

1. Agenda

Documents:

[CITY COUNCIL AGENDA 12 08 20.PDF](#)

2. Meeting Materials

Documents:

[CITY COUNCIL PACKET 12 08 20.PDF](#)

**COUNCIL AGENDA
CITY OF CARTHAGE, MISSOURI
TUESDAY, DECEMBER 8, 2020
COUNCIL CHAMBERS
6:30 P.M.**

1. Call to Order
2. Invocation
3. Pledge of Allegiance to Flag
4. Calling of the Roll
5. Reading and Consideration of Minutes of Previous Meeting
6. Presentations/Proclamations
 - Arbor Day Proclamation
 - GRO Program (through the Community Foundation of the Ozarks) summary and update
7. Public Comments

(Each person addressing the Council shall state their name and address or the organization or firm represented and is limited to no more than five (5) minutes. The time may be extended by the chair if deemed necessary. Once a person has had their say on a particular issue they are not permitted to once again speak on the issue unless called to answer any further questions by the Council or Chair)
8. Reports of Standing Committees
9. Reports from Special Committees and Board Liaisons
10. Report of the Mayor
11. Reports/Remarks of Councilmembers

(Each Councilmember is limited to no more than two (2) minutes. The time may be extended by the Chair if deemed necessary. Once a Councilmember has had their say on a particular issue they are not permitted to once again speak on the issue unless permitted by the Chair)
12. Administrative Reports
13. Report of Claims Presented Against the City
14. Public Hearings
15. Old Business
 1. **C.B. 20-52** – An Ordinance of the City Council of the City of Carthage, Missouri authorizing tax abatement for a project located in the Carthage Enhanced Enterprise Zone to be undertaken by Belleville Shoe Manufacturing Company. (Enhanced Enterprise Zoning Board)
 2. **C.B. 20-53** – An Ordinance authorizing the City of Carthage, Missouri, to enter into a Lease-Purchase Transaction with First State Community Bank, as Lessor, and the Missouri Association of Municipal Utilities, as Administrator, for

certain public improvements for the City of Carthage, Missouri; and authorizing and approving certain actions in connection with the execution and delivery of said Lease-Purchase Transaction.

3. **Reconsideration of C.B. 20-54 as amended with Mayor's objections.**

16. New Business

1. **C.B. 20-55** – An Ordinance to amend Sections 207 Resignations (02) (1 & 2) Advance Notice and 502 Vacations (01 – 14) of the Personnel Policy Manual of the City of Carthage. (Insurance, Audit and Claims)

17. Mayor's Appointments

- Civil War Museum
- Police Personnel Administration Board
- Carthage Tree Board

18. Resolutions

19. Closing Comments

20. Executive Session

21. Adjournment

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OR 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING

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certain public improvements for the City of Carthage, Missouri; and authorizing and approving certain actions in connection with the execution and delivery of said Lease-Purchase Transaction.

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MINUTES OF THE MEETING OF THE CITY COUNCIL
CITY OF CARTHAGE, MISSOURI
NOVEMBER 24, 2020

The Carthage City Council met in regular session on the above date in City Hall Council Chambers at 6:30 P.M. with Mayor Dan Rife presiding. Fire Chief Roger Williams gave the invocation and Police Chief Greg Dagnan led the flag salute.

The following Council Members answered roll call: Ray West, Ceri Otero, Mike Daugherty, Alan Snow, Craig Diggs, Ed Barlow, Seth Thompson, James Harrison, Juan Topete and David Armstrong. City Administrator Tom Short and City Attorney Nate Dally were also present.

The following Department Heads were present: Police Chief Greg Dagnan, Fire Chief Roger Williams, Public Works Director Zeb Carney, Parks & Recreation Director Mark Peterson, and City Clerk Traci Cox.

Mr. Daugherty made a motion, seconded by Ms. Otero, to approve the minutes of the November 10, 2020 Council Meeting. Motion carried unanimously.

During Citizen's Participation Period the following individuals addressed the council:

Steve Wilson, 1213 Grand, spoke in favor of a mask mandate.

Noah Baugh, 7818 Co. Road 190, spoke in opposition of a mask mandate.

Scott Watson, Administrator at Mercy Hospital Carthage, spoke in favor of a mask mandate.

Jason Comer, 1052 Co. Road 90, spoke in opposition of a mask mandate.

Dominic Davis, 824 E. 5th, MO, spoke in favor of a mask mandate.

Latayzia Davis, 8257 Co. Road 166, spoke in favor of a mask mandate.

Mr. Snow reported the Budget Ways & Means Committee is between meetings with the next meeting scheduled for December 14.

Ms. Otero reported the Committee on Insurance, Audit and Claims met on this date and approved the claims. Ms. Otero made a motion, seconded by Mr. Armstrong, to approve the job description for the Human Resources Coordinator/Payroll Clerk position. Motion carried.

Mr. Harrison reported the Public Safety Committee met November 16. Mr. Harrison made a motion, seconded by Mr. Snow, to approve the street closures for the Christmas parade as in years past on Chestnut, 9th, 10th, 11th, and Main Street for the 48th Annual Christmas Parade to be held on December 7, 2020 at 7:00 p.m. Motion tied 5-5 with Mayor Rife breaking the tie in favor of the motion. Motion carried.

Mr. Harrison reported the Public Services Committee met November 17. There were no items on the agenda for consideration.

Mr. Daugherty reported the Public Works Committee is between meetings with the next meeting scheduled for December 1.

Special Committee and Board Liaison reports were given by Ms. Otero for the Carthage Humane Society and Mr. Snow for GRO meetings, Enhanced Enterprise Zoning Board, and Carthage Water & Electric Plant Board.

Mayor Rife reported on a meeting with Mayors from Carl Junction and Webb City to issue a joint press release encouraging individuals to wear masks and follow protocol for Covid.

During Reports of Council Members, Mr. Barlow requested future press releases be translated into Spanish, Ms. Otero and Mr. Thompson thanked the individuals that addressed Council, Mr. Snow read the Mayor's Proclamation addressing Covid in the community, Mr. Armstrong reported the CDC has released a statement that a mask mandate has been proven to reduce spread of Covid.

City Attorney Nate Dally reminded Council of the Sunshine Law as it relates to emails between council members, and once it hits the sixth person, it should be forwarded to the City Clerk for archiving.

Parks and Recreation Director Mark Peterson reported work continues on the Parks Master Plan.

City Administrator Tom Short reported on the following: the City auction, sales tax revenues, changes to the Region M grant process, discussions with Sprinstead regarding possible refinancing of a 2007 issue that is not meeting the criteria for long-term savings so it will be reviewed, an appeal of an employee termination and possibly negotiating a settlement, work on the Parks Master Plan, updates to the employee vacation policy, a letter from AT&T regarding communications tower in the City, and conversations with the bond counsel.

The Committee on Claims filed a report in the amount of \$715,608.02 against the following funds: General Revenue \$87,228.29, Public Health \$137,528.88, Parks/Stormwater \$50,524.47, Fire Protection \$725.17, Golf \$1656.97, Capital Improvements \$230,181.69, Library \$12,000.00 and Payroll \$195,762.55. Ms. Otero made a motion, seconded by Mr. Armstrong, to accept the report and allow the claims. Motion carried.

Public Hearing regarding a grant of tax abatement for a project to be located at 2236 Missouri Ave in Carthage pursuant to Sections 135.950 to 135.973, RSMo. No citizens were present for the hearing. Mr. Short reported the tax abatement was approved by the Enhanced Enterprise Zoning Board and all affected taxing entities have been contacted.

Under old business, C.B. 20-51 – An Ordinance amending the Annual Operating and Capital Budget of the City of Carthage for Fiscal Year 2020-2021 for specified funds was placed on second reading followed by a roll call vote of 10 yeas and 0 nays. Ayes:

Armstrong, Barlow, Daugherty, Diggs, Harrison, Otero, Snow, Thompson, Topete and West.

Mr. Barlow made a motion, seconded by Mr. Armstrong, to take a recess.

Under new business, Consider and discuss City's response to COVID-19 request from Mercy & Freeman Health Systems. There was lengthy discussion regarding the pros and cons of a mask mandate; however, no action was taken due to the special council meeting scheduled for November 25.

C.B. 20-52 – An Ordinance of the City Council of the City of Carthage, Missouri authorizing tax abatement for a project located in the Carthage Enhanced Enterprise Zone to be undertaken by Belleville Shoe Manufacturing Company was placed on first reading with no action taken.

C.B. 20-53 – An Ordinance authorizing the City of Carthage, Missouri, to enter into a Lease-Purchase Transaction with First State Community Bank, as Lessor, and the Missouri Association of Municipal Utilities, as Administrator, for certain public improvements for the City of Carthage, Missouri; and authorizing and approving certain actions in connection with the execution and delivery of said Lease-Purchase Transaction was place on first reading with no action taken.

Mr. Daugherty made a motion, seconded by Mr. Harrison, to approve the Mayor's appointment of Jeff Pinnell to the Police & Fire Pension Committee until November 2022. Motion carried.

During closing comments, Ms. Otero commended the Street Department on leaf pick-up efforts, Mr. Daugherty stated he was thankful for the paving on Baker Street, Mr. Snow stated he hoped we don't have to repeat what was discussed regarding a mask mandate at the Special Council Meeting on November 25, Mr. Barlow thanked the individuals that addressed the Council, and Mr. Topete stated that everyone is passionate about the mask mandate and everyone wants what is best regardless of the outcome.

Mr. Armstrong made a motion, seconded by Mr. Snow, to adjourn the regular session of the Council Meeting. Motion carried and meeting adjourned at 8:12 p.m.

Dan Rife, Mayor

Traci Cox, City Clerk

MINUTES OF THE SPECIAL MEETING OF THE CITY COUNCIL
CITY OF CARTHAGE, MISSOURI
NOVEMBER 25, 2020

The Carthage City Council met in Special session on the above date at 3:15 P.M. with Mayor Dan Rife presiding. Fire Chief Roger Williams gave the invocation and Police Chief Greg Dagnan led the flag salute.

The following Council Members answered roll call via Zoom video conference: Ceri Otero, Mike Daugherty, Alan Snow, Craig Diggs, Ed Barlow, Seth Thompson, James Harrison, Juan Topete, David Armstrong and Ray West. City Administrator Tom Short and City Attorney Nate Dally were also present.

The following Department Heads were present via Zoom video conference: Police Chief Greg Dagnan, Fire Chief Roger Williams, Public Works Director Zeb Carney, Parks and Recreation Director Mark Peterson and City Clerk Traci Cox.

During Citizens Participation Period the following individuals addressed the Council:

Deborah Ferguson, Lawyer that works in Carthage, spoke in opposition of a mask mandate.

Lynn Andrews, owner of Lillian James, questioned the end date of the mask mandate and spoke in opposition to Section 7 of the proposed C.B. 20-54.

Mark Elliff, Carthage Chamber of Commerce, spoke in opposition to Section 7 of the proposed C.B. 20-54.

Ed Hardesty, 2259 Laura Street, spoke in opposition of a mask mandate.

Shawn McGrew, 1217 S. Main Street, spoke in favor of a mask mandate.

Brady Beckham, 1346 S. Main Street, spoke in favor of a mask mandate.

Kevin Van Story, Real Estate Agent, spoke in opposition of a mask mandate.

Under New Business, C.B. 20-54 – An Ordinance to require persons to wear facemasks that cover the nostrils and mouth to help restrict the spread of the COVID-19 virus, to establish reasonable exemptions, to set practical enforcement conditions; and containing an emergency clause was placed on first reading. Mr. Daugherty made a motion, seconded by Mr. Thompson, to remove Section 7 of proposed C.B. 20-54. On vote, motion carried 6-4 with Mr. Harrison, Ms. Otero, Mr. Snow and Mr. Diggs casting the nay votes.

Ms. Armstrong made a motion, seconded by Mr. Daugherty, to follow the emergency protocol and advance Council Bill 20-54 to the second reading. Motion passed

C.B. 20-54 – An Ordinance to require persons to wear facemasks that cover the nostrils and mouth to help restrict the spread of the COVID-19 virus, to establish reasonable exemptions, to set practical enforcement conditions; and containing an emergency clause was placed on second reading. Ms. Otero made a motion, seconded by Mr. Daugherty, to amend Section 9 for an effective date of November 26, 2020 at 6:00 a.m.

and ending on February 28, 2021 at midnight. Motion carried 7-3 with Mr. West, Mr. Snow and Mr. Diggs casting the Nay votes.

Mr. Armstrong made a motion, seconded by Mr. Thompson, to remove Section 6 of proposed C.B. 20-54. Motion carried 6-4 with Mr. Daugherty, Mr. Harrison, Mr. Topete and Ms. Otero casting the Nay votes.

Mr. Daugherty moved to table and adjourn because the C.B. no longer makes anyone wear a mask because it is no longer enforceable. Motion failed for lack of a second.

Mr. Snow moved to call the question with a second from Mr. Diggs. Motion failed 3-7 with Mr. Armstrong, Mr. West, Ms. Otero, Mr. Daugherty, Mr. Diggs, Mr. Barlow and Mr. Thompson casting the Nay votes.

Mr. Thompson made a motion, seconded by Mr. Daugherty, to amend Section 6 to add "To state that businesses shall place signs at their entrance stating that a city mask ordinance is in place until the date specified in C.B. 20-54, and that businesses have the right to refuse service." Motion carried 6-4 with Mr. West, Mr. Snow, Mr. Diggs and Mr. Barlow casting the Nay votes.

Mr. Thompson made a motion, seconded by Mr. Armstrong, to modify Section 2 to add the following exemptions to C.B. 20-54, "People with disabilities which prevent them from putting on or removing face coverings, people with disabilities which prevent them from communicating while wearing face coverings, people who have been told by a medical, legal, or behavior health professional not to wear face coverings, and for religious reasons." Motion carried 7-3 with Mr. West, Mr. Snow and Mr. Diggs casting the Nay votes.

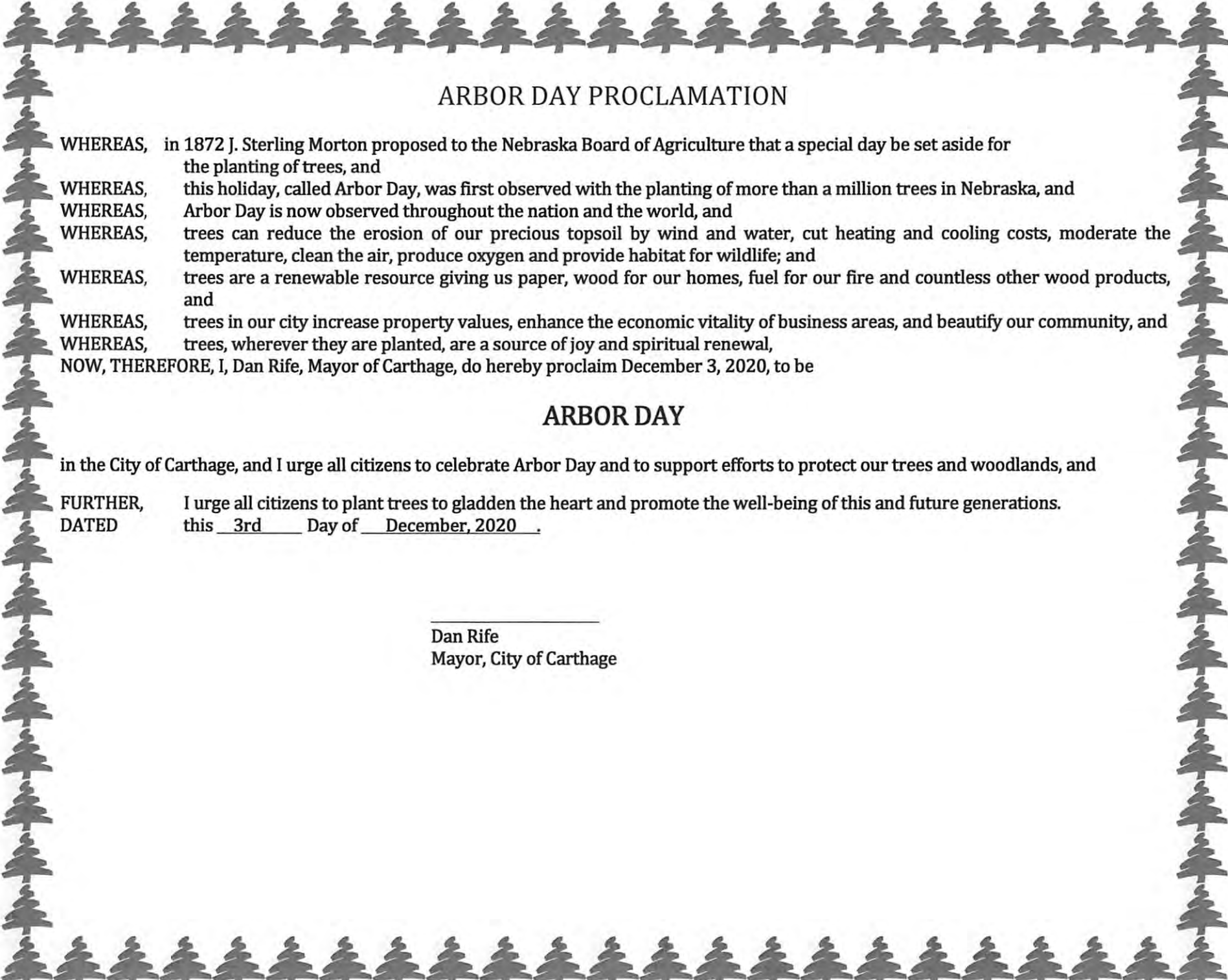
Second reading of C.B. 20-54 as amended was passed on a roll call vote of 6-4. Ayes: Armstrong, Daugherty, Harrison, Otero, Thompson, and Topete. Nays: Barlow, Diggs, Snow and West. Mayor Rife informed the council that he will not be signing C.B. 20-54 as amended; therefore, vetoing C.B. 20-54 as amended.

Mr. Armstrong made a motion, seconded by Mr. Daugherty, to adjourn the regular session of the Council Meeting. Motion carried and meeting adjourned at 4:18 p.m.

Dan Rife, Mayor

Traci Cox, City Clerk

***PRESENTATIONS/
PROCLAMATIONS***



ARBOR DAY PROCLAMATION

WHEREAS, in 1872 J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and
WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and
WHEREAS, Arbor Day is now observed throughout the nation and the world, and
WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife; and
WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fire and countless other wood products, and
WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and
WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal,
NOW, THEREFORE, I, Dan Rife, Mayor of Carthage, do hereby proclaim December 3, 2020, to be

ARBOR DAY

in the City of Carthage, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

FURTHER, I urge all citizens to plant trees to gladden the heart and promote the well-being of this and future generations.
DATED this 3rd Day of December, 2020.

Dan Rife
Mayor, City of Carthage

Tom Short

From: Kevin Kinsey
Sent: Thursday, December 3, 2020 3:46 PM
To: Tom Short; Traci Cox
Cc: Stacey Anderson; alan.snow@leggett.com
Subject: GROW Plan Presentation during City Council 12/8

Follow Up Flag: Follow up
Flag Status: Flagged

Greetings,

Councilman Alan Snow has asked about the possibility of a Zoom ^{*presentation*} ~~meeting~~ during Tuesday's City Council Meeting with a consultant for the GROW plan.

Although I'm a little concerned about the sound quality if two-way audio is needed, the rest of this should be easily "doable" with a little extra hardware (to wit, a more modern computer, a laptop, instead of the older computer in council chambers). It's worked fairly well for the CPD's Citizen's Board, with the exception of two-way audio, which we'll work on a little and test again before Tuesday in hopes that bugs can be ironed out (it may be highly dependent on the speed/latency of the remote user's internet connection).

Below is the Zoom invitation, containing the Meeting ID and Passcode that are necessary to login to the meeting. I've CC'ed Alan in order to get this to our "remote presenter".

I assume that as this is for the presenter's use, we are NOT publishing the details of the meeting for the general public ... someone should weigh in on this if that assumption is incorrect.

City of Carthage is inviting you to a scheduled Zoom meeting.

Topic: City Council, "GROW" Plan Conference with Consultant/Expert
Time: Dec 8, 2020 06:30 PM Central Time (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/89371992353?pwd=SWNhem9Bd1FpQVFJOWFMVCthcnNPdz09>

Meeting ID: 893 7199 2353
Passcode: 504780
One tap mobile
+13126266799,,89371992353#,,,,,0#,,504780# US (Chicago)
+16465588656,,89371992353#,,,,,0#,,504780# US (New York)

Dial by your location
+1 312 626 6799 US (Chicago)
+1 646 558 8656 US (New York)

+1 301 715 8592 US (Washington D.C)
+1 346 248 7799 US (Houston)
+1 669 900 9128 US (San Jose)
+1 253 215 8782 US (Tacoma)

Meeting ID: 893 7199 2353

Passcode: 504780

Find your local number: <https://us02web.zoom.us/j/krF53wrr2>

Kevin D. Kinsey, **IT Administrator**

City of Carthage – 417.237.7000 ext. 4357 (“*HELP*”)

City Intranet: it.carthagemo.gov



***PUBLIC
HEARINGS***

***OLD
BUSINESS***

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARTHAGE,
MISSOURI AUTHORIZING TAX ABATEMENT FOR A PROJECT LOCATED
IN THE CARTHAGE ENHANCED ENTERPRISE ZONE TO BE UNDERTAKEN
BY BELLEVILLE SHOE MANUFACTURING COMPANY**

WHEREAS, Jasper County, Missouri (the “County”), created the Carthage-Jasper County Enhanced Enterprise Zone (the “Zone”) pursuant to Sections 135.950 to 135.973, inclusive, of the Revised Statutes of Missouri, as amended (the “EEZ Act”); and

WHEREAS, Belleville Shoe Manufacturing Company, a Delaware corporation (the “Company”), has proposed to renovate an existing building to be used for the manufacturing of military combat boots (the “Project”) within a portion of the Zone located within the City of Carthage, Missouri; and

WHEREAS, in its Notice of Intent requesting tax abatement under the EEZ Act, the Company represented that it expects to invest approximately \$2,720,000 in the Project with approximately \$350,000 of the cost qualifying for tax abatement under the EEZ Act, and expects to create 158 new full-time jobs with an average annual wage of \$32,668; and

WHEREAS, based on the foregoing, the City desires to grant tax abatement, as provided in the EEZ Act, to the Company to incentivize the construction of the Project within the Zone so as to create jobs and foster the development of industries within the Zone; and

WHEREAS, on November 24, 2020, the City Council held a duly-noticed public hearing regarding the proposed real property tax abatement described herein; and

WHEREAS, Section 135.963 of the EEZ Act requires the City Council to pass an Ordinance specifying the percentage of tax abatement, the duration of the tax abatement, the political subdivisions to which such tax abatement will apply and such other terms, conditions and stipulations as may be otherwise required;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARTHAGE, MISSOURI, AS FOLLOWS:

Section 1. Enhanced Enterprise Zone Tax Abatement.

(a) Subject to the provisions of this Ordinance and the requirements of the EEZ Act, the Project shall receive the abatement from general ad valorem real property taxes imposed by the City, the State of Missouri, or any political subdivision thereof as described in the Enhanced Enterprise Zone Agreement (the “Agreement”) between the City and the Company, attached as **Exhibit A** hereto and incorporated by reference herein.

(b) The tax abatement provided in the Agreement shall only apply to general ad valorem taxes (including commercial surcharges) levied against the Project and shall not be deemed or construed to exempt the Company or any successor in title, in whole or in part, from special assessments, fees, charges or other taxes that may be imposed by the City or another governmental unit.

(c) In accordance with Section 135.963.2 of the EEZ Act, the City Clerk is hereby authorized and directed to provide a copy of this Ordinance and the Agreement to the Director of the Missouri Department of Economic Development within 30 days of the approval thereof.

Section 2. Execution of Agreement. The Mayor is hereby authorized to execute the Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk is hereby authorized to attest to and affix the seal of the City to the Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Further Authority. The officers of the City, including the Mayor and City Clerk, are hereby 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.

Section 4. Effective Date. This Ordinance shall take effect and be in full force immediately after its passage by the City Council and approval by the Mayor.

PASSED and APPROVED by the City Council and the Mayor of the City of Carthage, Missouri, this day of November, 2020.

Dan Rife, Mayor

ATTEST:

Traci Cox, City Clerk

Sponsored by: The _____ Committee

Enhanced Enterprise Zone Application information for the military boot manufacture interested in the Justin Boot factory building.

- Oldest and leading provider of military combat boots to the U.S. Military.
- Been in business since 1904.
- First expansion into Missouri.
- Expected investment of nearly 3 million dollars into the facility in Carthage.
- Adding more than 150 new jobs in Carthage.
- Bringing in a yearly payroll of 5.1 million dollars to the region.
- Full Time Employees will be offered health care benefits.
- EEZ Tax abatement of \$3,500 each year for 10 years.

TO: CARTHAGE/JASPER COUNTY ENHANCED ENTERPRISE ZONE BOARD
FROM: SID DOUGLAS AND SARAH SMITH, GILMORE & BELL, P.C.
**RE: RESOLUTION RECOMMENDING TAX ABATEMENT FOR REAL PROPERTY
IN THE ENHANCED ENTERPRISE ZONE**

EXECUTIVE SUMMARY:

This Resolution recommends that the Carthage City Council approve an ordinance authorizing 50% ad valorem tax abatement for ten (10) years on real property improvements to the property located at 2236 Missouri Avenue associated with the development of manufacturing facilities (the "Project").

BACKGROUND:

Potential Redeveloper: Belleville Shoe Manufacturing Company

The City Ordinance governing the granting of tax abatement in the Carthage/Jasper County Enhanced Enterprise Zone provides for tax abatement upon the recommendation of the Enhanced Enterprise Zone Board and an ordinance by the City Council or an order by the County Commission of Jasper County.

Belleville Shoe Manufacturing Company (Company), wishes to renovate an existing building to provide a manufacturing facility for the production of military combat boots. The Company expects to invest \$2,720,000 in the purchase, renovation and equipping of the facility and expects that \$350,000 of that investment will be for real property improvements that qualify for tax abatement under the EEZ Act (the real property improvements being the "Project"). Additionally, the Company commits to creating at least 2 new jobs within twelve (12) months of completion of the project.

REQUESTED ACTION:

Recommend to the Carthage City Council that the property to be developed for the Project be granted 50% ad valorem tax abatement for ten (10) years on improvements associated with the development of manufacturing facilities with the creation of at least two (2) new jobs, in accordance with the Enhanced Enterprise Zone Tax Abatement Matrix.

NOW, THEREFORE, be it resolved by the Carthage/Jasper County Enhanced Enterprise Zone Board as follows:

1. The Carthage/Jasper County Enhanced Enterprise Zone Board (the "EEZ Board") hereby recommends to the Carthage City Council that the ad valorem taxes on improvements to the property for the Project be abated for a period of ten (10) years at 50%, conditioned upon the creation of at least 2 new jobs, according to the Enhanced Enterprise Zone Tax Abatement Matrix.
2. The Executive Director and other officers and staff members of the EEZ Board are hereby authorized to and directed to take such other actions as may be necessary and proper to carry out the intent of this Resolution.

ADOPTED THIS 3rd day of November, 2020

CARTHAGE/JASPER COUNTY
ENHANCED ENTERPRISE ZONE BOARD

By: _____
Title: Chair

(Seal)

ATTEST:

Secretary

PERFORMANCE AGREEMENT

THIS PERFORMANCE AGREEMENT, dated as of _____, 2020, as from time to time amended and supplemented in accordance with the provisions hereof (this "**Agreement**"), by and between the City of Carthage, Missouri, a municipal corporation duly organized and existing under the laws of the State of Missouri (the "**City**") and Belleville Shoe Manufacturing Company, a Delaware corporation (the "**Company**");

RECITALS:

WHEREAS, the City is authorized by Sections 135.950 RSMo., et. seq. as amended (the "**Act**"), to provide certain incentives for the construction of new and expansion of existing facilities for certain industrial, warehousing and manufacturing purposes; and

WHEREAS, pursuant to the Act, the City Council of the City has passed an ordinance establishing the Enhanced Enterprise Zone Board (the "**Board**") for the City and to provide certain ad valorem tax abatements in the form of real estate tax abatements on the improvements to real property that will provide a base number of jobs and a base number of investments and paying an average wage at least equal to the County Average Wage as outlined in the Enhanced Enterprise Zone Tax Abatement Matrix attached as Exhibit C (the "**Abatement Matrix**") and providing for certain bonuses for exceeding the base as outlined in the Abatement Matrix; and

WHEREAS, the Company will be renovating an existing building in the City to provide a manufacturing facility for the production of military combat boots and expects to spend approximately \$2,720,000 related to the improvements with \$350,000 of the cost of the project qualifying for tax abatement under the Act; and

WHEREAS, the City has declared the area where the Project is to be located to be within the area designated by Jasper County and approved by the Missouri Department of Economic Development as an Enhanced Enterprise Zone; and

WHEREAS, pursuant to the foregoing, the City desires to enter into this Agreement with the Company in consideration of the Company's desire to cause the acquisition, construction, furnishing and equipping of the Project as more fully described in the Development Plan upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the City and the Company hereby represent, covenant and agree as follows:

ARTICLE I DEFINITIONS

1. **Definitions of Words and Terms.** In addition to the word and terms defined in the Recitals, the following words and terms as used herein shall have the following meanings:

"**Administrator**" means the Economic Development Director of the City or another officer or employee of the City designated by the City in writing to the Company.

“Agreement” means this Performance Agreement dated as of _____, 2020, between the City and the Company, as from time to time amended and supplemented in accordance with the provisions hereof.

“Annual Jobs Report” means the Annual Jobs Report required to be filed by the Company by Article IV, Section 3 hereof.

“Average Wage” means the wages paid by the Company during the year ending on the applicable Test Date to those persons which are engaged in the Jobs that are being counted to determine compliance with the Required Number of Jobs hereunder, divided by the number of hours performed by such persons during the year ending on the applicable Test Date.

“County” means Jasper County, Missouri.

“County Average Wage” means the average wage for the County on the applicable Test Date as published by the Missouri Department of Economic Development and used for purposes of the Missouri Quality Jobs Act (Section 620.1878(4), RSMo).

