its certified assessed valuation and receives the adjusted tax levy rate back from the State Auditor's Office. The property tax levy rate must be established by October 1.

While the City has already received Platte County information, Clay County information has not yet been received. Staff has reached out to Clay County Assessors and Clerk's staff to determine their current timeline to provide information to cities. The planning calendar currently anticipates a public hearing on September 17, with ordinance approval on the same date in both readings. Depending upon the date set for the second meeting in September and when we receive information from the county, a special meeting may be required to set the tax levy.

Photo Contest

We are conducting a photo contest where the selected photos will be highlighted by the City for marketing and/or promotional purposes. Our mission is to encourage community involvement. Participants may submit photographs taken of landscapes, cityscapes, artwork or landmarks that are unique to Smithville and the Smithville community. The original end date for the contest was August 30, 2024 but we have extended the deadline to October 31, 2024 to give applicants the opportunity to submit fall photos.

MoDOT work – 169 Highway and 147th Street

MoDOT will begin work late this week or early next week to install concrete medians between the new intersection of 147th Street and 169 Highway, as well as Commercial Street (soon to be 148th Street) and 169 Highway. During construction, most of the median will be restricted to all traffic for left turns. Access to the bank is available for southbound traffic by turning east on Commercial, then south on the new Fairview Drive. This street loops around and a new bank entrance is open from the south. Northbound 169 traffic will still have access via a right turn. All traffic leaving the bank and wanting to go south must use the Fairview Drive to Commercial route.

Construction is scheduled to last for four weeks, weather permitting.

Mid-America Regional Council (MARC) Update

Smithville staff continues to actively attend MARC meetings, which is critical for securing funding opportunities. The city has maintained 100% attendance at transportation and other planning related meetings.

In the most recent round of grant applications, Smithville submitted three projects for consideration: the Maple Lane Sidewalks, Eagle Parkway Nexus Trail, and Wayfinding Implementation Project. These projects are currently under review and will be scored in the coming weeks.

Presentations to the funding committee are scheduled for next month, with final recommendations and MARC Board approval expected in December or January.



Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Administration

AGENDA ITEM: Bill No. 3035-24, Re-adopt Chapter 135 of the Code of Ordinances for the Code of Ethics – 2nd reading

REQUESTED BOARD ACTION:

A motion to approve Bill No. 3035-24, re-adopting Chapter 135 of the Code of Ordinances for the Code of Ethics. 2nd reading by title only.

SUMMARY:

Every two years the Board is required by state law to review and re-adopt its Code of Ethics with election of new Board members. The present form of the Code of Ethics is included in the packet and recommended for re-adoption.

PREVIOUS ACTION:

The Code of Ethics was last approved August 2022.

POLICY OBJECTIVE:

To maintain the integrity of City government and comply with state law.

FINANCIAL CONSIDERATIONS:

Click or tap here to enter text.

ATTACHMENTS:

- | | |
|---|-----------------------------------|
| <input checked="" type="checkbox"/> Ordinance | <input 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: RSMo Section 135 | |

AN ORDINANCE RE-ADOPTING CHAPTER 135 OF THE CODE OF ORDINANCES FOR THE CODE OF ETHICS

WHEREAS Section 105.485.4 RSMo allows political subdivisions the option of adopting their own method of disclosing conflicts of interest and personal financial disclosure. State laws require that this ordinance/resolution be adopted biennially by September 15th; and

WHEREAS the City currently provides by ordinance in Chapter 135 for procedures for compliance with ethics requirements; and

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

Section 1. Chapter 135 of the Code of Ordinances of the City of Smithville, Missouri is hereby deleted in its entirety, and a new Chapter 135 is hereby enacted, to be read and numbered as follows:

CHAPTER 135: CODE OF ETHICS

SECTION 135.010: DECLARATION OF POLICY

It is the policy of the City of Smithville, Missouri, to uphold, promote and demand ethical conduct from its elected and appointed public officials (hereinafter "public officials"). The citizens and businesses of the City are entitled to have fair, ethical and accountable local government. The City recognizes the importance of codifying and making known to the general public the ethical principles that guide the work of public officials. Public officials of the City are to maintain the highest standards of personal integrity, truthfulness and fairness in carrying out their public duties. In order to fulfill this mission, the City hereby adopts a code of ethics for public officials to assure public confidence in the integrity of local government and its effective and fair operation. Unless specifically defined otherwise, the terms used in Chapter 135 shall be defined as set forth in Section 105.450 R.S.Mo et seq. as now adopted or hereinafter amended.

SECTION 135.020: RESPONSIBILITY OF PUBLIC OFFICE

Stewardship of the public interest shall be the public official's primary concern, working for the common good of the citizens of the City and avoiding actions that are inconsistent with the best interests of the City. All persons, claims and transactions coming before the Board of Aldermen or any City board, commission or committee shall be assured of fair and equal treatment.

SECTION 135.030: COMPLIANCE WITH LAW

Public officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the laws of the nation, State and the City and to carry out

impartially these laws in the performance of their public duties to foster respect for all government. These laws include, but are not limited to, the United States and Missouri Constitutions, the laws of the State of Missouri and City ordinances.

SECTION 135.040: CONDUCT OF OFFICIALS

The professional and personal conduct of public officials shall be above reproach and shall avoid even the appearance of impropriety. Public officials shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of the Mayor, other members of the Board of Aldermen, boards, commissions, committees, City staff and the public.

SECTION 135.050: PERFORMANCE OF DUTIES

A. Public officials shall perform their duties in accordance with the processes and rules of order as established by the Board of Aldermen, boards, commissions and committees governing the deliberation of public policy issues, meaningful involvement of the public and implementation of policy decisions of the Board of Aldermen by City staff.

SECTION 135.060: PUBLIC MEETINGS

Public officials shall prepare themselves for the public issues, listening courteously and attentively to all public discussion before the body and focus on the business at hand. Public officials shall refrain from interrupting other speakers, making personal comments not relevant to the business of the body or otherwise interfere with the orderly conduct of meetings.

SECTION 135.070: DECISION BASED ON MERIT

Public officials shall base their decisions on the merits and the substance at hand.

SECTION 135.080: COMMUNICATION

Unless otherwise prohibited by law, privilege or the rules of evidence, Public officials shall publicly share with the Board of Aldermen or any boards, commissions and/or committees of the City any substantive information that is relevant to a matter under consideration by said entity of which they have knowledge from any source.

SECTION 135.090: CONFLICT OF INTEREST

- A. In order to assure independence and impartiality on behalf of the common good, public officials shall not use their official positions to influence government decisions in which they have a Substantial Interest or personal relationship, or which may reasonably give rise to the appearance of a conflict of interest or impropriety.
- B. The Mayor or any member of the Board of Aldermen who has a Substantial Interest, in any bill shall disclose on the records of the Board of Aldermen the nature of his or her interest and shall disqualify himself or herself from participation in deliberation or voting on any matters relating to this interest.
- C. Public officials should avoid action, whether or not specifically prohibited, which might reasonably result in or create the appearance of using their public office for private gain.

SECTION 135.100: GIFTS, GRATUITIES AND FAVORS

Public officials shall comply with the requirements of Chapter 105, RSMo relating to the acceptance and reporting of gifts, gratuities and favors.

SECTION 135.110: CONFIDENTIALITY OF INFORMATION

Unless approved by the Board of Aldermen, no elected or appointed Public Official shall disclose or make public any information which is otherwise closed to the Public pursuant to §610.021 R.S.Mo. or otherwise protected from disclosure by Missouri or Federal law. No Public Official shall use or provide information obtained as a result of his or her position for the benefit of the Public Official or the recipient in an advantages position over the general public.

SECTION 135.120: USE OF PUBLIC RESOURCES

A. Unless specifically permitted by City policy, the use of City facilities, equipment, vehicles, supplies, on-duty personnel or other goods or services is limited to City business. Public resources may not be used for private gain or personal purposes except on the same basis that they are otherwise normally available to the public. Normal rental or usage fees may not be waived except in accordance with City policy.

B. A public official shall not utilize the City's name, letterhead, logo or seal for the purpose of endorsing any political candidate, business, commercial product or service.

SECTION 135.130: ADVOCACY

As nonpartisan stewards of the public interest, the Mayor and members of the Board of Aldermen shall not appear on behalf of the private interests of third parties before the Board of Aldermen or any other board, commission, committee or proceeding in the City. Public officials of boards, commissions and committees shall not appear before their own bodies or before the Board of Aldermen on behalf of the private interests of third parties on matter related to the areas of service of their bodies. Public officials shall represent the official policies or positions of the City to the best of their abilities when designated as delegates for this purpose. When representing their individual opinions and positions, public officials shall explicitly state that they do not represent their body or the City and they shall not give the inference that they do.

SECTION 135.140: POLICY ROLE OF MEMBERS

Public officials shall respect and adhere to the City Administrator form of government as outlined in the ordinances, policies and procedures with respect to the City Administrator's relationship to the Board of Aldermen. In this structure, the Board of Aldermen determine the policies of the City with the advice, information and analysis provided by the public, boards, commissions, committees and City staff. Individual Board of Aldermen members shall not, except at the direction of the entire Board of Alderman, have any role in the administrative functions of the City or the professional duties of City staff or the implementation of City policy or decisions. This prohibition shall not apply to the Mayor, nor the Mayor Pro Tem acting in the Mayor's absence.

Additionally, this prohibition shall not apply to any individual Board of Aldermen's ability to obtain information reasonably necessary to perform his or her duties.

SECTION 135.150: INDEPENDENCE OF BOARDS, COMMISSIONS AND COMMITTEES

The value of independent advice and recommendations of boards, commissions and committees to the public decision-making process is of such significance that members of the Board of Aldermen should refrain from using their positions to influence the deliberations or outcomes of board, commission and committee proceedings. This prohibition is not meant to include the actions of any Board of Aldermen when acting as a member of any such committee.

SECTION 135.160: BEHAVIOR

All City elected and appointed officials shall conduct themselves in a professional business manner and should refrain from the public use of profane or offensive language so as to reflect well on the City.

SECTION 135.170: POSITIVE WORKPLACE ENVIRONMENT

Public officials shall support the maintenance of a positive and constructive workplace environment for the City employees and for citizens and businesses dealing with the City.

SECTION 135.180: IMPLEMENTATION

The code of ethics for public officials of the City is intended to be self-enforcing. Therefore, it becomes most effective when public officials are thoroughly familiar with it and embrace its provisions. For this reason, these ethical standards shall be included in the regular orientation of candidates for Board of Aldermen, newly elected officials and appointed members of all boards, commissions and committees of the City.

The code of ethics shall be reviewed biannually by the Board of Aldermen. Recommendations received from the review shall be considered by the Board of Aldermen.

