



CITY OF OSAGE BEACH  
BOARD OF ALDERMEN MEETING

**REVISED 04/19/11**

1000 City Parkway  
Osage Beach, MO 65065  
573/302-2000 FAX 573/302-0528  
Email: [www.osagebeach.org](http://www.osagebeach.org)

NOTICE OF OPEN MEETING

TENTATIVE AGENDA  
REGULAR MEETING  
April 21, 2011 – 6:30 P.M.  
CITY HALL

**\*\*\*\*\* Note: Make sure that your cell phone is turned off or on a silent tone only. Please sign the attendance sheet located at the podium if you desire to address the Board.**

**CALL TO ORDER**  
**Pledge of Allegiance**  
**Roll Call**

**MAYOR'S COMMUNICATIONS**

**CITIZENS' COMMUNICATIONS**

- This is a time set aside on the agenda for citizens and visitors to address the Mayor and Board on any topic that is not a public hearing. The Board will not take action on any item not listed on the agenda, but the Mayor and Board welcome and value input and feedback from the public. Speakers will be restricted to three minutes unless otherwise permitted. Minutes may not be donated or transferred from one speaker to another.

**APPROVAL OF CONSENT AGENDA**

If the Board desires, the consent agenda may be approved by a single motion.

- Minutes of 04/07/11 (Page 01)
- Bills (Page 10)
- Liquor Licenses: (Page 22)
  1. Formula Boats of Missouri (Munganest)
  2. Molotoft Cocktails Bar & Grill (Hook 'n Hoof)
  3. Seven Springs Winery (Caterer)

## **UNFINISHED BUSINESS**

None

## **NEW BUSINESS**

- A. Certification of Election Results (Page 25)
- B. Oaths of Office
- C. Election of President of the Board of Aldermen
- D. Appointment of Board Members to Boards and Commissions**
- E. Resolution 2011-03. Resolution of Intent to Annex. Lazy Days Condominiums (Page 28)
- F. Bill No. 11-14. Authorize Mayor to Execute State Block Grant Agreement to Conduct an Environmental Assessment, Site Assessment and Boundary Survey at the Grand Glaize Osage Beach Airport. First and Second Readings (Page 34)
- G. Bill No. 11-20. Authorize Mayor to Execute Agreement with the Osage Beach Fire Protection District. First and Second Readings (Page 36)
- H. Bill No. 11-21. 2011 Budget Amendment. MoDOT Mandated Projects. First and Second Readings (Page 42)
- I. Bill No. 11-22. Approval of Voluntary Annexation of MoDOT Right of Way along the Expressway. First and Second Readings (Page 44)
- J. Bill No. 11-23. Amending Schedule VII Removing Electrically Operated Traffic Signals. First and Second Readings (Page 52)
- K. Bill No. 11-24. Amending Schedule VII Establishing Electrically Operated Traffic Signals. First and Second Readings (Page 56)
- L. Bill No. 11-25. Establishing a Regulatory Traffic Sign at the Intersection of Highway 54 and Key Largo Road. First and Second Readings (Page 60)
- M. Bill No. 11-26. Authorizes the Issuance of Notes as Provided in the Dierbergs Osage Beach Tax Increment Financing Agreement. First and Second Readings (Page 63)
- N. Bill No. 11-27. Authorizes Mayor to Execute Agreement with MoDOT. First and Second Readings (Page 127)
- O. Authorize Mayor to Execute Renewal Contract with Vaisala for Maintenance of Localizer at the Lee C. Fine Airport (Page 129)
- P. Approve Terms of Contract for the Grounds Sublease at Lee C. Fine Airport. (Page 138)

## **COMMUNICATIONS FROM MEMBERS OF THE BOARD OF ALDERMEN**

## **STAFF COMMUNICATIONS**

**EXECUTIVE SESSION.** Notice is given that the agenda includes a roll call vote to close the meeting as allowed by **RSMo. Section 610.021(1)** Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys; **RSMo. Section 610.021(2)** Leasing, purchase, or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefore; and **RSMo. Section 610.021(3)**, Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded.

**ADJOURN**

# UNAPPROVED

## MINUTES OF THE REGULAR MEETING OF THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, MISSOURI

April 7, 2011

The Board of Aldermen of the City of Osage Beach, Missouri, met to conduct a regular meeting on Thursday, April 7, 2011, at 6:30 p.m. at City Hall. The following were present: Mayor Penny Lyons, Alderman Lois Farmer, Alderman Dave Gasper, Alderman Steve Kahrs, Alderman John Olivarri, Alderman Kevin Rucker and Alderman Ron Schmitt. City Clerk Diann Warner was present and performed the duties of that office.