“Development Plan” means construction of improvements to the facilities of the Company located at 2236 Missouri Avenue in Carthage, Missouri to provide for the manufacturing of military combat boots as provided in the Notice of Intent filed by the Company with the City and the Board.

“Enhanced Enterprise Zone” means the area within the City described by the Missouri Department of Economic Development as being qualified through their standards of unemployment and poverty (and certain other qualifications, as described in the Act), which area is illustrated on the map in Exhibit A (the “Enhanced Enterprise Zone Map”).

“Event of Default” means any Event of Default as provided in Article V hereof.

“Job” means a full-time position with the Company of not less than 30 hours per week at the Project and such person at all times has health insurance offered to him or her that at least 50% of the health insurance premiums are paid by the Company. Positions filled by workers who are not directly employed by the Company do not qualify as “Jobs” for purposes of this definition; provided, however that workers who are employed by a third party company at the Project pursuant to a written agreement with the Company during an employee's probationary period shall qualify as a “Job” for purposes of this definition; provided, further, that workers performing less than 30 hours per week but not less than 20 hours per week shall constitute one-half of a “Job” for purposes of this definition; provided, further, that such workers who are employed by a Related Taxpayer shall qualify as a “Job” for purposes of this definition.

“New Jobs” means Jobs created at the Project on or after November 1, 2020.

“Notice of Intent” means the form developed by the Missouri Department of Economic Development which is completed by the Company and submitted to the Missouri Department of Economic Development that states the Company's intent to hire new Jobs and request benefits in the Enhanced Enterprise Zone.

“Project” means the acquiring, constructing, furnishing and equipping of a facility at the Project

Site within the designated Enhanced Enterprise Zone as more fully described in the Development Plan.

“Project Site” means all of the real estate described in the “Application” attached hereto as Exhibit B and by this reference made a part hereof, and generally located at 2236 Missouri Avenue, Carthage, Missouri.

“Related Taxpayer” means (i) a corporation, partnership, trust or association controlled by the Company; (ii) an individual, corporation, partnership, trust, or association in control of the Company; or (iii) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the Company. For the purposes of this definition, “control of a corporation” shall mean ownership, directly or indirectly, of stock possessing at least fifty percent of the total combined voting power of all classes of stock entitled to vote; “control of a partnership or association” shall mean ownership of at least fifty percent of the capital or profits interest in such partnership or association; and “control of a trust” shall mean ownership, directly or indirectly, of at least fifty percent of the beneficial interest in the principal or income of such trust; ownership shall be determined as provided in Section 318 of the U.S. Internal Revenue Code, as amended.

“Required Number of Jobs” means the base number of New Jobs that the Company commits to providing at the Project as part of this Agreement. The Company commits to creating 2 New Jobs at the Project within twelve (12) months of the approval of this Agreement and maintaining such number of New Jobs at the Project thereafter for the term of this Agreement. The base minimum of New Jobs created at the time of application by the Company shall be no less than two (2).

“Stated Expiration Date” means December 31, 2030.

“Test Date” means each October 1 during the term of this Agreement.

ARTICLE II

QUALIFICATIONS FOR BENEFITS OF THE ENHANCED ENTERPRISE ZONE

1. **Jobs Created.** As described herein, the Missouri Department of Economic Development in managing the various Enhanced Enterprise Zones in the State of Missouri, has determined that the Act has established certain minimums for qualifying for property tax abatement on the improvements to real estate and the benefits offered by the Department among its several programs. The minimum number of Jobs created must be not less than two (2). The City and the Board have developed the Abatement Matrix included on Exhibit C, that sets forth bonuses for more Jobs created above the minimum. It is the intent of this Agreement to establish the base number of Jobs through the application by the Company and require an Annual Jobs Report as established in Article IV, Section 3 of this Agreement. These Jobs are to be New Jobs created in Missouri subsequent to the Notice of Intent related to the Project. The Company must offer a basic health insurance plan in conformance with The Patient Protection and Affordable Care Act (PPACA) 2010 HR3590 (ACA) or an equivalent benefit for the employees in the New Jobs that at least 50% of the health care premiums are paid by the Company.
2. **Investment.** The Act describes the minimum investment for any business to qualify for the benefits of the Act as being at least \$100,000.

3. **County Average Wage.** The City and the Board have determined that bonuses will be granted for businesses that are willing to pay a minimum of 100% of the County Average Wage in connection with at least ten (10) New Jobs, as shown on the abatement matrix.
4. **Minimum Benefits.** The Act describes the minimum benefits for any qualified project meeting the base of two (2) New Jobs created and \$100,000 invested shall be the exemption of the Company from paying any more than 50% of the ad valorem taxes on the improvements to real property as a part of the project for at least ten (10) years. The improvements to the real property as a part of the Project is expected to be \$350,000.
5. **Bonus Benefits for Qualified Projects.** Bonuses as described in Exhibit C, shall be awarded by the Administrator for "qualified projects" (as defined below in Section 6) based on the information provided in the "Notice of Intent" submitted by the Company and shall be in the form of additional abatement percentages as noted on Exhibit C and increased years of eligibility based on the number of New Jobs created and sustained and the amount of wages paid relative to the County Average Wage. The Project does not qualify for a bonus benefit.
6. **Qualified Project.** The Project for the Company that includes improvements made to real property within an Enhanced Enterprise Zone as permitted by the Act and approved by the City.

ARTICLE III

REAL ESTATE PROPERTY TAX ABATEMENT

1. **Real Estate Property Tax Abatement.** The period of real estate property tax abatement shall be a minimum of 10 years with bonus years approved according to the number of New Jobs and the Average Wage as outlined in Exhibit C of this Agreement. In no event shall the period of abatement extend beyond the year 2030.
2. **Qualifications.**
 - a. The Company covenants and agrees that, during each year the improvements to real property related to the Project are subject to tax abatement from real estate taxes, the Company shall the report required by Article IV, Section 3 of this Agreement. The Company also agrees that it shall create and maintain no less than two (2) New Jobs during the term of this Agreement.
 - b. The Company covenants and agrees that it will invest no less than \$100,000 in the Project. The Company shall complete the Project no later than December 31, 2022, subject to any extension granted by the City upon a showing of good cause by the Company.
 - c. The Company and the City agree that the Company will not receive bonuses in percentage of tax abatement and years of abatement for the Project.
3. **Adjustment of Terms for Failure to Deliver Required Jobs or Wages.** The Company covenants to maintain the Required Number of Jobs within the Enhanced Enterprise Zone for so long as this Agreement is in effect. In the event the Company fails to maintain the Required Number of Jobs at the Project (measured by determining the highest actual number of New Jobs during the 90-day period ending on each Test Date), the Administrator shall advise the Board of such failure and recommend waiving the abatement from payment of ad valorem real estate taxes

of the Company and returning the Project to the tax rolls at full value.

4. **Obligation to Effect Tax Abatement.** The City shall take all actions within its control to obtain and/or maintain in effect the abatement referred to in Section 1 above, including any filing required with any governmental authorities; provided, however, the City shall not be liable for any failure of any other governmental taxing authority to recognize the abatement provided herein.
5. **Company's Right to Protest Taxes.** Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall be construed to limit or in any way restrict the availability of any provision of Missouri law which confers upon the Company the right to appeal, protest or otherwise contest any property tax valuation, assessment, classification or similar action. The City agrees to cooperate with the Company in any such appeal, protest or contest to the extent that the real property tax abatement is challenged by another governmental entity.
6. **Cessation of Operations at the Project.** If for any reason the Company ceases operation at the Project during the term of this Agreement, the Administrator shall advise the Board of such cessation and recommend waiving the abatement from payment of ad valorem real estate taxes of the Company and returning the Project to the tax rolls at full value.

"Ceases operations" or "cessation of operations" means the failure of the Company to employ an average of at least the minimum 100 full-time equivalent employees at the Project for a period of 12 consecutive months; provided, however, that if such failure is due to a casualty at the Project, such failure shall not constitute the "cessation of operations" provided that the Company promptly commences the reconstruction of the Project and diligently pursues such reconstruction and such reconstruction is completed within 12 months of the casualty event.

7. **No Abatement on Special Assessments.** The City and the Company hereby agree that the property tax abatements described in this Agreement shall not apply to special assessments. The Company hereby agrees to make a payment to the City or any other taxing jurisdiction on or before each December 31 in an amount equal to 100% of the special assessments which would otherwise be due with respect to the Project if such Project were not subject to abatement.

ARTICLE IV

COVENANTS, REPRESENTATIONS AND AGREEMENTS OF THE COMPANY

1. **Inspection.** The Company agrees that the City and its duly authorized agents shall have the right at reasonable times (during business hours), subject to at least 48 hours advance written notice and to the Company's usual business proprietary, safety and security requirements, to enter upon the Project Site to examine and inspect the Project and the records of the Company which demonstrate compliance with this Agreement. In addition to any and all record requirements stated herein, Company agrees to maintain and make available for inspection by the City, upon reasonable notice, the following records of the Project:
 - a. The Company shall establish and maintain sufficient records as required by 24 CFR

570.506. Such records shall be made available to the City upon reasonable request.

2. **Compliance with Laws.** The Project will comply in all material respects with all applicable building and zoning, health, environmental and safety ordinances and laws and all other applicable laws, rules and regulations.
3. **Annual Jobs Reports.** The Company shall file with the City annually, commencing on October 1, 2021, and continuing on each October 1 thereafter while this Agreement remains in effect, a report stating the number of New Jobs maintained at the Project and Average Wage with respect to such Jobs in a form reasonably satisfactory to the City. The information shall be given as of the applicable Test Date, provided that, for purposes of determining compliance with the Required Number of Jobs pursuant to Article III, Section 3 of this Agreement, the Company may report the highest actual number of New Jobs during the 90-day period ending on such Test Date. The Company agrees to provide the City and the Assessor with reasonable access to the payroll and other corporate records as may be requested to verify the information provided by the Company regarding New Jobs and Average Wage information. If any report and/or other corporate records show that the Company has failed to create and maintain the New Jobs as provided herein, this Agreement shall terminate.
4. **City Approvals.** The City intends that the approval of the Project granted by the City pursuant to this Agreement shall not affect or constitute any approval required by any other city or county or governmental entity or department or pursuant to any city ordinance, code, regulation or any other governmental approval required by law, nor does any approval by the City pursuant to this Agreement constitute approval of the quality, structural soundness or safety of any portion of the Project. The City will not unreasonably withhold any consent or approval required by any City ordinance, code, regulation or any other governmental approval required by law related to the Project; provided that nothing herein shall be construed to obligate the City, acting as a party hereto, to grant permits or other approvals the City would not be obligated to grant, acting as a political subdivision, absent this Agreement. Any other political subdivision outside the boundaries of the City will be required to apply the City's ordinances, codes, regulations or any other approvals to the Project as required by law.
5. **General.** The Company represents, warrants and covenants that as of the date of this Agreement and during the term of this Agreement, or such shorter period as may be expressly provided for below:
 - a. The Company is a corporation duly organized and validly existing pursuant to the laws of the state of incorporation and is in good standing and qualified to do business in the State of Missouri;
 - b. The Company has the right, power and authority to enter into, execute, deliver and perform this Agreement;
 - c. The execution, delivery and performance by the Company of this Agreement has been duly authorized by all necessary corporate action, and does not violate the articles of incorporation or bylaws of the Company, as the same may be amended and supplemented, or any applicable provision of law, nor does it constitute a breach of or default under or require any consent under any agreement, instrument or document to which the Company is now a party or by which the Company is now or may become bound;

- d. There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Company which would impair its ability to perform under this Agreement; and
 - e. The Company has obtained (or will, prior to the commencement of construction or operation obtain) and shall maintain all required government permits, certificates and consents (including without limitation appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project.
6. **Compliance with Laws.** To the best of the Company's knowledge, the Project is and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project, including environmental laws.
7. **Survival of Covenants.** All warranties, representations, covenants and agreements of the Company contained herein shall survive termination of this Agreement for any reason.
8. **Indemnification of City.** The Company shall indemnify, defend and save the City and its officers, employees and agents, including members of the City Council, harmless from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done in, on or about, the Project during the term of this Agreement, and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the term of this Agreement from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Agreement, or any action requested of the City by the Company pursuant to this Agreement, (c) any contract entered into in connection with the acquisition, construction, furnishing and equipping of the Project, (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) any act of negligence of any permitted assignee, lessee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any permitted assignee, lessee or sublessee of the Company.
9. **Federal Work Authorization.** Simultaneously with the execution of this Agreement and in conjunction with every submitted annual report regarding New Jobs, the Company shall, pursuant to the provisions of Sections 285.525 through 285.555 of the Revised Statutes of Missouri, as amended, by sworn affidavit in substantially the form attached hereto as Exhibit D and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to its employees and state that it does not knowingly employ any person who is an unauthorized alien.
10. **Payment to City Costs.** The Company agrees to pay all costs of the City in connection with the preparation of this Agreement. The Company also agrees to pay all costs of the City in connection with the City's enforcement of this Agreement, including reasonable attorneys' fees.

ARTICLE V

DEFAULT AND REMEDIES

1. **Events of Default.** If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an Event of Default hereunder:
 - a. the Company shall fail to perform any of its obligations hereunder and (i) such failure continues for a period of 60 days (or such longer period as the City and the Company may agree in writing) following written notice to the Company from the City of such failure and the notice shall include a specific description of the Company's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, the Company shall have failed to initiate action to cure such default and shall pursue such action to cure diligently;
 - b. the Company shall breach any material covenant contained herein and continuance of such breach for a period of 60 days (or such longer period as the City and the Company may agree in writing) after there has been given to the Company by the City a written notice specifying such breach and requiring it to be remedied; provided, that if such breach cannot be fully remedied within such 60-day period, but can reasonably be expected to be fully remedied, such breach shall not constitute an event of default if the Company shall promptly upon receipt of such notice commence the curing of such breach and shall thereafter prosecute and complete the same with due diligence and dispatch; or
 - c. any representation of the Company contained herein shall prove to be materially false or erroneous and shall not be corrected or brought into compliance within 60 days (or such longer period as the City and the Company may agree in writing) after there has been given to the Company by the City a written notice specifying such false or erroneous representation and requiring it to be remedied; provided, that if such default cannot be fully remedied within such 60-day period, but can reasonably be expected to be fully remedied, such default shall not constitute an event of default if the Company shall promptly upon receipt of such notice commence the curing of such default and shall thereafter prosecute and complete the same with due diligence and dispatch.
2. **Remedies on Default.** Upon an Event of Default hereunder, this Agreement may be terminated by written notice to the Company from the Administrator stating that an Event of Default has occurred and all abatement of property taxes shall be terminated. Upon notice that the Company has defaulted on this Agreement, the Company may appeal the decision of the Administrator to the Board whose decision shall become final.
3. **Failure of the City to Perform its Obligations.** In the event the City shall fail to perform any of its obligations hereunder for (i) a period of 60 days (or such longer period as the Company and the City may agree in writing) following written notice to the City from the Company of such failure which notice shall include a specific description of the City's failure hereunder), or (ii) if such failure is not subject to cure within such 60 days, the City shall have failed to initiate action to cure such default and shall pursue such action diligently; the Company may declare that the City is in default under this Agreement and may pursue any legal remedy available to it to enforce this Agreement.

ARTICLE VI

TERM OF AGREEMENT

This Agreement shall become effective upon execution, and subject to earlier termination pursuant to the provisions of this Agreement), shall have a term commencing as of the date of this Agreement and terminating on the Stated Expiration Date, which term shall be automatically extended during any extended abatement period granted under Article III, Section 2(c) in accordance with the Abatement Matrix on Exhibit C.

ARTICLE VII

MISCELLANEOUS PROVISIONS

1. **Mutual Assistance.** The City and the Company agree to take such actions as may be necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.
2. **Severability.** If for any reason any provision of this Agreement shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.
3. **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.
4. **Execution in Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.
5. **Entire Agreement.** This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the City and the Company with respect to the subject matter hereof.
6. **Electronic Storage of Documents.** The City and the Company agree that the transaction described herein may be conducted and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

CITY OF CARTHAGE, MISSOURI

By: _____
Title: Mayor

[SEAL]

ATTEST:

By: _____
Title: City Clerk

BELLEVILLE SHOE MANUFACTURING COMPANY

By: _____
Name: _____
Title: _____

[SEAL]

ATTEST:

By: _____
Name: _____
Title: Secretary

EXHIBIT A
ENHANCED ENTERPRISE ZONE MAP

EXHIBIT B
NOTICE OF INTENT

EXHIBIT C

ENHANCED ENTERPRISE ZONE TAX ABATEMENT MATRIX Jasper County Average Wage (CAW)

Jobs	100%	120%	140%	160%
10	3 yrs / 100% 5 yrs / 75% 2 yrs / 50%	4 yrs / 100% 6 yrs / 75% -----	6 yrs / 100% 4 yrs / 75% 2 yrs / 50%	8 yrs / 100% 4 yrs / 75% -----
50	4 yrs / 100% 6 yrs / 75% -----	6 yrs / 100% 4 yrs / 75% 2 yrs / 50%	8 yrs / 100% 4 yrs / 75% -----	10 yrs / 100% 4 yrs / 75% 2 yrs / 50%
100	6 yrs / 100% 4 yrs / 75% 2 yrs / 50%	8 yrs / 100% 4 yrs / 75% -----	10 yrs / 100% 4 yrs / 75% 2 yrs / 50%	12 yrs / 100% 5 yrs / 75% 2 yrs / 50%
250	8 yrs / 100% 4 yrs / 75% -----	10 yrs / 100% 4 yrs / 75% 2 yrs / 50%	12 yrs / 100% 5 yrs / 75% 2 yrs / 50%	----- ----- -----
500	10 yrs / 100% 4 yrs / 75% 2 yrs / 50%	12 yrs / 100% 5 yrs / 75% 2 yrs / 50%	----- ----- -----	----- ----- -----

Base: 10 yr / 50% for companies creating a minimum of two jobs and not in the targeted clusters, with approval of EEZ Ad

Enhanced: As per chart above, for companies in the targeted clusters.

County Avg. Wage (CAW): Jasper County average wages as defined by state DED. New companies must meet CAW as employees in new operation. Existing firms qualify based on avg. wage of existing employment base.

Job Creation: Number of FTE in twenty-four months after beginning new/expanded operation. To be new jobs created in the area. Movement of jobs from one plant to another within the state would not qualify as jobs under the Act.

Benefits: Employer must also provide benefits as part of employee compensation package.

EXHIBIT D

AFFIDAVIT OF COMPLIANCE WITH SECTION 285.525 R.S.MO., ET SEQ.

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

Before me, the undersigned Notary Public, in and for the County of Jasper, State of Missouri, personally appeared _____, who is _____ of Belleville Shoe Manufacturing Company, a Delaware corporation, and after being duly sworn did depose and say:

(1) that said company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and

(2) that said company does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

The terms used in this affidavit shall have the meaning set forth in Section 285.525 R.S.Mo., et seq.

Documentation of participation in a federal work authorization program is attached to this affidavit. (An example of acceptable documentation is the E-Verify Memorandum of Understanding (MOU) - a valid, completed copy of the first page identifying the employer and a valid copy of the signature page completed and signed by the employer, the Social Security Administration and the Department of Homeland Security.)

By: _____
Print Name: _____
Title: _____
Date: _____

Subscribed and sworn to before me this _____ day _____, _____.

Notary Public
Print Name: _____

My commission expires:

ORDINANCE AUTHORIZING THE CITY OF CARTHAGE, MISSOURI, TO ENTER INTO A LEASE-PURCHASE TRANSACTION WITH FIRST STATE COMMUNITY BANK, AS LESSOR, AND THE MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES, AS ADMINISTRATOR, FOR CERTAIN PUBLIC IMPROVEMENTS FOR THE CITY OF CARTHAGE, MISSOURI; AND AUTHORIZING AND APPROVING CERTAIN ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF SAID LEASE-PURCHASE TRANSACTION.

WHEREAS, the City of Carthage, Missouri (the "Lessee"), desires to provide for certain public improvements, consisting of the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment (the "Project"), and for the leasing by the Lessee of the Project with an option to purchase; and

WHEREAS, after considering various financial alternatives for providing for the Project, the Lessee hereby determines that it is in the Lessee's best financial interest to provide for the acquisition and installation of the Project through the lease-purchase arrangement described in this ordinance; and

WHEREAS, in order to accomplish the foregoing, it is necessary and desirable for the Lessee to take the following actions:

1. Enter into a draw-down form of Lease-Purchase Agreement (the "Lease"), substantially in the form attached hereto as **Exhibit A**, with First State Community Bank, a state-chartered banking institution organized and existing under the laws of the State of Missouri (the "Lessor"), as lessor, and the Missouri Association of Municipal Utilities, as administrator (the "Administrator") pursuant to which the Lessee will lease, as lessee, the Project from the Lessor, as lessor, with an option to purchase, for a lease term not to exceed 16 years and one month and for Base Rentals with aggregate principal components of Base Rentals not to exceed \$7,000,000 and interest components of Base Rentals to be computed at an interest rate of 2.475% per annum.

2. Enter into an Escrow Agreement (the "Escrow Agreement"), substantially in the form attached hereto as **Exhibit B**, among the Lessee, the Lessor, the Administrator and UMB Bank, N.A., as escrow agent (the "Escrow Agent"); and

3. Enter into a Tax Compliance Agreement (the "Tax Agreement"), substantially in the form attached hereto as **Exhibit C**, with the Escrow Agent, setting forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Lease in order to establish and maintain the exclusion of the interest portion of Base Rentals under the Lease from gross income for federal income tax purposes and in order to provide guidance for complying with the arbitrage rebate provisions of the Internal Revenue Code upon the terms and conditions as set forth in the Tax Agreement.

(the Lease, the Escrow Agreement and the Tax Agreement are referred to herein as the "Lessee Documents").

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
CARTHAGE, MISSOURI, AS FOLLOWS:**

Section 1. Approval of Lessee Documents. The Lessee Documents are hereby approved in substantially the forms submitted to and reviewed by the governing body on the date hereof, with such changes therein and final payment terms as shall be approved by the Mayor of the Lessee, such officer's execution thereof to be conclusive evidence of the approval thereof.

The Mayor is hereby authorized and directed to execute and deliver the Lessee Documents on behalf of and as the act and deed of the Lessee.

Section 2. Reimbursement. The Lessee expects to make capital expenditures after the date of the adoption of this Ordinance in connection with the Project and the Lessee intends to reimburse itself for such expenditures and also expenditures made with respect to the Project on or after sixty days before the date of this Ordinance with proceeds received under the Lease.

Section 3. Further Authority. The Lessee shall, and the officials and agents of the Lessee are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the Lessee with respect to the Lessee Documents and the Project.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body.

ADOPTED by the City Council of the City of Carthage, Missouri on December 8, 2020.

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

LEASE-PURCHASE AGREEMENT

LESSOR: First State Community Bank
201 E. Columbia
Farmington, Missouri 63640
Attention: Governmental Lending

LESSEE: City of Carthage, Missouri
326 Grant Street
Carthage, Missouri 64836

ADMINISTRATOR: Missouri Association of Municipal Utilities
1808 I-70 Drive SW
Columbia, Missouri 65203

DATE OF LEASE: December 15, 2020

PRINCIPAL AMOUNT: Not to Exceed \$7,000,000

COMMENCEMENT DATE: December 15, 2020

TERMINATION DATE: December 1, 2035
(Unless earlier terminated as provided herein)

LESSEE'S FISCAL YEAR: July 1 through June 30

**MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES
LEASE-PURCHASE PROGRAM**

This Lease-Purchase Agreement (the "Lease") constitutes a Security Agreement under the Missouri Uniform Commercial Code.

FOR PURPOSES OF (A) PERFECTION OF AN INTEREST IN THIS LEASE UNDER ARTICLE 9 OF THE UCC, ONLY THE LEASE MARKED "ORIGINAL 1 OF 3" ON THE EXECUTION PAGE HEREOF SHALL CONSTITUTE CHATTEL PAPER UNDER THE UCC AND (B) SALE OR TRANSFER OF THIS LEASE, ONLY THE LEASE MARKED "ORIGINAL 1 OF 3" ON THE EXECUTION PAGE HEREOF SHALL BE TRANSFERABLE OR ASSIGNABLE, AND THE SALE, TRANSFER OR ASSIGNMENT OF ANY OTHER LEASE SHALL BE INEFFECTIVE TO TRANSFER ANY RIGHT, TITLE AND INTEREST IN THIS LEASE.

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but for convenience of reference only)

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LEASE-PURCHASE AGREEMENT

This Lease-Purchase Agreement (this "Lease"), dated the date shown on the cover page hereof, by and among the Lessor shown on the cover page hereof (the "Lessor"), as lessor hereunder, the Lessee shown on the cover page hereof (the "Lessee"), as lessee hereunder, a political subdivision validly existing under the constitution, statutes and laws of the State, and the Missouri Association of Municipal Utilities (the "Administrator") for purposes of administering the Program, as defined herein.

RECITALS

1. The governing body of the Lessee (the "Governing Body") has the power to enter into lease-purchase agreements in order to provide for the use of property for public purposes.

2. The Governing Body has previously determined, and hereby further determines, that the Lessee is in need of the Project, as defined herein.

3. The Governing Body has determined and hereby determines that it is in the best interests of the Lessee that the Lessee and the Lessor enter into this Lease for the leasing by the Lessee from the Lessor of the Project under the Program.

4. The execution, delivery and performance of this Lease by the Lessee have been authorized, approved and directed by the Governing Body by Authorizing Ordinance finally passed and adopted by the Governing Body.

5. The execution, delivery and performance of this Lease by the Lessor have been authorized, approved and directed by all necessary and appropriate action of the Lessor.

6. The Lessor desires to lease the Project to the Lessee, and the Lessee desires to lease the Project from the Lessor, pursuant to the terms and conditions and for the purposes set forth herein, all in accordance with the administration of the Program by the Administrator.

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

Section 1. Defined Terms; Rules of Construction.

(a) In addition to the terms defined elsewhere in this Lease, the following terms have the meanings given below unless the context clearly requires otherwise:

"Additional Rent" means the aggregate of (i) any expenses (including attorneys' fees and expenses) of the Lessor in defending an action or proceeding in connection with this Lease or in enforcing the provisions of this Lease and (ii) any taxes or any other expenses, including, but not limited to, licenses, permits, state and local sales and use or ownership taxes or property taxes and recording fees and/or other fees which the Lessor is expressly required to pay as a result of or in connection with this Lease.

"Administrator" means the Missouri Association of Municipal Utilities, a Missouri nonprofit corporation, and its successors and assigns.

"Administrator's Fees" means the fees and expenses of the Administrator in administering this Lease.

“Authorizing Ordinance” means the resolution or ordinance passed by the Governing Body authorizing this Lease, the Base Lease and the Tax Agreement.

“Base Lease” means the Base Lease dated as of the date hereof between the Lessee, as lessor, and the Lessor, as lessee, whereby any portion of the Project constituting real property is leased to the Lessor. If no Base Lease is executed and delivered in connection with this Lease, references to the Base Lease shall be disregarded.

“Base Rent” means the Lease Payments payable by the Lessee hereunder, including the Administrator’s Fees, the Principal Components and Interest Components, specified in **Exhibit B**.

“Code” means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein will be deemed to include the United States Treasury Regulations proposed or in effect with respect thereto and applicable to this Lease or the use of the proceeds thereof.

“Commencement Date” means the Commencement Date shown on the cover page hereto, which is the date when the term of this Lease and the Lessee’s obligation to pay Base Rent commences.

“Disbursing Agent” means UMB Bank, N.A., in its capacity as Disbursing Agent pursuant to the Program Administration Agreement, and its successors and assigns.

“Escrow Agent” means UMB Bank, N.A., in its capacity as Escrow Agent under any Escrow Agreement, and its successors or assigns. At any time that no Escrow Agreement is required to be in effect in connection with this Lease, references to the Escrow Agent shall be disregarded.

“Escrow Agreement” means the Escrow Agreement dated the date hereof among the Lessor, the Lessee, the Administrator and the Escrow Agent entered into pursuant to **Section 3(b)** or **Section 17**. At any time that no Escrow Agreement is required to be in effect in connection with this Lease, references to the Escrow Agreement shall be disregarded.

“Event of Default” means any Event of Default described in **Section 23**.

“Event of Nonappropriation” means an event described in **Section 8**.

“Fiscal Year” means the 12-month period ending on the date specified as the end of Lessee’s fiscal year on the cover page of this Lease.

“Governing Body” means the Governing Body of the Lessee.

“Interest Component” means the interest component of a Lease Payment identified as such in **Exhibit B**.

“Late Payment Rate” means 10% per annum.

“Lease” means this Lease-Purchase Agreement as the same may be amended or supplemented from time to time.

“Lease Payments” means the sum of the Base Rent and Additional Rent due at or during a stated time.

“Lease Term” means the term of this Lease as established by **Section 5**.

“Lessee” means the Lessee identified on the cover page hereto, its successors and assigns.

“Lessee Representative” means the person or persons at the time designated to act on behalf of the Lessee for the purpose of performing any act under this Lease by a written certificate furnished to the Lessor and the Trustee containing the specimen signature of such person or persons and signed by an authorized official of the Lessee.

“Lessor” means the Lessor identified on the cover page hereto, its successors and assigns.

“Permitted Encumbrances” means, as of any particular time, (a) liens for taxes and assessments not then delinquent or liens which may remain unpaid pursuant to **Section 14**; (b) this Lease; (c) the Base Lease; (d) utility, access and other easements and rights of way, restrictions and exceptions which do not, as expressed in an opinion of counsel acceptable to the Lessor, interfere with or impair the title to or the use and enjoyment of the Project; (e) any financing statements filed to perfect security interests created or permitted by this Lease, (f) any liens, mortgages, security interests and other encumbrances that are subject and subordinate in all respects to the liens, mortgages and security interests of this Lease and the Base Lease and that are approved in writing by the Lessor, (g) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to property of the general character of the Project and as do not, as expressed in an opinion of counsel acceptable to the Lessor, materially impair title to or the use and enjoyment of the Project, and (h) any other liens or encumbrances to which the Lessor and the Lessee consent in writing.

“Principal Component” means the principal component of a Lease Payment identified as such in **Exhibit B**.

“Program” means the Missouri Association of Municipal Utilities Lease-Purchase Program established by the Administrator to provide a vehicle for the economical financing or refinancing of the acquisition, construction and installation of various public projects by municipalities and other political subdivisions and public agencies in the State.