SECTION 135.190: COMPLIANCE AND ENFORCEMENT

- A. The City's code of ethics expresses standards of ethical conduct expected for the public officials of the Board of Aldermen, boards, commissions and committees. Public officials themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of the government.
- B. A person making a complaint against a public official for violation of this policy shall submit the complaint, in writing, to the Mayor who shall conduct or cause to be conducted an investigation as he or she reasonably believes is warranted by the complaint. The Mayor may request the aid of the City Attorney, Police or other City employees with said investigation. The Mayor may choose to disregard any anonymous complaint or complaint not based on personal or credible evidence as

determined in the sole discretion of the Mayor. If the Mayor determines that the complaint may warrant disciplinary action by the Board of Alderpersons, the Mayor shall cause a special session of the Board of Alderpersons to be held for the purpose of conducting a hearing with regard to said allegations/complaint. Said hearing to be conducted pursuant to the Missouri Administrative procedures act §536.010 R.S.Mo et seq. as now adopted or hereinafter amended.

- C. Any complaint concerning the Mayor shall be made to the Mayor Pro Tem who shall have the same authority as the Mayor set forth above when reviewing any such complaint.
- D. The Board of Aldermen shall make a final determination upon a majority vote of all members, except for any member of the Board of Aldermen which is the subject of a complaint. The standard of proof required for a final determination of violation of this policy (unless otherwise required by law) shall be a preponderance of the evidence. At the discretion of the Board of Aldermen, sanctions may include private or public reprimand or censure, removal or exclusion from leadership positions, the governing board, and other official positions or duties that do not conflict with Missouri Statutes.

SECTION 135.210: DISCLOSURE REPORTS

Each elected official, the City Clerk, the City Administrator and the Chief Purchasing Officer (if some other individual) shall disclose the following information by May first (1st) regarding any such transactions which were engaged in during the previous calendar year:

1. For such person, and all persons within the first (1st) degree of consanguinity or affinity of such person, the date and identities of the parties to each transaction with a total value in excess of five hundred dollars (\$500), if any, that such person had with the political subdivision, and other than transfers for no consideration to the political subdivision; (if none, state none) and;
2. The date and the identities of the parties to each transaction known to the person with a total value in excess of five hundred dollars (\$500), if any, that any business entity in which such person had a substantial interest, had with the political subdivision, other than payment of any tax, fee or penalty due to the political subdivision or transactions involving payment for providing utility service to the political subdivision, and other than transfers for no consideration to the political subdivision; (if none state none);
3. The City Administrator, City Clerk and the Chief Purchasing officer also shall disclose by May first (1st) for the previous calendar year the following information:

- a. The name and address of each of the employers of such person from whom income of one thousand dollars (\$1,000) or more was received during the year covered by the statement;
- b. The name and address of each sole proprietorship that he owned; the name, address and the general nature of the business conducted of each general partnership and joint venture in which he was a partner or participant; the name and address of each partner or co-participant for each partnership or joint venture unless such names and addresses are filed by the partnership or joint venture with the Secretary of State; the name, address and general nature of the business conducted of any closely held corporation or limited partnership in which the person owned ten percent (10%) or more of any class of the outstanding stock or limited partnership units; and the name of any publicly traded corporation or limited partnership that is listed on a regulated stock exchange or automated quotation system in which the person owned two percent (2%) or more of any class of outstanding stock, limited partnership units or other equity interests;
- c. The name and address of each corporation for which such person served in the capacity of a director, officer or receiver.

SECTION 135.220: FILING OF REPORTS

The reports, in the attached format, shall be filed with the City Clerk and with the Missouri Ethics Commission. The reports shall be available for public inspection and copying during normal business hours.

SECTION 135.230: WHEN FILED

The financial interest statements shall be filed at the following times, but no person is required to file more than one (1) financial interest statement in any calendar year:

1. Each person appointed to office shall file the statement within thirty (30) days of such appointment.
2. Every other person required to file a financial interest statement shall file the statement annually not later than May first (1st) and December thirty-first (31st); provided that any member of the Board of Aldermen may supplement the financial interest statement to report additional interests acquired after December thirty-first (31st) of the covered year until the date of filing of the financial interest statement.

SECTION 135.240: FILING OF ORDINANCE

The City Clerk shall send a certified copy of this ordinance to the Missouri Ethics Commission within ten (10) days of its adoption.

PASSED THIS 20th DAY OF AUGUST 2024.

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

First Reading: 08/06/2024

Second Reading: 08/20/2024

Section 135.010 Declaration of Policy.

[Ord. No. 2895-14 §1, 7-1-2014^[1]; Ord. No. 2954-16 §1, 9-6-2016]

It is the policy of the City of Smithville, Missouri, to uphold, promote and demand ethical conduct from its elected and appointed public officials (hereinafter "public officials"). The citizens and businesses of the City are entitled to have fair, ethical and accountable local government. The City recognizes the importance of codifying and making known to the general public the ethical principles that guide the work of public officials. Public officials of the City are to maintain the highest standards of personal integrity, truthfulness and fairness in carrying out their public duties. In order to fulfill this mission, the City hereby adopts a Code of Ethics for public officials to assure public confidence in the integrity of local government and its effective and fair operation. Unless specifically defined otherwise, the terms used in Chapter [135](#) shall be defined as set forth in Section 105.450, RSMo., et seq., as now adopted or hereinafter amended.

^[1] Editor's Note: Section 1 of this ordinance also repealed former Ch. 135, Code of Ethics, as adopted and amended by Ord. No. 1407 §1, 8-27-1991; Res. of 8-15-1995; Ord. No. 1805-98 §§1 — 2, 8-18-1998; Ord. No. 2022-01 §§1 — 3, 8-21-2001; Ord. No. 2110-02 §§1 — 2, 8-20-2002; Ord. No. 2110-03 §§1 — 2, 8-19-2003; Ord. No. 2303-04 §§1 — 3, 8-17-2004; Ord. No. 2402-05 §§1 — 2, 8-16-2005; Ord. No. 2483-06 §§1 — 2, 8-1-2006; Ord. No. 2568-07 §§1 — 2, 7-17-2007; Ord. No. 2717-09 §§1 — 2, 6-2-2009; Ord. No. 2768-10 §§1 — 2, 9-7-2010; Ord. No. 2844-12 §§1 — 2, 8-7-2012.

Section 135.020 Responsibility of Public Office.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Stewardship of the public interest shall be the public official's primary concern, working for the common good of the citizens of the City and avoiding actions that are inconsistent with the best interests of the City. All persons, claims and transactions coming before the Board of Aldermen or any City board, commission or committee shall be assured of fair and equal treatment.

Section 135.030 Compliance With Laws.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Public officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the laws of the nation, State and the City and to carry out impartially these laws in the performance of their public duties to foster respect for all government. These laws include, but are not limited to, the United States and Missouri Constitutions, the laws of the State of Missouri and City ordinances.

Section 135.040 Conduct of Officials.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

The professional and personal conduct of public officials shall be above reproach and shall avoid even the appearance of impropriety. Public officials shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of the Mayor, other members of the Board of Aldermen, boards, commissions, committees, City staff and the public.

Section 135.050 Performance of Duties.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Public officials shall perform their duties in accordance with the processes and rules of order as established by the Board of Aldermen, boards, commissions and committees governing the deliberation of public policy issues, meaningful involvement of the public and implementation of policy decisions of the Board of Aldermen by City staff.

Section 135.060 Public Meetings.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Public officials shall prepare themselves for the public issues, listening courteously and attentively to all public discussion before the body and focus on the business at hand. Public officials shall refrain

from interrupting other speakers, making personal comments not relevant to the business of the body or otherwise interfere with the orderly conduct of meetings.

Section 135.070 Decision Based on Merit.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Public officials shall base their decisions on the merits and the substance at hand.

Section 135.080 Communication.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Unless otherwise prohibited by law, privilege or the rules of evidence, public officials shall publicly share with the Board of Aldermen or any boards, commissions and/or committees of the City any substantive information that is relevant to a matter under consideration by said entity of which they have knowledge from any source.

Section 135.090 Conflict of Interest.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

A. In order to assure independence and impartiality on behalf of the common good, public officials shall not use their official positions to influence government decisions in which they have a substantial interest or personal relationship, or which may reasonably give rise to the appearance of a conflict of interest or impropriety.

B. The Mayor or any member of the Board of Aldermen who has a substantial interest in any bill shall disclose on the records of the Board of Aldermen the nature of his or her interest and shall disqualify himself or herself from participation in deliberation or voting on any matters relating to this interest.

C. Public officials should avoid action, whether or not specifically prohibited, which might reasonably result in or create the appearance of using their public office for private gain.

Section 135.100 Gifts, Gratuities and Favors.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Public officials shall comply with the requirements of Chapter 105, RSMo., relating to the acceptance and reporting of gifts, gratuities and favors.

Section 135.110 Confidentiality of Information.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Unless approved by the Board of Aldermen, no elected or appointed public official shall disclose or make public any information which is otherwise closed to the public pursuant to Section 610.021, RSMo. or otherwise protected from disclosure by Missouri or Federal law. No public official shall use or provide information obtained as a result of his or her position for the benefit of the public official or the recipient in an advantageous position over the general public.

Section 135.120 Use of Public Resources.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

A. Unless specifically permitted by City policy, the use of City facilities, equipment, vehicles, supplies, on-duty personnel or other goods or services is limited to City business. Public resources may not be used for private gain or personal purposes except on the same basis that they are otherwise normally available to the public. Normal rental or usage fees may not be waived except in accordance with City policy.

B. A public official shall not utilize the City's name, letterhead, logo or seal for the purpose of endorsing any political candidate, business, commercial product or service.

Section 135.130 Advocacy.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

As nonpartisan stewards of the public interest, the Mayor and members of the Board of Aldermen shall not appear on behalf of the private interests of third parties before the Board of Aldermen or any other board, commission, committee or proceeding in the City. Public officials of boards, commissions and committees shall not appear before their own bodies or before the Board of Aldermen on behalf of the private interests of third parties on matters related to the areas of service of their bodies. Public officials shall represent the official policies or positions of the City to the best of their abilities when designated as delegates for this purpose. When representing their individual opinions and positions, public officials shall explicitly state that they do not represent their body or the City and they shall not give the inference that they do.

Section 135.140 Policy Role of Members.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Public officials shall respect and adhere to the City Administrator form of government as outlined in the ordinances, policies and procedures with respect to the City Administrator's relationship to the Board of Aldermen. In this structure, the Board of Aldermen determines the policies of the City with the advice, information and analysis provided by the public, boards, commissions, committees and City staff. Individual Board of Aldermen members shall not, except at the direction of the entire Board of Aldermen, have any role in the administrative functions of the City or the professional duties of City staff or the implementation of City policy or decisions. This prohibition shall not apply to the Mayor, nor the Mayor Pro Tem acting in the Mayor's absence. Additionally, this prohibition shall not apply to any individual Board of Aldermen's ability to obtain information reasonably necessary to perform his or her duties.

Section 135.150 Independence of Boards, Commissions and Committees.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

The value of independent advice and recommendations of boards, commissions and committees to the public decision-making process is of such significance that members of the Board of Aldermen should refrain from using their positions to influence the deliberations or outcomes of board, commission and committee proceedings. This prohibition is not meant to include the actions of any Board of Aldermen when acting as a member of any such committee.

