



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 incurrence). 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

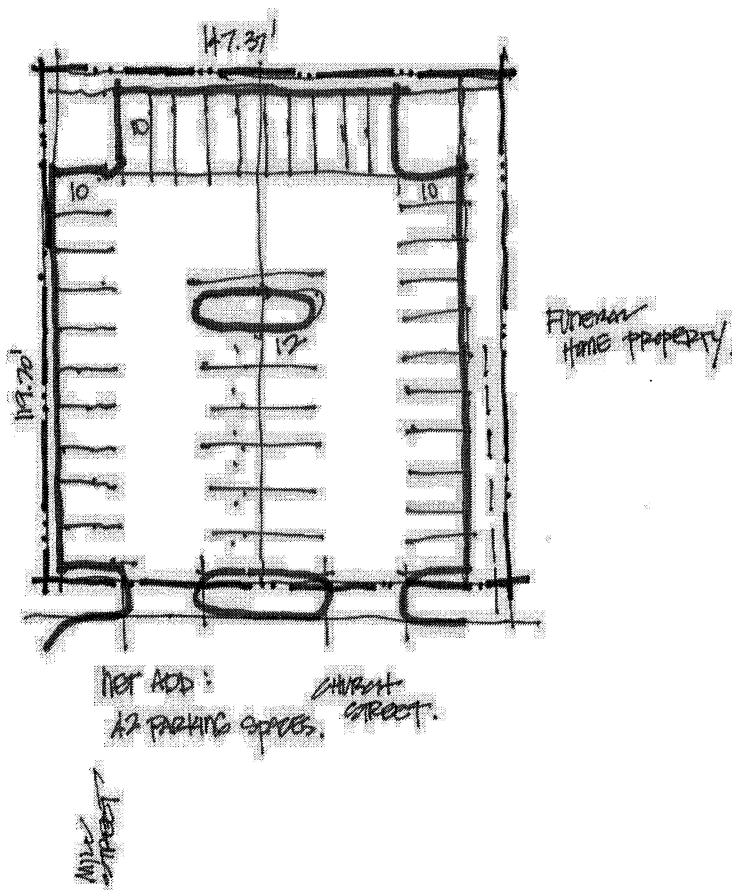
110 Smithville, LLC (the "Bidder") is excited to submit this response (the "Response") to RFP #24-11(the "RFP"): Sale of City-Owned Property in Downtown District – Northside of Church Street (the "Property").

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.]