“Program Administration Agreement” means the Program Administration Agreement dated as of April 9, 2020, by and among the Lessor, the Disbursing Agent and the Administrator, as the same may be supplemented or amended from time to time.

“Project” means the property leased to the Lessee under this Lease, the Project Costs of which are financed or refinanced, or the Project Costs of which are reimbursed hereunder, as more particularly described in **Exhibit A** and any property acquired in replacement or substitution therefor, or in the improvement or modification thereof, pursuant to **Sections 11, 12, 13 or 17**, less any property released from this Lease pursuant to **Section 13** or damaged, destroyed or condemned as provided in **Section 17**.

“Project Costs” means all or any part of the cost of acquisition, construction and installation of all land, buildings, structures, machinery and equipment; finance charges; extensions, enlargements, additions, replacements, renovations and improvements; engineering, financial and legal services (including costs of issuance in connection with the execution and delivery of this Lease); plans, specifications, studies, surveys, estimates of cost of revenue, administrative expenses, expenses necessary or incidental to determining the feasibility or practicability of constructing, installing and acquiring the Project; and such other expenses as the Lessor determines may be necessary or incidental to the construction, installation and acquisition of the Project, the financing of such acquisition, construction

and installation, and interest during the acquisition, construction or installation and the placing of the Project in service.

“Project Fund” means the Project Fund established with the Escrow Agent pursuant to **Section 3(b)** and as further set forth in the Escrow Agreement.

“Purchase Price” means, as of any Purchase Date, the amount set forth in **Exhibit B**, which the Lessee may pay to purchase the Project.

“Purchase Date” means any Payment Date listed in **Exhibit B** on which the Lessee elects to purchase the Project pursuant to **Section 20**.

“State” means the State of Missouri.

“Tax Agreement” means the Tax Compliance Agreement dated December 15, 2020, between the Lessee and the Escrow Agreement.

“Taxable Interest Rate” means the interest rate that is equal to the Tax-Exempt Interest Rate divided by the difference between one and the highest marginal corporate income tax rate then in effect (i.e., one minus that highest marginal corporate income rate then in effect).

“Tax-Exempt Interest Rate” means the interest rate identified as such in **Exhibit B**, which is the rate at which the Interest Components are calculated except as otherwise provided herein.

“Termination Date” means the Termination Date shown on the cover page hereto.

“UCC” means the Uniform Commercial Code as adopted and in effect in the State.

(b) References to sections or exhibits, unless otherwise indicated, are to sections of or exhibits to this Lease.

(c) The words “herein,” “hereof,” “hereunder,” and “herewith,” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

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

(e) The headings used in this Lease are for convenience of reference only and shall not define or limit the provisions hereof.

(f) Words in the singular include the plural and vice versa.

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

(h) If the Project does not involve construction, all references to construction shall be disregarded.

(i) If no Base Lease is executed and delivered in connection with this Lease, references to the Base Lease shall be disregarded.

(j) If no Escrow Agreement is executed and delivered in connection with this Lease, references to an Escrow Agreement, Escrow Agent or Project Fund shall be disregarded.

Section 2. Lease of the Project. The Lessor hereby demises, leases and lets to the Lessee, and the Lessee rents, leases and hires from the Lessor, the Project in accordance with the provisions of this Lease, to have and to hold for the Lease Term. All leasehold rights granted to the Lessee by the Lessor under this Lease shall vest in the Lessee, without any further action on the part of the Lessor.

To secure all of its obligations hereunder, the Lessee hereby (i) grants to the Lessor a first and prior security interest in any and all right, title and interest of the Lessee in the portions of the Project that constitute personal property and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom, (ii) authorizes the Lessor or the Administrator to file financing statements evidencing such security interest, and (iii) agrees to execute and deliver all certificates of title and other instruments necessary or appropriate to evidence such security interest.

The Lessee hereby declares its current need for the Project and further determines and declares its expectations that the Project will (so long as it is subject to the terms hereof) adequately serve the needs for which it is being acquired throughout the Lease Term. The Lessee hereby determines and declares that, to the best of its knowledge, the period during which the Lessee has an option to purchase the Project (that is, the maximum term of this Lease) does not exceed the useful life of the Project. In addition, the Lessor and the Lessee declare that it is their mutual interest for this Lease to be administered by the Administrator.

Section 3. Funds to Be Provided by the Lessor. The Lease is a draw down agreement. Amounts advanced to the Lessee shall be applied to pay Project Costs. The total principal amount of this Lease is hereby expressly limited to \$7,000,000 (the "Authorized Amount"), provided that the Principal Component of the Base Rentals at any time shall include only those portions of the Principal Components of Base Rentals that have been advanced from time to time by the Lessor. On the Commencement Date, the Lessor shall deliver an amount equal to the Initial Deposit (as set forth and defined in the Escrow Agreement), representing the initial request and advance of the Principal Component of this Lease, to the Escrow Agent for deposit in the Project Fund established under the Escrow Agreement and disbursed to the payees on the date hereof to pay Project Costs. Interest on such initial advance shall accrue from the Commencement Date. All subsequent draw requests shall be made at such times and in such amounts as set forth on **Schedule 1** to the Escrow Agreement

Section 4. Acquisition, Construction and Installation of the Project. Unless the acquisition, construction and installation of the Project has been completed on or before the Commencement Date as evidenced by a certificate of the Lessee delivered to the Lessor and the Administrator:

(a) The Lessee will make, execute, acknowledge and transact any and all contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be necessary or proper, all for the acquisition, construction and installation of the Project. The acquisition, construction and installation of the Project will be in accordance with the acquisition or construction documents approved by the Lessee, subject to reasonable change orders or any other reasonable changes approved by the Lessee so long as such changes do not cause the Project to be used for purposes other than the lawful governmental purposes of the Lessee. The Lessee shall remain liable to any vendor or contractor in respect of its duties and obligations in accordance with each such contract or order and shall bear the risk of loss with respect to any loss or claim relating to any item of the Project covered thereby, and the Lessor shall not assume any such liability or risk of loss.

(b) The Lessor shall deposit the purchase price of the Principal Components of the Base Rentals from time to time pursuant to **Schedule 1** attached to the Escrow Agreement. Such funds shall be used by the Lessee to pay Project Costs by submitting a Written Request for Funding from Project Fund (the "Written Request for Funding"), in the form attached as **Exhibit A** to the Escrow Agreement, approved by the Lessor and payable to the payee named therein for the payment of Project Costs, or reimbursement of previously expended Project Costs by the Lessee. Following each deposit pursuant to **Schedule 1**, the aggregate Principal Component of Base Rentals shall be deemed outstanding and such amount so drawn down shall begin to accrue interest. The first draw-down, on the date of the execution and delivery of this Lease, shall be the amount equal to the Initial Deposit. If the total drawn under this Lease is insufficient for the Lessee to completion the Project, the Lessee shall advance its own funds to assure such completion. Any draws shall reduce the Authorized Amount and no amounts drawn may be re-drawn for any purpose.

(c) The Lessee will acquire, construct and install the Project through the application of moneys disbursed by the Lessor to the Escrow Agent for disbursement from the Project Fund as directed by the Lessee and will use its best efforts to complete the acquisition, construction and installation of the Project by the "Estimated Date of Completion of the Project" shown on **Exhibit A**. If for any reason the acquisition, construction, and installation of the Project is not completed by that date, there will be no resulting liability on the part of the Lessor and no Event of Default hereunder, and there will be no diminution in or postponement of the Lease Payments required to be paid by the Lessee during the Lease Term.

(d) If the amount available under the terms of this Lease is insufficient to pay the entire cost of acquiring, constructing and installing the Project, the Lessee either (i) will make such modifications to or deletions from the plans and specifications for the Project as will permit the Project to be acquired, constructed and installed from the amounts available hereunder or (ii) will complete the acquisition, construction and installation of the Project from whatever sources of funds are legally available to the Lessee for that purpose.

(e) When the acquisition, construction and installation of the Project have been completed, the Lessee will deliver a certificate to the Lessor, the Disbursing Agent and the Administrator stating that acquisition, construction and installation of the Project have been completed, the date thereof and, except for amounts estimated by the Lessee to be necessary for payment of any Project Costs not then due and payable, all Project Costs have been paid. Upon delivery of such certificate to the Lessor, the Disbursing Agent and the Administrator, **Exhibit B** will be amended to reamortize the Principal Components of Base Rentals under this Lease.

Section 5. Lease Term; Lessee's Annual Right to Terminate. The term of this Lease will be the period commencing on the Commencement Date and terminating on the earliest to occur of: (i) the end of the Fiscal Year immediately succeeding an Event of Nonappropriation unless the Event of Nonappropriation is cured; (ii) the occurrence of an Event of Default and termination of this Lease as provided in **Section 24**; (iii) the Lessee's exercise of its option to purchase the Project pursuant to **Section 20** and payment of the Purchase Price; or (iv) the Termination Date.

Termination of the Lease Term will terminate all obligations of the Lessee to pay Lease Payments, except the payment of all Lease Payments accrued to the date of termination of this Lease, and will terminate the Lessee's rights to use, possess or occupy the Project (unless a conveyance of the Project to the Lessee has occurred).

If the Lessee determines, for any reason, to exercise its annual right to terminate this Lease, effective on the first day of the ensuing Fiscal Year, the Lessee must give written notice to such effect to the Lessor and the Administrator not later than 30 days before that effective date; provided that a failure to give such notice will not constitute an Event of Default nor prevent the Lessee from terminating this Lease nor result in any liability on the part of the Lessee (except for the payment of all Lease Payments accrued prior to the termination of this Lease). The exercise by the Lessee of its annual option to terminate this Lease will be conclusively determined by the occurrence of an Event of Nonappropriation as provided in **Section 8**. Unless and until terminated as provided above, the Lease Term will continue in effect from Fiscal Year to Fiscal Year. The Lessee's obligations under this Lease will be subject to the Lessee's annual right to terminate this Lease and will not constitute a mandatory charge or requirement in any future Fiscal Year. No provision of this Lease will be construed as creating a general obligation or other indebtedness of the Lessee within the meaning of any constitutional, charter or statutory debt limitation.

Section 6. Base Rent. Subject to **Sections 5** and **8**, the Lessee shall pay Base Rent in the amounts and at the times set forth in **Exhibit B**. **Exhibit B** may be amended at any time to reamortize the Principal Components of Base Rentals under this Lease upon completion of the Project.

If the Lessor determines that an amendment to **Exhibit B** is appropriate, the Administrator will mail to the Lessee a revised **Exhibit B** (identified by date or other means), by first class mail, postage prepaid. Said amendment will become effective and will for all purposes become a part of this Lease and will reflect Base Rent to be paid by the Lessee for subsequent periods (unless **Exhibit B** is further amended as provided in this Section) upon the earlier of the acknowledgment thereof by the Lessee or automatically on the next payment date set forth in the revised **Exhibit B**.

The Lessee will pay Additional Rent within 15 days after a written request therefor is mailed to the Lessee by or on behalf of the Lessor.

Any Lease Payment that is not paid when due shall bear interest thereon at the Late Payment Rate to the extent permitted by law. To the extent the Lessor advances any funds for the payment of any amounts due hereunder or to cure any Event of Default, the Lessee shall immediately reimburse the Lessor therefor with interest accrued on such amount at the Late Payment Rate to the extent permitted by law. Amounts due pursuant to this paragraph will be deemed to be Additional Rent due and payable when incurred and without further written demand therefor.

Each Lease Payment will be applied to amounts then due and payable (i) first to the Interest Component of Base Rent, (ii) second to the portion of the Principal Component then due, (iii) third to Additional Rent, and (iv) fourth to the components of Base Rent that are not Interest Component or Principal Component (and pro-rata between the Administrative Fee, the fees due to the Disbursing Agent and any fees due to the Escrow Agent if insufficient to pay all such fees).

This Lease will be deemed and construed to be a "net lease," and the Lessee will pay absolutely net during the Lease Term, the Lease Payments and all other payments required hereunder, free of any deductions, and without abatement, deduction or set-off (other than credits against Lease Payments expressly provided for in this Lease). Notwithstanding any dispute between the Lessee and the Lessor or a dispute between the Lessee and any Project-related vendors or contractors, the Lessee shall make all Lease Payments when due and shall not withhold any Lease Payments pending final resolution of such dispute nor shall the Lessee assert any right of set-off or counterclaim against its obligations to make such payments required under this Lease.

Lease Payments shall be payable to the Disbursing Agent, on behalf of the Lessor, at such place as the Disbursing Agent may from time to time designate in writing, as initially set forth in **Exhibit B** hereto, or as otherwise agreed to by the Disbursing Agent and the Lessee for the electronic transfer of payments.

Section 7. Actions Relating to Tax Exemption of Interest Components.

(a) The Lessor and the Lessee each will restrict the use of moneys realized under this Lease or otherwise in connection with the financing of the Project in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of entering into this Lease, so that there will not exist at any time any obligation in connection with this Lease or the Project that constitutes an obligation the interest on which is includable in gross income for federal income tax purposes or constitutes an "arbitrage bond" under Section 148 of the Code. Any officer of the Lessor or the Lessee having responsibility with respect to the execution and delivery of this Lease shall, alone or in conjunction with any other officer, employee or agent of or consultant to the Lessor or the Lessee, give an appropriate certificate of the Lessor or the Lessee pursuant to Sections 103 and 148 of the Code, setting forth the reasonable expectations of the Lessor or the Lessee on the date of entering into this Lease regarding this Lease and the use of those moneys. The Lessee agrees to complete and file or cause to be completed and filed in a timely manner an information reporting return on IRS Form 8038-G with respect to this Lease as required by the Code.

(b) The Lessee will not use the Project, or permit the Project to be used, in such a manner as would result in the loss of the exclusion from gross income for federal income tax purposes of the Interest Components afforded under Section 103(a) of the Code.

(c) The Lessor will take all action required to maintain exclusion from gross income for federal income tax purposes afforded under Section 103(a) of the Code of the Interest Components.

(d) If the Lessee takes any action or fails to take any action that results in the Interest Components being finally determined by the Internal Revenue Service or a court of competent jurisdiction to be includible in gross income for federal income tax purposes, the Interest Components shall be recalculated at a rate equal to the Taxable Interest Rate from the date that the Interest Components are determined to be includable in gross income for federal income tax purposes and the Interest Components on **Exhibit B** shall be amended accordingly. As soon as practical after receipt of a statement from the Lessor itemizing such amounts, the Lessee shall pay to the Lessor any increased Interest Component allocable to Lease Payments that have become due, plus any penalties and interest payable by the Lessor as a result of such loss of the tax-exempt status of the Interest Components.

(e) The Lessee will comply with the Escrow Agreement and the Tax Agreement.

Section 8. Authority and Authorization; Nonappropriation by the Lessee. The Lessee represents, covenants and warrants, and will deliver to the Lessor an opinion of its counsel to the effect that: (i) the Lessee is a political subdivision of the State, duly organized and validly existing under and by virtue of the laws of the State; (ii) the execution, delivery and performance by the Lessee of this Lease have been duly authorized by all necessary action on the part of the Lessee; and (iii) this Lease, the Escrow Agreement and the Tax Agreement constitute legal, valid and binding obligations of the Lessee enforceable in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, moratorium, reorganization or other laws or equitable principles of general application affecting remedies or creditors' rights. The Lessee agrees and warrants that: (i) subject to its rights under **Section 5** and this Section it will do or cause to be done all things necessary to preserve and keep this Lease, the Escrow Agreement and the Tax Agreement in full force and effect; (ii) it has complied with all requirements

applicable to it, and has taken all steps for approval of this Lease, the Escrow Agreement and the Tax Agreement as valid obligations on its part; and (iii) sufficient funds are appropriated to pay all amounts due under this Lease for the current Fiscal Year.

If the Lessee fails, for any reason, to duly enact by at least 30 days before the end of the then current Fiscal Year an appropriation authorization for the ensuing Fiscal Year which includes amounts required to pay all Lease Payments to become due during that Fiscal Year, or on any earlier date on which the Lessor receives notice from the Lessee that this Lease will be terminated, an Event of Nonappropriation will be deemed to have occurred.

If an Event of Nonappropriation occurs, the Lessee will not be obligated to make Lease Payments or any other payments provided for herein beyond the amounts specifically appropriated by the Lessee for the Fiscal Year during which such Event of Nonappropriation occurs; provided that, the Lessee will continue to be liable for Lease Payments allocable to any period during which the Lessee continues to use, occupy or retain possession of the Project.

The Lessee will vacate and/or surrender the Project to the Lessor by the first day of the Fiscal Year following an Event of Nonappropriation. The surrender of any personal property comprising a portion of the Project will consist of delivering such property to the Lessor at a site within the jurisdiction of the Lessee selected by the Lessor at the Lessee's cost and expense.

Upon the occurrence of an Event of Nonappropriation, any amounts on deposit in the Project Fund will be applied as provided in **Section 4**. After the expiration of the Fiscal Year during which an Event of Nonappropriation occurs, the Lessor may proceed to repossess and liquidate or release or otherwise dispose of the Project or any portion thereof and may take one or any combination of steps described in **Section 24**.

Section 9. Title.

(a) The Lessee will retain title to the Project during the Lease Term, subject to the Lessor's rights under this Lease and the Base Lease. The Base Lease, this Lease or any other appropriate documents may be filed or recorded to evidence the parties' respective interests in the Project. Title to any equipment, furnishings, vehicles and other personal property included in the Project shall immediately and without any action by the Lessee vest in the Lessor and the Lessee shall immediately surrender possession of the Project to the Lessor upon (i) any termination of this Lease without the Lessee exercising its option to purchase the Project pursuant to **Section 20** or (ii) the occurrence of an Event of Default or an Event of Nonappropriation. In any of such cases, the Lessee will execute such instruments and do such things as the Lessor reasonably requests and as may be required by law in order to effect such transfer.

(b) The Lessee will during the Lease Term peaceably and quietly have and hold and enjoy the Project without suit, trouble or hindrance from the Lessor, except as expressly required or permitted by this Lease. The Lessor will, at the request of the Lessee and at the cost of the Lessee, join and cooperate fully in any legal action regarding the Project, and the Lessee may, at its own expense, join in any legal action affecting the Project.

(c) The Lessor's interest in the Project shall pass to the Lessee without cost upon (i) the Lessee's exercise of the Purchase Option granted in **Section 20**, or (ii) the complete payment and performance by the Lessee of all of its obligations during the Lease Term if the Lease Term extends to the Termination Date.

Section 10. Sale or Assignment by the Lessee. The Lessee will not sell, lease, assign, transfer, pledge, grant a security interest in or otherwise dispose of all or any of the Project or this Lease or any interest therein, except for Permitted Encumbrances, without the Lessor's prior written consent.

Section 11. Use; Maintenance and Repair.

(a) The Lessee will: (i) use the Project in a careful manner for the use contemplated by this Lease and the applicable laws of the State with respect to public property; (ii) comply with all laws, insurance policies and regulations relating to the use and maintenance of the Project; and (iii) pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance of the Project.

(b) The Lessee, at its expense, will: (i) keep the Project in good condition and furnish all parts, mechanisms and devices required therefor, and (ii) obtain and maintain any governmental licenses and permits required for ownership of the Project.

(c) The Lessee will maintain, or by contract provide for the proper maintenance of, the Project in accordance with this **Section 11** during the Lease Term.

(d) The Lessor will not impair the Lessee's abilities to maintain the Project during the Lease Term.

Section 12. Alterations. Following completion of the Project, the Lessee will not make any alterations, additions, substitutions or replacements to the Project that would have a material adverse effect on either the nature of the Project or the functionality or value of the Project. Any alterations, additions or improvements to the Project and any substitutions or replacements, shall be and be considered to constitute a part of the Project.

The Lessee may also install machinery, equipment and other tangible property in or on the Project; provided that such machinery, equipment and other tangible property which becomes permanently affixed to the Project will be subject to this Lease if the Lessor reasonably determines that the Project would be damaged or impaired by the removal of such machinery, equipment or other tangible property.

Section 13. Replacement and Substitution of Equipment. The Lessee will not be under any obligation to renew, repair or replace any inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary equipment. In any instance where the Lessee determines that any equipment has become inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary, the Lessee may remove that equipment from the Project and sell, trade-in, exchange or otherwise dispose of it as a whole or in part without any responsibility or accountability to the Lessor or any assignee of the Lessor therefor, provided that the Lessee will either:

(a) Substitute (by direct payment of the costs thereof or by designating as equipment, machinery or other personal property, other than property included as part of the Project pursuant to **Section 11.2**) and install anywhere in or on the Project, other equipment, machinery or related property having equal or greater value and utility (but not necessarily having the same function) in the operation of the Project; or

(b) Not make any such substitution and installation, provided that the Lessee will pay to the Lessor (i) in the case of the sale of any of that equipment to anyone other than itself, or in the case of the scrapping thereof, as a prepayment of Base Rentals for application as agreed to by the Lessor and the Lessee, the net proceeds from the sale or the scrap value thereof, as the case

may be, (ii) in the case of the trade-in of that equipment for other machinery, equipment or related property not to be installed in or on the Project, for application as agreed to by the Lessor and the Lessee, the amount of the credit received by it in the trade-in and (iii) in the case of the sale of any of that equipment to the Lessee, or in the case of any other disposition thereof, the amount equal to the original cost thereof paid out of the Project Fund.

The removal from the Project of any portion of the equipment pursuant to this Section will not entitle the Lessee to any postponement, abatement or diminution of the Base Rentals or Additional Rentals required to be paid under **Section 6.1**.

The Lessee will promptly report in writing to the Lessor each removal, substitution, sale or other disposition under this Section and will pay to the Lessor all amounts required by **Section 13(b)** promptly after any subsequent sale, scrapping, trade-in or other disposition requiring such payment. All substituted machinery, equipment or related property installed pursuant to this Section will be free of all liens and encumbrances (other than Permitted Encumbrances) and will become a part of the Project. The Lessee will not remove, or permit the removal of, any of the equipment from the Project except in accordance with this Section. At the Lessee's expense, the Lessor and its assignees will cooperate with the Lessee in implementing the Lessee's rights to dispose of equipment pursuant to this Section and will execute any and all conveyances, releases or other documents necessary or appropriate in connection therewith.

Section 14. Taxes, Other Governmental Charges and Utility Charges. If the Project or any portion thereof is, for any reason, deemed subject to taxation, assessments or charges lawfully made by any governmental body, the Lessee will, during the Lease Term, pay all such taxes, assessments and governmental charges when due. With respect to special assessments or other governmental charges which may be lawfully paid in installments over a period of years, the Lessee will be obligated to provide only for such installments as are required to be paid during the then current Fiscal Year. The Lessee will not allow any liens for taxes, assessments or governmental charges with respect to the Project or any portion thereof to become delinquent (including any taxes levied upon the Project or any portion thereof which, if not paid, will become a charge on the rentals and receipts from the Project or any portion thereof, or any interest therein, including the interest of the Lessor or the rentals and revenues derived therefrom or hereunder). The Lessee will also pay, as the same respectively become due, all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance and upkeep of the Project.

The Lessee may, at the expense and in the name of the Lessee, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments, utility or other charges so contested to remain unpaid during the period of the contest and any appeal therefrom unless the Lessor notifies the Lessee that, in the opinion of counsel acceptable to the Lessor (whose fees and expenses shall be paid by the Lessee), by nonpayment of any such items the security afforded pursuant to this Lease may be materially endangered or the Project or any portion thereof will be subject to loss or forfeiture, or the Lessor will be subject to liability, in which event those taxes, assessments, utility or other charges will be paid forthwith.

Section 15. Location; Inspection. The Lessor will be entitled to enter upon the Project or elsewhere during reasonable business hours to inspect or observe the use of the Project.

Section 16. Liens and Encumbrances. Except for Permitted Encumbrances, the Lessee and the Lessor shall keep the Project free and clear of all liens and encumbrances.

Section 17. Risk of Loss; Damage; Destruction. The Lessee assumes all risk of loss or damage to the Project from any cause whatsoever. No loss of or damage to, or appropriation by governmental

authorities of, or defect in or unfitness or obsolescence of, the Project will relieve the Lessee of the obligation under this Lease. The Lessee will promptly repair or replace any portions of Project lost, destroyed, damaged or appropriated which are necessary to maintain the Project in sound operating condition so that at all times during the Lease Term the Project will be able to carry out its intended functions.

The net proceeds of any insurance policies, performance bonds, condemnation awards or net proceeds received as a consequence of default or breach of warranty under a construction contract or other contract relating to the Project will be deposited in the Project Fund, if received before the completion of the Project, or, if received thereafter, will be deposited in a separate account established by the Escrow Agent pursuant to the Escrow Agreement that the Lessor, the Lessee and the Administrator shall enter into with the Escrow Agent and will be applied in the same manner described in **Section 4**. The balance remaining after repair, restoration, modification, improvement or replacement of the Project has been completed will be applied to satisfy payment of Lease Payments.

Section 18. Insurance. The Lessee, at its expense, will cause casualty and property damage insurance with a company or self insurance fund acceptable to the Lessor to be carried and maintained with respect to the Project in an amount equal to the unpaid Principal Components or the replacement cost (excluding land and foundations) of the Project, if less than such Principal Components. Any casualty and property damage insurance policy required by this Section will name the Lessor and the Administrator as additional named insureds and loss payees (for application as provided in **Section 17**).

The Lessee will cause public liability insurance to be carried and maintained with a company or self-insurance fund reasonably acceptable to the Lessor with respect to the Project in such amount as is reasonably acceptable to the Lessor. Any public liability insurance policy required by this Section will name the Lessor and the Administrator as additional named insureds.

The Lessee, at its expense, and only if a Base Lease is executed, will obtain a leasehold policy of title insurance insuring the leasehold interest under the Base Lease of the Lessor in an amount equal to the aggregate amount of the Principal Components and subject only to such exceptions as shall be acceptable to the Lessor, with such endorsements and affirmative coverages as may be reasonably required by the Lessor, including endorsements respecting zoning and access to public roads, and otherwise in form and substance satisfactory to the Lessor and issued by a company acceptable to the Lessor and authorized to issue such insurance in the State.

The Lessee shall cause the Administrator to be furnished annually with evidence of the insurance required by this Section and, if requested by the Administrator, copies of the policies of insurance required by this Section.

Section 19. Financial Reports; Budgets; Inspection. The Lessee will provide the Lessor and the Administrator with a copy of the Lessee's annual audited financial report within 220 days of its Fiscal Year end; provided that, if its audited financial report is not available by such date, the Lessee will provide a compilation of its financial information in form and content acceptable to the Lessor. The Lessee will immediately notify the Lessor, the Disbursing Agent and the Administrator of any Event of Default or Event of Nonappropriation or any circumstance or event that, with the passage of time or the giving of notice or both, would qualify as an Event of Default. The Lessee shall file a copy of its annual budget with the Lessor and the Administrator upon adoption. The Lessor, the Administrator and their respective authorized representatives shall at any time during normal business hours after reasonable notice to the Lessee have the right to enter the premises where the Project may be located for the purpose of inspecting and examining the Project and its condition, use, and operation and the books and records of the Lessee.

Section 20. Purchase Option; Partial Prepayment; Determination of Fair Purchase Price.

(a) The Lessee, upon 30 days prior written notice to the Lessor and the Administrator, shall have the right to purchase the Project in whole, but not in part, on any Purchase Date by paying to the Lessor all Lease Payments then due together with the Purchase Price relating to that Purchase Date.

(b) Notwithstanding subparagraph (a) above, the Lessee may prepay the Principal Components in part, at any time, upon giving written notice to the Lessor at least 30 days before the prepayment date (unless shorter notice is satisfactory to the Lessor), at the prepayment price equal to 100% of the Principal Component of Rental Payments being so prepaid plus the Interest Component of Rental Payments accrued thereon to such prepayment date. The Principal Component of Lease Payments prepaid pursuant to the provisions of this subparagraph will be in integral multiples of \$0.01 and will be credited in such order of stated payment dates as is determined by the Lessee. Upon any partial prepayment, the amount of each Interest Component of Lease Payments coming due thereafter will be reduced by the amount of such Interest Component attributable to such prepaid Principal Component determined by applying the annual interest rate corresponding to such prepaid Principal Component as shown on **Exhibit B**. Upon a partial prepayment pursuant to pursuant this subsection, the Lessor shall revise **Exhibit B** to reflect the partial prepayment and send a revised copy of **Exhibit B** via facsimile or electronic mail to the Lessee.

Section 21. Release and Indemnification Covenants.

(a) The Lessor, the Disbursing Agent and the Administrator shall not be liable for and, to the extent permitted by law, the Lessee releases the Lessor, the Disbursing Agent and the Administrator from and agrees to indemnify and save the Lessor, the Disbursing Agent and the Administrator (each, an "Indemnatee") harmless against and from any or all claims, by or on behalf of any person, firm, corporation or other legal entity, and all liabilities, obligations, losses and damages whatsoever, regardless of the cause thereof and the expenses, penalties and fees in connection therewith (including counsel fees and expenses), arising from or as a result of the operation, ordering, ownership, acquisition, construction, use, condition, delivery, rejection, storage, return or management of the Project during the Lease Term, or the entering into of this Lease or any other document or instrument relating thereto (collectively, "Indemnified Claims"), including, but not limited to: (i) any condition of the Project; (ii) any act of negligence of the Lessee or of any of the agents, contractors or employees or any violation of law by the Lessee or breach of any covenant or warranty by the Lessee hereunder; (iii) any accident in connection therewith resulting in damage to property or injury or death to any person; and (iv) the incurring of any cost or expense in connection with the acquisition of the Project in excess of the moneys available therefor in the Project Fund. To the extent permitted by law, the Lessee will indemnify and save each Indemnatee harmless from any such Indemnified Claim, or in connection with any action or proceeding brought thereon and, upon notice from such Indemnatee, will defend or pay the cost of defending such Indemnatee, in any such action or proceeding.

(b) The Lessee shall not be liable for and the Lessor and the Disbursing Agent release the Lessee from and agree to indemnify and save harmless the Lessee against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the Lessor or the Disbursing Agent in the performance of any covenant or agreement on the part of the Lessor or the Disbursing Agent to be performed pursuant to the terms of this Lease, or arising from any act or negligence of or failure to act by the Lessor or the Disbursing Agent, or any of its agents, contractors, servants, employees, or licensees, and from and against all cost, liability and expenses incurred in or in connection with any such claim or action or proceeding brought thereon; and in case any action or proceeding be brought against the Lessee by reason of any such claim, the Lessor and the Disbursing

Agent, upon notice from the Lessee, each covenant to resist or defend such action (using counsel acceptable to the Lessee, as the case may be) or proceedings at such parties' expense.