Section 135.160 Behavior.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

All City elected and appointed officials shall conduct themselves in a professional business manner and should refrain from the public use of profane or offensive language so as to reflect well on the City.

Section 135.170 Positive Workplace Environment.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

Public officials shall support the maintenance of a positive and constructive workplace environment for the City employees and for citizens and businesses dealing with the City.

Section 135.180 Implementation.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

A. The Code of Ethics for public officials of the City is intended to be self-enforcing. Therefore, it becomes most effective when public officials are thoroughly familiar with it and embrace its provisions. For this reason, these ethical standards shall be included in the regular orientation of

candidates for Board of Aldermen, newly elected officials and appointed members of all boards, commissions and committees of the City.

- B. The Code of Ethics shall be reviewed biannually by the Board of Aldermen. Recommendations received from the review shall be considered by the Board of Aldermen.

Section 135.190 Compliance and Enforcement.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]

- A. The City's Code of Ethics expresses standards of ethical conduct expected for the public officials of the Board of Aldermen, boards, commissions and committees. Public officials themselves have the primary responsibility to assure that ethical standards are understood and met and that the public can continue to have full confidence in the integrity of the government.

- B. A person making a complaint against a public official for violation of this policy shall submit the complaint, in writing, to the Mayor who shall conduct or cause to be conducted an investigation as he or she reasonably believes is warranted by the complaint. The Mayor may request the aid of the City Attorney, Police or other City employees with said investigation. The Mayor may choose to disregard any anonymous complaint or complaint not based on personal or credible evidence as determined in the sole discretion of the Mayor. If the Mayor determines that the complaint may warrant disciplinary action by the Board of Aldermen, the Mayor shall cause a special session of the Board of Aldermen to be held for the purpose of conducting a hearing with regard to said allegations/complaint, said hearing to be conducted pursuant to the Missouri Administrative Procedures Act, Section 536.010, RSMo., et seq., as now adopted or hereinafter amended.

- C. Any complaint concerning the Mayor shall be made to the Mayor Pro Tern who shall have the same authority as the Mayor set forth above when reviewing any such complaint.

- D. The Board of Aldermen shall make a final determination upon a majority vote of all members, except for any member of the Board of Aldermen who is the subject of a complaint. The standard of proof required for a final determination of violation of this policy (unless otherwise required by law) shall be a preponderance of the evidence. At the discretion of the Board of Aldermen, sanctions may include private or public reprimand or censure, removal or exclusion from leadership positions, the governing board, and other official positions or duties that do not conflict with Missouri Statutes.

Section 135.200 (Reserved)

Section 135.210 Disclosure Reports.

[Ord. No. 2895-14 §1, 7-1-2014; Ord. No. 2954-16 §1, 9-6-2016]



Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Administration

AGENDA ITEM: Bill No. 3036-24 - Authorization of a Real Estate Purchase Contract for the Sale of City Property on the Northside of Church Street – 2nd Reading

REQUESTED BOARD ACTION:

A motion to approve Bill No 3036-24, 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 #24-11 Sale of City-Owned Property in Downtown District – Northside of Church Street (“RFP #24-11”) includes the two parcels of land adjacent to the Hixson-Klein Funeral Home on the northside of Church Street that is legally described in RFP #24-11 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 #24-11 to 110 Smithville, LLC (the “Buyer”) and has been negotiating a Real Estate Purchase Contract with the Buyer (the “Real Estate Contract”).

The Real Estate Contract and associated Special Warranty deed includes the restriction that the Property is to remain available to the public from 6 a.m. to 6 p.m. every day, and if this is not adhered to, the Property will revert back to City ownership.

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 # 24-11 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**”):

Lot 4, except the East 30 feet, and all of Lots 5 and 6, all in Block 2, ORIGINAL TOWN OF SMITHVILLE, a subdivision in Smithville, Clay County, Missouri. [TO BE CONFIRMED BY SURVEY]

B. Pursuant to the authority of Missouri law, City has issued **RFP # 24-11 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; Reverter. 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, and upon the express condition that the Property be developed and maintained as a parking lot under the terms and conditions of the

RFP. If for any reason Buyer or its heirs, successors or assigns fail to develop and maintain the Parking Lot pursuant to the terms of the RFP, the property shall revert back to the City.

3. Purchase Price, Earnest Money Deposit. The purchase price (“**Purchase Price**”) for the Property is \$16,726, which Buyer agrees to pay as follows:

(a) \$350.00 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 \$16,376.00 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. 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.

5. “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 or 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.

6. 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 and may be modified without amendment to this Contract. 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.

7. 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, but including all costs 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.

8. 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 or the reversion of the property, 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 for withheld. 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.

9. 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 public parking of at least 42 spaces on the property (the "Public Parking"), and continually thereafter to maintain and operate the Public Parking during business hours from 6 a.m. until 6 p.m. every day, but the Property may be used at all other times exclusively for its customers or tenants or other uses of the Buyer. If Buyer fails to build, maintain, and operate the Public Parking on the Property as required, then the Property will revert back to the City.

10. 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) 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.
- (iii) A closing statement prepared by the Title Company and executed by Buyer; and
- (iv) 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

[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 DETERMINABLE

THIS MISSOURI SPECIAL WARRANTY DEED DETERMINABLE, 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]

Lot 4, except the East 30 feet, and all of Lots 5 and 6, all in Block 2, ORIGINAL TOWN OF SMITHVILLE, a subdivision in Smithville, Clay County, Missouri.

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,

upon condition that the Grantee constructs, and thereafter maintains and operates public parking of at least 42 spaces (the “Public Parking”) on the property in accordance with the City of Smithville RFP 24-11; and that if Grantee fails construct the Public Parking, or if thereafter, other than with the express written permission of the Grantor, fails to maintain and operate

Public Parking on the property in accordance with Smithville RFP 24-11 during business hours from 6 a.m. to 6 p.m. every day, then title to the premises shall revert back to Grantor;

Grantor hereby covenanting that, other than as set forth in Smithville RFP 24-11, 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:



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 #24-11: Sale of City-Owned Property
in Downtown District – Northside 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 #24-11 Sale of City-Owned Property
in the Downtown District – Northside 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 #24-11.

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 #24-11

Understanding the anticipated ability of the Bidder to timely construct, and thereafter maintain and operate the Property 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 Bidder 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 #24-11

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 #24-11

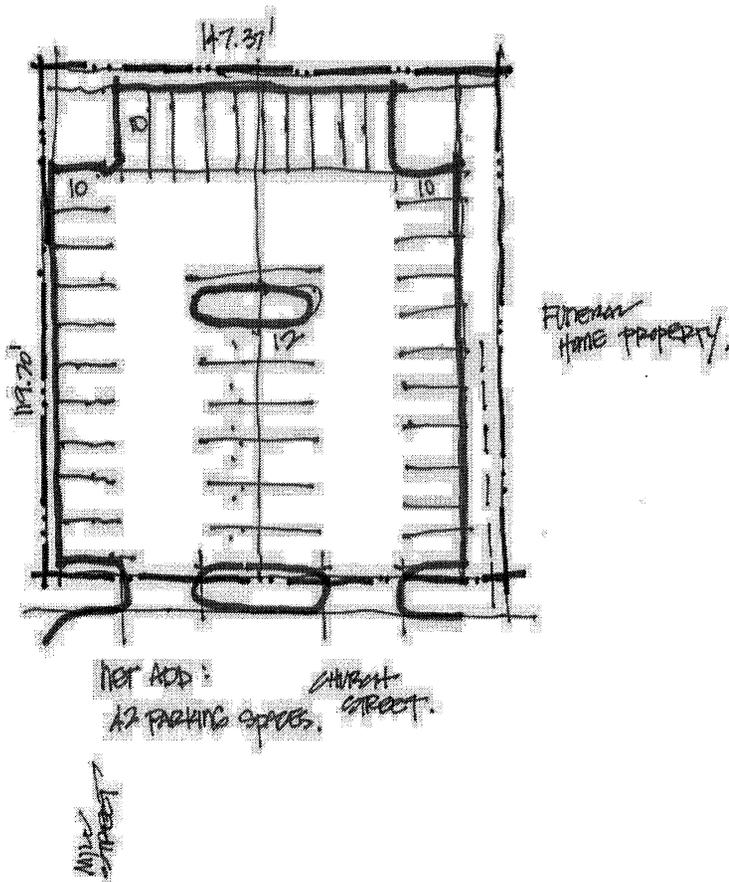
110 Smithville, LLC (the "Bidder") is excited to submit this response (the "Response") to RFP #24-11(the "RFP"): Sale of City-Owned Property in Downtown District – Northside of Church Street (the "Property").

Requirement 1:

"The City desires to sell the Property with a restriction that the Property remain available for public parking during business hours from 6 a.m. until 6 p.m. every day but may be used at all other times exclusively for its customers or tenants."

Response 1:

If awarded the right to purchase the Property, Bidder will agree that the present number of parking spaces (42) will remain available for public parking during business hours from 6 a.m. until 6 p.m. every day. The proposed parking plan below shows thirty-nine standard parking spaces and 3 ADA spaces.



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 public parking lot* [emphasis added]. The sale will be upon the condition that the 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 that the Property is being sold as-is without any representation as to its current condition.

Bidder agrees to the future purpose of maintaining a public parking lot. However, Bidder is excited about the future prospects of development in Downtown Smithville. Since Bidder believes that both the residential and commercial uses of the Downtown area will increase, Bidder envisions a future where the highest and best use of the Property may be a multi-level mixed use development with parking included. If awarded the right to purchase the Property, Bidder Agrees to the deed restriction on the Property for an equivalent of the present number of parking spaces (42). If the Bidder redevelops the Property in a way that results in more than forty-two spaces (subject to all City approvals for the new project), any additional spaces may be designated as public *or* private.

Requirement 3:

“If the public 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:

On August 1, 2023, the City of Smithville approved a TIF Plan for a redevelopment district (the “TIF Project”) that includes the Property. Construction mobilization will commence this year within the redevelopment district. The Property will be used for construction activities during the construction of the TIF Project. The parking improvements on the Property will be completed on or before August 1, 2026. This schedule projection will be subject to construction delays and unforeseen delays in the project. Keeping this projected schedule will be deemed “timely” for purposes of the RFP.

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.

Bidder acknowledges 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 public parking lot is to be built, and continually thereafter maintained and operated as a public parking lot on the Property as described in **Exhibit 2** and used for no other purpose(s) [emphasis added], subject to the terms herein and in any subsequent real estate purchase contract or deed. After completion of the public parking lot, (other than with the express written approval of the City) if it is not maintained and operated as a public parking lot from 6 a.m. to 6 p.m. every day, the Property will revert back to the City.”

Response 4:

Bidder acknowledges this 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, if 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.

Bidder acknowledges that the public parking lot is to be built, and continually thereafter maintained and operated as a public parking lot with a minimum of forty-two public spaces on the Property as described in Exhibit 2 and subject to the terms herein and in any subsequent real estate purchase contract or deed. However, see Responses 2 for Bidders response to the phrase “and used for no other purpose(s).”