**Mayor's Communications.** Mayor Lyons expressed her condolences to the family and friends of Nancy Sheely who passed away on Sunday. Nancy was appointed to the Board of Aldermen in 1995 by Mayor Gary Martin. Mrs. Sheely then ran for the Ward II position and was elected in 1996, 1998 and 2000. Alderman Sheely was instrumental in supporting the construction of this City Hall and the City Park. She served on the Cultural and Historical Committee, and later she served on the Public Safety Committee, Leisure Services Committee and the Airport Advisory Committee. She also volunteered and was a current member of the Osage Beach Citizen's Advisory Committee. Alderman Sheely continued to be involved in teaching long after her retirement. She was a supportive and active volunteer for the City of Osage Beach.

### **Citizens Communications.**

No one was present who wished to speak during this portion of the meeting.

### **Consent Agenda.**

Alderman Farmer moved to approve the consent agenda which includes minutes of the regular meeting held on March 17, 2011, the bill list as submitted and a liquor license to the Hideout Bar and Grill (formerly Stockton's). Alderman Olivarri seconded the motion which was voted on and unanimously passed.

**Unfinished Business.** None.

### **New Business.**

Following a motion by Alderman Rucker, seconded by Alderman Gasper voted on and passed, the Certified Election Results, the oaths of office and the election of the President of the Board of Aldermen were postponed until the next meeting because the Certified Election Results were not yet received from the election held on April 5<sup>th</sup>.

**Public Hearing.** MoDOT Right of Way Voluntary Annexation.

This is a request to annex a portion of property that contains a section of the new Route 54 Highway between the Passover Road Interchange and the Osage Beach Parkway Interchange, which passes through Lake of the Ozarks State Park.

The proposed annexation will allow the City to provide continuous coverage of services. Currently there are three areas outside the City limits along the new Highway 54 and if there is an accident in these areas the City cannot provide law enforcement services. The accidents in these areas must be handled by the Missouri State Highway Patrol or Camden County. Currently, dispatching for this

## UNAPPROVED

area is difficult because there are no monuments that can define if someone is within the City limits.

Traveling in a westerly direction from the Osage River Bridge, there is an Osage Beach City Limit Sign but there are no signs indicating leaving City limits. The travelling public and citizens would assume they are still within the City limits and expect the services of the City.

The Police Department is concerned about this problem and concurs with the Engineering Department that this is a situation that should be corrected.

The Engineering Department and City Clerk's Office contacted MoDOT about this situation and have followed all of their requirements for this property to be annexed.

No action is necessary at this time. The annexation may be complete if no written objections are received during the fourteen day period following the public hearing.

No one was present to speak in favor of or in opposition to MoDOT's voluntary annexation petition therefore, Mayor Lyons closed the public hearing at 6:35 p.m.

**Bill No. 11-15.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ANNEXING CERTAIN ADJACENT TERRITORY INTO THE CITY OF OSAGE BEACH, MISSOURI.

A public hearing was held March 17, 2011 on the petition for annexation for the Dogwood Animal Shelter. No written objections were filed by March 31, 2011 and no one at the public hearing voiced any opposition to the proposed annexation, therefore the Board may approve the ordinance annexing the property.

Alderman Kahrs reiterated his concerns regarding noise. City Planner Patterson said from a planning and a community perspective, he could find no reason to annex the property at this time.

Alderman Rucker spoke in favor of annexing the property stating that it is no different than any other annexation. He said even though there could be noise issues, there are ordinances to regulate and control noise.

Alderman Olivarri said he viewed the property and not much is built around the Shelter at this time. He questioned whether the concerns of the City had been shared with the Dogwood Animal Shelter. City Planner Patterson said he did not seek them out and his report from the last meeting expressed his concerns about the annexation. Alderman Olivarri said that after reading the memo from City Engineer Edelman, he finds the annexation to be in the best interest of the City.

Alderman Schmitt said that at first he could see very little reason to annex this property however there would be a future benefit if the City is anticipating expansion.

Mayor Lyons presented the first reading of Bill No. 11-15 by title only. It was noted that Bill No. 11-15 has been available for public review.

## UNAPPROVED

Alderman Olivarri moved to approve the first reading of Bill No. 11-15 as presented. Alderman Gasper seconded the motion which was voted on and passed with Alderman Kahrs expressing a negative vote.

Mayor Lyons presented the second and final reading of Bill No. 11-15 by title only.

Alderman Gasper moved to approve the second and final reading of Bill No. 11-15 as presented. Alderman Farmer seconded the motion. The following roll call vote was taken to approve the second and final reading of Bill No. 11-15 and to pass same into Ordinance: "Ayes": Alderman Rucker, Alderman Gasper, Alderman Schmitt, Alderman Olivarri, Alderman Farmer. "Nays": Alderman Kahrs. Bill No. 11-15 was passed and approved as Ordinance No. 11.15.

**Bill No. 11-16.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ESTABLISHING THE LOCATION OF A STOP SIGN AS INDICATED HEREIN.

MoDOT has completed the connection for residents that live north of the expressway on Mariner Circle. They are using Sycamore Valley Drive to access Highway 54. A stop sign is planned to be installed at the intersection of Sycamore Valley and Fall Street. The Engineering Department recommends approval of Bill No. 11-16.