(c) The releases and indemnifications under this Section will continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease or the Base Lease for any reason.

Section 22. Assignments by the Lessor. The Lessor may, at any time and from time to time without the Lessee's consent, assign, transfer or otherwise convey all of its interest in the Project or this Lease, including the Lessor's rights to receive the Lease Payments (in which event the Lessee agrees to make all Lease Payments thereafter to the assignee designated by the Lessor), and to repossess the Project and exercise the Lessor's other rights and remedies under **Section 24** or, subject to the conditions specified below, part of its interest therein; provided that (a) any assignment shall not be effective until the Lessee has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee, and (b) any assignment shall not be effective until it is registered on the registration books kept by the Lessee. The Lessee shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. The Lessor's interest in this Lease cannot be fractionalized, nor can certificates of participation in this Lease be executed and delivered by the Lessor, without the prior written consent of the Lessee and then only if such fractionalizations or certificates of participation are sold on a private placement basis (and not pursuant to any "public offering") to a purchaser(s) who represents that (i) such purchaser has sufficient knowledge and experience in financial and business matters to be able to evaluate the risks and merits of the investment (ii) such purchaser understands neither this Lease nor the certificates will be registered under the Securities Act of 1933, as amended, (iii) such purchaser is a qualified institutional buyer within the meaning of Rule 144A, and (iv) that it is the intention of such purchaser to acquire such fractionalizations or certificates for investment for its own account. The Lessee will acknowledge any notices of assignment that may be reasonably requested by the Lessor or any assignee to protect its interests in this Lease.

Section 23. Events of Default. The occurrence of any one or more of the following events constitutes an "Event of Default" under this Lease:

(a) The Lessee's failure to make any Lease Payment (or any other payment) as it becomes due in accordance with the terms of this Lease;

(b) The Lessee's failure to vacate or surrender the Project by the beginning of the Fiscal Year following an Event of Nonappropriation as provided in **Section 8**;

(c) The Lessee's failure to perform or observe any other covenant, condition or agreement to be performed or observed by it under this Lease or any document delivered by the Lessee pursuant to or in connection with this Lease, and the failure is not cured or steps satisfactory to the Lessor taken to cure the failure, within 30 days after written notice of the failure to the Lessee by the Lessor;

(d) The discovery by the Lessor that any material statement, representation or warranty made by the Lessee in this Lease or in any writing delivered by the Lessee pursuant to or in connection with this Lease is false, misleading or erroneous in any material respect; or

(e) An order, judgment or decree will be entered by any court of competent jurisdiction approving a petition or appointment a receiver, trustee, custodian or liquidator of the Lessee or of all or a substantial part of the assets of the Lessee, in each case without its

application, approval or consent, and such order, judgment or decree will continue unstayed and in effect for any period of 30 consecutive days.

Section 24. Remedies. Upon the occurrence of an Event of Default, and as long as the Event of Default is continuing, the Lessor may, at its option, exercise any one or more of the following remedies as to the Project, to whichever the Event of Default pertains:

- (a) Terminate the Lease Term and give notice to the Lessee to vacate or surrender the Project within 60 days from the date of such notice;
- (b) By written notice to the Lessee, enter and take immediate possession of the Project;
- (c) Recover from the Lessee:
 - (i) the Lease Payments which would otherwise have been payable hereunder during any period in which the Lessee continues to use, occupy or retain possession of the Project; and
 - (ii) Lease Payments which would otherwise have been payable hereunder after the Lessee vacates or surrenders the Project during the remainder of the Fiscal Year in which such Event of Default occurs;
- (d) Sell or lease the Lessor's interest in the Project or sublease it for the account of the Lessee, holding the Lessee liable for all Lease Payments and other payments due during the remainder of the Fiscal Year in which the Event of Default occurs (if not collected under clause (c) above) to the extent that such selling, leasing or subleasing fails to provide amounts that are sufficient to pay all past due Lease Payments, the other remaining Principal Components listed on **Exhibit B** and any other amounts due to the Lessor under this Lease, with any proceeds of the sale of the Project being applied first to all past due Lease Payments, second to pay the Lessor an amount up to the aggregate of the remaining Principal Components listed on **Exhibit B**, third to any other amounts that are due to the Lessor under this Lease, and with any remainder to be paid to the Lessee; and
- (e) Exercise any other right, remedy or privilege which may be available to it under the applicable laws of the State or any other applicable law, subject to the limitations contained in this Lease with respect to the Lessee's obligations upon the occurrence of an Event of Nonappropriation; or proceed by appropriate court action to enforce the terms of this Lease or to recover damages for the breach of this Lease or to rescind this Lease as to any or all of the Project, including, but not limited to, any one or more remedial steps available to secured parties under Article 9 of the UCC or which are otherwise accorded to the Lessor by law.

The Lessee will remain liable for all covenants and obligations under this Lease, and for all legal fees and other costs and expenses, including court costs awarded by a court of competent jurisdiction, incurred by the Lessor or the Administrator with respect to the enforcement of any of the remedies under this Lease, when a court of competent jurisdiction has finally adjudicated that an Event of Default has occurred and enforced the remedies set forth in this Section.

Section 25. Personal Property. If no Base Lease is executed and delivered in connection with this Lease, (i) the Project is and will remain personal property, (ii) the Project will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Project or any

part thereof may be or hereafter become in any manner physically affixed or attached to that real estate or any building thereon and (iii) upon the request of the Lessor, the Lessee will, at the Lessee's expense, furnish a waiver of any interest in the Project from any party having an interest in any such real estate or building.

If a Base Lease is executed and delivered in connection with this Lease, any portion of the Project not located on the land that is subject to the Base Lease, (i) is and will remain personal property; and (ii) will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Project or any part thereof may be or hereafter become in any manner physically affixed to that real estate or any building thereon. Upon the request of Lessor, the Lessee will, at the Lessee's expense, furnish a waiver of any interest in that portion of the Project from any party having an interest in any such real estate or building.

Section 26. Notices. All notices, certificates, requests or other communications hereunder will be in writing and mailed (postage prepaid, and certified or registered with return receipt requested) or delivered (including delivery by courier service) to the addresses listed on the cover page hereof.

Any of the parties hereto may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent hereunder. All notices, certificates, requests and other communications pursuant to this Lease will be effective when received (if given by mail) or when delivered (if given by delivery).

Section 27. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State.

Section 28. Delivery of Related Documents. The Lessee will execute or provide, as requested by the Lessor, such other documents and information as are reasonably necessary with respect to the transaction contemplated by this Lease. This Lease or any other appropriate documents may be filed or recorded to evidence the parties' respective interests in the Project.

Section 29. Special Representations and Covenants of the Lessor. The Lessor represents that it is in good standing under the laws of the state of its incorporation and in good standing under the laws of the State of Missouri. The Lessor has full and complete power to enter into this Lease and to enter into and carry out the transactions contemplated hereby, and to carry out its obligations under this Lease; is possessed of full power to own and hold real and personal property, and to lease the same; and has duly authorized the execution and delivery of this Lease.

Section 30. Special Representations and Covenants of the Lessee. The Lessee represents, covenants and warrants that (a) it is a political subdivision of the State; (b) it has full power and authority to enter into and to perform its obligations under this Lease and all related documents; (c) it has duly authorized this Lease, the Base Lease, the Tax Agreement, the Escrow Agreement and all related documents; (d) this Lease, the Base Lease, the Tax Agreement, the Escrow Agreement and all related documents are valid, legal and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms subject to any applicable bankruptcy, insolvency, moratorium, reorganization or other laws or equitable principles of general application affecting remedies or creditors' rights; (e) the execution and delivery of this Lease, the Base Lease, the Tax Agreement, the Escrow Agreement and all related documents does not conflict with or result in a breach of the terms of any agreement or instrument by which the Lessee is bound, or conflicts with or results in a violation of any provision of law or regulation applicable to the Lessee; (f) there is no action, suit, proceeding or investigation before or by any court or public body wherein an unfavorable decision would materially and adversely affect the transactions contemplated by this Lease, the Base Lease, the Tax Agreement, the

Escrow Agreement and all related documents; (g) it will not take or permit, or omit to take or cause to be taken, any action that would adversely affect the exclusion from gross income for federal income tax purposes of the Interest Components; (h) the Project furthers the Lessee's governmental purposes, serves a public purpose and is in the best interests of the Lessee, and at the time of execution and delivery of this Lease, the Lessee intends to annually appropriate the Lease Payments due hereunder; and (i) during the Lease Term, the Project will at all times be used only for the purpose of performing one or more lawful governmental functions of the Lessee.

Section 31. DISCLAIMER OF WARRANTIES. NEITHER THE LESSOR NOR THE ADMINISTRATOR MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY PORTION OF THE PROJECT OR AS TO ITS TITLE THERETO OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROJECT.

Section 32. Entire Agreement; Amendment; Severability; Beneficiaries.

(a) This Lease, together with all attachments, exhibits and other documents or instruments executed by the Lessee and the Lessor in connection with this Lease, constitute the entire agreement between the parties with respect to the lease of the Project.

(b) This Lease may not be modified, amended, altered or changed except with the written consent of the Lessee and the Lessor.

(c) In any provision of, or any covenant, obligation or agreement contained in this Lease is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Lease. The invalidity or unenforceability shall not affect any valid or enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(d) No person other than a party hereto and the Administrator, will have any right, remedy or claim under or by reason of this Lease or otherwise be a third party beneficiary of any rights, remedies, claims or agreements hereunder.

Section 33. Costs and Expenses of the Lessor, the Disbursing Agent and the Administrator. To the extent permitted by law and as provided in the Program Administration Agreement, the Lessee shall pay to the Disbursing Agent, on behalf of Lessor, in addition to the Lease Payments payable by the Lessee hereunder, such amounts in each year as shall be required by the Lessor, the Disbursing Agent or the Administrator in payment of any reasonable costs and expenses incurred by the Lessor, the Disbursing Agent or the Administrator in connection with the enforcement of this Lease due to the Lessee's failure to comply with this Lease, including payment of all reasonable fees, costs and expenses and all administrative costs of the Lessor, the Administrator and the Disbursing Agent in connection with the Project, expenses (including attorneys' fees and disbursements), fees of auditors or attorneys, insurance premiums not otherwise paid hereunder and all other direct and necessary administrative costs of the Lessor, the Administrator and the Disbursing Agent or charges required to be paid by them in order to enforce their rights under this Lease. Such costs and expenses shall be billed to the Lessee by the Disbursing Agent, on behalf of the Lessor, from time to time, together with a statement certifying that the amount so billed has been paid by the Lessor, the Administrator or the Disbursing Agent for one or more of the items above described, or that such amount is then payable by the Lessor, the Administrator or the

Disbursing Agent for such items. Amounts so billed shall be due and payable by the Lessee within 30 days after receipt of the bill by the Lessee and shall be treated as Additional Rent hereunder, except in as much as the Lessee will have 30 days instead of 15 days to effect payment thereof.

Section 34. Multiple Counterparts; Electronic Transaction. This Lease may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument, and any of the parties hereto may execute this Lease by signing any such counterpart, provided that only the original of this Lease marked "Original: 1 of 3" on the execution page thereof shall constitute chattel paper under the UCC. In addition, the transaction described herein may be conducted and this Lease and related documents may be sent, received or stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 35. Successors and Assigns; Third-Party Beneficiary. Subject to Sections 10 and 22, this Lease inures to the benefit of the parties hereto and the Administrator and their successors and assigns and is binding upon the parties hereto and their successors or assigns.

Section 36. Immunity of Officials and Employees of the Lessee. No recourse shall be had upon any representation, obligation, covenant or agreement in this Lease or otherwise related to this Lease or for any claim based thereon against any past, present or future official or employee of the Lessee, and all such liability of any such officials and employees as such is hereby expressly waived and released as a condition of and consideration for the execution of this Lease.

Section 37. Administrator's Role. The Administrator is not and shall not be responsible for (a) monitoring the Lessee's compliance with this Lease, the Base Lease, the Tax Agreement or the Escrow Agreement, (b) the acquisition, construction, installation, existence, maintenance, condition, operation, ownership or use of, or any security or other interest in, the Project, (c) the availability, existence, use or investment of any moneys in the Project Fund or other moneys provided by the Lessor or the Lessee, or (d) for the exercise of any remedies under this Lease, the Base Lease, the Tax Agreement or the Escrow Agreement. The Administrator has not acted and will not act as a fiduciary for the Lessee or as the Lessee's agent or municipal advisor. The Administrator has not and will not provide financial, legal, tax, accounting or other advice to the Lessee or to any financial advisor or placement agent engaged by the Lessee with respect to this Lease. The Lessee, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Lease from its own advisors (including as it relates to structure, timing, terms and similar matters).

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IN WITNESS WHEREOF, the parties have executed this Lease by their authorized officers as of the Commencement Date.

FIRST STATE COMMUNITY BANK, as Lessor

By: _____
Title: _____

CITY OF CARTHAGE, MISSOURI, as Lessee

By: _____
Title: Mayor _____

**ACKNOWLEDGED:
MISSOURI ASSOCIATION OF MUNICIPAL
UTILITIES, as Administrator**

By: _____
Title: _____

ORIGINAL: __ OF 3

EXHIBIT A
DESCRIPTION OF PROJECT

ESTIMATED COST OF THE PROJECT:

\$7,000,000

ESTIMATED DATE OF COMPLETION OF THE PROJECT:

January 1, 2022

DESCRIPTION:

The Project consists of the improvement and expansion of the Lessee's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment, together with any and all replacement parts, additions, repairs, modifications, attachments and accessories thereto, any and all substitutions, replacements or exchanges therefor, and any and all insurance and/or proceeds thereof.

LOCATION:

The Project will be located in the City of Carthage, Missouri.

This Description of Project shall be deemed to be supplemented by the descriptions of the Project included in the Written Requests for Funding from Project Fund submitted to the Disbursing Agent, which descriptions shall be deemed to be incorporated herein.

**EXHIBIT B
BASE RENT PAYMENTS**

<u>Payment Date</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Administrative Fee (.15%)</u>	<u>Disbursing Agent Fee</u>	<u>Total Base Rent</u>	<u>Remaining Principal Component</u>
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See attached Payment Schedule.

The Lessee hereby acknowledges the Base Rent set forth in the attached Payment Schedule.

The Tax-Exempt Interest Rate is 2.475% per annum. The Interest Components are (and shall be) computed on a 360-day year of 12 30-day months. The Base Rent includes the Interest Component, Principal Component and Administrative Fees payable under the Program Administration Agreement. The Payment Date is the due date for Base Rent under the Lease.

The Purchase Price shall be the Remaining Principal Component set forth above, plus the unpaid Interest Component accrued to the Purchase Date, plus all other amounts due under the Lease that remain unpaid on the Purchase Date.

The following fees and expenses shall be paid by the Lessee in connection with the execution and delivery of the Lease:

Fees and Expenses (Paid by Lessee and not from proceeds of the Lease)

<u>Administrator's Initial Administrative Fee</u>	<u>Special Tax Counsel Fee</u>	<u>Disbursing Agent/ Escrow Agent Initial Set-Up Fee</u>
\$21,000	\$28,000	\$300

Unless Lessee has submitted a properly executed ACH Form, or as otherwise provided for the electronic transfer of payments, all Base Rent under the Lease shall be paid by check mailed to the Disbursing Agent, on behalf of the Lessor, as follows:

UMB Bank, N.A.
2 South Broadway, 6th Floor
St. Louis, Missouri 63102
Attention: Corporate Trust Department

CITY OF CARTHAGE, MISSOURI, LESSEE

By: _____
Title: Mayor

ESCROW AGREEMENT

LESSOR: FIRST STATE COMMUNITY BANK

LESSEE: CITY OF CARTHAGE, MISSOURI

ESCROW AGENT: UMB BANK, N.A.

ADMINISTRATOR: MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES

DATE: DECEMBER 15, 2020

**DEPOSIT TO
PROJECT FUND:** NOT TO EXCEED \$7,000,000.00

**AMOUNT OF
INITIAL DEPOSIT:** \$55,000.00 (the "Initial Deposit")

THIS ESCROW AGREEMENT, dated as of the date set forth above, among the Lessor named above ("Lessor"), the Lessee named above ("Lessee"), the Escrow Agent named above, as Escrow Agent ("Escrow Agent"), and the Administrator named above, as Administrator ("Administrator"):

In consideration of the mutual covenants and agreements herein set forth, the parties hereto do hereby covenant and agree as follows:

1. This Escrow Agreement relates to the Lease-Purchase Agreement (the "Lease"), dated as of the date hereof, by and among Lessor, Lessee and Administrator.
2. Except as otherwise defined herein, all capitalized terms in this Escrow Agreement that are not otherwise defined herein will have the meaning set forth in the Lease.
3. Lessor, Lessee and Escrow Agent agree that Escrow Agent will act as sole Escrow Agent under this Escrow Agreement, in accordance with the terms and conditions set forth in this Escrow Agreement. Escrow Agent in its capacity as Escrow Agent hereunder will not be deemed to be a party to the Lease, and this Escrow Agreement will be deemed to constitute the entire agreement among Lessor, Lessee and Escrow Agent.
4. There is hereby established in the custody of Escrow Agent a special trust fund designated as the "City of Carthage, Missouri December 15, 2020 Project Fund" (the "Project Fund") to be held and administered by Escrow Agent in trust in accordance with this Escrow Agreement.
5. Escrow Agent will deposit the Initial Deposit into the Project Fund at the time of the execution and delivery by Lessor and Lessee of the Lease and this Escrow Agreement, and Escrow Agent shall accept deposits from time to time from Lessor in amounts consistent with the schedule attached hereto as **Schedule 1**. No further action shall be required of Lessee or Lessor to request such draws. Upon receipt of such amounts, the obligations of Escrow Agent hereunder shall commence. Any moneys held by Escrow Agent hereunder will be invested and reinvested by Escrow Agent upon written order of a representative of Lessee in Qualified Investments (as hereinafter defined) meeting the requirements specified in the Tax

Compliance Agreement dated as of December 15, 2020 (the "Tax Compliance Agreement"), between Lessee and Escrow Agent, and maturing or subject to redemption at the option of the holder thereof prior to the date on which it is expected that such funds will be needed. Escrow Agent may conclusively rely upon the written investment instructions of the representative of Lessee and shall have no obligation to determine if such directed investment is a Qualified Investment or meets the requirements specified in the Tax Compliance Agreement. Such investments will be held by Escrow Agent in the Project Fund, and any interest earned on such investments will be deposited in the Project Fund. Escrow Agent may act as purchaser or agent in the making or disposing of any investment.

6. "Qualified Investments" means to the extent the same are at the time legal for investment of the funds being invested: (i) direct general obligations of the United States of America; (ii) obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America; (iii) general obligations of the agencies and instrumentalities of the United States of America acceptable to Lessor; (iv) certificates of deposit, time deposits or demand deposits with any bank or savings institution including Escrow Agent or any affiliate thereof, provided that such certificates of deposit, time deposits or demand deposits, if not insured by the Federal Deposit Insurance Corporation, are fully secured by obligations described in (i), (ii) or (iii) above; (v) repurchase agreements with any state or national bank or trust company, including Escrow Agent or any affiliate thereof, that are secured by obligations of the type described in (i), (ii) or (iii) above, provided that such collateral is free and clear of claims of third parties and that Escrow Agent or a third party acting solely as agent for Escrow Agent has possession of such collateral and a perfected first security interest in such collateral; (vi) investment contracts with a bank, bank holding company, insurance company or financial institution whose unsecured long-term indebtedness or claims-paying ability are rated at least AA by S&P or Aa3 by Moody's and (vii) money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AA-Am-G, AA-Am or AA-Am.

7. Moneys in the Project Fund will be used to pay for Project Costs. Payment will be made from the Project Fund for the Project Costs (i) upon presentation to Escrow Agent of a written request for funding in the form attached hereto as **Exhibit A**, signed by Lessee Representative and approved for payment by Lessor and submission of a valid IRS Form W-9 for each payee, or (ii) upon presentation to Escrow Agent of a written request for funding signed by the Lessee Representative stating that amount requested and certifying the disbursement shall be applied by Lessee to costs incurred in connection with the execution and delivery of the Lease.

Escrow Agent may rely conclusively on any such certificate and will not be required to make any independent investigation in connection therewith. Escrow Agent will make disbursements to pay Project Costs for which any such request is made within five business days of the receipt of that certificate.

8. The Project Fund will terminate upon the occurrence of the earlier of (i) the presentation to Lessor and Escrow Agent of (a) a Completion Certificate, a form of which is attached hereto as **Exhibit B**, (b) a certificate of Lessee confirming it has delivered to Lessor certificates of insurance evidencing compliance with **Section 18** of the Lease, and (c) a certificate of Lessee confirming it has delivered to Lessor final occupancy permit(s) respecting the Project, if any, issued by all appropriate governmental authorities; or (ii) the presentation of written notification by Lessor, or, if Lessor has assigned its interest under the Lease, then the assignees or subassignees of all of Lessor's interest under the Lease, that an Event of Default has occurred or that Lessee has terminated the Lease pursuant to **Sections 5** and **8** of the Lease. The Completion Certificate may also state that it is given without prejudice to any rights of Lessee that then exist or may subsequently come into being against third parties. Upon termination as described in (i) or (ii), any amount remaining in the Project Fund will be promptly disbursed to Lessor and applied by Lessor, without further authorization, as provided in **Section 4** of the Lease.

9. Lessee will comply with the Tax Compliance Agreement. Escrow Agent will comply with its duties as expressly set forth in the Tax Compliance Agreement. The Tax Compliance Agreement may be amended at any time without the consent of the parties hereto if in the opinion of nationally recognized counsel in the area of tax-exempt obligations of state and local governments satisfactory to Lessor, such amendment is necessary or desirable to ensure that the Interest Components of Lease Payments will remain excluded from gross income for federal income tax purposes.

10. Escrow Agent may at any time resign by giving at least 30 days' written notice to Lessee and Lessor, but such resignation will not take effect until the appointment of a successor Escrow Agent. The substitution of another bank or trust company to act as Escrow Agent under this Escrow Agreement may occur by written agreement of Lessor and Lessee. In addition, Escrow Agent may be removed at any time, with or without cause, by an instrument in writing executed by Lessor and Lessee. In the event of any resignation or removal of Escrow Agent, a successor Escrow Agent will be appointed by an instrument in writing executed by Lessor and Lessee. Such successor Escrow Agent will indicate its acceptance of such appointment by an instrument in writing delivered to Lessor, Lessee and the predecessor Escrow Agent. Thereupon such successor Escrow Agent will, without any further act or deed, be fully vested with all the trusts, powers, rights, duties and obligations of Escrow Agent under this Escrow Agreement, and the predecessor Escrow Agent will deliver all moneys and securities held by it under this Escrow Agreement to such successor Escrow Agent.

11. Escrow Agent incurs no liability to make any disbursements pursuant to this Escrow Agreement except from funds held in the Project Fund. Escrow Agent makes no representations or warranties as to the title to the Project or as to the performance of any obligations of Lessor or Lessee.

12. Escrow Agent makes no representation or admission and assumes no responsibility respecting the ownership, validity, genuineness or value of the fund, instruments, documents, matters or things, or any endorsement or assignment thereof, mentioned in this Escrow Agreement and transaction between the Contractor and Lessee.

13. Escrow Agent will be liable as a depository only and will not be responsible for the sufficiency or accuracy of the form, execution or validity of the documents herein referred to or deposited hereunder, nor will it be liable in any respect on account of the identity, authority or rights of the persons executing or delivering, or purporting to execute or deliver any such document, paper, matter or thing.

14. The decision of Escrow Agent reached by it in good faith by its officer and/or counsel that the stipulations in this Escrow Agreement have been complied with or not complied with will be binding upon the parties to this Escrow Agreement and upon all persons interested in the Project Fund, instrument, documents, matters or things, and Escrow Agent will not be liable for any loss, expense, claim or damage that may result or be claimed to result to any such part(ies) by reason of this Escrow Agreement acting upon the basis of such decision. Escrow Agent shall not incur any liability to anyone for any damages, losses, expenses, or claims except for damages, losses, expenses or claims finally determined to have been caused by the willful misconduct or gross negligence of Escrow Agent.

15. Escrow Agent is under no obligation whatsoever to superintend or monitor the Project or to monitor if the investments made hereunder are in compliance with the Tax Compliance Agreement.

16. Lessee, to the extent permitted by law, will indemnify and hold Escrow Agent harmless from any and all loss or damage of whatsoever kind and from any suits, claims or demands, including Escrow Agent's reasonable legal fees and expenses on account of any matter or thing arising out of this

Escrow Agreement or in connection therewith, except for such suits, claims or demands resulting from Escrow Agent's own gross negligence or willful misconduct. The indemnification obligation of Lessee shall survive the resignation or removal of Escrow Agent or the termination of this Escrow Agreement.

17. Lessee and Lessor understand and agree that Escrow Agent is not the agent or representative of either party and this Agreement will not be construed to make Escrow Agent liable to materialmen, contractors, subcontractors, craftsmen, laborers or others for goods or services delivered or provided by them upon the Project or for debts or claims accruing to Lessee or Lessor against the Project, and it is distinctly understood and agreed that there is no contractual relationship, either express or implied, between Escrow Agent and any materialman, contractor, subcontractor, craftsman, laborer, or any other persons supplying any work, labor or material in the construction of the Project.

18. Lessee will pay any reasonable fee and expenses of Escrow Agent for its services under this Escrow Agreement. Additionally, Escrow Agent is entitled to fees for extraordinary services and reimbursement of any out of pocket and extraordinary costs and expenses, including, but not limited to, attorneys' fees.

19. This Escrow Agreement will be governed by and construed in accordance with the laws of the State.

20. If any provision of this Escrow Agreement is held invalid or unenforceable by any court of competent jurisdiction, that holding will not invalidate or render unenforceable any other provision hereof.

21. This Escrow Agreement may not be amended except by a written instrument executed by Lessor, Lessee, Administrator and Escrow Agent.

22. This Escrow Agreement may be executed in several counterparts, and each counterpart so executed will be an original. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents will be deemed to be authentic and valid counterparts of the original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law. The transaction described herein may be conducted and related documents may be sent, received or stored by electronic means.

23. This written agreement is a final expression of the agreement between the parties hereto and that agreement may not be contradicted by evidence of any prior oral agreement or of a contemporaneous oral agreement between the parties hereto. No unwritten oral agreement between the parties exists.

24. In the event of any disagreement between the undersigned or the person or persons named in the instructions contained in this Escrow Agreement, or any other person, resulting in adverse claims and demands being made in connection with or for any papers, money or property involved herein, or affected hereby, Escrow Agent shall be entitled to refuse to comply with any demand or claim, as long as such disagreement shall continue, and in so refusing to make any delivery or other disposition of any money, papers or property involved or affected hereby, Escrow Agent shall not be or become liable to the undersigned or to any person named in such instructions for its refusal to comply with such conflicting or adverse demands, and Escrow Agent shall be entitled to refuse and refrain to act until: (i) The rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby, or (ii) All differences shall have been adjusted by agreement and Escrow Agent shall have been notified thereof in writing, signed by all the interested parties.

25. All notices, demands and requests required or permitted to be given under the provisions hereof must be in writing and shall be deemed to have been sufficiently given, upon receipt, if (i) personally delivered, (ii) sent by telecopy and confirmed by phone or (iii) mailed by registered or certified mail, with return receipt requested, delivered as follows:

- (a) If to Lessee: City of Carthage, Missouri
326 Grant Street
Carthage, Missouri 64836
- with a copy to the Administrator: Missouri Association of Municipal Utilities
1808 I-70 Drive SW
Columbia, Missouri 63857
- (b) If to Lessor: First State Community Bank
201 E. Columbia
Farmington, Missouri 63640
Attention: Governmental Lending
- (c) If to Escrow Agent: UMB Bank, N.A.
2 South Broadway, Suite 600
St. Louis, Missouri 63102
Attention: Corporate Trust Department

26. The parties hereto agree that, for tax reporting purposes, all interest or other income, if any, attributable to the Project Fund or any other amount held in escrow by Escrow Agent pursuant to this Agreement shall be allocable to Lessee. Lessee shall be responsible for all tax reporting. At the request of Escrow Agent, the parties agree to provide Escrow Agent completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that Escrow Agent may reasonably request (collectively, "Tax Reporting Documentation") at the time of execution of this Agreement and any information reasonably requested by Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time. The parties hereto understand that if such Tax Reporting Documentation is not so certified to Escrow Agent, Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by Escrow Agent pursuant to this Escrow Agreement.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Lessor, Lessee and Escrow Agent have caused this Escrow Agreement to be executed by their duly authorized representatives.

FIRST STATE COMMUNITY BANK
Lessor

By: _____
Title: _____

CITY OF CARTHAGE, MISSOURI
Lessee

By: _____
Title: Mayor

UMB BANK, N.A.
Escrow Agent

By: _____
Title: _____

**MISSOURI ASSOCIATION OF MUNICIPAL
UTILITIES**
Administrator

By: _____
Title: _____

SCHEDULE 1

DRAW SCHEDULE

[to be completed prior to Closing]

**EXHIBIT A
TO ESCROW AGREEMENT**

FORM OF WRITTEN REQUEST FOR FUNDING FROM PROJECT FUND

Request No. _____

Date: _____

To: UMB Bank, N.A.
2 South Broadway, 6th Floor
St. Louis, Missouri 63102
Attention: Corporate Trust Department

Re: Lease-Purchase Agreement dated as of December 15, 2020 (the "Lease"), by and among First State Community Bank, as lessor ("Lessor"), the City of Carthage, Missouri, as lessee ("Lessee"), and the Missouri Association of Municipal Utilities, as administrator

Ladies and Gentlemen:

Pursuant to **Section 4** of the Lease and **Section 7** of the Escrow Agreement dated as of December 15, 2020 (the "Escrow Agreement"), among Lessor, Lessee, the Missouri Association of Municipal Utilities, as administrator, and you, as escrow agent, Lessee hereby requests payment from the Project and hereby states and certifies as follows:

(a) All terms in this request are used with the meanings used in the Escrow Agreement.