Bidder acknowledges that, after construction, if forty-two public parking spaces are not maintained and operated as a public parking lot from 6 a.m. to 6 p.m. every day (other than with the express written approval of the City), the Property will revert back to the City.

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 public parking lot as described herein or it will automatically revert back to ownership by the City. 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 and 4 for a discussion of the designation of forty-two public parking spaces.

Bidder acknowledges and agrees that the Property will be developed and maintained in accordance with the specifications set forth in Exhibit 2 or as otherwise agreed to in writing by the City.

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 - Sample 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 Sale Contract.

Bidder acknowledges and agrees to the terms of this section. However, see Responses 2 and 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 fee simple determinable warranty deed is required, then the reversion clause should be revised as follows.

"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,

upon condition that the Grantee constructs, and thereafter maintains and operates a public parking lot of at least 42 spaces (the "Public Parking") on the property in accordance with the City of Smithville RFP 24-11; and that if Grantee fails construct the Public Parking lot, or if thereafter, other than with the express written permission of the Grantor, fails to maintain and operate a Public Parking lot on the property in accordance with Smithville RFP 24-11 during business hours from 6 a.m. to 6 p.m. every day, then title to the premises shall revert back to Grantor"

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

EXHIBIT E

Purchase Price for RFP #24-11

The Property is currently gravel parking lots without pavement, marked stalls, or curb stops and is in need of maintenance and repair. Since the Bidder will comply with the RFP in creating a safe and attractive parking area, we believe that the City should consider the price in light of both the purchase price, and the value of the improvements to the City as a public parking area.

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.

Parcel #1 – Lot 6 (.16 acres) - Parcel ID 05617000201000 - **\$6,690**

Parcel #2 – Lots 4 & 5 (.24 acres) - Parcel ID 05617000201100- **\$10,036**

Total cash offer: **\$16,726**

2) Value of improvements

Bidder will pave and stripe the lots in the timeline proposed in Response 2 in Exhibit D. On or before August 1, 2026, the City will have the use of a paved and striped public parking lot, with forty-two marked stalls available for public parking during business hours from 6 a.m. until 6 p.m. every day. The cost of these improvements is estimated to be **\$294,000**.

3) Total Value

The cash offer of **\$16,726** plus the value of the improvements **\$294,000**, equals:

Total Value of Bid **\$310,726**.

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



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



LEVY CRAIG
— LAW FIRM —

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:

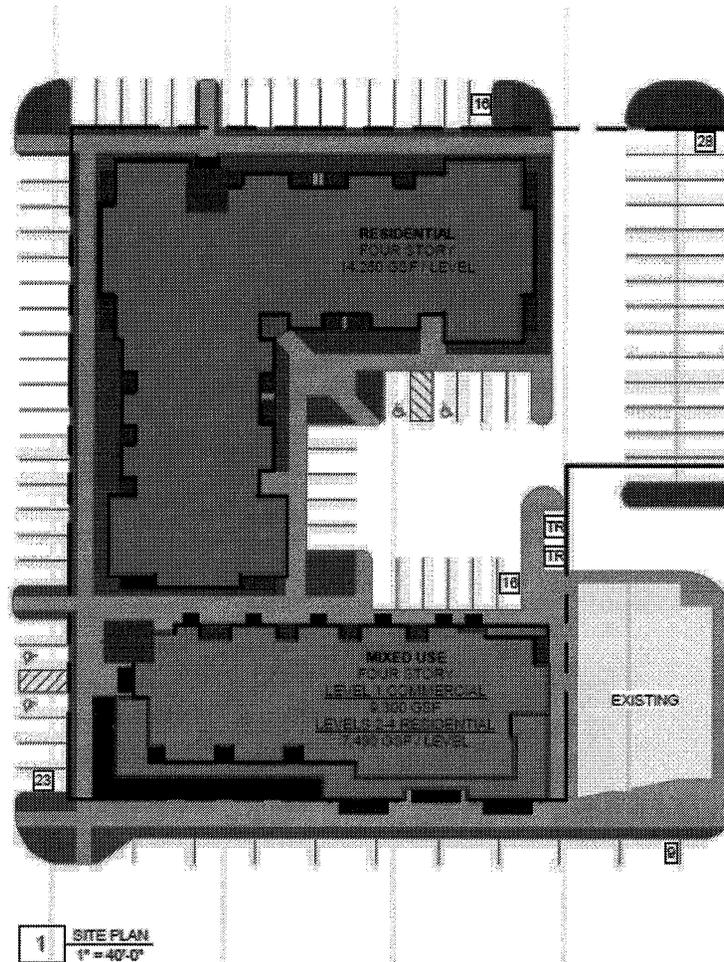
Bidder is aware that parking is of paramount importance to the City. On August 1, 2023, the City of Smithville approved a TIF Plan (the “TIF Plan”) for a redevelopment district (the “TIF Project”) that includes the Property.

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:



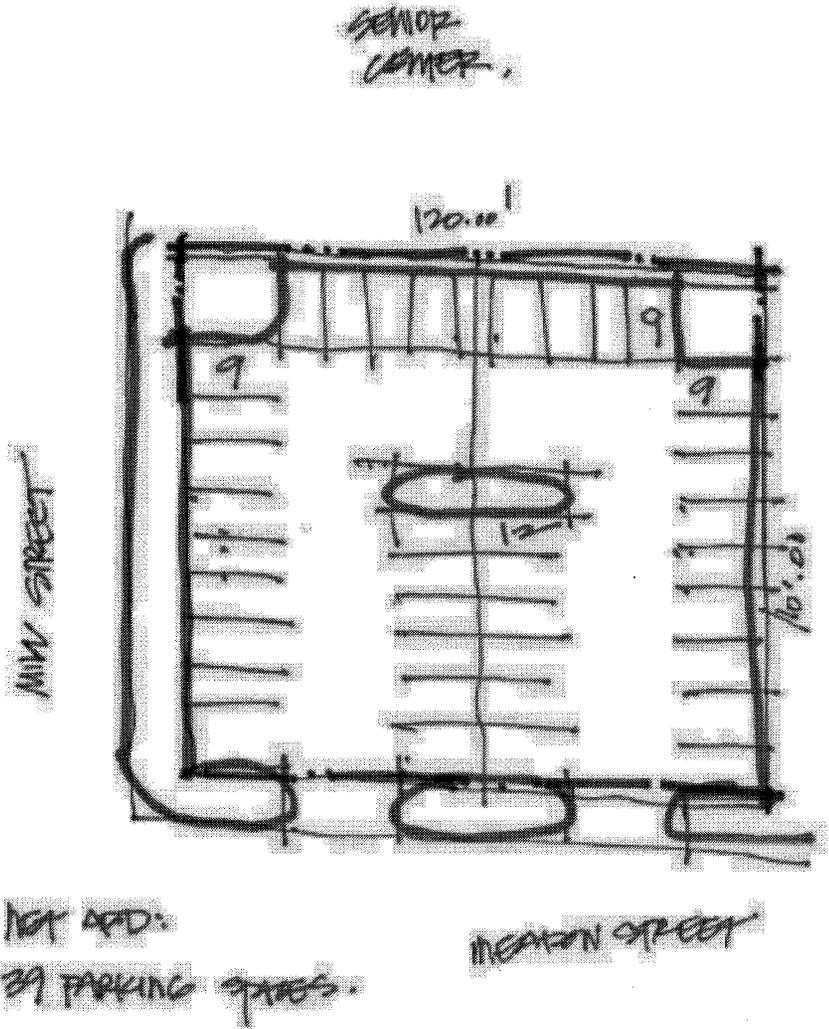
Bidder believes that simply restricting part of the parking portion of the project to always remain parking will not serve either the City’s or the Bidder’s purposes. Bidder would like to offer an alternative proposal that will both satisfy City’s parking concerns and allow the Bidder to use the Property 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.]



Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Development

AGENDA ITEM: Resolution 1394, Site Plan Approval – 14450 North 169 Highway, Suite B

REQUESTED BOARD ACTION:

A motion to approve Resolution 1394, authorizing site plan approval for construction of a 5,109 ft² addition to the Montessori Academy at 14450 North 169 Highway, Suite B.

SUMMARY:

The applicant submitted a site plan application for construction of an addition in 2021, which was approved but never completed. Recently, the applicant sought to begin construction, but the previous approval had expired and a new application was required due to changes in the Site Plan Review Standards.

Since the applicant made no changes to the application, they were only required to provide a traffic impact report and a stormwater impact report to determine if full studies would be required. The traffic impact report showed less than 50 trips would be added, so no study was required. Chuck Soules determined that the addition of less than 1% of the total lot area would be made impervious with the new construction, no storm study was required.

The other items of the application, the site plan, landscaping plan and façade treatments were the same as previously approved in 2021, so no new information was needed to complete the review. After review at the August 13, 2024, Planning Commission meeting, the Commission recommended approval of the site plan as described in the staff report.

PREVIOUS ACTION:

This site plan was previously approved by the Board on December 21, 2021 by Resolution 1009.

POLICY ISSUE:

Complies with Codes

FINANCIAL CONSIDERATIONS:

None anticipated.

ATTACHMENTS:

- | | |
|---|---|
| <input type="checkbox"/> Ordinance | <input type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution | <input checked="" type="checkbox"/> Plans |
| <input checked="" type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input checked="" type="checkbox"/> Other: Planning Commission meeting may be viewed online | |

RESOLUTION 1394

**A RESOLUTION AUTHORIZING SITE PLAN APPROVAL FOR
CONSTRUCTION OF A 5,109 FT² ADDITION TO THE MONTESORRI
ACADEMY AT 14450 NORTH 169 HIGHWAY, SUITE B**

WHEREAS, the applicant submitted plans for construction of an addition to its' daycare at 14450 North 169 Highway, and was approved on December 16, 2021 but took no action to begin construction; and

WHEREAS, the applicant sought to move forward with those plans in 2024, but the site plan approval had expired, requiring a new application to be reviewed using the updated Site Plan Standards; and

WHEREAS, the Planning Commission reviewed the updated submittal concerning the layout, building materials and colors, as well as a traffic impact report and stormwater evaluation at its August 14, 2024 meeting; and

WHEREAS, the Planning Commission recommends approval of the site plan at 14450 North 169 Highway, Suite B as described in the Staff Report.

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

**THAT THE SITE PLAN APPLICATION FOR AN ADDITION AT 14450
NORTH 169 HIGHWAY, SUITE B.**

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

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk



STAFF REPORT
August 8, 2024
Site Plan Review of Parcel Id #05-820-00-02-006.00

Application for a Site Plan Approval

Code Sections:
400.390 – 400.440 Site Plan Approval

Property Information:

Address: 14450 N. 169 Hwy, Suite B
Owner: Major Lumber Co. Inc.
Current Zoning: B-3

Application Date: June 18, 2024

GENERAL DESCRIPTION:

Applicant seeks to obtain site plan approval for a 5,000+ square foot addition to the Major Mall building. The applicant presented the same proposal in 2021, but took no action on the approval. In accordance with our regulations, that approval was valid for only one year. The purpose of that limitation is to require new applications to comply with the newest requirements. In this case, the applicant needed to provide a Traffic Impact Assessment to determine if a full study would be required and provide an assessment of the extent of change of the impervious areas of the site to determine if any stormwater study would be needed.