Mayor Lyons presented the first reading of Bill No. 11-16 by title only. It was noted that Bill No. 11-16 has been available for public review.

Alderman Schmitt moved to approve the first reading of Bill No. 11-16 as presented. Alderman Rucker seconded the motion which was voted on and unanimously passed.

Mayor Lyons presented the second and final reading of Bill No. 11-16 by title only.

Alderman Farmer moved to approve the second and final reading of Bill No. 11-16 as presented. Alderman Schmitt seconded the motion. The following roll call vote was taken to approve the second and final reading of Bill No. 11-16 and to pass same into Ordinance: "Ayes": Alderman Gasper, Alderman Schmitt, Alderman Olivarri, Alderman Farmer, Alderman Kahrs, Alderman Rucker. "Nays": None. Bill No. 11-16 was passed and approved as Ordinance No. 11.16.

**Bill No. 11-17.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ESTABLISHING THE LOCATION OF AN ELECTRICALLY OPERATED TRAFFIC SIGNAL AS INDICATED HEREIN.

The Missouri Department of Transportation is working on activating an electrically operated signal at Highway 54 and Jeffries Road. The Engineering Department recommends approval of Bill No. 11-17.

Mayor Lyons presented the first reading of Bill No. 11-17 by title only. It was noted that Bill No. 11-17 has been available for public review.

Alderman Olivarri moved to approve the first reading of Bill No. 11-17 as presented. Alderman Gasper seconded the motion which was voted on and unanimously passed.

## UNAPPROVED

Mayor Lyons presented the second and final reading of Bill No. 11-17 by title only.

Alderman Rucker moved to approve the second and final reading of Bill No. 11-17 as presented. Alderman Farmer seconded the motion. The following roll call vote was taken to approve the second and final reading of Bill No. 11-17 and to pass same into Ordinance: “Ayes”: Alderman Schmitt, Alderman Olivarri, Alderman Farmer, Alderman Kahrs, Alderman Rucker, Alderman Gasper. “Nays”: None. Bill No. 11-17 was passed and approved as Ordinance No. 11.17.

**Bill No. 11-18.** AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE QUIT CLAIM DEED VACATING AN EASEMENT.

City Engineer Edelman explained the sewer easement that is vacated by Bill No. 11-18 is for C. Crane Schafer and Carolyn Schafer at Rocket Point Subdivision and is not centered on the sewer line. The sewer line is closer to the edge of the easement than the center. The property owner will be granting the City a new easement that is centered on the sewer line. By vacating this easement, the property owner can add onto their existing residence. The Engineering department recommends approval.

Mayor Lyons presented the first reading of Bill No. 11-18 by title only. It was noted that Bill No. 11-18 has been available for public review.

Alderman Olivarri moved to approve the first reading of Bill No. 11-18 as presented. Alderman Schmitt seconded the motion which was voted on and unanimously passed.

Mayor Lyons presented the second and final reading of Bill No. 11-18 by title only.

Alderman Schmitt moved to approve the second and final reading of Bill No. 11-18 as presented. Alderman Farmer seconded the motion. The following roll call vote was taken to approve the second and final reading of Bill No. 11-18 and to pass same into Ordinance: “Ayes”: Alderman Olivarri, Alderman Farmer, Alderman Kahrs, Alderman Rucker, Alderman Gasper, Alderman Schmitt. “Nays”: None. Bill No. 11-18 was passed and approved as Ordinance No. 11.18.

**Bill No. 11-19.** AN ORDINANCE APPROVING THE TAX INCREMENT FINANCING REDEVELOPMENT AGREEMENT BETWEEN THE CITY OF OSAGE BEACH, MISSOURI, AND DIERBERGS OSAGE BEACH, LLC, FOR THE AMENDED DIERBERGS OSAGE BEACH TAX INCREMENT FINANCING REDEVELOPMENT PLAN AND PROJECT.

City Attorney Ed Rucker explained that Bill No. 11-19 authorizes the Tax Increment Financing Redevelopment Agreement between the City of Osage Beach and Dierbergs Osage Beach, LLC. Previously the Board of Aldermen approved the Amended Dierbergs Osage Beach Tax Increment Financing Plan which was unanimously recommended for approval by the Osage Beach TIF Commission on March 2, 2011. Bill No. 11-19 adopts a Redevelopment Agreement in accordance with that Plan.

This Agreement will redevelop the vacant High Point Shopping Center. It provides the flexibility for the Developer to proceed with or without the participation of Best Buy as a tenant at the center. Ordinance No. 10.81 approved the initial Redevelopment Plan on December 16, 2010, and required

## UNAPPROVED

that the Developer enter into a redevelopment agreement with the City within 6 months following the effective date of that ordinance. This redevelopment agreement meets that timing requirement.