(b) The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the Project Costs for which each obligation requested to be paid hereby was incurred are as set forth on **Attachment I** hereto.

(c) The amounts requested either have been paid by Lessee, or are justly due to vendors, contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses are stated on **Attachment I** hereto) who have performed necessary and appropriate work or furnished necessary and appropriate materials, equipment or furnishings in the acquisition, construction and installation of the Project.

(d) All such materials, equipment or furnishings have been delivered to Lessee.

(e) Any Project Cost that is for equipment relates to the equipment described on **Attachment 1**. That equipment is part or all of the equipment included in the Project under the Lease.

(f) The equipment described in this request for funding (i) has been delivered, installed and accepted, or (ii) the amount requested is a down payment currently due on that equipment.

(g) If (f)(i) is applicable, Lessee has conducted such inspection and/or testing of that equipment as it deems necessary and appropriate and hereby acknowledges that it accepts that equipment for all purposes.

(h) If (f)(i) is applicable, Lessee is currently maintaining the insurance coverage required by **Section 18** of the Lease.

(i) No part thereof has been or is being made the basis for the withdrawal of any moneys in any previous or pending request under the Escrow Agreement.

(j) [Reserved].

(j) This certificate contains no request for payment on account of any retained percentage which Lessee is on the date hereof entitled to retain.

(k) There has not been filed with or served upon Lessee any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts requested which has not been released or will not be released simultaneously with the payment of such obligation.

(l) Each of Lessee's representations contained in the Lease is true, correct and not misleading as though made as of the date hereof.

(m) No event exists that constitutes, or with the giving of notice of the passage of time or both would constitute, an Event of Default under the Lease.

(n) Lien waivers for all services or materials furnished by subcontractors or suppliers related to the amounts requested are attached hereto.

(o) Invoices, statements, vouchers or bills for the amounts requested are attached hereto.

CITY OF CARTHAGE, MISSOURI

By: _____
Lessee Representative

APPROVED BY LESSOR:

FIRST STATE COMMUNITY BANK

By: _____
Lessor Representative

ATTACHMENT I
TO WRITTEN REQUEST FOR FUNDING
FROM PROJECT FUND

SCHEDULE OF PAYMENTS REQUESTED

<u>Payee and Address</u>	<u>Amount</u>	<u>Description</u>
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Any of the foregoing payments that are related to equipment, relate to the following equipment:

<u>Quantity</u>	<u>Serial Number</u>	<u>Item</u>	<u>Amount</u>
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EXHIBIT B
TO ESCROW AGREEMENT
COMPLETION CERTIFICATE

To: UMB Bank, N.A.
2 South Broadway, 6th Floor
St. Louis, Missouri 63102
Attention: Corporate Trust Department

Re: Lease Purchase Agreement dated as of December 15, 2020 (the "Lease"), by and among First State Community Bank, as lessor ("Lessor"), the City of Carthage, Missouri, as lessee ("Lessee"), and the Missouri Association of Municipal Utilities, as administrator

Ladies and Gentlemen:

Pursuant to **Section 8** of the Escrow Agreement dated as of December 15, 2020 (the "Escrow Agreement"), among Lessor, Lessee, the Missouri Association of Municipal Utilities, as administrator, and you, as escrow agent, the undersigned hereby certifies (a) all terms in this certificate are used with the meanings used in the Escrow Agreement, (b) the Project was completed on _____, 20__, (c) all other facilities necessary in connection with the Project have been acquired, constructed and installed, (d) the Project and such other facilities have been acquired, constructed and installed in accordance with their plans and specifications and in conformance with all applicable zoning, planning, building, environmental and other similar governmental regulations, (e) each of Lessee's representations contained in the Lease is true, correct and not misleading as though made as of the date hereof, (f) no event exists that constitutes, or with the giving of notice of the passage of time or both would constitute, an Event of Default thereunder, and (g) all Project Costs have been paid. This certificate is given without prejudice to any rights of Lessee that now exist or may subsequently come into being against third parties.

Date: _____, 20__.

CITY OF CARTHAGE, MISSOURI

By: _____
Lessee Representative

TAX COMPLIANCE AGREEMENT

Dated as of December 15, 2020

Between

CITY OF CARTHAGE, MISSOURI

And

**UMB BANK, N.A.,
as Escrow Agent**

**Not to Exceed \$7,000,000
Lease-Purchase Agreement
dated as of December 15, 2020
by and among
City of Carthage, Missouri, as Lessee,
First Community State Bank, as Lessor
and the
Missouri Association of Municipal Utilities, as Administrator**

TAX COMPLIANCE AGREEMENT

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* * *

TAX COMPLIANCE AGREEMENT

THIS TAX COMPLIANCE AGREEMENT (the "Tax Agreement"), entered into as of December 15, 2020, between the **CITY OF CARTHAGE, MISSOURI**, a political subdivision organized and existing under the laws of the State of Missouri (the "Lessee"), and **UMB BANK, N.A.**, a national banking association organized and existing under the laws of the United States of America, as Escrow Agent (the "Escrow Agent");

RECITALS

1. This Tax Agreement is being executed and delivered in connection with the execution and delivery of that certain Lease-Purchase Agreement dated as of December 15, 2020 (the "Lease"), in the original principal amount of not to exceed \$7,000,000, by and among the Lessee, as lessee, First Community State Bank, a state-chartered banking institution organized and existing under the laws of the State of Missouri, as lessor (the "Lessor"), and the Missouri Association of Municipal Utilities, a Missouri nonprofit corporation, as administrator (the "Administrator"), for the purposes described in this Tax Agreement and in the hereinafter-defined Escrow Agreement.

2. The Internal Revenue Code of 1986, as amended (the "Code"), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the "Regulations"), impose certain limitations on the uses and investment of the Lease proceeds and of certain other money relating to the Lease and set forth the conditions under which the interest components of the Lease payments will be excluded from gross income for federal income tax purposes.

3. The Lessee and the Escrow Agent are entering into this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of Lease proceeds and the property financed or refinanced with those proceeds and the investment of the Lease proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest components of the Lease payments from gross income for federal income tax purposes.

4. The Lessee adopted a Tax-Exempt Financing Compliance Procedure on September 11, 2012 (the "Tax Compliance Procedure"), a copy of which is attached hereto as **Exhibit G**, for the purpose of setting out general procedures for the Lessee to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations.

5. This Tax Agreement is entered into as required by the Tax Compliance Procedure to set out specific tax compliance procedures applicable to the Lease.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Lessee and the Escrow Agent represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Lease, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

“Administrator” means the Missouri Association of Municipal Utilities, a nonprofit corporation organized under the laws of the State of Missouri.

“Annual Compliance Checklist” means a checklist for the Financed Property designed to measure compliance with the requirements of this Tax Agreement and the Tax Compliance Procedure after the Issue Date as further described in **Section 4.2** and substantially in the form attached as **Exhibit E**.

“Bond Compliance Officer” means the Lessee’s City Clerk or, if the position of City Clerk is vacant, the person filling the responsibilities of the City Clerk for the Lessee.

“Code” means the Internal Revenue Code of 1986, as amended.

“Escrow Agent” means UMB Bank, N.A., and its successor or successors and any other corporation or association which at any time may be substituted in its place at the time serving as Escrow Agent under the Escrow Agreement.

“Escrow Agreement” means the Escrow Agreement dated as of December 15, 2020, among the Lessor, the Lessee, the Escrow Agent and the Administrator.

“Final Written Allocation” means the Final Written Allocation of expenditures prepared by the Bond Compliance Officer in accordance with the Tax Compliance Procedure and **Section 4.2(b)** of this Tax Agreement, a sample of which is included as **Exhibit F**.

“Financed Property” means the portion of the Project being financed or refinanced with the proceeds of the Lease as described on **Exhibit D**.

“Gross Proceeds” means (a) sale proceeds (any amounts actually or constructively received by the Lessee from the execution and delivery of the Lease, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds, other Investment proceeds or transferred proceeds), (c) any amounts held in a sinking fund for the Lease, (d) any amounts held in a pledged fund or reserve fund for the Lease, (e) any other replacement proceeds. Specifically, Gross Proceeds includes (but is not limited) to amounts held in the Project Fund.

“Guaranteed Investment Contract” is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (e.g., a forward supply contract).

“Investment” means any security, obligation, annuity contract or other investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds. This term does not include a tax-exempt bond, except for “specified private activity bonds” as defined in Code § 57(a)(5)(C), but it does include the investment element of most interest rate caps.

“IRS” means the United States Internal Revenue Service.

“Issue Date” means December 15, 2020.

“Lease” means the Lease-Purchase Agreement dated as of December 15, 2020, by and among the Lessee, the Lessor and the Administrator.

“Lessee” means City of Carthage, Missouri, a political subdivision organized and existing under the laws of the State of Missouri.

“Lessor” means First Community State Bank, a state-chartered banking institution organized and existing under the laws of the State of Missouri, and its successors and assigns.

“Management or Service Agreement” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Property, such as a contract to manage the entire Financed Property or a portion of the Project. Contracts for services that are solely incidental to the primary governmental function of the Financed Property (for example, contracts for janitorial, office equipment repair, billing, or similar services), however, are not treated as Management or Service Agreements.

“Measurement Period” means, with respect to each item of property financed as part of the Financed Property, the period beginning on the later of (a) the Issue Date or (b) the date the property is placed in service and ending on or the earlier of (1) the final maturity date of the Lease or (2) the expected economic useful life of the property.

“Minor Portion” means the lesser of \$100,000 or 5% of the sale proceeds of the Lease.

“Net Proceeds” means the sale proceeds of the Financed Property (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

“Non-Qualified Use” means use of Lease proceeds or the Financed Property in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Lease proceeds or the Financed Property are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Property, will constitute use under Regulations § 1.141-3.

“Non-Qualified User” means any person or entity other than a Qualified User.

“Opinion of Special Tax Counsel” means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of special tax counsel. Unless otherwise specifically noted herein an Opinion of Special Tax Counsel must conclude that the action or proposed action or the failure to act or proposed

failure to act for which the opinion is required will not adversely affect the exclusion of the interest component of the payments made on the Lease from gross income for federal income tax purposes.

“Post-Issuance Tax Requirements” means those requirements related to the use of proceeds of the Lease, the use of the Financed Property and the investment of Gross Proceeds after the Issue Date.

“Project” means all of the property acquired, developed, constructed, renovated and equipped by the Lessee using proceeds of the Lease and other money contributed by the Lessee, as described on **Exhibit D**.

“Project Fund” means a fund by that name established in the custody of the Escrow Agent under the Escrow Agreement.

“Qualified Use Agreement” means any of the following:

(a) A lease or other short-term use by members of the general public who occupy the Financed Property on a short-term basis as in the ordinary course of the Lessee’s governmental purposes.

(b) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Property for a period up to 200 days in length pursuant to an arrangement whereby (1) the use of the Financed Property under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (2) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Property under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(c) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Property for a period up to 100 days in length pursuant to arrangements whereby (1) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (2) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed, and (3) the Financed Property was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Property under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(d) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Property for a period up to 50 days in length pursuant to a negotiated arm’s-length arrangement at fair market value so long as the Financed Property was not constructed for a principal purpose of providing the property for use by that person.

“Qualified User” means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

“Regulations” means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Lease.

“Special Tax Counsel” means Gilmore & Bell, P.C., or other firm of nationally recognized special tax counsel acceptable to the Lessee.

“State” means the State of Missouri.

“Tax Agreement” means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

“Tax Compliance Procedure” means the Lessee’s Tax-Exempt Financing Compliance Procedure dated as of September 11, 2012, a copy of which is included as **Exhibit G**.

“Tax-Exempt Bond File” means documents and records for the Lease, maintained by the Bond Compliance Officer pursuant to the Tax Compliance Procedure.

“Transcript” means the Transcript of Proceedings relating to the execution and delivery of the Lease.

“Yield” means yield on the Lease, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

ARTICLE II

GENERAL REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the Lessee. The Lessee represents and covenants as follows:

(a) *Organization and Authority.* The Lessee (1) is a political subdivision organized and existing under the laws of the State, (2) has lawful power and authority to execute and deliver the Lease for the purposes set forth therein and to enter into, execute and deliver this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Lease, the Escrow Agreement and this Tax Agreement, acting by and through its duly authorized officials.

(b) *Tax-Exempt Status of Lease—General Representation and Covenants.* In order to maintain the exclusion of the interest component of the Lease payments from gross income for federal income tax purposes, the Lessee (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or investment of, any Lease proceeds, other money held under the Escrow Agreement, or other funds of the Lessee, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Property in a manner that would cause any portion of the Lease to become a “private activity bond” as defined in Code § 141.

(c) *Governmental Obligations—Use of Proceeds.* Throughout the Measurement Period, (1) for federal income tax purposes, all of the Financed Property is expected to be owned by the Lessee or

another Qualified User, (2) no portion of the Financed Property is expected to be used in a Non-Qualified Use, and (3) the Lessee will not permit any Non-Qualified Use of the Financed Property without first consulting with Special Tax Counsel.

(d) *No Private Loan.* Not more than 5% of the Net Proceeds of the Lease will be loaned directly or indirectly to any Non-Qualified User.

(e) *Management or Service Agreements.* As of the Issue Date, the Lessee has no Management or Service Agreements with Non-Qualified Users. During the Measurement Period, the Lessee will not enter into or renew any Management or Service Agreement with any Non-Qualified User without first consulting with Special Tax Counsel.

(f) *Leases.* Except for the Lease, as of the Issue Date, the Lessee has not entered into any subleases of any portion of the Financed Property other than Qualified Use Agreements. During the Measurement Period, the Lessee will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first consulting with Special Tax Counsel.

(g) *Limit on Maturity of Lease.* A list of the assets included in the Financed Property and a computation of the "average reasonably expected economic life" is attached to this Tax Agreement as **Exhibit D**. Based on this computation, the "average maturity" of the Lease, as computed by Special Tax Counsel, does not exceed 120% of the average reasonably expected economic life of the Financed Property.

(h) *Expenditure of Lease Proceeds; Reimbursement.* On August 25, 2020, the governing body of the Lessee adopted a resolution declaring its intent to finance the Financed Property and to execute and deliver the Lease and to reimburse itself for expenditures made for the Financed Property prior to the execution and delivery of the Lease. A copy of the resolution is included as **Exhibit C**. \$_____ of the proceeds of the Lease will be allocated to expenditures paid by the Lessee prior to the Issue Date and should be shown on line 45 of Form 8038-G. No portion of the Net Proceeds of the Lease are expected to be used to reimburse an expenditure paid by the Lessee more than 60 days prior to the date the resolution was adopted unless such expenditure satisfies the requirements of Regulations § 1.150-2(f). No reimbursement allocation will be made for an expenditure made more than 3 years before the date of the reimbursement allocation. No reimbursement allocation will be made more than 3 years following the later of (1) the date of the expenditure or (2) the date the Financed Property was placed in service.

(i) *Registration Requirement.* The Lease requires that any assignment of the Lease by the Lessor is not effective until the assignment is registered on the registration books kept by the Lessee. Therefore, the Lease will be held in registered form within the meaning of Code § 149(a).

(j) *Lease Not Federally Guaranteed.* The Lessee will not take any action or permit any action to be taken which would cause any portion of the Lease to be "federally guaranteed" within the meaning of Code § 149(b).

(k) *IRS Form 8038-G.* Special Tax Counsel will prepare Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) based on the representations and covenants of the Lessee contained in this Tax Agreement or otherwise provided by the Lessee. Special Tax Counsel will sign the return as a paid preparer following completion and will then deliver copies to the Lessee for execution and for the Lessee's records. The Lessee agrees to timely execute and return to Special Tax Counsel the execution copy of Form 8038-G for filing with the IRS. A copy of the "as-filed" Form 8038-G, along

with proof of filing, will be included as **Exhibit B**. The Lessee has allocated \$ _____ of the Net Proceeds of the Lease to reimburse expenditures made prior to the Issue Date and that amount should be reflected on Line 45a of Form 8038-G. A list of expenditures to be reimbursed is included as part of **Exhibit D**.

(l) *Hedge Bond.* At least 85% of the net sale proceeds of the Lease will be used to carry out the governmental purpose of the Lease within three years after the Issue Date, and not more than 50% of the proceeds of the Lease will be invested in Investments having a substantially guaranteed Yield for four years or more.

(m) *Compliance with Future Tax Requirements.* The Lessee understands that the Code and the Regulations may impose new or different restrictions and requirements on the Lessee in the future. The Lessee will comply with such future restrictions that are necessary to maintain the exclusion of the interest components of the Lease payments from gross income for federal income tax purposes.

(n) *Single Issue; No Other Issues.* The Lease constitutes a single "issue" under Regulations § 1.150-1(c). No other debt obligations of the Lessee (1) are being sold within 15 days of the execution and delivery of the Lease, (2) are being sold under the same plan of financing as the Lease, and (3) are expected to be paid from substantially the same source of funds as the Lease (disregarding guarantees from unrelated parties, such as bond insurance).

(o) *Interest Rate Swap.* As of the Issue Date, the Lessee has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Lease. The Lessee will not enter into any such arrangement in the future without first consulting with Special Tax Counsel.

(p) *Guaranteed Investment Contract.* As of the Issue Date, the Lessee does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Lease. The Lessee will be responsible for complying **Section 4.4(d)** if it decides to enter into a Guaranteed Investment Contract at a later date.

(q) *Bank Qualified Tax-Exempt Obligation.* The Lessee designates the Lease as a "qualified tax-exempt obligation" under Code § 265(b)(3), and with respect to this designation certifies as follows:

(1) the Lessee reasonably anticipates that the amount of tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) that will be issued by or on behalf of the Lessee (and all subordinate entities of the Lessee) during the calendar year that the Lease is executed and delivered, including the Lease, will not exceed \$10,000,000; and

(2) the Lessee (including all subordinate entities of the Lessee) will not issue tax-exempt obligations (other than private activity bonds that are not qualified 501(c)(3) bonds) during the calendar year that the Lease is executed and delivered, including the Lease, in an aggregate principal amount or aggregate issue price in excess of \$10,000,000, without first obtaining an Opinion of Special Tax Counsel that the designation of the Lease as "qualified tax-exempt obligations" will not be adversely affected.

Section 2.2. Representations and Covenants of the Escrow Agent. The Escrow Agent represents and covenants to the Lessee as follows:

(a) The Escrow Agent will comply with its duties as expressly set forth in the provisions of this Tax Agreement and any written advice or Opinion of Special Tax Counsel, specifically referencing the Lease and received by the Escrow Agent, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Escrow Agent and relating to reporting requirements or other requirements necessary to maintain the exclusion of the interest component of the Lease from gross income for federal income tax purposes.

(b) The Escrow Agent, at the request of the Lessee, may from time to time cause a firm of attorneys, consultants or independent accountants or an investment banking firm to provide the Escrow Agent and the Lessee with such information as the Lessee may request in order to determine all matters relating to (1) the Yield on the Lease as it relates to any data or conclusions necessary to verify that no portion of the Lease is an "arbitrage bond" within the meaning of Code § 148, and (2) compliance with arbitrage rebate requirements of Code § 148(f). The Lessee will pay all costs and expenses incurred in connection with supplying the foregoing information.

Section 2.3. Survival of Representations and Covenants. All representations, covenants and certifications of the Lessee and the Escrow Agent contained in this Tax Agreement or in any certificate or other instrument delivered by the Lessee or the Escrow Agent under this Tax Agreement, will survive the execution and delivery of such documents and the Lease, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding prepayment of the Lease.

ARTICLE III

ARBITRAGE CERTIFICATIONS AND COVENANTS

Section 3.1. General. The purpose of this **Article III** is to certify, under Regulations § 1.148-2(b), the Lessee's expectations as to the sources, uses and investment of Lease proceeds and other money, in order to support the Lessee's conclusion that no portion of the Lease is an arbitrage bond. The person executing this Tax Agreement on behalf of the Lessee is an officer of the Lessee responsible for issuing the Lease.

Section 3.2. Reasonable Expectations. The facts, estimates and expectations set forth in this **Article III** are based upon and in reliance upon the Lessee's understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the Lessee's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Lessee set forth in this Tax Agreement are reasonable. The Lessee has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

Section 3.3. Purpose of Financing. The Lease is being delivered as a "draw-down loan," within the meaning of Regulations § 1.150-1(c)(4)(i). The Lessor has committed to fund the Lease from time to time for an aggregate purchase price of not to exceed \$7,000,000 (which amount equals the maximum par amount of the Lease), and therefore the aggregate issue price of the Lease is \$7,000,000. On the Issue Date, at the direction of the Lessee, the Lessor will make an initial advance in an amount equal to \$55,000, such amount exceeding the lesser of \$50,000 or 5% of the aggregate issue price of the

Lease. Thereafter, at the direction of the Lessee, the Lessor will make subsequent advances on the Lease, provided that, no advance will be made later than January 1, 2022, in accordance with the Lease, and the aggregate of all such advances, including the initial advance, will not exceed \$7,000,000. Therefore, the Lease will be treated as a "single issue" under Regulations §1.150-1(c) that is issued on the Issue Date.

Section 3.4. Funds and Accounts. The Project Fund has been established under the Escrow Agreement.

Section 3.5. Amount and Use of Lease Proceeds and Other Money. On the Issue Date, sale proceeds of the Lease in the amount of \$55,000 will be used to acquire a portion of the Financed Property, and \$-0- will be used to pay costs of executing and delivering the Lease. Following the Issue Date, the remaining sale proceeds of the Lease, as and when advanced, are expected to be used to finance the remaining portions of the Financed Property.

Section 3.6. No Refunding. No proceeds of the Lease will be used to pay principal or interest on any other debt obligation.

Section 3.7. Project Completion. The Lessee has incurred, or will incur within 6 months after the Issue Date, a substantial binding obligation to a third party to spend at least 5% of the Net Proceeds of the Lease on the Financed Property. The completion of the Financed Property and the allocation of the Net Proceeds of the Lease to expenditures will proceed with due diligence. At least 85% of the Net Proceeds of the Lease will be allocated to expenditures on the Financed Property within three years after the Issue Date.

Section 3.8. No Sinking Funds. No sinking fund or other similar fund that is expected to be used to pay principal components or interest components of the Lease payments has been established or is expected to be established.

Section 3.9. Reserve, Replacement and Pledged Funds.

(a) *Debt Service Reserve Fund.* No reserve or replacement fund has been established for the Lease.

(b) *No Other Replacement or Pledged Funds.* None of the Lease proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Property, and that instead has been or will be used to acquire higher yielding Investments. There are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest component of the Lease payments if the Lessee encounters financial difficulty.

(c) *Other Funds.* The Project Fund is expected to be used to provide funds to construct and install the Financed Property, and therefore is not pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest component of the Lease payments if the Lessee encounters financial difficulty.

Section 3.10. Purpose Investment Yield. The proceeds of the Lease will not be used to purchase an Investment for the purpose of carrying out the governmental purpose of the financing.

Section 3.11. Issue Price and Yield on Lease.

(a) *Issue Price.* Based on the Lessor's certifications in the Investment Letter included as a part of the Transcript, the Lessee hereby elects to establish the issue price of the Lease pursuant to Regulations § 1.148-1(f)(2)(i) (relating to the so-called "private placement rule"). Therefore, the aggregate issue price of the Lease for such purpose is \$7,000,000.

(b) *Yield.* Based on the initial purchase price, the Yield on the Lease is _____%, as computed by Special Tax Counsel as shown on **Exhibit A**. The Lessee has not entered into an interest rate swap agreement with respect to any portion of the proceeds of the Lease.

Section 3.12. Miscellaneous Arbitrage Matters.

(a) *No Abusive Arbitrage Device.* The Lease is not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Lessee to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.

(b) *No Over-Issuance.* The sale proceeds of the Lease, together with expected Investment earnings thereon and other money contributed by the Lessee, do not exceed the cost of the governmental purpose of the Lease as described above.

Section 3.13. Conclusion. On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Lessee does not expect that the Lease proceeds will be used in a manner that would cause any portion of the Lease to be an "arbitrage bond" within the meaning of Code § 148 and the Regulations.

ARTICLE IV

POST-ISSUANCE TAX COMPLIANCE REQUIREMENTS POLICIES AND PROCEDURES

Section 4.1. General.

(a) *Purpose of Article.* The purpose of this **Article IV** is to supplement the Tax Compliance Procedure and to set out specific policies and procedures governing compliance with the federal income tax requirements for the Lease that apply after the Lease is executed and delivered. The Lessee recognizes that the interest component of the Lease payments will remain excludable from gross income only if the Post-Issuance Tax Requirements are followed after the Issue Date. The Lessee further acknowledges that written evidence substantiating compliance with the Post-Issuance Tax Requirements must be retained in order to permit the Lease to be refinanced with tax-exempt obligations and substantiate the position that the interest component of each Lease payment is exempt from gross income in the event of an audit of the Lease by the IRS.

(b) *Written Policies and Procedures of the Lessee.* The Lessee intends for the Tax Compliance Procedure, as supplemented by this Tax Agreement, to be its primary written policies and procedures for monitoring compliance with the Post-Issuance Tax Requirements for the Lease and to supplement any other formal policies and procedures related to the Post-Issuance Tax Requirements that the Lessee has established. The provisions of this Tax Agreement are intended to be consistent with the

Tax Compliance Procedure. In the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.

(c) *Bond Compliance Officer.* The Lessee, when necessary to fulfill its Post-Issuance Tax Requirements, will, through its Bond Compliance Officer, sign Form 8038-T in connection with the payment of arbitrage rebate or Yield reduction payments, participate in any federal income tax audit of the Lease or related proceedings under a voluntary compliance agreement procedures (VCAP) or undertake a remedial action procedure pursuant to Regulations § 1.141-12. In each case, all costs and expenses incurred by the Lessee shall be treated as a reasonable cost of administering the Lease and the Lessee shall be entitled to reimbursement and recovery of its costs to the same extent as provided in the Lease or State law.

Section 4.2. Record Keeping; Use of Lease Proceeds and Use of Financed Property.

(a) *Record Keeping.* The Bond Compliance Officer will maintain the Tax-Exempt Bond File for the Lease in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in a written Opinion of Special Tax Counsel or to the extent otherwise provided in this Tax Agreement, the Bond Compliance Officer shall retain records related to the Post-Issuance Tax Requirements until 3 years following the final maturity of (i) the Lease or (ii) any obligation issued to refinance the Lease. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the Lessee and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Lessee's premises.

(b) *Accounting and Allocation of Lease Proceeds to Expenditures.* The Bond Compliance Officer will account for the investment and expenditure of Lease proceeds in the level of detail required by the Tax Compliance Procedure. The Bond Compliance Officer will supplement the expected allocation of Lease proceeds to expenditures with a Final Written Allocation as required by the Tax Compliance Procedure. A sample form of Final Written Allocation is attached as **Exhibit F**.

(c) *Annual Compliance Checklist.* Attached as **Exhibit E** is a form of Annual Compliance Checklist for the Lease. The Bond Compliance Officer will prepare and complete an Annual Compliance Checklist for the Financed Property at least annually, following the placed in service date of the Project, in accordance with the Tax Compliance Procedure. In the event the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Bond Compliance Officer will take the actions identified in advice or an Opinion of Special Tax Counsel or **Section 4.4** of the Tax Compliance Procedure to correct any deficiency.

(d) *Opinions of Special Tax Counsel.* The Bond Compliance Officer is responsible for obtaining and delivering to the Lessee any advice or Opinion of Special Tax Counsel required under the provisions of this Tax Agreement, including any advice or Opinion of Special Tax Counsel required by this Tax Agreement or the Annual Compliance Checklist.

Section 4.3. Investment Yield Restriction. Except as described below, the Lessee will not invest Gross Proceeds at a Yield greater than the Yield on the Lease:

(a) *Project Fund.* Lease proceeds deposited in the Project Fund, including amounts held to pay the costs of executing and delivering the Lease, and Investment earnings on those proceeds may be invested without Yield restriction for up to 3 years following the Issue Date. If any unspent proceeds remain in the Project Fund after 3 years, those amounts may continue to be invested without Yield restriction so long as the Lessee pays to the IRS all Yield reduction payments in accordance with Regulations § 1.148-5(c). These payments are required whether or not the Lease is exempt from the arbitrage rebate requirements of Code § 148.

(b) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

Section 4.4. Procedures for Establishing Fair Market Value.

(a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with Regulations § 1.148-5.

(b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with Regulations § 1.148-5.

(c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The Lessee is applying Regulations § 1.148-5(d)(6)(iii)(A) (relating to electronic bidding of Guaranteed Investment Contracts) to the Lease. The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. The Lessee or the Escrow Agent makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

(A) The bid specifications are in writing and are timely forwarded to potential providers.

(B) The bid specifications include all "material" terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.

(C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Lessee, the Escrow Agent, or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the Lessee, the Escrow Agent, or any other person, for purposes of satisfying the requirements of the Regulations.

(D) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.

(E) The terms of the solicitation take into account the Lessee’s reasonably expected deposit and draw-down schedule for the amounts to be invested.

(F) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (*i.e.*, a last look) before providing a bid.

(G) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of Investments being purchased.

(2) Bids Received. The bids received must meet all of the following requirements:

(A) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(B) At least one of the three bids received is from a reasonably competitive provider, as defined above.

(C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.

(3) Winning Bid. The winning bid is the highest yielding bona fide bid (determined net of any broker’s fees).

(4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.

(5) Records. The Lessee and the Escrow Agent retain the following records with the lease documents until three years after the Lease is prepaid:

(A) A copy of the Guaranteed Investment Contract.

(B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Lessee or the Escrow Agent, and the certification as to fees paid, described in paragraph (d)(4) above.

(C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

(e) *Other Investments*. If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

(1) at least three bids on the Investment must be received from persons with no financial interest in the Lease (*e.g.*, as underwriters or brokers); and

(2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

Section 4.5 Lease Exempt from the Rebate Requirement.

(a) *The Lease Qualifies as a Rebate-Exempt Small Issue.*

(1) the Lessee is a governmental unit under State law with general taxing powers;

(2) no portion of the Lease is a "private activity bond" as defined in Code § 141;

(3) 95% or more of the Net Proceeds of the Lease are to be used for local governmental activities of the Lessee; and

(4) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) to be issued by the Lessee during the current calendar year is not reasonably expected to exceed \$5,000,000. The Lessee understands that, for this purpose; (a) the Lessee and all entities which issue bonds on behalf of the Lessee are treated as one issuer; (b) all bonds issued by an entity subordinate to the Lessee are treated as issued by the Lessee; and (c) bonds issued by the Lessee to currently refund any other bond are not taken into account to the extent that the amount of the refunding bonds does not exceed the outstanding amount of the refunded obligations.