The TIA was provided that clearly showed that no traffic study was required. The City's Public Works department determined that the additional impervious area was less than 1% of the total area of the project site and no new study would be required. All other aspects of the project are the same as was previously approved by the Commission and the Board of Aldermen. The following excerpt is from the 2021 staff report on the matter:

Since it is an expansion, the proposal is required to make the addition as cohesive with the existing structure as is practical.

The existing structure is shown here:



As shown on the attached plan sheets, the request is to extend the lower level out from the existing façade. The roof is proposed to contrast the existing metal on the roof and the second story façade, and the three sides of the addition to be clad with a faux red brick material. The entrance to the new structure will include a new canopy using black metal. The stucco areas will be beige colored.

To the extent that the construction will occur over existing paved areas, and the only additional areas of pavement will be a small area for three parking spaces, no adverse impact to the stormwater drainage will occur. The area will continue to drain naturally to the south over the existing vegetation and into the road ditch.

In there is an addition to an existing building scenario, the purpose of this review is to verify the addition will not bring the overall building/project out of compliance with the code. In this case, the contrasting style, material and color scheme actually upgrade the buildings' compliance with the code while still blending with the existing structure.

STAFF RECOMMENDATION:

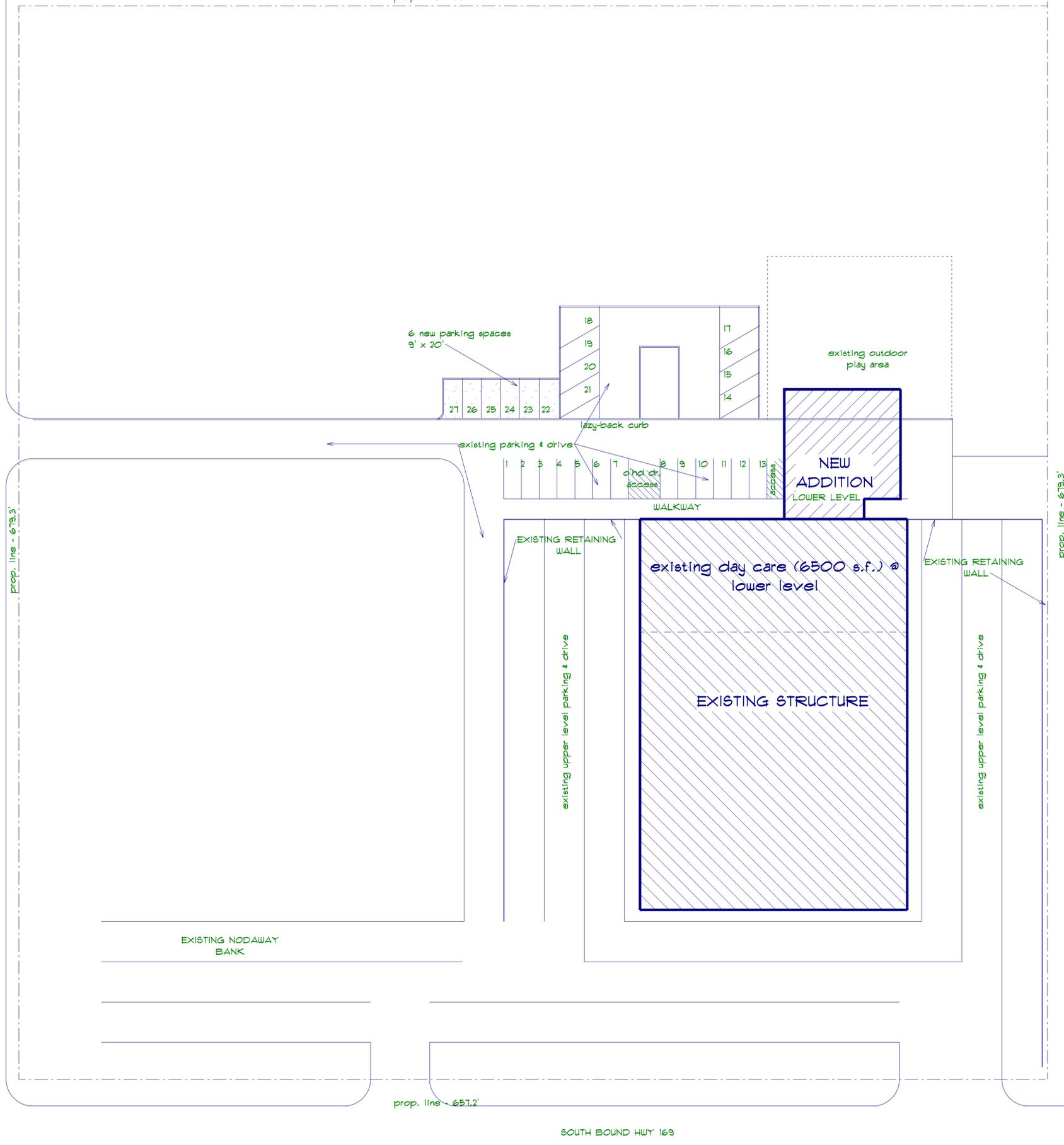
Staff recommends APPROVAL of the proposed Site Plan with the condition that no permit shall issue until approval of the final design plans have been reviewed and approved by both the City and the Fire District.

Respectfully Submitted,

S/Jack Hendrix/S
Director of Development

existing zone B-3

prop. line - 657.2'



5109 s.f. addition to 6500 s.f. existing day care @ lower level.
 Upper level approx. 28,000 s.f.
 Existing Zoning B-3
 Existing Site - 443,379 s.f. , 10.18 acres

existing zoning B-3



SITE PLAN
 SCALE: 1/4" = 1'-0"

existing zoning R-1B

existing zoning across 169 - A-1



GROUND SNOW LOAD - 20#/S.F.
 WIND SPEED - 90 M.P.H.
 SEISMIC DESIGN CATEGORY - A
 FROST LINE DEPTH - 36"

Renovations to the
 Smithville Montessori
 14450 US Hwy 169
 Suite B

Dennis E. Tuck,
 Architect
 12319 Moffitt
 Liberty, MO 64068

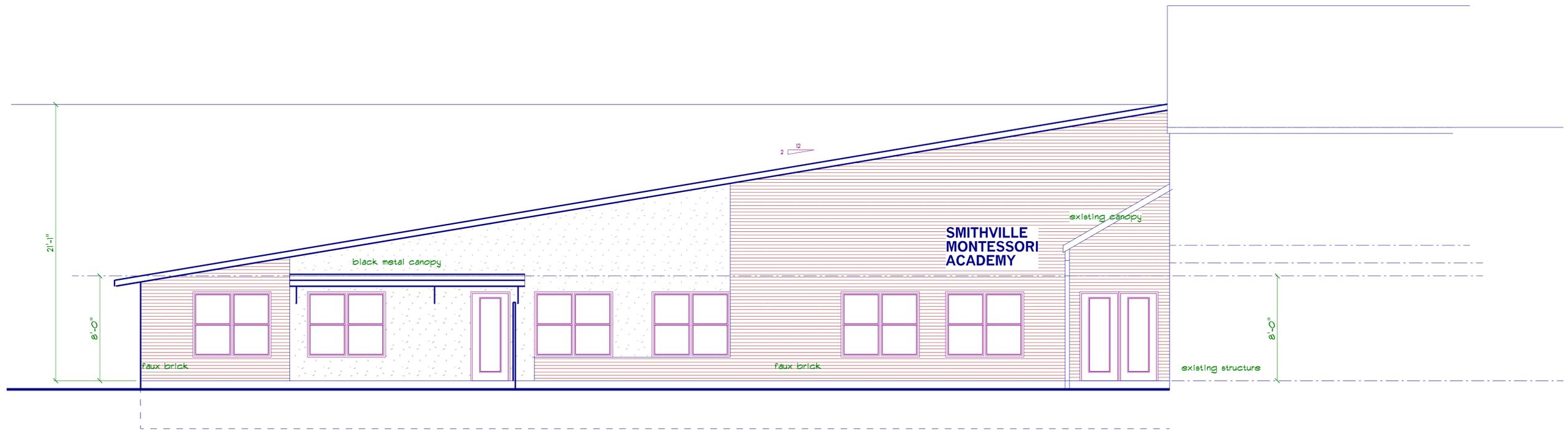
Archituckture
 816.622.5013

Sheet
 1
 Wednesday, June 19, 2020
 Job. NO.
 20.011

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WEST ELEVATION
SCALE: 1/4" = 1'-0"



SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

Renovations to the
Smithville Montessori
14450 US Hiway 169
Suite B

GROUND SNOW LOAD - 20#/S.F.
WIND SPEED - 90 M.P.H.
SEISMIC DESIGN CATEGORY - A
FROST LINE DEPTH - 36"

Dennis E. Tuck,
Architect
12319 Moffitt
Liberty, MO 64068

Archituckture
816.628.5013

Sheet
3

Wednesday, June 18, 2020
Job. NO.
20.011

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LANDSCAPING SCHEDULE
Recommended Species



Evergreens
Pine, Austrian-Pinus Nigra 6'-8'



Trees, shade
Maple, Silver-Acer Saccharinum 2-2.5" cal.
Ash, Marshall's Seedless-Fraxinum Pennsylvanica 2-2.5" cal.
Plane Tree, London-Platanus Acerifolia 2-2.5" cal.