In summary, the Agreement provides for a TIF incentive to the developer of \$3 million for the primary Dierbergs store and an additional \$2.1 million for the remaining retail buildings. This Agreement includes two important new provisions that have been negotiated since the March 17<sup>th</sup> Board meeting. First, reimbursement to Developer from TIF revenues, with interest, lasts 12 years absent an extraordinary delay. If the Developer is not fully reimbursed after 12 years, the City will stop making interest payments to the Developer on any remaining principal reimbursement amount, and only the remaining principal amount at year 12 will be reimbursed with TIF revenues generated from existing taxes. As a result, the Developer is at risk if the revenue for the project fails to perform adequately to pay off the obligation within the 12 years. This time limit is shorter than the City's TIF Policy preference of 15 years.

Second, the agreement also provides a public participation/profit limit feature that mandates a maximum rate of return for the Developer of nine percent (9%). If the average annual rate of return realized by Developer for the Project exceeds nine percent (9%), the principal amount of TIF reimbursement will be reduced so that Developer's return is a maximum of nine percent over the life of the TIF Plan.

David Bushek of Gilmore and Bell said that there are construction performance standards where the reimbursement to the developer is \$3 million for Phase 1 and \$2.1 million for Phase 2. The agreement provides for the withholding of 10% of the \$3 million reimbursement if the store is not built or opened by a certain time, and Phase 1 reimbursement may be cancelled. The \$2.1 million reimbursement may be cancelled if not constructed as proposed. The agreement has a 12 year time limit on the use of TIF revenue and if not paid off by year 12, the interest reimbursement will stop and payment would be for principal only. The Dierbergs Osage Beach LLC TIF is for 12 years compared to the City's policy of 15 years.

Mr. Bushek explained the public participation provision. He also explained that if a store closes the amount of revenue lost may be added onto the end up to two years. Mr. Bushek said if it is not paid off at the end of 12 years, all revenue may no longer be used to pay interest but it may be used to pay principal. The TDD revenues captured by the TIF may be used to pay interest.

Alderman Olivarri questioned whether 9% is a reasonable rate of return. Both City Attorney Rucker and Mr. Bushek agreed that 9% is reasonable and they have seen public participation limits as high as 14%. Joy Howard of WM Financial Strategies said that the original rate was 14% which was too high and she had suggested 9% which is a reasonable rate of return.

Alderman Rucker said it is a challenge to project revenues for other taxing entities and he questioned whether the taxing entities would receive 100% of the revenue after the 12 or 14 year period. Mr. Bushek explained that the TIF revenue cannot be used to pay interest but it could be used to pay the principle. Mr. Rucker asked if the TIF could go beyond the 15 years called for in the City's TIF policy. Mr. Bushek said that it could go past 15 years if the project severely under performs or stores close but that it is extremely unlikely.

Alderman Kahrs questioned whether the agreement is a good deal or a bad deal for the City. Mr. Bushek responded that the agreement is a good deal for the City.

## UNAPPROVED

Mayor Lyons presented the first reading of Bill No. 11-19 by title only. It was noted that Bill No. 11-19 has been available for public review.

Alderman Kahrs moved to approve the first reading of Bill No. 11-19 as presented. Alderman Farmer seconded the motion which was voted on and passed with Alderman Schmitt abstaining and Alderman Olivarri voting in the negative.

Alderman Schmitt commented that he received the packet of eighty three pages two days ago which was an insufficient amount of time to review and evaluate the agreement, therefore, Alderman Schmitt moved to postpone the second reading of Bill No. 11-19 until the next Board meeting. Alderman Rucker seconded the motion which was voted on and failed with Alderman Gasper, Alderman Farmer, Alderman Kahrs and Alderman Olivarri voting in the negative.

Mayor Lyons presented the second and final reading of Bill No. 11-19 by title only.

Alderman Kahrs moved to approve the second and final reading of Bill No. 11-19 as presented. Alderman Farmer seconded the motion. The following roll call vote was taken to approve the second and final reading of Bill No. 11-19 and to pass same into Ordinance: "Ayes": Alderman Farmer, Alderman Kahrs, Alderman Gasper. "Nays": Alderman Rucker, Alderman Schmitt, Alderman Olivarri. The vote resulted in a tie, therefore, Mayor Lyons voted in the affirmative to break the tie. Bill No. 11-19 was passed and approved as Ordinance No. 11.19.

Alderman Kahrs said he agreed with Alderman Schmitt that the Board needs adequate time to review information and that there was not enough time.

**Contract Modification No. 2 for the Connecting Sewer Project.** Contract Modification No. 2 is for the Connecting Sewer Project which has the water line relocates around the Route KK – Highway 54 Expressway proposed interchange. The waterline that bores across KK from a location near Palisades Boulevard to a location near the old KK laundry must be relocated. The 90 degree change in direction on the laundry side will be underneath the new state route KK. The Public Works Department will no longer be able to access this water line if a break occurs if the line is not relocated. MoDOT considers this project to be 100% reimbursable.

If this work is approved a budget amendment needs to be approved. Funding would come from 30-00-773182 MoDOT Mandated Projects.

Aldermen Kahrs moved to approve Contract Modification No. 2 in the amount of \$37,800. Alderman Gasper seconded the motion which was voted on and unanimously passed.