(c) *Conclusion.* Based on these certifications, Special Tax Counsel has advised the Lessee that the Lease is exempt from the arbitrage rebate requirements of Code § 148(f), under the small-issuer exception set forth in Code § 148(f)(4)(D).

(d) *Circumstances Requiring Yield Reduction Calculations.* In the event Lease proceeds in excess of the Minor Portion remain on deposit in the Project Fund three years after the Issue Date, the Lessee will contact Special Tax Counsel to seek advice regarding restricting the Yield on Investments held in the Project Fund and preparing a Yield reduction calculation.

(e) *Filing Requirements.* The Lessee will file or cause to be filed with the IRS such reports or other documents as are required by the Code in accordance with an Opinion of Special Tax Counsel.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1. Term of Tax Agreement. This Tax Agreement will be effective concurrently with the execution and delivery of the Lease and will continue in force and effect until the principal components of, redemption premium, if any, and interest components on all Lease have been fully paid and all such Lease are cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States.

Section 5.2. Amendments. This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of the Lessor, but only if such amendment is in writing and is accompanied by an Opinion of Special Tax Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause the interest component of the Lease payments to be included in gross income for federal income tax purposes. No such amendment will become effective until the Lessee and the Escrow Agent receive this Opinion of Special Tax Counsel.

Section 5.3. Opinion of Special Tax Counsel. The Lessee and the Escrow Agent may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Special Tax Counsel addressed to each of them to the effect that the proposed deviation will not adversely affect the exclusion of interest component of Lease payments from gross income for federal income tax purposes. The Lessee and the Escrow Agent will comply with any further or different instructions provided in an Opinion of Special Tax Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Lease or the exclusion from gross income of interest component of the Lease payments.

Section 5.4. Reliance. In delivering this Tax Agreement, the Lessee and the Escrow Agent are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. Neither the Lessee nor the Escrow Agent is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of its knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering

its opinion as to the validity of the Lease and the exclusion from federal gross income of the interest component of the Lease payments.

Section 5.5. Severability. If any provision in this Tax Agreement or in the Lease is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

Section 5.6. Benefit of Tax Agreement. This Tax Agreement is binding upon the Lessee and the Escrow Agent and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Lease. Nothing in this Tax Agreement or in the Escrow Agreement or the Lease, express or implied, gives to any person, other than the parties to this Tax Agreement, and their successors and assigns, and the owners of the Lease, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement.

Section 5.7. Default; Breach and Enforcement. Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Lessor or any other document which references this Tax Agreement and gives remedies for a misrepresentation or breach thereof.

Section 5.8. Execution in Counterparts. This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

Section 5.9. Governing Law. This Tax Agreement will be governed by and construed in accordance with the laws of the State.

Section 5.10. Electronic Transactions. The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be sent, received or stored, by electronic means.

[Remainder of page intentionally blank.]

The parties to this Tax Agreement have caused this Tax Compliance Agreement to be duly executed by their duly authorized officers as of the Issue Date of the Lease.

CITY OF CARTHAGE, MISSOURI

By: _____
Title: Mayor

UMB BANK, N.A., as Escrow Agent

By: _____
Title: _____

EXHIBIT A

**DEBT SERVICE SCHEDULE AND COMPUTATION OF YIELD
AND COMPUTATION OF WEIGHTED AVERAGE MATURITY**

[To be prepared by Special Tax Counsel.]

EXHIBIT B

IRS FORM 8038-G

[To be prepared and filed by Special Tax Counsel.]

EXHIBIT C

RESOLUTION OF OFFICIAL INTENT

[On file with Special Tax Counsel.]

EXHIBIT D

**DESCRIPTION OF THE FINANCED PROPERTY;
LIST OF EXPENDITURES FOR REIMBURSEMENT**

[To be prepared by Special Tax Counsel.]

[List of expenditures to be provided by Lessee.]

EXHIBIT E

FORM OF ANNUAL COMPLIANCE CHECKLIST

Name of tax-exempt bonds ("Bonds") financing Financed Assets:	Lease-Purchase Agreement dated as of December 15, 2020, by and among the City of Carthage, Missouri, as lessee (the "Lessee"), First Community State Bank, as lessor (the "Lessor"), and the Missouri Association of Municipal Utilities, as administrator
Issue Date of Bonds:	December 15, 2020
Name of Bond Compliance Officer:	
Period covered by request ("Annual Period"):	

Description of Financed Assets: Improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment

Item	Question	Response
1 Ownership	For federal income tax purposes, was the Financed Property owned by the Lessee during the entire Annual Period?	☐ Yes ☐ No
	If answer above was "No," was advice of Special Tax Counsel obtained prior to the transfer?	☐ Yes ☐ No
	If Yes, include a description of the advice in the Tax-Exempt Bond File.	
	If No, contact Special Tax Counsel and include description of resolution in the Tax-Exempt Bond File.	
2 Leases & Other Rights to Possession	During the Annual Period, was the Financed Property subleased at any time pursuant to a lease or similar use agreement for more than 50 days?	☐ Yes ☐ No
	If answer above was "Yes," was advice of Special Tax Counsel obtained prior to entering into the lease or other arrangement?	☐ Yes ☐ No
	If Yes, include a description of the advice in the Tax-Exempt Bond File.	
	If No, contact Special Tax Counsel and include description of resolution in the Tax-Exempt Bond File.	

Item	Question	Response
3 Management or Service Agreements	During the Annual Period, has the management or service of all or any part of the operations related to the Financed Property assumed by or transferred to another entity?	☐ Yes ☐ No
	If answer above was "Yes," was advice of Special Tax Counsel obtained prior to entering into the management or service agreement?	☐ Yes ☐ No
	If Yes, include a description of the advice in the Tax-Exempt Bond File.	
	If No, contact Special Tax Counsel and include description of resolution in the Tax-Exempt Bond File.	
4 Other Use	Was any other agreement entered into with an individual or entity that grants special legal rights to the Financed Property?	☐ Yes ☐ No
	If answer above was "Yes," was advice of Special Tax Counsel obtained prior to entering into the agreement?	☐ Yes ☐ No
	If Yes, include a description of the advice in the Tax-Exempt Bond File.	
	If No, contact Special Tax Counsel and include description of resolution in the Tax-Exempt Bond File.	
5 Arbitrage & Rebate	1. Were Lease proceeds on deposit in the Project Fund 3 years after the Issue Date?	☐ Yes ☐ No ☐ N/A
	2. If Yes, has a yield reduction calculation been prepared for the Lease?	☐ Yes ☐ No
	If No, contact Special Tax Counsel or a rebate analyst and incorporate report or include description of resolution in the Tax-Exempt Bond File.	

Bond Compliance Officer: _____

Date Completed: _____

EXHIBIT F

SAMPLE FINAL WRITTEN ALLOCATION

Not to Exceed \$7,000,000
Lease-Purchase Agreement
dated as of December 15, 2020
by and among
City of Carthage, Missouri, as Lessee,
First Community State Bank, as Lessor
and the
Missouri Association of Municipal Utilities, as Administrator

The undersigned is the Bond Compliance Officer of the City of Carthage, Missouri (the "Lessee"), and in that capacity is authorized to execute federal income tax returns required to be filed by the Lessee and to make appropriate elections and designations regarding federal income tax matters on behalf of the Lessee. This allocation of the proceeds of the tax-exempt obligation referenced above (the "Lease") is necessary for the Lessee to satisfy ongoing reporting and compliance requirements under federal income tax laws.

Purpose. This document, together with the schedules and records referred to below, is intended to memorialize allocations of Lease proceeds to expenditures for purposes of §§ 141 and 148 of the Internal Revenue Code (the "Code"). All allocations are or were previously made no later than 18 months following the date the expenditure was made by the Lessee or, if later, the date the "project" was "placed in service" (both as defined below), and no later than 60 days following the 5th anniversary of the issue date of the Lease.

Background. The Lease was executed and delivered on December 15, 2020 (the "Issue Date"), by the Lessee. The Lease was executed and delivered in order to provide funds for the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment (the "Project"). Proceeds of the Lease used to pay costs of the Project were deposited to the Project Fund.

Sources Used to Fund Project Costs and Allocation of Proceeds to Project Costs. A portion of the costs of the Project was paid from sale proceeds of the Lease and the remaining portion of the costs of the Project was paid from earnings from the investment of Lease proceeds and from other money of the Lessee as shown on **Schedule 1** to this Final Written Allocation.

Identification of Financed Assets. The portions of the Project financed from Lease proceeds (i.e., the "Financed Property" referenced in the Tax Compliance Agreement) are listed on page 1 of **Schedule 2** to this Final Written Allocation.

Identification and Timing of Expenditures for Arbitrage Purposes. For purposes of complying with the arbitrage rules, the Lessee allocates the proceeds of the Lease to the various expenditures described in the invoices, requisitions or other substantiation attached as **Schedule 2** to this Final Written Allocation. In each case, the cost requisitioned was either paid directly to a third party or reimbursed the Lessee for an amount it had previously paid or incurred. Amounts received from the sale of the Lease and retained as purchaser's discount are allocated to that purpose and spent on the Issue Date. Amounts allocated to interest expense are treated as paid on the interest payment dates for the Lease.

Placed In Service. The Project was “placed in service” on the date set out on **Schedule 2** to this Final Written Allocation. For this purpose, the assets are considered to be “placed in service” as of the date on which, based on all the facts and circumstances: (1) the constructing and equipping of the asset has reached a degree of completion which would permit its operation at substantially its design level; and (2) the asset is, in fact, in operation at that level.

This allocation has been prepared based on statutes and regulations existing as of this date. The Lessee reserves the right to amend this allocation to the extent permitted by future Treasury Regulations or similar authorities.

CITY OF CARTHAGE, MISSOURI

By: _____
Title: _____

Dated: _____

Name of Legal Counsel/Law Firm Reviewing Final Written Allocation:

Date of Review: _____

**SCHEDULE 1
TO FINAL WRITTEN ALLOCATION**

ALLOCATION OF SOURCES AND USES

[Attach Spreadsheet after acquisition of the Project is completed.]

**SCHEDULE 2
TO FINAL WRITTEN ALLOCATION**

**IDENTIFICATION OF FINANCED ASSETS
AND
DETAILED LISTING OF EXPENDITURES**

[Attach Spreadsheet after acquisition of the Project is completed.]

EXHIBIT G

LESSEE'S TAX COMPLIANCE PROCEDURE

[On file with Special Tax Counsel.]

**MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES
LEASE-PURCHASE PROGRAM**

Not to Exceed \$7,000,000
Lease-Purchase Agreement dated as of December 15, 2020
among the City of Carthage, Missouri, as Lessee,
First State Community Bank, as Lessor and
Missouri Association of Municipal Utilities, as Administrator

Closing Date: December 15, 2020

CLOSING LIST

**Document
No.**

1. Lease-Purchase Agreement with the following exhibits attached:
Exhibit A: Description of Project.
Exhibit B: Schedule of Base Rent Payments.
2. Lessee's Pay Proceeds Letter.
3. Escrow Agreement with the following exhibits attached:
Exhibit A: Form of Written Request for Funding from Project Fund.
Exhibit B: Form of Completion Certificate.
4. Lessee's Closing Certificate with the following exhibits attached:
Exhibit A: Excerpts of Minutes of Meetings showing adoption of Ordinance authorizing the Lease-Purchase Agreement and related documents; Notices of Meetings.
Exhibit B: Ordinance authorizing Lease-Purchase Agreement and related documents.
Exhibit C: Resolution adopted by the Board of Directors of the Carthage Water and Electric Plant authorizing the Lease-Purchase Agreement and related documents; Excerpt of Minutes of Meeting; Notice of Meeting.
5. Tax Compliance Agreement, with the following exhibits attached:
Exhibit A: Debt Service Schedule and Computation of Yield and Computation of Weighted Average Maturity.
Exhibit B: IRS Form 8038-G.
Exhibit C: Resolution of Official Intent.
Exhibit D: Description of the Financed Facility; List of Expenditures for Reimbursement.
Exhibit E: Form of Annual Compliance Checklist.
Exhibit F: Sample Final Written Allocation.
Exhibit G: Lessee's Tax Compliance Procedure.

**Document
No.**

6. Copy of Program Administration Agreement dated April 9, 2020 among Lessor, Disbursing Agent and Administrator.
7. Opinion of Lessee's Counsel.
8. Opinion of Special Tax Counsel.
9. Lessor's Investment Letter.
10. Evidence of Insurance.
11. Lessee's Form W-9.
12. UCC-1 Financing Statement.
13. Written Request for Funding from Project Fund – Request No. 1.

#

LESSEE'S PAY PROCEEDS LETTER

Relating to:

Not to Exceed \$7,000,000

Lease-Purchase Agreement dated as of December 15, 2020
among the City of Carthage, Missouri, as Lessee,
First State Community Bank, as Lessor and
Missouri Association of Municipal Utilities, as Administrator

First State Community Bank
201 E. Columbia
Farmington, Missouri 63640
Attention: Governmental Lending

Ladies and Gentlemen:

The undersigned officer of the City of Carthage, Missouri (the "City"), does hereby instruct and direct First State Community Bank to disburse the proceeds of the above-referenced Lease-Purchase Agreement (the "Lease"), as follows:

<u>Amount</u>	<u>Payee</u>	<u>Purpose</u>
\$55,000	UMB Bank, N.A., as escrow agent St. Louis, MO	Project Costs (as defined in Lease)

Additionally, the City will make the following disbursements to pay the costs of executing and delivering the Lease:

\$ 300	UMB Bank, N.A. (See attached invoice and wire instructions.)	Disbursing Agent Initial Set Up Fee
21,000	Missouri Association of Municipal Utilities (See attached invoice and wire instructions.)	Administrative Fee
<u>28,000</u>	Gilmore & Bell, P.C. (See attached invoice and wire instructions.)	Special Tax Counsel Fee

Dated: December 15, 2020.

CITY OF CARTHAGE, MISSOURI

By _____
Title: Mayor

**ATTACHMENTS TO
LESSEE'S PAY PROCEEDS LETTER**

[Invoices to come and be attached.]

LESSEE'S CLOSING CERTIFICATE

Relating to:

Not to Exceed \$7,000,000
Lease-Purchase Agreement dated as of December 15, 2020
By and Among the City of Carthage, Missouri, as Lessee,
First State Community Bank, as Lessor and
Missouri Association of Municipal Utilities, as Administrator

We, the undersigned officers of the City of Carthage, Missouri (the "Lessee"), in connection with the execution and delivery of the above-referenced Lease-Purchase Agreement dated as of December 15, 2020 (the "Lease"), among First State Community Bank (the "Lessor"), the Lessee and Missouri Association of Municipal Utilities, as administrator (the "Administrator"), do hereby further certify as follows:

Capitalized words and terms used in this Certificate, unless the context requires otherwise, shall have the same meanings as set forth in the Lease.

1. Meeting. Attached hereto as a part of **Exhibit A** are true and correct copies of excerpts of minutes of lawful regular meetings of the Lessee's City Council held on November 24, 2020 and December 8, 2020, at which meetings a quorum was present and acting throughout, and said excerpts of minutes of meetings remain in full force and effect. In accordance with by law, including Chapter 610 of the Revised Statutes of Missouri, as amended, notice of such meetings (1) was posted at least 24 hours (excluding weekends and holidays) prior to the commencement thereof on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for posting notices at the principal office and meeting place of the City Council, and (2) was made available at least 24 hours (excluding weekends and holidays) prior to the commencement of said meetings to any representative of the news media who requested notice of the meetings. Copies of the notices are attached hereto as a part of **Exhibit A**.

2. Ordinance. Attached hereto as **Exhibit B** is a full, true and correct copy of the ordinance (the "Ordinance") authorizing the hereinafter referred to Lease Documents adopted by the Lessee's City Council at the December 8, 2020 meeting. The Ordinance has not been amended or rescinded and is in full force and effect, and the Lessee's City Council has, and at the time of the adoption of the Ordinance had, full power and lawful authority to adopt the Ordinance and to confer the powers thereby granted to the officers therein named, who have full power and lawful authority to exercise the same.

3. Approval of Lease Documents from CWEP. Attached hereto as **Exhibit C** is a full, true and correct copy of the resolution (the "CWEP Resolution") authorizing the hereinafter referred to Lease Documents adopted by the Board of Directors of the Carthage Water and Electric Plant at a meeting held on _____, 2020, at which a quorum was present and acting throughout. A copy of the excerpt of minutes of such meeting and of the notice of the meeting that was posted at least 24 hours (excluding weekends and holidays) prior to the commencement thereof on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for posting notices at the principal office and meeting place of the Board of Directors are included as a part of **Exhibit C**, and said excerpt of minutes of meeting remains in full force and effect.

4. Authorization, Execution and Delivery of Lease Documents. The following documents (the "Lease Documents") have been duly authorized, executed and delivered in the name and on behalf of the Lessee by the its duly authorized officers, pursuant to and in full compliance with the Ordinance; the copies of the Lease Documents contained in the transcript of proceedings relating to the authorization and delivery of the Lease are true, complete and correct copies or counterparts of the Lease Documents as

authorized, executed and delivered by the Lessee, and are in substantially the same forms submitted to and approved by the City Council of the Lessee at the meeting described in paragraph 1 of this certificate with only such changes therein as have been approved by the officer of the Lessee executing the same; and said documents have not been amended, modified or rescinded in any manner and are in full force and effect on the date hereof:

(a) Lease;

(b) Escrow Agreement dated as of December 15, 2020 (the "Escrow Agreement"), among the Lessor, the Lessee, the Administrator and UMB Bank, N.A., as escrow agent (the "Escrow Agent"); and

(c) Tax Compliance Agreement dated as of December 15, 2020 (the "Tax Agreement"), between the Lessee and the Escrow Agent.

5. Lessee Representatives. The following persons are hereby delegated authority to act on behalf of the Lessee as Lessee Representatives under the Lease Documents, and the signatures set forth opposite his or her name is a true and correct specimens of his or her genuine signature:

<u>Position</u>	<u>Name</u>	<u>Title</u>	<u>Signature</u>
Lessee Representative	_____	_____	_____
Lessee Representative	_____	_____	_____

6. Compliance with Lease Documents. The Lessee has performed and complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied by it under the Lease Documents at or prior to the date hereof.

7. Representations and Warranties. The representations and warranties of the Lessee contained in the Lease Documents are true and correct on and as of the date hereof as if made on the date hereof.

8. Insurance. The Lessee maintains or has caused to be maintained the bonds and insurance required by **Section 18** of the Lease.

9. No Default. No condition or event exists that constitutes, or with the giving of notice or the passage of time or both would constitute, an Event of Default under the Lease, and the leasehold estate created thereby is now in full force and effect and it has not been further modified, except as herein shown.

10. No Litigation. There is no pending or, to the knowledge of the undersigned, threatened action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court or governmental agency in any way questioning or affecting the ability of the Lessee to perform its obligations under the Lease Documents or contesting the validity or enforceability thereof or the existence of the Lessee.

Dated: December 15, 2020.

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

PROGRAM ADMINISTRATION AGREEMENT

[On file with Administrator]

FORM OF OPINION OF LESSEE'S COUNSEL

December 15, 2020

City of Carthage, Missouri
Carthage, Missouri

First State Community Bank
Farmington, Missouri

Missouri Association of Municipal Utilities
Columbia, Missouri

Gilmore & Bell, P.C.
St. Louis, Missouri

Re: Lease-Purchase Agreement dated as of December 15, 2020, by and among First State Community Bank, as lessor, the City of Carthage, Missouri, as lessee, and the Missouri Association of Municipal Utilities, as administrator

Ladies and Gentlemen:

We have acted as counsel to the lessee identified above (the "Lessee") in connection with the authorization, execution, and delivery by the Lessee of the above-referenced Lease-Purchase Agreement (the "Lease"). We have reviewed (i) the Constitution and laws of the State of Missouri (the "State"); (ii) the Lease; (iii) the Escrow Agreement dated as of December 15, 2020 (the "Escrow Agreement"), among the Lessee, the Lessor, the Missouri Association of Municipal Utilities, as administrator, and UMB Bank, N.A., as escrow agent (the "Escrow Agent"); (iv) the Tax Compliance Agreement dated December 15, 2020 (the "Tax Agreement"), between the Lessee and the Escrow Agent; (v) certain proceedings taken by the governing body of the Lessee, (vi) any related documents, to the extent defined and identified in the Lease, and (vii) such other information and documents as we have deemed necessary or appropriate in order to render this opinion.

Based on the foregoing, we are of the opinion that:

1. The Lessee is a political subdivision, validly organized and existing in good standing under the laws of the State and has full power and authority to enter into and to perform its obligations under the Lease, the Escrow Agreement and the Tax Agreement and has one or more of the following sovereign powers: (a) power to tax, (b) power of eminent domain, and (c) police powers.

2. The Lease, the Escrow Agreement and the Tax Agreement and any related documents have been duly authorized, executed and delivered by the Lessee and (assuming the due authorization, execution and delivery thereof by the other parties thereto) constitute legal, valid and binding obligations of the Lessee, enforceable against the Lessee in accordance with their respective terms (including, without limitation, the right of the Lessee to terminate the Lease at the end of each fiscal year of the Lessee by reason of an Event of Nonappropriation, as defined in the Lease), except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

3. All consents, approvals or authorizations of any governmental entity and all filings and notices required on the part of the Lessee in connection with the authorization, execution and delivery of

the Lease, the Escrow Agreement and the Tax Agreement and the consummation of the transactions contemplated thereby have been obtained and are in full force and effect.

4. Neither the execution and delivery of the Lease nor the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions of the Lease conflict with or constitute a violation of any provision of any law or regulation applicable to the Lessee or, to the best of our knowledge after reasonable investigation, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Lessee is now a party or by which the Lessee is bound.

5. To the best of our knowledge, after reasonable investigation, there is no action, suit, proceeding or governmental investigation at law or in equity before or by any court, public board or body, pending of which the Lessee has been served with a summons, summons and complaint or other notice of commencement, or threatened against or affecting the Lessee, challenging the validity of the Lease or contesting the power and authority of the Lessee to execute and deliver the Lease, the Escrow Agreement and the Tax Agreement or to consummate the transactions contemplated by the Lease.

Respectfully submitted,

FORM OF OPINION OF SPECIAL TAX COUNSEL

December 15, 2020

City of Carthage, Missouri
Carthage, Missouri

Missouri Association of Municipal Utilities
Columbia, Missouri

First State Community Bank
Farmington, Missouri

Re: Lease-Purchase Agreement dated as of December 15, 2020 (the "Lease"), by and among First State Community Bank, as lessor (the "Lessor"), the City of Carthage, Missouri, as lessee (the "Lessee"), and the Missouri Association of Municipal Utilities, as administrator (the "Administrator")

Ladies and Gentlemen:

We have acted as special tax counsel to the Missouri Association of Municipal Utilities, as Missouri nonprofit corporation (the "Administrator") in connection with a transaction involving (a) the above-referenced Lease; (b) an Escrow Agreement dated as of December 15, 2020, among the Lessee, the Lessor, the Administrator and UMB Bank, N.A., as escrow agent (the "Escrow Agent"); and (c) a Tax Compliance Agreement dated December 15, 2020 (the "Tax Agreement"), between the Lessee and the Escrow Agent (collectively the "Documents"). Under the Lease, the Lessee has the use of and an option to purchase certain property on certain conditions upon payment of the rentals and purchase price set forth therein. Capitalized terms that are not defined herein are used with the meanings given to them in the Lease.

We have reviewed executed copies of the Documents, and, in addition, we have reviewed and considered the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder promulgated by the United States Department of Treasury.

In rendering the opinion set forth herein, we have assumed without undertaking to investigate the same by independent investigation or research that (a) the Documents have been duly authorized and executed and constitute valid and binding obligations of the parties thereto; and (b) the Lessee has fully complied with and fulfilled and will continue to fully comply with and fulfill all covenants and requirements of the Documents. Reference is made to the opinion of Nathaniel Dally, City Attorney, Carthage, Missouri, counsel to the Lessee, that the Documents have been duly authorized and delivered by the Lessee and are valid and binding obligations of the Lessee.

Based upon the foregoing review and assumptions, it is our opinion that, under existing law, the Interest Component of each Base Rent payment paid by the Lessee under the Lease is (1) excludable from gross income for federal income tax purposes, (2) is exempt from income taxation by the State of Missouri, and (3) is not an item of tax preference for purposes of computing the federal alternative minimum tax. The opinions set forth in this paragraph are subject to the condition that the Lessee comply with all requirements of the Code that must be satisfied subsequent to the execution and delivery of the Lease in order that the Interest Components of the Base Rent payments paid by the Lessee, be or continue to be, excludable from gross income for federal and Missouri income tax purposes. The Lessee has

covenanted to comply with all of these requirements. Failure to comply with certain of these requirements may cause the Interest Components of the Base Rent payments paid by the Lessee under the Lease to be included in gross income for federal and Missouri income tax purposes retroactive to the date of the execution and delivery of the Lease. The Lessee's obligation to pay Base Rent payments under the Lease has been designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. We express no opinion regarding other federal tax consequences arising with respect to the Lease.

We express no opinions as to the title to or the description of the property subject to the Lease.

This opinion is given as of its date, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may come to our attention or any changes in law that may occur after the date of this opinion.

Very truly yours,

LESSOR'S INVESTMENT LETTER

December 15, 2020

City of Carthage, Missouri
Carthage, Missouri

Missouri Association of Municipal Utilities
Columbia, Missouri

Re: Not to Exceed \$7,000,000 Lease-Purchase Agreement dated December 15, 2020, by and among First State Community Bank, as lessor, the City of Carthage, Missouri, as lessee (the "Lessee"), and the Missouri Association of Municipal Utilities, as administrator

Gentlemen:

The undersigned lessor (the "Lessor") under the above-referenced Lease-Purchase Agreement (the "Lease"), hereby represents to you as follows:

1. The Lessor has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the Lease.
2. The Lessor is aware that the operations of the Lessee involve certain economic variables and risks that could affect adversely the security of the Lessor's investment in the Lease.
3. The Lessor is able to bear the economic risks of such investment.
4. The Lessor has read the Lease and related documents and understands the terms thereof, including without limitation the Lessee's right to terminate the Lease if it fails to appropriate sufficient funds to pay lease payments for any of its fiscal years.
5. The Lessor acknowledges that no offering circular, official statement, prospectus or other comprehensive offering statement containing material information with respect to the Lessee, the Lease and the Project (as defined in the Lease) has been provided to the Lessor, and the Lessor has made its own inquiry and analysis with respect to the Lessee, the Lease and the security therefor, and other material factors affecting the security and payment of the Lease.
6. The Lessor acknowledges that it has either been supplied with or has access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making its investment decisions, and the Lessor has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Lessee, the Lease and the security therefor, so that as a reasonable investor, the Lessor has been able to make its decision to purchase the Lease.
7. The Lessor understands that the Lease (a) is not being registered under the Securities Act of 1933 and is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed on any stock or other securities exchange and (c) will carry no rating from any rating service.

8. Except for participating the Lease with other banking institutions, the Lessor does not intend to divide the Lease nor to resell or otherwise dispose of all or any part of the Lease, but reserve the right to do so as permitted by the Lease on a basis of full disclosure to any subsequent holder of the Lease and subject to compliance with applicable securities laws and regulations thereunder. The disposition of the Lessor's property in compliance with applicable law and the Lease, of course, shall at all times remain within its control subject to the provisions of the Lease.

9. On the date hereof, the Lessor is purchasing the Lease for the amount of up to \$7,000,000, as provided under the Lease. The Lessor is not acting as an Underwriter with respect to the Lease. The Lessor has no present intention to sell, reoffer, or otherwise dispose of the Lease (or any portion of the Lease or any interest in the Lease). The Lessor has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Lease, and the Lessor has not agreed with the Lessee pursuant to a written agreement to sell the Lease to persons other than the Lessor or a Related Party to the Lessor.

Defined Terms.

(i) The term "Public" means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

(ii) The term "Related Party" means any two or more persons who have a greater than 50 percent common ownership, directly or indirectly.

(iii) The term "Underwriter" means (A) any person that agrees pursuant to a written contract with the Lessee (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Lease to the Public, and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) of this paragraph to participate in the initial sale of the Lease to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Lease to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Lessor's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Lessee with respect to certain of the representations set forth in the Tax Compliance Agreement dated as of the date hereof between the Lessee and UMB Bank, N.A., as escrow agent, relating to the Lease and with respect to compliance with the federal income tax rules affecting the Lease, and by Gilmore & Bell, P.C., Special Tax Counsel, in rendering its opinion relating to the exclusion from federal gross income of the interest portion of lease payments paid under the Lease and in preparing any informational return required to be filed with the Internal Revenue Service in connection with the execution and delivery of the Lease.

FIRST STATE COMMUNITY BANK

By: _____
Title: _____

**INSURANCE CERTIFICATES (PROPERTY AND LIABILITY) RESPECTING THE PROJECT
WITH THE FOLLOWING PARTIES SHOWN AS LOSS PAYEE AND ADDITIONAL
INSURED:**

First State Community Bank, and its successors and assigns
201 E. Columbia
Farmington, Missouri 63640

Missouri Association of Municipal Utilities
1808 I-70 Drive SW
Columbia, Missouri 65203

[Post-Closing Item.]

LESSEE'S FORM W-9

[Lessee's Signed Form W-9 on file with Lessor.]

UCC-1 FINANCING STATEMENT

[To be prepared and filed by Special Tax Counsel.]

**WRITTEN REQUEST FOR FUNDING
FROM PROJECT FUND**

Request No. 1

Date: December 15, 2020

To: UMB Bank, N.A.
2 South Broadway, 6th Floor
St. Louis, Missouri 63102
Attention: Corporate Trust Department

Re: Lease-Purchase Agreement dated as of December 15, 2020 (the "Lease"), by and among First State Community Bank, as lessor ("Lessor"), the City of Carthage, Missouri, as lessee ("Lessee"), and the Missouri Association of Municipal Utilities, as administrator

Ladies and Gentlemen:

Pursuant to **Section 4** of the Lease and **Section 7** of the Escrow Agreement dated as of December 15, 2020 (the "Escrow Agreement"), among Lessor, Lessee, the Missouri Association of Municipal Utilities, as administrator, and you, as escrow agent, Lessee hereby requests payment from the Project Fund and hereby states and certifies as follows:

(a) All terms in this request are used with the meanings used in the Escrow Agreement.