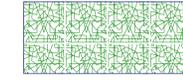


Trees, Specimen
Crab, Radiant-Malus sp 2-2.5" cal.
Redbud (1 stem)-Cercis Canddensis
Locust, Sunburst-Gleditsia Triacantos Inermis 1-1.5" cal.
(Red Oak, Cottonless Cottonwood, Hackberry, Silver Maple, Pecan Sycamore, Walnut, Bradford Pear and Autumn Olive may be considered)



Shrubs
Euonymus, Dwf. Winged-Euonymus Compactus 18-24" 3 gal.
Spirea, Goldflame-Spirea h.v.
Forsythia, Showy Border-Forsythia Intermedia
Quince, Japanese Flowerint-Chaenomeles Japonica
Euonymus, Jewell-Euonymus Fortuei
Euonymous, Paul i - Euonymus Ki autschovi cus
Pyracanta, Lowboys - Pyracantha Cocci nea
Yew, Dwf. Spreading-Taxus Densiformis

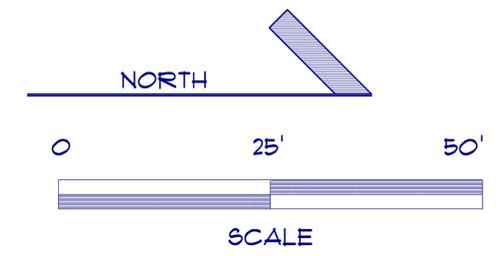
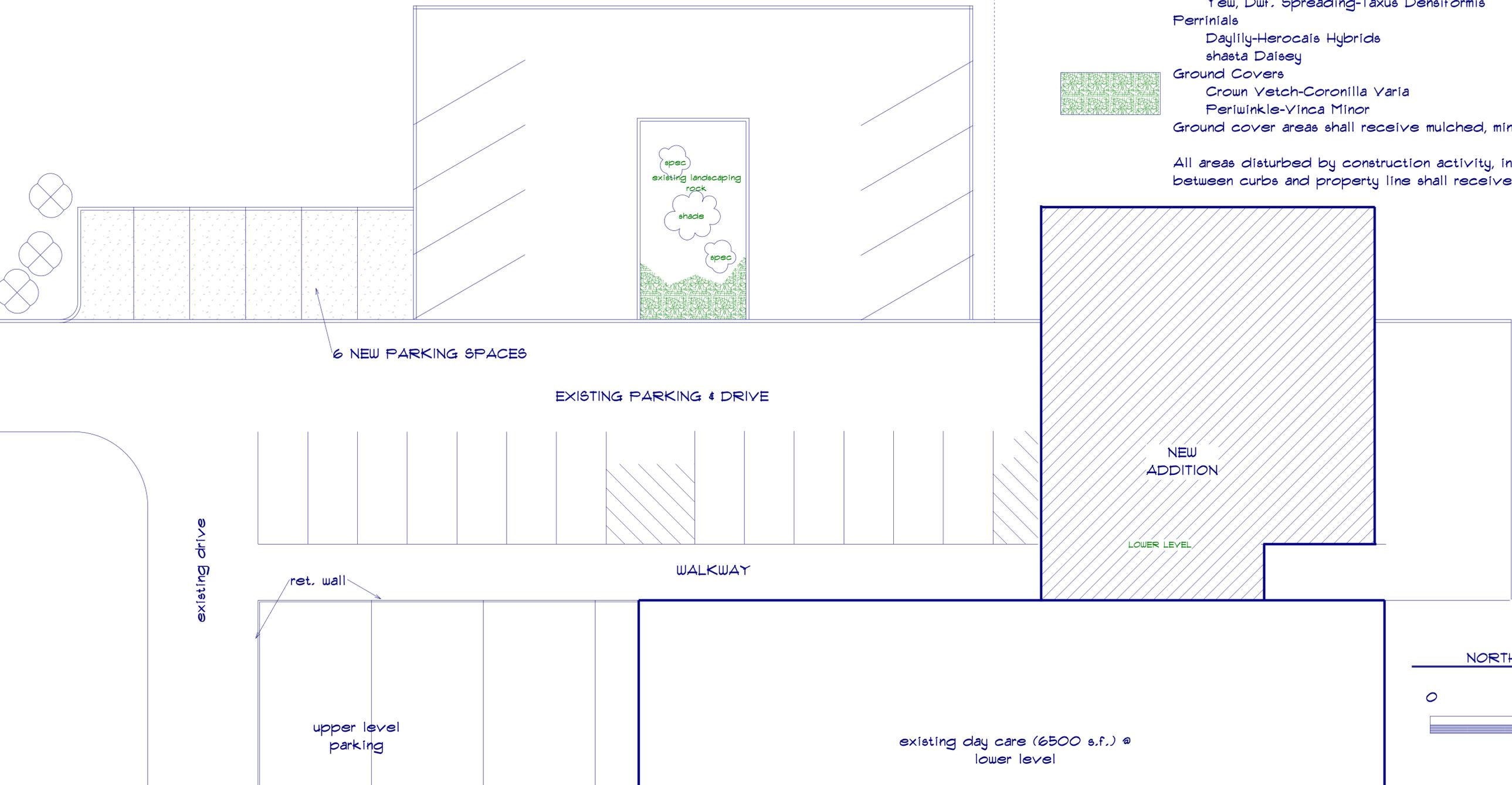
Perrinials
Daylily-Herocals Hybrids 1 gal.
shasta Daisey 1 gal.



Ground Covers
Crown Vetch-Coronilla Varia 4" pot
Periwinkle-Vinca Minor 36/flat

Ground cover areas shall receive mulched, min. 2" deep.

All areas disturbed by construction activity, including areas between curbs and property line shall receive sod.



Renovations to the
 Smithville Montessori
 14450 US Hwy 169
 Suite B
 Dennis E. Tuck,
 Architect
 12319 Mcbritt
 Liberty, MO 64068
Archituckture
 816.622.5013
 Sheet
 1A
 Wednesday, June 13, 2024
 Job. NO.
 20.011
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Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Public Works

AGENDA ITEM: Resolution 1395, awarding Bid No. 24-16 2024 Commercial Avenue Pedestrian Improvements

REQUESTED BOARD ACTION:

A motion to approve Resolution 1395, awarding Bid No. 24-16 to Legacy Underground Construction for Commercial Avenue Pedestrian Improvements in an amount not to exceed \$898,658.00 and authorizing a force account of \$100,000.

SUMMARY:

This project includes the construction of concrete sidewalks, curb ramps, concrete curb and gutter removal and replacement, curb inlets, and retaining walls along Commercial Avenue.

The City received a Federal Grant Award of 80% up to \$960,000 for the 2024 Commercial Avenue Pedestrian Improvements project, the City is responsible for 20% match and construction administration. Legacy Underground provided a bid of \$898,658 (80% is 718,926.4 and the City 20% is \$179,731.6).

Four bids were received on July 30, 2024 (bid tabulation below). The low bid was Legacy Underground Construction at \$898,658. Staff conducted reference checks, all of whom provided positive feedback regarding the previous work performed by Legacy Underground Construction.

Legacy Underground Construction also completed the 2023 Sidewalk replacement program for the City.

MODOT has reviewed all the bid documents and concurs with the award.

Contractor	Bid
Mega KC Corporation	\$1,671,340
Amino Brothers Construction	\$1,523,034.65
Legacy Underground Construction, Inc.	\$898,658
Wil-Pav	\$1,553,116.06
Engineer's Estimate	\$1,689,375

PREVIOUS ACTION:

N/A

POLICY ISSUE:

Infrastructure Maintenance

FINANCIAL CONSIDERATIONS:

This project is included in the 2024 Transportation Sales tax budget.

ATTACHMENTS:

- Ordinance
- Resolution
- Staff Report
- Other: [Bid Documents & Letter of Concurrence from MODOT](#)
- Contract
- Plans
- Minutes

RESOLUTION 1395

A RESOLUTION AWARDING BID NO. 24-16 TO LEGACY UNDERGROUND CONSTRUCTION FOR COMMERCIAL AVENUE PEDESTRIAN IMPROVEMENTS IN AN AMOUNT NOT TO EXCEED \$898,658 AND AUTHORIZE A FORCE ACCOUNT OF \$100,000

WHEREAS, Bids were opened and read aloud on July 30, 2024 for Bid No. 24-16, 2024 Commercial Avenue Pedestrian Improvements; and

WHEREAS, after a bid process, as outlined in the City Purchasing Policy, and reference checks, staff is recommending the bid received from Legacy Underground Construction, as the most responsive and best bid received, and the most advantageous to the City in the amount of \$898,658.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI:

THAT Bid No. 24-16 is hereby awarded to Legacy Underground Construction in an amount not to exceed \$898,658 and the Mayor is authorized to execute the construction contract for the Commercial Avenue Pedestrian Improvements project with a force account of \$100,000.

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

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk



Board of Aldermen Request for Action

MEETING DATE: 8/20/2024

DEPARTMENT: Public Works

AGENDA ITEM: Res 1396 - Authorizing the Mayor to sign an agreement with GBA

REQUESTED BOARD ACTION:

Motion to approve Resolution 1396, authorizing the Mayor to sign an agreement with GBA for engineering services for a roundabout at the intersection of East First Street and North Bridge Street and authorizing GBA to proceed with Phase A.

SUMMARY:

The City's Capital Improvement Plan includes the construction of a roundabout at the intersection of East First Street and North Bridge Street. The City received partial funding from the Mid-America Regional Council in the amount of \$896,000. The estimated construction cost is nearing \$3 million. The anticipated bid letting is August 2027. Staff will request additional funding as plans progress and estimates are updated.

During the Board retreat it was discussed that the City should have the plans developed, "shovel ready". As opportunities present, the City would be ready to accept additional funding.

The project will also include a sidewalk North on Bridge Street to Second Street and over to Highway 169 and improved ADA access.

The agreement with GBA has two phases:

Phase A – including survey, environmental and some preliminary engineering for an amount of \$102,266.89.

Phase B - including all other tasks necessary to complete the plans, bidding and construction engineering services in an amount of \$337,816.25.

The 2024 CIP has \$250,000 for engineering of this project. The Board action only authorizes Phase A to keep within the currently adopted 2024 budget.

Phase B will be presented in the proposed 2025 CIP Budget.

PREVIOUS ACTION:

None

POLICY OBJECTIVE:

Transportation Safety, mobility, continuity of operations

FINANCIAL CONSIDERATIONS:

Funding for Phase A is available in the 2024 Capital Improvement Plan

ATTACHMENTS:

- Ordinance
- Resolution
- Staff Report
- Other: Drawing

- Contract / Scope
- Plans
- Minutes

RESOLUTION 1396

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH
GBA FOR ENGINEERING SERVICES FOR A ROUNDABOUT AT THE
INTERSECTION OF EAST FIRST STREET AND NORTH BRIDGE STREET AND
AUTHORIZING GBA TO PROCEED WITH PHASE A.**

WHEREAS, the City desires to make improvements to the intersection at East First Street and North Bridge Street and construct a roundabout; and

WHEREAS, the City has received partial funding from the Mid-America Regional Council through the Surface Transportation Program; and

WHEREAS, construction funding is available in Federal Fiscal year 2028; and

WHEREAS, GBA is a pre-qualified engineering firm capable to provide engineering and design services for this project; and

NOW, THEREFORE, Be it resolved by the City of Smithville Missouri, authorizing the Mayor is to sign an agreement with GBA for engineering services for a roundabout at East First Street and North Bridge Street in a total amount of \$ 440,084.14 and authorization to proceed with Phase A of the contract in an amount of \$102,266.89.

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

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

Exhibit III

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

This is an Agreement (hereafter referred to as the “Agreement” or “Contract”) by and between City of Smithville, MO (“City”) located at 107 W. Main Street, Smithville, MO 64089 and George Butler Associates, Inc. (“Consultant” or “Engineer”) a Corporation registered to do business in the State of Missouri located at 9801 Renner Blvd, Lenexa, KS 66219.

d

WITNESSETH:

WHEREAS the City desires to procure engineering services pertaining to the Bridge Street Roundabout Improvements and the City is desirous of retaining a consulting engineer/architect for such works; and

WHEREAS the Engineer is qualified by experience and training and is willing to perform the engineering/architectural services necessary to said work.