**Authorize Mayor to Execute Agreement with FAA.** Authorization for the Mayor to sign a Memorandum of Agreement (MOA) with the Federal Aviation Administration (FAA) for land sites and easements for existing navigational aid (NAVAID) facilities operated by FAA at Grand Glaize Airport.

Airport Manager Budd Hyde explained that this MOA will replace the existing lease agreement (DTFA09-91-L-10528) which will then be terminated and made into the superseding MOA Document No. DTFACN-11-L-00134. As this is a national policy for all FAA land leases and is

## UNAPPROVED

used for existing leases and easements for NAVAID facilities at Grand Glaize Airport, the Airport Manager recommends approval.

Alderman Farmer moved to authorize Mayor Lyons to execute the agreement with the FAA as recommended at the Grand Glaize Airport. Alderman Schmitt seconded the motion which was voted on and unanimously passed.

### **Bid Award.** Pavement Marking

Bids were opened on March 31, 2011. The following bids were received:

|                             |             |
|-----------------------------|-------------|
| America's Parking Remarking | \$7,166.67  |
| KW Luetkemeyer              | \$8,224.29  |
| Park Mark                   | \$10,482.32 |

The low bidder is America's Parking Remarking, Inc., with a bid of \$7,166.67. This project was budgeted under Item No. 20-00-764208, Road Striping in the amount of \$15,000.00.

The Engineering Department has reviewed the bidding documents and found them to be in order. They have fully researched the bidder's qualifications and find them qualified to perform the work of this contract.

The Engineering Department recommended the bid for Construction Contract OB11-009, for the 2011 Pavement Marking Project be awarded to America's Parking Remarking, Inc., in the amount of \$7,166.67.

Aldermen Olivarri moved to award the bid for pavement markings to America's Parking Remarking, the low bidder, in the amount of \$7,166.67. Alderman Schmitt seconded the motion which was voted on and unanimously passed.

### **Bid Award.** Grinder Pumps.

Municipal Equipment, who has the franchise for this area, submitted the only bid for the grinder pumps in the amount of \$108,730. The budgeted amount is \$109,984 in line item 35-00-774255 for thirty 2 horsepower, five 3 horsepower, and twenty 5 horsepower replacement pumps. Superintendent of Public Works Rick King said the increase from last year is due to shipping and fuel costs.

Superintendent of Public Works Rick King recommended awarding the bid to Municipal Equipment in the amount of \$108,730.

Discussion followed on pump costs and whether the most effective pumps are being used. Mr. King explained that energy efficiency does not have much to do with brand names but with flow. He added that pumps are inefficient when they are worn and they are efficient when they fit the application.

Aldermen Rucker moved to award the bid for grinder pumps to Municipal Equipment, in the amount of \$108,730. Alderman Schmitt seconded the motion which was voted on and

## UNAPPROVED

unanimously passed.

### **Communications from Board Members.**

Alderman Kahrs. Steve Kahrs thanked the citizens of Ward 2 for the honor of representing them for another 2 years. He expressed his appreciation to the police department for their professionalism during the funeral procession through town today for Nancy Sheely.

Alderman Olivarri. John Olivarri announced that it had been a pleasure serving with the Mayor and aldermen the last 4 years and he thanked the citizens of Ward 3 for the opportunity.

Alderman Gasper. Dave Gasper announced that he does not ask many questions from the dais however he generally calls staff if he has questions. He said he does not totally understand the TIF contract but he trusts staff to advise the Board.

Alderman Schmitt. Ron Schmitt reported that on this day in 1862, Grant beat the Confederates at Shiloh.

### **Staff Communications.**

City Administrator. Nancy Viselli reported that the packet for the special meeting on April 14<sup>th</sup> would be delivered tomorrow.

City Attorney. City Attorney Rucker said that it is the Board's prerogative when to take his legal advice. He reported on a significant historical event that occurred on this day long ago.

Assistant City Administrator. Jeana Albertson reported that the new website is up and running and she asked to be contacted with any changes. She announced that Mayor Lyons had approved the City having a Facebook page and also to be on Twitter and that individuals should contact her to sign up. She reported on activity at the City Park and stated that the calendar is filling up with league play and tournaments at the park.

City Engineer. Nick Edelman expressed his appreciation for the opportunity to attend the Team Conference on transportation in Branson.

Public Works Superintendent. Rick King announced that the street sweeper had been out cleaning streets during the week. He reported that he would be involved in the Shoreline Clean up April 13-14.

Airport Manager. Budd Hyde reported that he attended State Aviation Day in Jefferson City and met with legislators. He thanked the City for the opportunity to attend. Jim Morris announced from the gallery that there were 349 attendees and he would be meeting with Governor Nixon on April 14<sup>th</sup>.

Executive Session. Alderman Schmitt moved to close the meeting pursuant to RSMo. Section 610.021(1), Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys; RSMo. Section 610.021(2) Leasing, purchase, or sale of real

## UNAPPROVED

estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefore.