(b) The names of the persons, firms or corporations to whom the payments requested hereby are due, the amounts to be paid and the general classification and description of the Project Costs for which each obligation requested to be paid hereby was incurred are as set forth on **Attachment I** hereto.

(c) The amounts requested either have been paid by Lessee, or are justly due to vendors, contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses are stated on **Attachment I** hereto) who have performed necessary and appropriate work or furnished necessary and appropriate materials, equipment or furnishings in the acquisition, construction and installation of the Project.

(d) All such materials, equipment or furnishings have been delivered to Lessee.

(e) Any Project Cost that is for equipment relates to the equipment described on **Attachment 1**. That equipment is part or all of the equipment included in the Project under the Lease.

(f) The equipment described in this request for funding (i) has been delivered, installed and accepted, or (ii) the amount requested is a down payment currently due on that equipment.

(g) If (f)(i) is applicable, Lessee has conducted such inspection and/or testing of that equipment as it deems necessary and appropriate and hereby acknowledges that it accepts that equipment for all purposes.

(h) If (f)(i) is applicable, Lessee is currently maintaining the insurance coverage required by **Section 18** of the Lease.

(i) No part thereof has been or is being made the basis for the withdrawal of any moneys in any previous or pending request under the Escrow Agreement.

(j) [Reserved].

(j) This certificate contains no request for payment on account of any retained percentage which Lessee is on the date hereof entitled to retain.

(k) There has not been filed with or served upon Lessee any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts requested which has not been released or will not be released simultaneously with the payment of such obligation.

(l) Each of Lessee's representations contained in the Lease is true, correct and not misleading as though made as of the date hereof.

(m) No event exists that constitutes, or with the giving of notice of the passage of time or both would constitute, an Event of Default under the Lease.

(n) Lien waivers for all services or materials furnished by subcontractors or suppliers related to the amounts requested are attached hereto.

(o) Invoices, statements, vouchers or bills for the amounts requested are attached hereto.

CITY OF CARTHAGE, MISSOURI

By: _____
Lessee Representative

APPROVED BY LESSOR:

FIRST STATE COMMUNITY BANK

By: _____
Lessor Representative

ATTACHMENT I

**TO WRITTEN REQUEST FOR FUNDING
FROM PROJECT FUND – REQUEST NO. 1**

SCHEDULE OF PAYMENTS REQUESTED

<u>Payee and Address</u>	<u>Amount</u>	<u>Description</u>
City of Carthage, Missouri (See attached wire instructions.)	\$55,000	Reimbursement for Project Costs (See attached invoices and proof of payment.)
<i>[Invoices, including proof of payment and City's wire instructions to be provided.]</i>		

Any of the foregoing payments that are related to equipment, relate to the following equipment:

<u>Quantity</u>	<u>Serial Number</u>	<u>Item</u>	<u>Amount</u>
------------------------	-----------------------------	--------------------	----------------------

NOTICE OF MEETING

Public notice is hereby given that a meeting of the Board of Directors of the Carthage Water and Electric Plant will be held at the Carthage Water and Electric Plant Complex, 627 West Centennial in Carthage, Missouri, at _____ p.m. on _____, 2020, to consider and act upon the matters on the following tentative agenda and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.

1. Resolution to recommend and request that the City of Carthage, Missouri enter into a lease-purchase transaction to finance the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment.
2. Other Matters.

The meeting will be open to the public. A copy of the resolution referred to above will be available for public inspection prior to the meeting with the Board of Directors.

Dated: _____, 2020.

DANNY LAMBETH
Secretary and Director

SIGNATURE REQUIRED FROM ANY ABSENT MEMBERS

WAIVER OF NOTICE OF SPECIAL MEETING

We, the undersigned, as member(s) of the Board of Directors of the Carthage Water and Electric Plant hereby waive any and all notice of the time, place and purposes of the _____, 2020 special meeting of the Board of Directors, and consent and agree to such meeting and to the transaction of any and all business presented at such meeting.

DATED: _____, 2020.

Director

Director

EXCERPT OF MINUTES OF MEETING

The Board of Directors of the Carthage Water and Electric Plant (the "Board") met on _____, 2020, at _____ p.m., at Carthage Water and Electric Plant Complex, 627 West Centennial in Carthage, Missouri. The following officials were present or absent as indicated:

	<u>Present/Absent</u>
Pat Goff, President and Director	_____
Neel Baucom, Vice President and Director	_____
Danny Lambeth, Secretary and Director	_____
G. Stephen Beimdiek, Director	_____
Brian Schmidt, Director	_____
Ron Ross, Director	_____

The President of the Board declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

* * * * *

The matter of approving the resolution to recommend and request that the City of Carthage, Missouri enter into a lease-purchase transaction with First State Community Bank, as lessor, and the Missouri Association of Municipal Utilities, as administrator, to finance the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment, came on for consideration and was discussed.

Director _____ moved for the adoption of a resolution entitled as follows:

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
CARTHAGE WATER AND ELECTRIC PLANT
RECOMMENDING AND REQUESTING THE CITY COUNCIL
OF THE CITY OF CARTHAGE, MISSOURI ENTER INTO A
LEASE-PURCHASE TRANSACTION WITH FIRST STATE
COMMUNITY BANK, AS LESSOR, AND THE MISSOURI
ASSOCIATION OF MUNICIPAL UTILITIES, AS
ADMINISTRATOR TO FINANCE THE IMPROVEMENT AND
EXPANSION OF THE CITY'S COMMUNICATIONS
INFRASTRUCTURE, INCLUDING THE ACQUISITION, DESIGN,
CONSTRUCTION AND INSTALLATION OF FIBER CABLE,
HARDWARE AND OTHER MATERIALS AND EQUIPMENT.**

Director _____ seconded the motion for the adoption of the foregoing Resolution, said Resolution was read, considered and discussed, and the question being put to a roll call vote, the vote thereon was as follows:

Aye: _____.

Nay: _____.

The motion having received the affirmative vote of all members of the Board present, the President declared the motion carried and the Resolution duly passed.

* * * * *

(Other Proceedings)

* * * * *

There being no further business, on motion duly made, seconded and carried, the meeting thereupon adjourned.

(Seal)

Secretary

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
CARTHAGE WATER AND ELECTRIC PLANT
RECOMMENDING AND REQUESTING THE CITY COUNCIL
OF THE CITY OF CARTHAGE, MISSOURI ENTER INTO A
LEASE-PURCHASE TRANSACTION WITH FIRST STATE
COMMUNITY BANK, AS LESSOR, AND THE MISSOURI
ASSOCIATION OF MUNICIPAL UTILITIES, AS
ADMINISTRATOR TO FINANCE THE IMPROVEMENT AND
EXPANSION OF THE CITY'S COMMUNICATIONS
INFRASTRUCTURE, INCLUDING THE ACQUISITION, DESIGN,
CONSTRUCTION AND INSTALLATION OF FIBER CABLE,
HARDWARE AND OTHER MATERIALS AND EQUIPMENT.**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CARTHAGE WATER
AND ELECTRIC PLANT, AS FOLLOWS:**

Section 1. Request and Recommendation to the City Council of the City to Enter into Lease-Purchase Transaction. The Board of Directors of the Carthage Water and Electric Plant (the "Board") hereby finds and determines that it is advisable to recommend to and request the City Council of the City of Carthage, Missouri (the "City"), and the Board hereby recommends and requests the City Council of the City, as lessee, execute and deliver a Lease Purchase agreement with First State Community Bank, as lessor, and the Missouri Association of Municipal Utilities, as administrator, to finance the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment, in a principal amount of not to exceed \$7,000,000 (the "Lease"), and the officers of the Board are hereby authorized and directed to file copies of this Resolution with the City Clerk as evidence of such recommendation and request.

Section 2. Approval of Ordinance. The Board hereby approves the form and contents of the proposed ordinance of the City Council of the City authorizing the execution and delivery of the Lease (the "Ordinance"), in substantially the form attached hereto as **Exhibit A**, together with any changes which the City Council may make in the Ordinance with the approval of the Board, which the President of the Board is hereby authorized to approve. The City Council is hereby requested to pass the Ordinance and to execute and deliver the Lease.

Section 3. Agreement to Perform Obligations in the Ordinance, the Lease, the Escrow Agreement and the Tax Agreement. The Board hereby contracts, covenants and agrees with the City and with First State Community Bank and the Missouri Association of Municipal Utilities to perform all duties and obligations incurred by the City on behalf of the Board in and by the provisions of the Ordinance, the Lease, the Escrow Agreement and the Tax Agreement (as defined in the Ordinance).

Section 4. Further Authority. The Board shall, and the officers, agents and employees of the Board are hereby authorized and directed to, take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Board with respect to the Lease and the documents described above.

Section 5. Effective Date. This Resolution shall be effective upon its passage.

ADOPTED by the Board of Directors of the Carthage Water and Electric Plant this ____ day of _____, 2020.

President

ATTEST:

Secretary

EXHIBIT A

PROPOSED ORDINANCE OF THE CITY COUNCIL

[On file in the Office of the Secretary of the Board.]

NOTICE OF MEETING

Public notice is hereby given that a regular meeting of the City Council of the City of Carthage, Missouri will be held at City Hall, 326 Grant Street, Carthage, Missouri 64836, at 6:30 p.m. on November 24, 2020, to consider and act upon the matters on the following tentative agenda and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.

1. First reading of an ordinance authorizing the City of Carthage, Missouri to enter into a lease-purchase agreement with First State Community Bank, as lessor, and the Missouri Association of Municipal Utilities, as administrator, for the purpose of financing certain public improvements, consisting of the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment; and authorizing and approving certain actions in connection with the execution and delivery of said lease-purchase transaction.
2. Other Matters.

The meeting will be open to the public. A copy of the ordinance referred to above will be available for public inspection prior to the meeting in the office of the City Clerk.

Dated: November __, 2020.

TRACI COX
City Clerk

NOTICE OF MEETING

Public notice is hereby given that a regular meeting of the City Council of the City of Carthage, Missouri will be held at City Hall, 326 Grant Street, Carthage, Missouri 64836, at 6:30 p.m. on December 8, 2020, to consider and act upon the matters on the following tentative agenda and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.

1. Second reading and final passage of an ordinance authorizing the City of Carthage, Missouri to enter into a lease-purchase transaction with First State Community Bank, as lessor, and the Missouri Association of Municipal Utilities, as administrator, for the purpose of financing certain public improvements, consisting of the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment; and authorizing and approving certain actions in connection with the execution and delivery of said lease-purchase transaction.
2. Other Matters.

The meeting will be open to the public. A copy of the ordinance referred to above will be available for public inspection prior to the meeting in the office of the City Clerk.

Dated: December ___, 2020.

TRACI COX
City Clerk

EXCERPT OF MINUTES OF MEETING

The City Council of City of Carthage, Missouri (the "Lessee"), met in regular session at City Hall, 326 Grant Street, Carthage, Missouri 64836, on November 24, 2020, at 6:30 p.m., and the following officials were present or absent as indicated:

	<u>Present/Absent</u>
Dan Rife, Mayor	_____
Juan Topete, Councilmember	_____
James Harrison, Councilmember	_____
David Armstrong, Councilmember	_____
Raymond West, Councilmember	_____
Mike Daugherty, Councilmember	_____
Ceri Otero, Councilmember	_____
Alan Snow, Councilmember	_____
Craig Diggs, Councilmember	_____
Seth Thompson, Councilmember	_____
Ed Barlow, Councilmember	_____
Traci Cox, City Clerk	_____

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

The matter of authorizing the Lessee to enter into a lease-purchase transaction with First State Community Bank, as lessor, and the Missouri Association of Municipal Utilities, as administrator, came on for consideration and was discussed.

Councilmember _____ introduced Bill No. _____, being for an Ordinance entitled as follows:

ORDINANCE AUTHORIZING THE CITY OF CARTHAGE, MISSOURI, TO ENTER INTO A LEASE-PURCHASE TRANSACTION WITH FIRST STATE COMMUNITY BANK, AS LESSOR, AND THE MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES, AS ADMINISTRATOR, FOR CERTAIN PUBLIC IMPROVEMENTS FOR THE CITY OF CARTHAGE, MISSOURI; AND AUTHORIZING AND APPROVING CERTAIN ACTIONS IN CONNECTION

WITH THE EXECUTION AND DELIVERY OF SAID LEASE-PURCHASE TRANSACTION.

The City Clerk reported that copies of the proposed ordinance had been made available for public inspection prior to the time the Bill was introduced and under consideration by the City Council.

On motion duly made, seconded and carried, the Bill was placed on its first reading and was read by title, considered and discussed.

* * * * *

(Other Proceedings)

There being no further business to come before the meeting at this time, upon motion duly made, seconded and carried, the meeting was adjourned.

(SEAL)

City Clerk

EXCERPT OF MINUTES OF MEETING

The City Council of City of Carthage, Missouri (the "Lessee"), met in regular session at City Hall, 326 Grant Street, Carthage, Missouri 64836, on December 8, 2020, at 6:30 p.m., and the following officials were present or absent as indicated:

	<u>Present/Absent</u>
Dan Rife, Mayor	_____
Juan Topete, Councilmember	_____
James Harrison, Councilmember	_____
David Armstrong, Councilmember	_____
Raymond West, Councilmember	_____
Mike Daugherty, Councilmember	_____
Ceri Otero, Councilmember	_____
Alan Snow, Councilmember	_____
Craig Diggs, Councilmember	_____
Seth Thompson, Councilmember	_____
Ed Barlow, Councilmember	_____
Traci Cox, City Clerk	_____

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

The matter of authorizing the Lessee to enter into a lease-purchase transaction with First State Community Bank, as lessor, and the Missouri Association of Municipal Utilities, as administrator, came on for consideration and was discussed.

Councilmember _____ introduced Bill No. _____, being for an Ordinance entitled as follows:

ORDINANCE AUTHORIZING THE CITY OF CARTHAGE, MISSOURI, TO ENTER INTO A LEASE-PURCHASE TRANSACTION WITH FIRST STATE COMMUNITY BANK, AS LESSOR, AND THE MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES, AS ADMINISTRATOR, FOR CERTAIN PUBLIC IMPROVEMENTS FOR THE CITY OF CARTHAGE, MISSOURI; AND AUTHORIZING AND APPROVING CERTAIN ACTIONS IN CONNECTION

WITH THE EXECUTION AND DELIVERY OF SAID LEASE-PURCHASE TRANSACTION.

The City Clerk reported that copies of the proposed ordinance had been made available for public inspection prior to the time the Bill was introduced and under consideration by the City Council.

On motion duly made and seconded, the Bill was placed on its second reading and final passage and was read by title, considered and discussed. Thereupon, the question was put to a roll call vote, the vote thereon was as follows:

Aye: _____
_____.

Nay: _____.

Thereupon, the Mayor declared the Bill duly passed and the Bill was then duly numbered Ordinance No. _____, and was signed and approved by the Mayor and attested by the City Clerk.

* * * * *

(Other Proceedings)

There being no further business to come before the meeting at this time, upon motion duly made, seconded and carried, the meeting was adjourned.

(SEAL)

City Clerk

BILL NO. _____

ORDINANCE NO. _____

ORDINANCE AUTHORIZING THE CITY OF CARTHAGE, MISSOURI, TO ENTER INTO A LEASE-PURCHASE TRANSACTION WITH FIRST STATE COMMUNITY BANK, AS LESSOR, AND THE MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES, AS ADMINISTRATOR, FOR CERTAIN PUBLIC IMPROVEMENTS FOR THE CITY OF CARTHAGE, MISSOURI; AND AUTHORIZING AND APPROVING CERTAIN ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF SAID LEASE-PURCHASE TRANSACTION.

WHEREAS, the City of Carthage, Missouri (the "Lessee"), desires to provide for certain public improvements, consisting of the improvement and expansion of the City's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment (the "Project"), and for the leasing by the Lessee of the Project with an option to purchase; and

WHEREAS, after considering various financial alternatives for providing for the Project, the Lessee hereby determines that it is in the Lessee's best financial interest to provide for the acquisition and installation of the Project through the lease-purchase arrangement described in this ordinance; and

WHEREAS, in order to accomplish the foregoing, it is necessary and desirable for the Lessee to take the following actions:

1. Enter into a draw-down form of Lease-Purchase Agreement (the "Lease"), substantially in the form attached hereto as **Exhibit A**, with First State Community Bank, a state-chartered banking institution organized and existing under the laws of the State of Missouri (the "Lessor"), as lessor, and the Missouri Association of Municipal Utilities, as administrator (the "Administrator") pursuant to which the Lessee will lease, as lessee, the Project from the Lessor, as lessor, with an option to purchase, for a lease term not to exceed 16 years and one month and for Base Rentals with aggregate principal components of Base Rentals not to exceed \$7,000,000 and interest components of Base Rentals to be computed at an interest rate of 2.475% per annum.

2. Enter into an Escrow Agreement (the "Escrow Agreement"), substantially in the form attached hereto as **Exhibit B**, among the Lessee, the Lessor, the Administrator and UMB Bank, N.A., as escrow agent (the "Escrow Agent"); and

3. Enter into a Tax Compliance Agreement (the "Tax Agreement"), substantially in the form attached hereto as **Exhibit C**, with the Escrow Agent, setting forth certain representations, facts, expectations, terms and conditions relating to the use and investment of the proceeds of the Lease in order to establish and maintain the exclusion of the interest portion of Base Rentals under the Lease from gross income for federal income tax purposes and in order to provide guidance for complying with the arbitrage rebate provisions of the Internal Revenue Code upon the terms and conditions as set forth in the Tax Agreement.

(the Lease, the Escrow Agreement and the Tax Agreement are referred to herein as the "Lessee Documents").

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CARTHAGE, MISSOURI, AS FOLLOWS:

Section 1. Approval of Lessee Documents. The Lessee Documents are hereby approved in substantially the forms submitted to and reviewed by the governing body on the date hereof, with such changes therein and final payment terms as shall be approved by the Mayor of the Lessee, such officer's execution thereof to be conclusive evidence of the approval thereof.

The Mayor is hereby authorized and directed to execute and deliver the Lessee Documents on behalf of and as the act and deed of the Lessee.

Section 2. Reimbursement. The Lessee expects to make capital expenditures after the date of the adoption of this Ordinance in connection with the Project and the Lessee intends to reimburse itself for such expenditures and also expenditures made with respect to the Project on or after sixty days before the date of this Ordinance with proceeds received under the Lease.

Section 3. Further Authority. The Lessee shall, and the officials and agents of the Lessee are hereby authorized and directed to, take such action, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the Lessee with respect to the Lessee Documents and the Project.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the governing body.

ADOPTED by the City Council of the City of Carthage, Missouri on December 8, 2020.

By: _____
Mayor

[SEAL]

ATTEST:

City Clerk

**TAX INFORMATION REQUEST RELATING TO
NOT TO EXCEED \$7,000,000
LEASE PURCHASE AGREEMENT
DATED AS OF DECEMBER 15, 2020,
AMONG THE CITY OF CARTHAGE, MISSOURI, AS LESSEE,
FIRST STATE COMMUNITY BANK, AS LESSOR, AND
MISSOURI ASSOCIATION OF MUNICIPAL UTILITIES, AS ADMINISTRATOR**

Name of Lessee: *City of Carthage, Missouri*
Address of Lessee: *326 Grant Street, Carthage, Missouri 64836*
Contacts: *Traci Cox, City Clerk*
(417) 237-7300
t.cox@carthagemo.gov

Kelli Nugent, c/o Carthage Water and Electric Plant
knugent@cwep.com

Lessee's Federal Employer
Identification No.: *44-6000157 (For City of Carthage, Missouri)*

Check **one** of the following:

The proceeds of the lease purchase agreement will finance only new projects **X**

The proceeds of the lease purchase agreement will refinance existing projects ____

The proceeds of the lease purchase agreement will finance new projects and refinance existing projects ____

Part 1 – Description of the Financed Property

Please complete the following table to show the total cost (if different from financed amount), as well as the year expected to be placed in service and estimated useful life.

Description	Year Financed Property is Expected to be Placed in Service	Estimated Useful Life	Total Cost	Amount Financed From Lease Proceeds
Improvement and expansion of the Lessee's communications infrastructure, including the acquisition, design, construction and installation of fiber cable, hardware and other materials and equipment	2022	____ years	\$ ____	\$7,000,000

Part 2 – Uses of the Financed Property

1. **Management Agreement.** Is there or is there expected to be a contract with a Non-Qualified User (i.e., a private company, 501(c)(3) organization, the federal government or any agency of the federal government) to operate or manage any portion of the Financed Property?

(Do not include contracts for services incidental to the management of the improvements, such as janitorial, office equipment repair, billing or similar services.)

Yes ____ No ____

If Yes, please include a copy of the service or management agreement(s) or information regarding the planned service or management agreement(s) in your response to this Questionnaire.

2. **Leases.** Are there or are there expected to be any lease agreements, either short-term or long-term, that provide a Non-Qualified User (i.e., a private company, 501(c)(3) organization, the federal government or any agency of the federal government) legal rights to use any portion of the Financed Property?

Yes ___ No ___

If Yes, please include a copy of the lease agreement(s) or information regarding the planned lease agreement(s) in your response to this Questionnaire.

3. **Other Use Agreements.** Are there or are there expected to be any other agreements with Non-Qualified Users (i.e., a private company, 501(c)(3) organization, the federal government or any agency of the federal government) that provides the Non-Qualified User with legal rights to use any portion of the Financed Property?

Yes ___ No ___

If Yes, please include a copy of the agreement(s) or information regarding the planned agreement(s) in your response to this Questionnaire.

Do ISPs sign up for the same agreement as business class customers or is there a separate arrangement?

4. **Special Arrangement Agreements.** Are there or are there expected to be any agreements with large commercial users of the Financed Property?

Yes ___ No ___

If Yes, please include a copy of the agreement(s) or information regarding the planned agreement(s) in your response to this Questionnaire.

Do any users have long-term contracts or is everyone month-to-month (with the exception of wireless customers in the first year of a service contract)?

5. **Fees.** How are rates and rate classes set? Is there an ordinance/resolution passed by the City or CWEP?

Part 3 – Reimbursement of Prior Expenditures

1. Will any of the proceeds of the Lease be used to reimburse the City for expenditures paid prior to the anticipated Closing Date (December 15, 2020)?

Yes ___ No ___

Items 2-3 below need to be completed ONLY if the answer to item 1 above is YES.

2. Please attach a copy of the City's resolution of intent to finance the Financed Property.
3. Please attach a list of all expenditures to be reimbursed. The list should include the following: (1) date paid; (2) amount paid; (3) vendor paid; and (4) purpose of expenditure.

Part 4 – Bank Qualification; Small Issue Rebate Exemption

1. Has the City or any subordinate entity of the City issued any tax-exempt obligations during this calendar year?

Yes ___ No ___

If Yes, please provide the following information:

Name of Issue	Principal Amount	Issue Date	Purpose

2. Other than the Lease, does the City or any subordinate entity of the City plan to issue any other tax-exempt obligations during this calendar year?

Yes ___ No ___

If Yes, please provide the following information:

Name of Issue	<u>Expected Principal Amount</u>	<u>Expected Issue Date</u>	<u>Purpose</u>

Date: _____, 2020.

CITY OF CARTHAGE, MISSOURI

BY: _____
NAME: _____
TITLE: _____

INTER

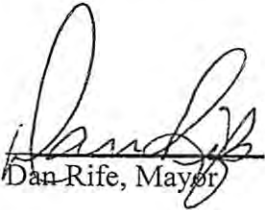
OFFICE

MEMO

To: City Council
From: Dan Rife, Mayor
Subject: Veto of Ordinance 20-54
Date: December 3, 2020

Pursuant to Article IV, Sections 4.5 and 4.6 of the City of Carthage Home Rule Charter, I have vetoed Council Bill 20-54, and am returning said Council Bill unsigned with the following objections:

- Council Bill 20-54 was not forwarded to a Committee for a recommendation to the City Council.
- Any enforcement of the ordinance was stripped out of the Council Bill.
- The orders and advisories included in CB 20-54 as being necessary to preserve the peace and order of the City of Carthage, and to protect life and to promote and preserve public safety and welfare, in particular to mitigate the spread of COVID-19 and provide essential protections to Carthage residents, including but not limited to those who are most vulnerable to infection, while still preserving the availability of essential services, were previously addressed in a proclamation from the Office of the Mayor, signed November 19, 2020.
- Council Bill 20-54 was passed on a vote of six for, four against, indicating a lack of significant support from the Council on this issue, even with no mechanism for enforcement.
- Public comments presented at the November 25, 2020 meeting did not support adoption of this ordinance.
- Public comments in general regarding this issue were divisive.
- Council Bill 20-54 declared that the Ordinance, being an Ordinance relating to the immediate preservation of the public peace, property, health, safety or morals, was considered an emergency and would become effective immediately upon its passage did not provide adequate time for appropriate public input.
- Jasper County has not espoused a county-wide ordinance mandating the wearing of masks.



Dan Rife, Mayor

XC:
Traci Cox, City Clerk
Nate Dally, City Attorney
Tom Short, City Administrator

***NEW
BUSINESS***

Transition to Per Pay Period Vacation Leave Accrual:

A. Effective January 1, 2021, the City of Carthage will transition from an annual vacation leave accrual to a per pay period vacation leave accrual. This policy will allow for a one (1) year transitional period to be completed January 1, 2022. The new per pay period vacation leave accrual rates will be the following:

General Employees (8 Hour)

1. 80 hours per year through the completion of four (4) years of service with the City, prorated per pay period based on date of hire through the end of the year equivalent of 3.08 rounded hours multiplied by number of pay periods expected to be completed.
2. 120 hours per year during years five (5) through fourteen (14) years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 4.62 rounded hours multiplied by number of pay periods expected to be completed.
3. 160 hours per year during fifteen (15)+ years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 6.15 rounded hours multiplied by number of pay periods expected to be completed.

Police Employees (12 Hour)

1. 100 hours per year through the completion of four (4) years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 3.85 rounded hours multiplied by number of pay periods expected to be completed.
2. 150 hours per year during years five (5) through fourteen (14) years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 5.77 rounded hours multiplied by number of pay periods expected to be completed.
3. 200 hours per year during fifteen (15)+ years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 7.69 rounded hours multiplied by number of pay periods expected to be completed.

Fire Employees (24 Hour)

1. 120 hours per year through the completion of four (4) years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 4.62 rounded hours multiplied by number of pay periods expected to be completed.
2. 180 hours per year during years five (5) through fourteen (14) years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 6.92 rounded hours multiplied by number of pay periods expected to be completed.
3. 240 hours per year during fifteen (15)+ years of service with the City, prorated per pay period based on date of hire through end of the year equivalent of 9.24 rounded hours multiplied by number of pay periods expected to be completed.

Department Heads

1. 144 hours per year prorated per pay period based upon hire date (5.54 hr. rounded per pay period) and through completion of fourteen (14) years of service with the City.
2. 184 hours per year prorated per pay period during fifteen (15)+ years (7.08 hr. rounded per pay period) with the City.

B. Accruals Method and Maximum Accrual Allowed: Employees hired prior to January 1, 2021 will receive a lump sum vacation leave deposit into their vacation leave bank. This deposit will be the sum of the amount of pay periods between the employee's anniversary date (or leave date if different) multiplied by the per pay period vacation leave accrual rates outlined in Section A. Cash payouts will not be considered. Employees will start accruing vacation leave on a per pay period basis starting on the first pay period following January 1, 2021 and will be allowed to carry over their vacation leave balances with the following maximum vacation leave caps in addition to what the employee is allowed to accrue on an annual basis:

1. No maximum vacation leave caps until July 1, 2021.
2. After July 1, 2021, the maximum vacation leave caps will be an additional 80 hours for 8-hour employees, 72 hours for 12-hour employees, and 144 hours for 24-hour employees through December 31, 2021.
3. Effective January 1, 2022, the maximum vacation leave caps will be an additional 40 hours for 8-hour employees, 36 hours for 12-hour employees, and 72 hours for 24-hour employees.

C. Employees Hired After January 1, 2021: These employees will receive vacation leave on a per pay period basis at their accrued rates outlined in Section A on the first pay period following their date of hire. Those employees will be eligible to use their accrued vacation leave upon the completion of ninety (90) days of service to the City. Those employees will not be allowed to accrue more vacation leave than the vacation leave caps outlined in Section B.

D. Payout upon Separation from Employment: Unused vacation leave may be paid to employees upon separation from the City provided the employee has completed at least one (1) year of continuous service and leaves in good standing providing a resignation notice of at least two (2) weeks in advance. Vacation may not be used as a two-week resignation notice, unless requested or approved by the Department Head and the City Administrator. The vacation leave payout shall not exceed the maximum vacation leave caps that go into effect January 1, 2022 as outlined in Section B, Subsection 3.

Employees with at least twenty (20) years of continuous service, employed prior to January 1, 2001, and retire from the City under LAGERS or the Police and Fire Pension between January 1, 2021 and January 1, 2025 will be eligible to receive a vacation leave accrual payout. The payout is equivalent to the amount of vacation accrued between the employee's last anniversary date (or leave date if different) and the date of retirement based on the rates outlined in Section A.

***MAYOR'S
APPOINTMENTS***

Mayor's Appointments

December 2020

Civil War Museum 3 Year Term – 7 Members – Meets on Call

<u>NAME</u>	<u>PHONE</u>	<u>ADDRESS</u>	<u>APPOINTED</u>	<u>EXPIRES</u>
Chris Johnson	358-3247	1321 S Main Street	03/07/2017	Dec-23
Gary Keene	825-2390	4658 S Plum Road	08/14/2012	Dec-23
Gary Hansford	358-1752	1640 S Garrison Ave	12/26/1995	Dec-23

Police Personnel Administration Board 4 Year Term – 4 Members – Meets on Call, Police Department

<u>NAME</u>	<u>PHONE</u>	<u>ADDRESS</u>	<u>APPOINTED</u>	<u>EXPIRES</u>
Allan Vandenberg	359-5851	710 Belle Air	12/23/2008	Dec-24

Carthage Tree Board 3 Year Term – 5 Members – Meets on Call

<u>NAME</u>	<u>PHONE</u>	<u>ADDRESS</u>	<u>APPOINTED</u>	<u>EXPIRES</u>
Renae Brownfield	793-4367	403 Euclid	12/08/2020	Dec-23
Jory Mertens	499-9748	913 Southern Hills	12/08/2020	Dec 23

RESOLUTIONS

MINUTES
STANDING
COMMITTEES

COMMITTEE ON INSURANCE/AUDIT AND CLAIMS
TUESDAY, NOVEMBER 24, 2020
5:00 p.m.