WHEREAS the City issued RFQ 23-13 On-Call Professional Services, a copy of which is attached hereto as **Exhibit A**.

WHEREAS the Engineer provided a response on November 7th, 2023, a copy of which is attached hereto as **Exhibit C**, with the qualifications and scope of services as identified therein.

WHEREAS the Consultant was deemed by the City as the company most qualified to work on this project.

WHEREAS upon consultation between the parties it was agree that the Consultant would provide the services as set forth in **Exhibit B** which is attached hereto and incorporated as if more fully set forth verbatim.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein the parties agree as follows:

1. CONTRACT DOCUMENTS: The Agreement between the parties shall consist of this Agreement, Exhibit A, B and C. The Parties further agree that this Agreement is a memorialization and a supplement to Exhibits A, B and C attached hereto. In the event of a conflict in the interpretation of the contract/Agreement documents, the parties agree that the terms within the Agreement documents shall be construed or given binding effect in the following order:

- a) This Agreement; and then
- b) Exhibit A; and then
- c) Exhibit B; and then
- d) Exhibit C.

2. GENERAL SCOPE OF THE WORK: Consultant shall furnish all of the labor and materials and perform all of the work set out in **Exhibit B** and incorporated in this Agreement, to the same extent and effect as if fully set out herein. The scope of work is split into two parts, Phase A, which includes Project Administration, Survey and Environmental Services, and Phase B, which includes Project Administration, Roadway, Traffic, Hydrology & Hydraulics, and Construction Period Services.

3. CONTRACT/AGREEMENT PRICE: The total price for all work, materials, and labor to be furnished and performed by the Consultant shall not exceed \$440,084.14. This sum is comprised of Phase A in the amount of \$102,266.89, and Phase B of \$337,817.25. Other than as set forth in paragraph 11, this price is a fixed fee and shall not increase for any reason including but not limited to convenience of the City, unknown site conditions, delays, weather or other Consultant claims. Consultant may submit monthly invoices to the City Director of Public Works (or such other person as designated by the City) detailing the hours of services provided and the percentage of the project completed. Upon verification by the City that the invoice does not exceed the percentage of the project completed, the City will pay said invoice within thirty (30) days. The City will not make any payments for invoiced amounts which exceed the percentage of completed project.

4. TIME: Time is of the essence of this Agreement. The work to be performed hereunder shall be commenced as soon as reasonably possible after the execution of this Agreement and is subject to authorized adjustments. The work contemplated by this agreement shall be completed by the Engineer within 4 years of the Notice to Proceed on this Agreement or by the 17th day of November, 2028.

5. NOTICES Any Notice as set forth herein must be served by Federal Express or similar overnight delivery service or by certified mail, return receipt requested, addressed to the party and shall be deemed given as of the deposit in the U. S. Mails or with overnight delivery service. Notice to the City shall be sent to the Director of Public Works and the City Administrator, City of Smithville, 107 W. Main Street Smithville MO 64089. Notice to Consultant shall be sent to the Consultant at 9801 Renner Blvd, Lenexa, KS 66219. Either party may designate such other Person and/or delivery address from time to time by written Notice.

6. INDEPENDENT CONTRACTOR: The Consultant warrants and represents to the City that it is fully experienced and properly qualified as an expert to perform the services provided for herein and that it is properly equipped organized and financed to perform such services. The Consultant shall finance its own operations and shall operate as an Independent Contractor and not as an agent of the City and shall indemnify and hold the City free and harmless from all liabilities, costs, and charges by reason of any act, omission or representation of the Engineer or of its subcontractors, agents, and employees, including costs and attorney's fees.

Consultant shall at all times cause all its workers, laborers, employees, independent contractors and subcontractors and agents and employees of such persons to be fully covered with Worker's Compensation insurance at the amounts required by law. The Consultant will indemnify and hold the City harmless for all damages and liabilities, including attorney's fees and costs for injuries to its employees, agents, servants, and/or subcontractors, for failure to obtain and maintain worker's compensation insurance or failure to provide a safe place to work, and Consultant will also be responsible to ensure that its subcontractors carry workers compensation insurance.

The Consultant will also conduct the services in such a manner as to keep members of the public safe and represents and warrants that it has General Liability insurance in a sum no less than \$2,000,000.00. The Engineer will provide the City with a Certificate of Insurance evidencing the same and naming the City as "additional named insured" and will indemnify and save the City harmless from all liability and costs, including attorney's fees claimed by any person who claims an injury as a result of the work. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-VII" or better or as specifically approved by the City and are licensed or approved by the State of Missouri to do business in Missouri.

Regardless of any approval by the City, it is the responsibility of the Engineer to always maintain the required insurance coverage in force; its failure to do so will not relieve it of any agreement, obligation

or responsibility. In the event of the Engineer 's failure to maintain the required insurance in effect, the City may order the Engineer to immediately terminate its work until the breach has been cured or terminate this Contract.

7. COMPLIANCE AND REQUIREMENTS: All work, labor and materials to be furnished and performed by the Engineer shall be to the satisfaction of the City Director of Public Works (or such other person as designated by the City) acting on behalf of the City, and payment shall be made only for such work and materials as are accepted in writing by the City Director of Public Works (or such other person as designated by the City) provided, however, that the City shall not arbitrarily withhold acceptance of such work and materials or payment so long as the Engineer makes satisfactory progress and performs all of its obligations in accordance with or pursuant to all the terms and conditions of this Agreement.

8. CORRECTION OF DEFAULTS: The Engineer will, at the request of the City Director of Public Works (or such other person as designated by the City), correct any defects to the materials or workmanship, and neither final payment by the City nor the final acceptance by the City of the work and materials shall relieve Engineer from responsibility for any defect in materials and workmanship.

9. ASSIGNMENT: The Engineer shall not assign this Agreement or any amount payable hereunder without the prior written consent of the City. The Engineer shall upon request of the City, disclose to the City the names, addresses and owners of all subcontractors or other persons with whom it intends to contract with or hereafter contracts in connection with the performance of this Agreement.

10. CONFLICTS OF INTEREST: The Engineer warrants and represents that neither the Engineer nor its officers, directors, agents, employees, or subcontractors are related within the second degree of affinity or consanguinity with any elected officials or employees of the City.

The Engineer will not offer, give, or agree to give any employee or former employee of the City, anything of a pecuniary value for or because of:

- a. Any official action taken, or to be taken, or which could be taken; or
- b. A legal duty performed or to be performed, or which could be performed; or
- c. A legal duty violated, or to be violated, or which could be violated by such employee or former employee.

No regular employee or elected or appointed member of the City shall be permitted to obtain any benefit of this Contract, or to obtain any benefit that may accrue there from.

11. EXTRAS: No claim for payment (more than the amount set forth in this Agreement for extra services or materials of any kind shall be made by the Engineer or shall be paid by the City unless the same is performed or furnished pursuant to a written agreement executed by the City and the Engineer.

12. COMPLIANCE WITH LAW: This Agreement is entered into subject to the federal, state, and local laws, charters, ordinances, and regulations. The Engineer shall comply with all federal, state and local laws, ordinances and regulations and shall ensure all such compliance with regard to its subcontractors, including but not limited to the Americans with Disabilities Act and the Equal Employment Opportunity Law. Engineer shall secure all occupational and professional licenses and permits from public and private sources necessary for the performance of the services contemplated by this Agreement as well as the placement and/or use of any equipment at the location specified.

13. AFFIDAVIT OF WORK AUTHORIZATION AND DOCUMENTATION: Pursuant to 285.530 R.S.Mo, the Engineer must affirm its enrollment and participation in a federal work authorization

program with respect to the employees proposed to work in connection with the services requested herein by

- submitting a completed, notarized copy of EXHIBIT 1, AFFIDAVIT OF WORK AUTHORIZATION and
- providing documentation affirming the bidder's enrollment and participation in a federal work authorization program (see below) with respect to the employees proposed to work in connection with the services requested herein.

E-Verify is an example of a federal work authorization program. Acceptable enrollment and participation documentation consists of the following two pages of the E-Verify Memorandum of Understanding (MOU): 1) a valid, completed copy of the first page identifying the bidder and 2) a valid copy of the signature page completed and signed by the bidder, the Social Security Administration, and the Department of Homeland Security – Verification Division.

14. UNITED STATES GOODS: Engineer agrees and understands that any manufactured goods or commodities used or supplied in the performance of the Agreement, or any subcontract thereto shall be manufactured or produced in the United States unless exempt from such requirement pursuant to §34.353 R.S.MO.

15. NOT A JOINT VENTURE: Nothing contained in this Agreement shall be deemed to constitute the City and the Engineer as partners in a partnership or joint venture for any purpose whatsoever.

16. NON-LIABILITY OF CITY PERSONNEL: Neither the Board of Alderpersons, Board Members, nor any other officer, official, employee, or agent of the City shall be *personally* responsible for any liability arising under or growing out of this Agreement or operations of the Engineer.

17. ENTIRE CONTRACT/AGREEMENT: This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties. Terms not specifically set out herein and no verbal agreement or conversation with any officer, official, agent or employee of the City, either before or after the execution of the Agreement, shall affect, modify or add to the terms or obligations contained in this Agreement. Any such purported term, verbal agreement or conversation shall in no way be binding upon the City or the Engineer.

18. RECORDS: The Engineer shall maintain all records for inspection by City representatives during the Contract period and for three (3) years after the date of termination of the Contract. The Engineer agrees that the City Auditor, or any of his/her duly authorized representatives shall, until the expiration of three (3) years after final payment under this Contract, have access to and the right to examine any and all pertinent books, documents, papers and records of the Engineer involving the transactions related to this Agreement.

19. SURVIVAL OF WARRANTIES: All warranties and representations of the Consultant hereunder shall survive final payment and acceptance of the work.

20. APPLICABLE LAW: the laws of the State of Missouri shall govern this contract. Any action regarding the consent or arising out of the terms and conditions shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. Consultant is validly registered to do business in Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Clay County.

21. **REMEDIES:** In addition to all other remedies at law or in equity, if Consultant shall fail to complete and/or meet any of its obligations under the terms of this Agreement, the City may, by giving the Consultant written Notice, cancel and terminate this Contract if the breach is not cured within Thirty (30) days after the sending of such Notice (unless otherwise set forth herein).

22. **NONRESIDENT/FOREIGN CONTRACTORS.** The Consultant shall procure and maintain during the life of this contract:

a. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 R.S.Mo.

23. **INTELLECTUAL PROPERTY RIGHTS:** Consultant shall pay all license, royalty or similar intellectual property fees or costs. Consultant shall hold City harmless and shall indemnify the City against all claims, damages, suits or losses for any and all infringements on any intellectual property rights of another (whether patents, copyrights, etc.) relating to or caused by the work of the Consultant.

24. **CONTRACT LANGUAGE** The language of this Contract reflects negotiations between Consultant and City, each of whom have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Contract, general rules construing ambiguities against the drafter shall not apply. It is agreed that if more than one copy of this document may be executed and that the original filed with the City Clerk shall pursuant to §432.080 R.S. Mo be deemed to be the controlling original.