Alderman Farmer seconded the motion. The following roll call vote was taken to close the meeting: "Ayes": Alderman Kahrs, Alderman Rucker, Alderman Gasper, Alderman Schmitt, Alderman Olivarri, Alderman Farmer. "Nays": None. The meeting was therefore closed.

### *CLOSED SESSION*

Alderman Gasper moved to open the meeting. Alderman Farmer seconded the motion. The following roll call vote was taken to open the meeting: "Ayes": Alderman Rucker, Alderman Gasper, Alderman Schmitt, Alderman Olivarri, Alderman Farmer, Alderman Kahrs. "Nays": None. The meeting was therefore opened.

No announcements were made following closed session.

There being no further business to come before the Board, the meeting adjourned at 8:05 p.m.

I, Diann Warner, City Clerk of the City of Osage Beach, Missouri, do hereby certify that the above foregoing is a true and complete journal of proceedings of the regular meeting of the Board of Aldermen of the City of Osage Beach, Missouri, held on April 7, 2011.

---

Diann Warner, City Clerk

---

Penny Lyons, Mayor

000010

**CITY OF OSAGE BEACH  
BILLS LIST  
April 21, 2011**

|                                                   |                          |
|---------------------------------------------------|--------------------------|
| <b>Bills Paid Prior to Board Meeting</b>          | <b>89,016.97</b>         |
| <b>Payroll Paid Prior to Board Meeting</b>        | <b>122,587.93</b>        |
| <b>SRF Transfer Prior to Board Meeting</b>        | <b>0.00</b>              |
| <b>TIF Transfer Prior to Board Meeting</b>        | <b>0.00</b>              |
| <b>TIF Pilots Transfer Prior to Board Meeting</b> | <b>0.00</b>              |
| <b>Bills Pending Board Approval</b>               | <b>142,922.22</b>        |
| <b>Total Expenses</b>                             | <b><u>354,527.12</u></b> |

| DEPARTMENT           | FUND         | VENDOR NAME                                                                                                                                                                      | DESCRIPTION                | 000011       | AMOUNT                               |                |  |        |
|----------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|--------------|--------------------------------------|----------------|--|--------|
| NON-DEPARTMENTAL     | General Fund | MO DEPT OF REVENUE<br>FAMILY SUPPORT PAYMENT CENTER<br>MO DEPT OF REVENUE<br>MO TREASURER BUDGET DIRECTOR<br>INTERNAL REVENUE SERVICE<br><br>ICMA<br><br>CADV<br>ONE TIME VENDOR | MAR CRIME VICTIMS COMP FEE |              | 762.91                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Case# 26v050500201         |              | 344.31                               |                |  |        |
|                      |              |                                                                                                                                                                                  | State Withholding          |              | 3,902.00                             |                |  |        |
|                      |              |                                                                                                                                                                                  | PEACE OFFCR STANDRDS/TRAIN |              | 109.00                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Fed WH                     |              | 11,766.87                            |                |  |        |
|                      |              |                                                                                                                                                                                  | FICA                       |              | 4,823.54                             |                |  |        |
|                      |              |                                                                                                                                                                                  | Medicare                   |              | 1,665.32                             |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement 457 &           |              | 349.76                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement 457             |              | 1,706.00                             |                |  |        |
|                      |              |                                                                                                                                                                                  | Loan Repayments            |              | 792.82                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Loan Repayments            |              | 1,066.46                             |                |  |        |
|                      |              |                                                                                                                                                                                  | 401 Loan Payment           |              | 292.34                               |                |  |        |
|                      |              |                                                                                                                                                                                  | 401 Loan Payment           |              | 247.56                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Loan Repayments            |              | 225.63                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement Roth IRA        |              | 235.00                               |                |  |        |
|                      |              |                                                                                                                                                                                  | MAR CADV FEES              |              | 214.00                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Bond Refund:090264633-01   |              | 100.50                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Bond Refund:092185225-01   |              | 400.00                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Bond Refund:092185476-01   |              | 10.00                                |                |  |        |
|                      |              |                                                                                                                                                                                  | Bond Refund:092185369-01   |              | 25.50                                |                |  |        |
|                      |              |                                                                                                                                                                                  | Bond Refund:092184723-01   |              | 25.50                                |                |  |        |
|                      |              |                                                                                                                                                                                  | BOND REFUND:090264633.01   |              | 250.00                               |                |  |        |
|                      |              |                                                                                                                                                                                  | TOTAL:                     |              | 29,315.02                            |                |  |        |
|                      |              |                                                                                                                                                                                  | City Administrator         | General Fund | INTERNAL REVENUE SERVICE<br><br>ICMA | FICA           |  | 404.35 |
|                      |              |                                                                                                                                                                                  |                            |              |                                      | Medicare       |  | 94.56  |
|                      |              |                                                                                                                                                                                  |                            |              |                                      | Retirement 401 |  | 402.53 |
|                      |              |                                                                                                                                                                                  |                            |              |                                      | TOTAL:         |  | 901.44 |
| City Clerk           | General Fund | INTERNAL REVENUE SERVICE<br><br>ICMA                                                                                                                                             | FICA                       |              | 418.60                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Medicare                   |              | 97.90                                |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement 401             |              | 401.33                               |                |  |        |
|                      |              |                                                                                                                                                                                  | TOTAL:                     |              | 917.83                               |                |  |        |
| City Treasurer       | General Fund | INTERNAL REVENUE SERVICE<br><br>ICMA                                                                                                                                             | FICA                       |              | 441.75                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Medicare                   |              | 103.32                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement 401             |              | 448.19                               |                |  |        |
|                      |              |                                                                                                                                                                                  | TOTAL:                     |              | 993.26                               |                |  |        |
| Municipal Court      | General Fund | INTERNAL REVENUE SERVICE<br><br>ICMA                                                                                                                                             | FICA                       |              | 93.10                                |                |  |        |
|                      |              |                                                                                                                                                                                  | Medicare                   |              | 21.77                                |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement 401             |              | 92.76                                |                |  |        |
|                      |              |                                                                                                                                                                                  | TOTAL:                     |              | 207.63                               |                |  |        |
| City Attorney        | General Fund | INTERNAL REVENUE SERVICE<br><br>ICMA                                                                                                                                             | FICA                       |              | 272.58                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Medicare                   |              | 63.75                                |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement 401             |              | 263.79                               |                |  |        |
|                      |              |                                                                                                                                                                                  | TOTAL:                     |              | 600.12                               |                |  |        |
| Building Inspection  | General Fund | FLEET ONE<br>INTERNAL REVENUE SERVICE<br><br>ICMA                                                                                                                                | BLDG DEPT FUEL             |              | 63.28                                |                |  |        |
|                      |              |                                                                                                                                                                                  | FICA                       |              | 367.11                               |                |  |        |
|                      |              |                                                                                                                                                                                  | Medicare                   |              | 85.86                                |                |  |        |
|                      |              |                                                                                                                                                                                  | Retirement 401             |              | 363.20                               |                |  |        |
|                      |              |                                                                                                                                                                                  | TOTAL:                     |              | 879.45                               |                |  |        |
| Building Maintenance | General Fund | ALLIED WASTE SERVICES #435                                                                                                                                                       | CITY HALL TRASH SERVICE    |              | 247.86                               |                |  |        |