COMMITTEE MEMBERS PRESENT: Ceri Otero, David Armstrong, Seth Thompson and Craig Diggs.

OTHER COUNCIL MEMBERS: Ed Barlow

OTHERS PRESENT: City Administrator Tom Short, City Clerk Traci Cox, Mark Peterson and Abi Almandinger.

Chair Ceri Otero called the meeting to order at 5:00 P.M.

OLD BUSINESS:

Approval of minutes from previous meeting: On a motion by Mr. Armstrong, the minutes of the October 27, 2020 meeting were approved 4-0.

Review and approval of the Claims Report: The Committee discussed items regarding the Claims Report. Mr. Diggs moved to approve the claims. Motion carried 4-0.

NEW BUSINESS:

- 1. Consider and Discuss Human Resources Coordinator/Payroll Clerk job description.**
Mr. Short presented the job description for the new position which is a result of a recommendation from the McGrath Compensation and Benefit Study. Ms. Otero explained it is an expansion of an existing role. Mr. Diggs moved to approve the job description. Motion carried.
- 2. Staff Reports:** Ms. Cox reported the Nicotine Cessation Program has been put on hold until a better program can be devised. The contract with Mercy Carthage for Covid testing has been signed, and Carthage Water & Electric will also be included in the contract pricing. Mr. Short reported the Salary Study Committee continues to work on changes to the vacation policy, which will be presented at the next meeting of the Insurance, Audit and Claims Committee.
- 3. Member Reports:** None.

ADJOURNMENT: Mr. Armstrong made a motion to adjourn at 5:20 PM Motion carried 4-0.

Traci Cox

PUBLIC WORKS COMMITTEE

Public Works Department 623 E 7th Carthage MO 64836
Tele: (417) 237-7010 Fax: (417) 237-7011

"America's Maple Leaf City"



12-01-20 PUBLIC WORKS COMMITTEE MEETING MINUTES

Committee Members present: Mike Daugherty, David Armstrong, Ray West, Craig Diggs

Staff Members present: Tom Short, City Administrator, Zeb Carney, Director, and Marcia Weng, Public Works Secretary

Citizens: Julie Tilley, Abi Almandinger

The Public Works Committee meeting was called to order at 5:30 p.m. by Chairman Mike Daugherty via a Zoom meeting.

A motion was made by Craig Diggs to accept the minutes from the September 1, 2020 Committee meeting. All ayes, motion passed.

Citizen Participation: None

Old Business: None.

New Business: None.

Other Business: None.

Staff Reports:

Zeb reported on the following:

Hector Gonzalez has contacted Zeb with a proposal for the city to purchase property located at 617 E. 6th Street, behind the Street barn. Mr. Gonzalez has priced the property at \$2,550.00. The city would demo the burned out house and use the property for storage. All committee members were in agreement for the purchase of the property. It will be reported at the next council meeting.

The Baker Street overlay has been completed. It was finished at about \$80,000.00 under budget. Blevins Asphalt has submitted a bid for overlaying Fairview, from the interchange to the railroad, with highway mix for approximately \$66,000.00. Zeb has talked to Schreibers and they are willing to split the cost of the overlay.

Anderson Engineering will begin the LIDAR project after the first of the year. They will begin with the primary snow routes.

The River Street bridge project should begin around the end of February. All of the utilities have been moved. It should be completed by the end of this fiscal year.

Leaf collection is underway. The boys are working diligently and have almost completed 2 rounds. It will continue until the end of December.

The construction industry is still in business, even with the drastic price increases on supplies.

The license renewal process has begun. Julie has sent out 458 renewal notices.

Zeb would like to change the office hours from 8:00 - 5:00 to 7:00 - 4:00. There are very few calls or customers in the hour from 4 to 5. He would like to begin the new hours January 1. All committee members agreed this would be a good idea.

Brian Croft, a bed manufacturer, is wanting to build a new facility in town.

Tom reported on the following:

Tom reported that we have some road tax money, in conjunction with the Special Road District, that we need to meet and plan on how to use it.

Planning and zoning has denied a cell tower for AT&T.

The Schreiber project is back and on a fast track. They are scheduling a conference call with the city attorney soon. They are planning on breaking ground in the first quarter of 2021.

David Armstrong made a motion to adjourn the meeting at 6:05 p.m. All ayes, motion carried.

***MINUTES
SPECIAL
COMMITTEES
AND BOARDS***

Minutes
Carthage Tree Board

December 1, 2020
4:00 pm.
Parks Department Office

Tree Board Members Present: Robert Balek, Noah Smith, Renae Brownfield, Jory Mertens

Members Absent: Bryan Stringer

Non-Members Present: Brian Bradley, and Kailey Williams, Jon Skinner, Craig Diggs

The meeting was called to order at 4:00 pm

1. Tree Board Members to choose President, Officers for 2021.

Renae Brownfield made a motion to nominate Noah Smith to become President for the Tree Board Committee.

Motion Passed.

2. Other Business

Discussion of more activities for 2021. We want to get more involved in the community to make known of what the tree board does and is about. Arbor Day set for April 27, 2021. Rain or shine. Participating school aiming for is Columbian for 3rd grade.

Meeting Adjourned at 4:54 pm

***AGENDAS
STANDING
COMMITTEES***

--NOTICE OF MEETING--
PUBLIC WORKS COMMITTEE

December 1, 2020

5:30 PM

BY VIDEO CONFERENCE

-- AGENDA—

In response to the Coronavirus pandemic and pursuant to the Declaration of Emergency within the City of Carthage, this meeting will be held by on-line video conference. If you would like to listen to the meeting, access information is provided below. For questions, contact City Clerk Traci Cox (417) 237-7000 or staff@carthagemo.gov. If you would like to listen to the meeting please call by telephone #346-248-7799. You will have to enter the ID# 82062593437 with a password of 020719. This will allow you to listen to the meeting.

OLD BUSINESS

1. Consideration and approval of minutes from previous meeting

CITIZENS PARTICIPATION

(Citizens wishing to address the Council or Committee should notify the City in advance, and provide the item they wish to address in written format at least 24 hours prior to the meeting to staff@carthagemo.gov. Residents who do not have internet service may call the Clerk's office at 417-237-7000.)

NEW BUSINESS

1. None.

OTHER BUSINESS

None

STAFF REPORTS - Zeb Carney & Tom Short

ADJOURNMENT

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OR 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING.

POSTED: 11/25/2020

BY: Marcia Weng

***AGENDAS
SPECIAL
COMMITTEES
AND BOARDS***

John Bartosh
Presiding Commissioner

Tom Flanigan
Eastern District Commissioner

Darieux K. Adams
Western District Commissioner

JASPER COUNTY COMMISSION



302 S. Main ST
Carthage, MO 64836

Carthage: 417-358-0421
Joplin: 417-625-4350

Toll Free: 800-404-0421
Fax: 417+358-0483

COMMISSION AGENDA NOVEMBER 24, 2020 9:00 A.M.

JASPER COUNTY COURTHOUSE ROOM 101

1. CALL TO ORDER
 - PRAYER
 - PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. APPROVAL OF MINUTES
4. PRESENTATIONS
 - **Jasper County Auditor-Present 2021 Preliminary Budget**
5. REPORTS AND COMMUNICATIONS
6. ELECTED OFFICIALS/CITIZENS REQUESTS
 - **Service Recycling-Tiffany Weber-Request to Vacate North Kentucky Avenue between East Echo Valley and East Eaglewood Roads and North Marion Avenue between East Echo Valley and East Eaglewood Roads.**
7. COMMISSIONER'S REPORTS
8. UNFINISHED BUSINESS
9. NEW BUSINESS
 - **Approve CARES Act Grant Applications**
10. PUBLIC HEARINGS

PUBLIC PARTICIPATION FROM AUDIENCE WHEN ADDRESSED YOU WILL BE ALLOWED THREE MINUTES TO SPEAK.

ELECTED OFFICIALS/CITIZENS WISHING TO BE HEARD UNDER ELECTED OFFICIALS/CITIZENS REQUEST MUST REQUEST TO SPEAK TO COMMISSION BY 4:00 P.M. ON THE FRIDAY PRIOR TO THE COMMISSION MEETING ON TUESDAY. CITIZENS SPEAKING TIME WILL BE LIMITED TO FIVE MINUTES.

THE NEWS MEDIA MAY OBTAIN COPIES OF THIS NOTICE BY CONTACTING:
COMMISSION OFFICE, 302 S. MAIN, COURTHOUSE, ROOM 101, CARTHAGE 417-358-0421

NOTICE POSTED NOVEMBER 20, 2020 AT 4:00 P.M.

(RSMO 610.020)

CARTHAGE TREE BOARD

TUESDAY December 1, 2020
4:00 P.M.

CARTHAGE PARK DEPARTMENT
MUNICIPAL PARK

TENTATIVE AGENDA

1. Tree Board Members to Choose President, officers for 2021
2. Any other business

ADJOURNMENT

PERSONS WITH DISABILITIES WHO NEED SPECIAL ASSISTANCE CALL 417-237-7000 (VOICE) OR 1-800-735-2466 (TDD VIA RELAY MISSOURI) AT LEAST 24 HOURS PRIOR TO MEETING.

Posted: _____

By: _____

John Bartosh
Presiding Commissioner

Tom Flanigan
Eastern District Commissioner

Daricus K. Adams
Western District Commissioner

JASPER COUNTY COMMISSION



302 S. Main ST
Carthage, MO 64836

Carthage: 417-358-0421
Joplin: 417-625-4350

Toll Free: 800-404-0421
Fax: 417+358-0483

COMMISSION AGENDA
DECEMBER 8, 2020
9:00 A.M.
JASPER COUNTY COURTHOUSE ROOM 101

1. CALL TO ORDER
 - PRAYER
 - PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. APPROVAL OF MINUTES
4. PRESENTATIONS
5. REPORTS AND COMMUNICATIONS
6. ELECTED OFFICIALS/CITIZENS REQUESTS
7. COMMISSIONER'S REPORTS
8. UNFINISHED BUSINESS
9. NEW BUSINESS
 - **Appointments to Domestic Violence Board**
 - **Approve CARES Act Grant Applications**
10. PUBLIC HEARINGS

PUBLIC PARTICIPATION FROM AUDIENCE WHEN ADDRESSED YOU WILL BE ALLOWED THREE MINUTES TO SPEAK.

ELECTED OFFICIALS/CITIZENS WISHING TO BE HEARD UNDER ELECTED OFFICIALS/CITIZENS REQUEST MUST REQUEST TO SPEAK TO COMMISSION BY 4:00 P.M. ON THE FRIDAY PRIOR TO THE COMMISSION MEETING ON TUESDAY. CITIZENS SPEAKING TIME WILL BE LIMITED TO FIVE MINUTES.

THE NEWS MEDIA MAY OBTAIN COPIES OF THIS NOTICE BY CONTACTING:
COMMISSION OFFICE, 302 S. MAIN, COURTHOUSE, ROOM 101, CARTHAGE 417-358-0421

NOTICE POSTED DECEMBER 4, 2020 AT 4:00 P.M.

(RSMO 610.020)

CARTHAGE PUBLIC LIBRARY BOARD OF TRUSTEES

Tuesday, December 8, 2020 5:15 p.m.

CARTHAGE PUBLIC LIBRARY
Steadley Family Legacy Center
612 S. Garrison Ave.

AGENDA

Roll Call of Members

Minutes of the Last Meeting

Financial Report

Director's Progress and Service Report

President's Message

Council Liaison's Report

Committee Reports

Building Committee

Multipurpose Building update

Update on water disaster

Update on roof

Budget Committee

Community Relations

By-Laws

Library Gardens

ADA Compliance

Communications

New Business

Approval of building and liability insurance

Payment of Bills

Adjournment

Closed Session

Adjournment

CORRESPONDENCE

McCune Brooks Regional Hospital
Statements of Financial Position
October 31, 2020

Assets

Assets

Cash in bank- New trust disbursement	\$ 19,138.17
New Trust investment	15,628,624.15
Escrow account	<u>5,072,642.44</u>
Total Assets	<u><u>\$ 20,720,404.76</u></u>

Liabilities and Net Position

Liabilities

Accounts payable	\$ 1,560,334.00
Total Liabilities	<u>1,560,334.00</u>

Net Position

Operational capital- Fund balance	18,947,382.98
Restricted- non expendable	322,626.00
Retained earnings	<u>(109,938.22)</u>
Total Net Position	<u>19,160,070.76</u>
Total Liabilities and Stockholders' Equity	<u><u>\$ 20,720,404.76</u></u>

See accountant's compilation report.

McCune Brooks Regional Hospital
Statements of Activities

6 Months Ended
October 31, 2020

Income

Interest and dividend income- bond/escrow	212.82
Interest and dividend income-Trust	141,220.49
Interest income	26.86
Other income	7,695.31
Other income- from other trusts	585.61
Gain (Loss) realized and unrealized	(78,679.06)
Total Income	71,062.03

Operating Expenses

Bank charges	9,425.25
Grants	165,575.00
Legal and professional fees	6,000.00
Total Operating Expenses	181,000.25

Net Income (Loss)	\$ (109,938.22)
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See accountant's compilation report.

"Rosenberg's Rules of Order"

(Simple Rules of Parliamentary Procedure for the 21st Century)

Introduction

The rules of procedure at meetings should be simple enough for most people to understand. Unfortunately, that has not always been the case. Virtually all clubs, associations, boards, councils and bodies follow a set of rules - "Robert's Rules of Order" - which are embodied in a small, but complex, book. Virtually no one I know has actually read this book cover to cover. Worse yet, the book was written for another time, and for another purpose. If one is chairing or running a Parliament, then "Robert's Rules of Order" is a dandy and quite useful handbook for procedure in that complex setting. On the other hand, if one is running a meeting of, say, a 5-member body with a few members of the public in attendance, a simplified version of the rules of parliamentary procedure is in order.

Hence, the birth of "Rosenberg's Rules of Order."

What follows is my version of the rules of parliamentary procedure, based on my 20 years of experience chairing meetings in state and local government. These rules have been simplified for the smaller bodies we chair or in which we participate, slimmed down for the 21st Century, yet retaining the basic tenets of order to which we have grown accustomed.

This treatise on modern parliamentary procedure is built on a foundation supported by the following four pillars: (1) Rules should establish order. The first purpose of rules of parliamentary procedure is to establish a framework for the orderly conduct of meetings. (2) Rules should be clear. Simple rules lead to wider understanding and participation. Complex rules create two classes: those who understand and participate; and those who do not fully understand and do not fully participate. (3) Rules should be user friendly. That is, the rules must be simple enough that the public is invited into the body and feels that it has participated in the process. (4) Rules should enforce the will of the majority while protecting the rights of the minority. The ultimate purpose of rules of procedure is to encourage discussion and to facilitate decision-making by the body. In a democracy, majority rules. The rules must enable the majority to express itself and fashion a result, while permitting the minority to also express itself, but not dominate, and fully participate in the process.

The Role of the Chair

While all members of the body should know and understand the rules of parliamentary procedure, it is the Chair of the body who is charged with applying the rules in the conduct of the meeting. The Chair should be well versed in those rules. The Chair, for all intents and purposes, makes the final ruling on the rules every time the Chair states an action. In fact, all decisions by the Chair are final unless overruled by the body itself.

Since the Chair runs the conduct of the meeting, it is usual courtesy for the Chair to play a less active role in the debate and discussion than other members of the body. This does not mean that the Chair should not participate in the debate or discussion. To the contrary, the Chair as a member of the body has the full right to participate in the debate, discussion and decision-making of the body. What the Chair should do, however, is strive to be the last to speak at the discussion and debate stage, and the Chair should not make or second a motion unless the Chair is convinced that no other member of the body will do so at that point in time.

The Basic Format for an Agenda Item Discussion

Formal meetings normally have a written, often published agenda. Informal meetings may have only an oral or understood agenda. In either case, the meeting is governed by the agenda and the agenda constitutes the body's agreed-upon roadmap for the meeting. And each agenda item can be handled by the Chair in the following basic format:

First, the Chair should clearly announce the agenda item number and should clearly state what the agenda item subject is. The Chair should then announce the format (which follows) that will be followed in considering the agenda item.

Second, following that agenda format, the Chair should invite the appropriate person or persons to report on the item, including any recommendation that they might have. The appropriate person or persons may be the Chair, a member of the body, a staff person, or a committee chair charged with providing input on the agenda item.

Third, the Chair should ask members of the body if they have any technical questions of clarification. At this point, members of the body may ask clarifying questions to the person or persons who reported on the item, and that person or persons should be given time to respond.

Fourth, the Chair should invite public comments, or if appropriate at a formal meeting, should open the public meeting for public input. If numerous members of the public indicate a desire to speak to the subject, the Chair may limit the time of public speakers. At the conclusion of the public comments, the Chair should announce that public input has concluded (or the public hearing as the case may be is closed).

Fifth, the Chair should invite a motion. The Chair should announce the name of the member of the body who makes the motion.

Sixth, the Chair should determine if any member of the body wishes to second the motion. The Chair should announce the name of the member of the body who seconds the motion. (It is normally good practice for a motion to require a second before proceeding with it, to ensure that it is not just one member of the body who is interested in a particular approach. However, a second is not an absolute requirement, and the Chair can proceed with consideration and vote on a motion even when there is no second. This is a matter left to the discretion of the Chair.)

Seventh, if the motion is made and seconded, the Chair should make sure everyone understands the motion. This is done in one of three ways: (1) The Chair can ask the maker of the motion to repeat it. (2) The Chair can repeat the motion. (3) The Chair can ask the secretary or the clerk of the body to repeat the motion.

Eighth, the Chair should now invite discussion of the motion by the body. If there is no desired discussion, or after the discussion has ended, the Chair should announce that the body will vote on the motion. If there has been no discussion or very brief discussion, then the vote on the motion should proceed immediately and there is no need to repeat the motion. If there has been substantial discussion, then it is normally best to make sure everyone understands the motion by repeating it.

Ninth, the Chair takes a vote. Simply asking for the "ayes", and then asking for the "nays" normally does this. If members of the body do not vote, then they "abstain". Unless the rules of the body provide otherwise (or unless a super-majority is required as delineated later in these rules) then a simple majority determines whether the motion passes or is defeated.

Tenth, the Chair should announce the result of the vote and should announce what action (if any) the body has taken. In announcing the result, the Chair should indicate the names of the members of the body, if any, who voted in the minority on the motion. This announcement might take the following form: "The motion passes by a vote of 3-2, with Smith and Jones dissenting. We have passed the motion requiring 10 days notice for all future meetings of this body."

Motions in General

Motions are the vehicles for decision-making by a body. It is usually best to have a motion before the body prior to commencing discussion of an agenda item. This helps the body focus.

Motions are made in a simple two-step process. First, the Chair should recognize the member of the body. Second, the member of the body makes a motion by preceding the member's desired approach with the words: "I move" So, a typical motion might be: "I move that we give 10-day's notice in the future for all our meetings."

The Chair usually initiates the motion by either (1) Inviting the members of the body to make a motion. "A motion at this time would be in order." (2) Suggesting a motion to the members of the body. "A motion would be in order that we give 10-day's notice in the future for all our meetings." (3) Making the motion. As noted, the Chair has every right as a member of the body to make a motion, but should normally do so only if the Chair wishes to make a motion on an item but is convinced that no other member of the body is willing to step forward to do so at a particular time.

The Three Basic Motions

There are three motions that are the most common and recur often at meetings:

The basic motion. The basic motion is the one that puts forward a decision for the body's consideration. A basic motion might be: "I move that we create a 5-member committee to plan and put on our annual fundraiser."

The motion to amend. If a member wants to change a basic motion that is before the body, they would move to amend it. A motion to amend might be: "I move that we amend the motion to have a 10-member committee." A motion to amend takes the basic motion which is before the body and seeks to change it in some way.

The substitute motion. If a member wants to completely do away with the basic motion that is before the body, and put a new motion before the body, they would move a substitute motion. A substitute motion might be: "I move a substitute motion that we cancel the annual fundraiser this year."

"Motions to amend" and "substitute motions" are often confused. But they are quite different, and their effect (if passed) is quite different. A motion to amend seeks to retain the basic motion on the floor, but modify it in some way. A substitute motion seeks to throw out the basic motion on the floor, and substitute a new and different motion for it. The decision as to whether a motion is really a "motion to amend" or a "substitute motion" is left to the chair. So that if a member makes what that member calls a "motion to amend", but the Chair determines that it is really a "substitute motion", then the Chair's designation governs.

Multiple Motions Before the Body

There can be up to three motions on the floor at the same time. The Chair can reject a fourth motion until the Chair has dealt with the three that are on the floor and has resolved them.

When there are two or three motions on the floor (after motions and seconds) at the same time, the vote should proceed first on the last motion that is made. So, for example, assume the first motion is a basic "motion to have a 5-member committee to plan and put on our annual fundraiser." During the discussion of this motion, a member might make a second motion to "amend the main motion to have a 10-member committee, not a 5-member committee to plan and put

on our annual fundraiser." And perhaps, during that discussion, a member makes yet a third motion as a "substitute motion that we not have an annual fundraiser this year." The proper procedure would be as follows:

First, the Chair would deal with the third (the last) motion on the floor, the substitute motion. After discussion and debate, a vote would be taken first on the third motion. If the substitute motion passed, it would be a substitute for the basic motion and would eliminate it. The first motion would be moot, as would the second motion (which sought to amend the first motion), and the action on the agenda item would be completed on the passage by the body of the third motion (the substitute motion). No vote would be taken on the first or second motions. On the other hand, if the substitute motion (the third motion) failed then the Chair would proceed to consideration of the second (now, the last) motion on the floor, the motion to amend.

Second, if the substitute motion failed, the Chair would now deal with the second (now, the last) motion on the floor, the motion to amend. The discussion and debate would focus strictly on the amendment (should the committee be 5 members or 10 members). If the motion to amend passed the Chair would now move to consider the main motion (the first motion) as amended. If the motion to amend failed the Chair would now move to consider the main motion (the first motion) in its original format, not amended.

Third, the Chair would now deal with the first motion that was placed on the floor. The original motion would either be in its original format (5-member committee), or, if amended, would be in its amended format (10-member committee). And the question on the floor for discussion and decision would be whether a committee should plan and put on the annual fundraiser.

To Debate or Not to Debate

The basic rule of motions is that they are subject to discussion and debate. Accordingly, basic motions, motions to amend, and substitute motions are all eligible, each in their turn, for full discussion before and by the body. The debate can continue as long as members of the body wish to discuss an item, subject to the decision of the Chair that it is time to move on and take action.

There are exceptions to the general rule of free and open debate on motions. The exceptions all apply when there is a desire of the body to move on. The following motions are not debatable (that is, when the following motions are made and seconded, the Chair must immediately call for a vote of the body without debate on the motion):

A motion to adjourn. This motion, if passed, requires the body to immediately adjourn to its next regularly scheduled meeting. It requires a simple majority vote.

A motion to recess. This motion, if passed, requires the body to immediately take a recess. Normally, the Chair determines the length of the recess which may be a few minutes or an hour. It requires a simple majority vote.

A motion to fix the time to adjourn. This motion, if passed, requires the body to adjourn the meeting at the specific time set in the motion. For example, the motion might be: "I move we adjourn this meeting at midnight." It requires a simple majority vote.

A motion to table. This motion, if passed, requires discussion of the agenda item to be halted and the agenda item to be placed on "hold". The motion can contain a specific time in which the item can come back to the body: "I move we table this item until our regular meeting in October." Or the motion can contain no specific time for the return of the item, in which case a motion to take the item off the table and bring it back to the body will have to be taken at a future meeting. A motion to table an item (or to bring it back to the body) requires a simple majority vote.

A motion to limit debate. The most common form of this motion is to say: "I move the previous question" or "I move the question" or "I call the question." When a member of the body makes such a motion, the member is really saying: "I've had enough debate. Let's get on with the vote." When such a motion is made, the Chair should ask for a second, stop debate, and vote on the motion to limit debate. The motion to limit debate requires a 2/3 vote of the body. Note: that a motion to limit debate could include a time limit. For example: "I move we limit debate on this agenda item to 15 minutes." Even in this format, the motion to limit debate requires a 2/3 vote of the body. A similar motion is a **motion to object to consideration of an item.** This motion is not debatable, and if passed, precludes the body from even considering an item on the agenda. It also requires a 2/3 vote.

Majority and Super-Majority Votes

In a democracy, a simple majority vote determines a question. A tie vote means the motion fails. So in a 7-member body, a vote of 4-3 passes the motion. A vote of 3-3 with one abstention means the motion fails. If one member is absent and the vote is 3-3, the motion still fails.

All motions require a simple majority, but there are a few exceptions. The exceptions come up when the body is taking an action which, effectively, cuts off the ability of a minority of the body to take an action or discuss an item. These extraordinary motions require a 2/3 majority (a super-majority) to pass:

Motion to limit debate. Whether a member says "I move the previous question" or "I move the question" or "I call the question" or "I move to limit debate", it all amounts to an attempt to cut off the ability of the minority to discuss an item, and it requires a 2/3 vote to pass.

Motion to close nominations. When choosing officers of the body (like the Chair) nominations are in order either from a nominating committee or from the floor of the body. A motion to close nominations effectively cuts off the right of the minority to nominate officers, and it requires a 2/3 vote to pass.

Motion to object to the consideration of a question. Normally, such a motion is unnecessary since the objectionable item can be tabled, or defeated straight up. However, when members of a body do not even want an item on the agenda to be considered, then such a motion is in order. It is not debatable, and it requires a 2/3 vote to pass.

Motion to suspend the rules. This motion is debatable, but requires a 2/3 vote to pass. If the body has its own rules of order, conduct or procedure, this motion allows the body to suspend the rules for a particular purpose. For example, the body (a private club) might have a rule prohibiting the attendance at meetings by non-club members. A motion to suspend the rules would be in order to allow a non-club member to attend a meeting of the club on a particular date or on a particular agenda item.

The Motion to Reconsider

There is a special and unique motion that requires a bit of explanation all by itself: the motion to reconsider. A tenet of parliamentary procedure is finality. After vigorous discussion, debate, perhaps disagreement and a vote, there must be some closure to the issue. And so, after a vote is taken, the matter is deemed closed, subject only to a re-opener if a proper motion to reconsider is made.

A motion to reconsider requires a majority vote to pass, but there are two special rules that apply only to the motion to reconsider. First, is timing. A motion to reconsider must be made at the meeting where the item was first voted upon or at the very next meeting of the body. A motion to reconsider made at a later time is untimely. (The body, however, can always vote to suspend the rules and by a 2/3 majority, can allow a motion to reconsider to be made at another time.) Second, a motion to reconsider can only be made by certain members of the body. Accordingly, a motion to reconsider can only be made by a member who voted in the majority on the original motion. If such a member has a change of heart, he or she can make the motion to reconsider (any other member of the body may second the motion). If a member who voted in the minority seeks to make the motion to reconsider, it must be ruled out of order. The purpose of this rule is finality. If a member of the minority could make a motion to reconsider, then the item could be brought back to the body again and again. That would defeat the purpose of finality.

If the motion to reconsider passes, then the original matter is back before the body, and a new original motion is then in order. The matter can be discussed and debated as if it were on the floor for the first time.

Courtesy and Decorum

The rules of order are meant to create an atmosphere where the members of the body and the members of the public can attend to business efficiently, fairly and with full participation. At the same time, it is up to the Chair and the members of the body to maintain common courtesy and decorum. Unless the setting is very informal, it is always best for only one person at a time to have the floor, and it is always best for every speaker to be first recognized by the Chair before proceeding to speak.

The Chair should always ensure that debate and discussion of an agenda item focuses on the item and the policy in question, not the personalities of the members of the body. Debate on policy is healthy, debate on personalities is not. The Chair has the right to cut off discussion that is too personal, is too loud, or is too crude.

Debate and discussion should be focused, but free and open. In the interest of time, the Chair may, however, limit the time allotted to speakers, including members of the body.

Can a member of the body interrupt the speaker? The general rule is "no." There are, however, exceptions. A speaker may be interrupted for the following reasons:

Privilege. The proper interruption would be: "point of privilege." The Chair would then ask the interrupter to "state your point." Appropriate points of privilege relate to anything that would interfere with the normal comfort of the meeting. For example, the room may be too hot or too cold, or a blowing fan might interfere with a person's ability to hear.

Order. The proper interruption would be: "point of order." Again, the Chair would ask the interrupter to "state your point." Appropriate points of order relate to anything that would not be considered appropriate conduct of the meeting. For example, if the Chair moved on to a vote on a motion that permits debate without allowing that discussion or debate.

Appeal. If the Chair makes a ruling that a member of the body disagrees with, that member may appeal the ruling of the chair. If the motion is seconded, and after debate, if it passes by a simple majority vote, then the ruling of the Chair is deemed reversed.

Call for orders of the day. This is simply another way of saying, "Let's return to the agenda." If a member believes that the body has drifted from the agreed-upon agenda, such a call may be made. It does not require a vote, and when the Chair discovers that the agenda has not been followed, the Chair simply reminds the body to return to the agenda item properly before them. If the Chair fails to do so, the Chair's determination may be appealed.

Withdraw a motion. During debate and discussion of a motion, the maker of the motion on the floor, at any time, may interrupt a speaker to withdraw his or her motion from the floor. The motion is immediately deemed withdrawn, although the Chair may ask the person who seconded the motion if he or she wishes to make the motion, and any other member may make the motion if properly recognized.

Special Notes About Public Input

The rules outlined above will help make meetings very public-friendly. But in addition, and particularly for the Chair, it is wise to remember three special rules that apply to each agenda item:

Rule One: Tell the public what the body will be doing.

Rule Two: Keep the public informed while the body is doing it.

Rule Three: When the body has acted, tell the public what the body did.