25. **CHANGE ORDERS:** Change Orders which are approved by the Consultant and the City's designee in writing which do not increase the cost of the project may be utilized to make needed changes to the scope of the work and to manage minor changes necessary.

26. **CITY OWNERSHIP AND PROPRIETARY INFORMATION** – The parties expressly agree that all data, documents, records, studies, or other information generated, created, found or otherwise completed by Engineer in the performance of Engineer's duties under the terms of this Agreement shall be considered as works for hire, and shall at all times be considered the proprietary information of and under the ownership of the City. All data, documents, records, studies, or other information generated, referred to above, shall be provided to the City by Consultant upon request so long as the City is not in default under other terms of this Agreement. City grants the Engineer the right to use all data, documents, records, studies, or other information generated, created, found, or otherwise completed by Engineer in the performance of Engineer's duties under the terms of this Agreement

27. **TERMINATION.** The City reserves the right to terminate this Agreement by giving at least two (2) weeks prior written notice to the Consultant, without prejudice to any other rights or remedies of the City should the Consultant be in breach of this Agreement, be adjudged a bankrupt, or if Consultant should make a general assignment for the benefit of its creditors, or if a receiver should be appointed for Consultant, or if Consultant should persistently or repeatedly refuse or fail to supply enough properly skilled workmen for the work under the Agreement, or persistently disregard instructions of the City or fail to observe or perform any provisions of the Agreement.

28. **COMPLIANCE WITH LAW.** This Agreement and the goods and services rendered herein are subject to all federal laws, the Constitution of the State of Missouri, the Revised Statutes of Missouri. Any specific provision contained herein which is contrary to federal laws or the Constitution of the State of Missouri and the Revised Statutes of Missouri shall be considered void without invalidating or otherwise affecting the remainder of the Agreement.

29. EFFECTIVE DATE: The effective date of the Agreement shall be deemed to be when all the required signatures have been executed by the City and the Consultant.

30. WAIVER: The waiver by either party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term. No term, covenant, or condition of this Agreement can be waived except by the written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of any term, covenant, or condition to be performed by Engineer to which the same may apply and, until complete performance by the Engineer of said term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

31. SEVERABILITY: All of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provisions that it cannot be presumed that the parties to this Agreement could have included the valid provisions without invalid provisions; or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

32. UNEMPLOYMENT INSURANCE AND TAXES: The Engineer shall pay, at the Engineer's own cost, all relevant taxes in connection with the work or materials to be performed, including but not limited to State and Federal, Unemployment and old age benefit taxes, sales and use taxes, income tax, withholding tax or other work or payroll related taxes. No payments to the Engineer will be approved unless the Engineer is current with tax payments to the City or unless satisfactory arrangements have been made for payment with the City.

33. FORCE MAJEURE: In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of restrictive governmental laws or regulations, riots, insurrection, war, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then the time allowed for performance of such act shall be extended by a period equivalent to the period of such delay.

34. CONDITION PRECEDENT: This Agreement 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 Alderpersons, obtained the authority to enter into this Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals the date and year first above written. The parties represent that the signatories below have full authority and authorization to sign on behalf of the respective parties.

THE CITY OF SMITHVILLE

By: _____
Mayor

Name: Damien Boley

ENGINEER :

By: *Aaron M. P. J.* 08/13/2024

Title Principal

EXISTING



PROPOSED



**EXHIBIT B
SCOPE OF SERVICES**

**PROJECT
BRIDGE STREET ROUNDABOUT IMPROVEMENTS**

**OWNER
SMITHVILLE, MO**

PROJECT DESCRIPTION

The City of Smithville, Missouri (OWNER) has identified the need for a single lane roundabout at the intersection of Bridge Street and 1st Street. The OWNER acquired the services of George Butler Associates, Inc. (ENGINEER) to produce construction drawings and documents for the project. The project consists of survey, environmental permitting services, a single lane roundabout, two lane roads with bike lanes, pedestrian facilities, sidewalk curb ramps, pavement markings, drainage and storm sewer design, traffic design, and bidding and construction period services. The project will also include the closure of Hilltop Street South of 2nd Street and the extension of 2nd Street to Bridge Street. The need for a possible shoofly detour will be evaluated during design.

SCOPE OF SERVICES

The basic Scope of Services for this Project is organized into the following major Tasks and Subtasks:

Phase A

- Task 100 – Survey
- Task 200 – Environmental
- Task 300 – Preliminary Design
 - Subtask 1 – Preliminary Design Administration

Phase B

- Task 300 – Preliminary Design
 - Subtask 2 – Preliminary Roadway Design
 - Subtask 3 – Preliminary Traffic Design
 - Subtask 4 – Preliminary H&H Design
- Task 400 – Final Design
 - Subtask 1 – Final Design Administration
 - Subtask 2 – Final Roadway Design
 - Subtask 3 – Final Traffic Design
 - Subtask 4 – Final H&H Design
- Task 500 – Bidding & Construction Phase Services

Schedule of Project Milestones

August 12, 2024 – Submit Scope/Fee to Smithville

August 20, 2024 – Scope/Fee approved by Smithville City Council
August 21, 2024 – Notice to Proceed
November/December 2024 – Survey Complete
May 2025 – Preliminary/Right of Way Plan Submittal
March 2027 – Final PS&E Submittal
May 2027 – Final PS&E Approval
August 2027 – Letting (Smithville FY27)

The detailed Scope of Services to be provided by the ENGINEER is as follows:

TASK 100: SURVEY

This task will include the following limited to:

- Perform research of right-of-way, section corners, property pins and horizontal and vertical control.
- Call in Missouri One-call tickets and locate utilities and invert storm and sanitary sewer structures within the project area. This task does not include utility potholing or geotechnical borings.
- Conduct a topographic survey of the project area of sufficient accuracy and detail to be used for Preliminary and Final Design of improvements.
- Prepare a MicroStation basemap which will include all above data
- The Project Drawings shall be created and provided using the following Coordinate System: State Plane Missouri West, Datum: NAD83, and the Units: US Feet. The completed and signed plans shall also be provided in a large-format, high quality resolution PDF format.
- Provide high resolution aerial imagery.

TASK 200: ENVIRONMENTAL

This task will include the following:

- Initiate and finalize MoDOT Request for Environmental Review and all other permits required to complete the MoDOT LPA process.

TASK 300: PRELIMINARY DESIGN

Subtask 1 – Preliminary Design Administration

This subtask will include the following:

- Project management services necessary throughout the project to successfully manage and complete the work, including project correspondence and consultation with OWNER staff; internal coordination meetings, supervision, and coordination of services; implementation of project scheduling and assignment of personnel resources; continuous monitoring of work progress; and maintenance of project controls.

- Coordinate a project kickoff meeting with the OWNER. The meeting will be used to discuss and review the scope of services, projected schedule, communication coordination, data requests, and existing conditions of the project site. The ENGINEER will prepare and distribute a meeting summary. Meeting will be held on-site.
- Conduct internal coordination meetings as necessary to successfully complete the project.
- Provide monthly invoices and project reports, and provide proper correspondence as necessary.
- Provide thorough quality control and quality assurance throughout the project.

Subtask 2 – Preliminary Roadway Design

This subtask will include the following:

- Plan production, including a title sheet, typical sections, plan and profile sheets, cross sections, and right of way taking sheets. Plan production and drafting for this project to be completed in OpenRoads Designer.
- Submit a design criteria memo, horizontal and vertical alignment design, MOT analysis, roadway geometrics design and review, curb ramp and driveway design, and production of a preliminary 3D model.
- Propose right of way and easement needs, and submit of right of way base files to the surveyor for review.
- Prepare preliminary roadway quantities and preliminary engineer's estimate.
- Submit preliminary plans to the City and MoDOT.
- Review and address comments from the City and MoDOT.

Subtask 3 – Preliminary Traffic Design

This subtask will include the following:

- Coordinate roundabout geometrics with the road group.
- Develop preliminary lighting layout, traffic control sequencing, detour layouts, pavement marking layouts, and signing layouts.
- Develop preliminary quantities and engineer's estimate.

Subtask 4 – Preliminary H&H Design

This subtask will include the following:

- Hydrologic and Hydraulic analysis of existing and proposed stormwater system, detention, and FEMA HEC RAS model.
- Design preliminary outlet protection, erosion control, draft floodplain development permit, and draft no rise certification.
- Produce preliminary storm sewer plan and profile sheets.
- Develop preliminary quantities and engineer's estimate.

TASK 400: FINAL DESIGN

Subtask 1 – Final Design Administration

This subtask will include the following:

- Project management services necessary throughout the project to successfully manage and complete the work, including project correspondence and consultation with OWNER staff; internal coordination meetings, supervision, and coordination of services; implementation of project scheduling and assignment of personnel resources; continuous monitoring of work progress; and maintenance of project controls.
- Coordinate and attend an on-site field check meeting.
- Conduct internal coordination meetings as necessary to successfully complete the project.
- Provide monthly invoices and project reports and provide proper correspondence as necessary.
- Provide thorough quality control and quality assurance throughout the project.

Subtask 2 – Final Roadway Design

This subtask will include the following:

- Plan production, including a title sheet, typical sections, general notes, quantity sheets, plan and profile sheets, intersection details, reference and coordinate point sheets, erosion control sheets, construction detail sheets, and cross sections.
- Final horizontal and vertical alignment design, final roadway geometric design and review, and production of a refined 3D model.
- Propose right of way and easement needs, and submit of right of way base files to the surveyor for review.
- Prepare final roadway quantities and final engineer's estimate.
- Submit final plans to the City and MoDOT.
- Review and address final comments from the City and MoDOT.
- Compile necessary MoDOT project manual documents.

Subtask 3 – Final Traffic Design

This subtask will include the following:

- Coordinate roundabout geometrics with the road group.
- Develop final lighting layout, traffic control sequencing, detour layouts, pavement marking layouts, and signing layouts.
- Plan production, including traffic control plans, detour plans, pavement marking and signing plans, and lighting plans.
- Develop final quantities and engineer's estimate.

Subtask 4 – Final H&H Design

This subtask will include the following:

- Finalize hydrologic and hydraulic analysis of existing and proposed stormwater system, detention, and FEMA HEC RAS model.
- Finalize outlet protection, erosion control, floodplain development permit, and no rise certification.
- Produce final storm sewer plan and profile sheets.
- Develop final quantities and engineer's estimate.

TASK 500: BIDDING AND CONSTRUCTION PHASE SERVICES

The ENGINEER will provide services to prepare the project to be bid for construction. This includes coordination with the city on schedule, contract, bonds, insurance, bid item descriptions, completing the bid form, and attending a pre-bid meeting. The ENGINEER will also provide services pre-construction and during construction to address questions to clarify the design, as needed, for the contractor. Lastly, the ENGINEER will prepare as-built drawings post construction.

COMPENSATION AND SCHEDULE

The ENGINEER fee will be \$102,266.89 at billing rates for Phase A and will be \$337,817.25 at billing rates for Phase B. The project is estimated to be let in August of 2027.