| DEPARTMENT             | FUND           | VENDOR NAME                        | DESCRIPTION               | AMOUNT          |
|------------------------|----------------|------------------------------------|---------------------------|-----------------|
|                        |                |                                    |                           | <b>000012</b>   |
|                        |                |                                    |                           | TOTAL: 247.86   |
| Parks                  | General Fund   | FLEET ONE                          | PARKS FUEL                | 72.10           |
|                        |                | INTERNAL REVENUE SERVICE           | FICA                      | 264.98          |
|                        |                | ICMA                               | Medicare                  | 61.97           |
|                        |                |                                    | Retirement 401            | 225.24          |
|                        |                |                                    |                           | TOTAL: 624.29   |
| Human Resources        | General Fund   | INTERNAL REVENUE SERVICE           | FICA                      | 110.00          |
|                        |                | ICMA                               | Medicare                  | 25.73           |
|                        |                |                                    | Retirement 401            | 113.98          |
|                        |                |                                    |                           | TOTAL: 249.71   |
| Overhead               | General Fund   | CHARTER BUSINESS                   | APR SERVICES              | 5.10            |
|                        |                |                                    |                           | TOTAL: 5.10     |
| Police                 | General Fund   | FLEET ONE                          | PUBLIC SAFETY FUEL        | 1,157.74        |
|                        |                | INTERNAL REVENUE SERVICE           | PUBLIC SAFETY CAR WASH    | 66.00           |
|                        |                | ICMA                               | FICA                      | 241.80          |
|                        |                | MISSOURI POLICE CANINE ASSOCIATION | FICA                      | 2,804.45        |
|                        |                |                                    | Medicare                  | 56.55           |
|                        |                |                                    | Medicare                  | 655.92          |
|                        |                |                                    | Retirement 401            | 2,800.07        |
|                        |                |                                    | 2011 MEMBERSHIP           | 35.00           |
|                        |                |                                    |                           | TOTAL: 7,817.53 |
| 911 Center             | General Fund   | AT & T/CITY HALL                   | E911 SERVICE              | 1,324.59        |
|                        |                | INTERNAL REVENUE SERVICE           | FICA                      | 800.51          |
|                        |                | ICMA                               | Medicare                  | 187.22          |
|                        |                |                                    | Retirement 401            | 805.77          |
|                        |                |                                    |                           | TOTAL: 3,118.09 |
| Planning               | General Fund   | INTERNAL REVENUE SERVICE           | FICA                      | 268.30          |
|                        |                | ICMA                               | Medicare                  | 62.75           |
|                        |                |                                    | Retirement 401            | 261.61          |
|                        |                |                                    |                           | TOTAL: 592.66   |
| Engineering            | General Fund   | EDELMAN, NICHOLAS                  | REIMB CONFERENCE EXPENSES | 162.20          |
|                        |                | FLEET ONE                          | CITY ENG FUEL             | 101.16          |
|                        |                | INTERNAL REVENUE SERVICE           | FICA                      | 584.44          |
|                        |                | ICMA                               | Medicare                  | 136.68          |
|                        |                |                                    | Retirement 401            | 435.88          |
|                        |                |                                    |                           | TOTAL: 1,420.36 |
| Information Technology | General Fund   | INTERNAL REVENUE SERVICE           | FICA                      | 290.29          |
|                        |                | ICMA                               | Medicare                  | 67.89           |
|                        |                | AT&T INTERNET/IP SERVICES          | Retirement 401            | 283.06          |
|                        |                | AT & T /EMSGTWY_SBC                | INTERNET SERVICE          | 831.83          |
|                        |                | VERIZON WIRELESS                   | MAR SERVICES              | 369.45          |
|                        |                |                                    | INTERNET CONNECTIONS      | 86.02           |
|                        |                |                                    |                           | TOTAL: 1,928.54 |
| NON-DEPARTMENTAL       | Transportation | MO DEPT OF REVENUE                 | State Withholding         | 326.85          |
|                        |                | INTERNAL REVENUE SERVICE           | Fed WH                    | 1,083.13        |
|                        |                |                                    | FICA                      | 453.02          |
|                        |                |                                    | Medicare                  | 156.41          |

000013

| DEPARTMENT       | FUND           | VENDOR NAME                     | DESCRIPTION                | AMOUNT   |
|------------------|----------------|---------------------------------|----------------------------|----------|
|                  |                | ICMA                            | Retirement 457             | 50.00    |
|                  |                |                                 | Loan Repayments            | 34.92    |
|                  |                |                                 | TOTAL:                     | 2,104.33 |
| Transportation   | Transportation | FLEET ONE                       | TRANS FUEL                 | 671.72   |
|                  |                | ALLIED WASTE SERVICES #435      | TRASH SERVICES STREET DEPT | 82.62    |
|                  |                | INTERNAL REVENUE SERVICE        | FICA                       | 668.76   |
|                  |                |                                 | Medicare                   | 156.42   |
|                  |                | ICMA                            | Retirement 401             | 665.42   |
|                  |                | CAMDEN COUNTY RECORDER OF DEEDS | COVE RD - WM & ELIZ TURNER | 30.00    |
|                  |                |                                 | COVE RD - DONNA CURTIS     | 30.00    |
|                  |                |                                 | WATER MAIN EASEMENTS       | 120.00   |
|                  |                |                                 | TOTAL:                     | 2,424.94 |
| NON-DEPARTMENTAL | Water Fund     | MO DEPT OF REVENUE              | State Withholding          | 148.02   |
|                  |                | INTERNAL REVENUE SERVICE        | Fed WH                     | 436.85   |
|                  |                |                                 | FICA                       | 217.11   |
|                  |                |                                 | Medicare                   | 74.95    |
|                  |                | ICMA                            | Retirement 457             | 25.00    |
|                  |                |                                 | Loan Repayments            | 16.89    |
|                  |                |                                 | Loan Repayments            | 22.97    |
|                  |                |                                 | 401 Loan Payment           | 64.32    |
|                  |                |                                 | 401 Loan Payment           | 75.98    |
|                  |                |                                 | Loan Repayments            | 68.06    |
|                  |                | CAMDEN COUNTY RECORDER OF DEEDS | WATER LIEN                 | 40.50    |
|                  |                | ONE TIME VENDOR DAVEN, WILLIAM  | 03-2020-03                 | 37.00    |
|                  |                | MARTIN, CAROL                   | 01-2940-00                 | 44.03    |
|                  |                |                                 | TOTAL:                     | 1,271.68 |
| Water            | Water Fund     | AMEREN MISSOURI                 | WELL #2 LK RD 54-59        | 169.13   |
|                  |                |                                 | SWISS VILLAGE WELL         | 1,787.61 |
|                  |                | FLEET ONE                       | WATER FUEL                 | 383.20   |
|                  |                | ALLIED WASTE SERVICES #435      | TRASH SERVICES WATER DEPT  | 82.62    |
|                  |                | INTERNAL REVENUE SERVICE        | FICA                       | 124.89   |
|                  |                |                                 | FICA                       | 320.51   |
|                  |                |                                 | Medicare                   | 29.21    |
|                  |                |                                 | Medicare                   | 74.95    |
|                  |                | ICMA                            | Retirement 401             | 328.31   |
|                  |                | BRIZENDINE, TERRY               | MILEAGE REIMB 03/30-04/05/ | 8.16     |
|                  |                | DUNHAM, LOYD                    | MILEAGE REIMB 03/23-03/29/ | 70.38    |
|                  |                | RUBLE, JUSTIN                   | MILEAGE REIMB 03/23-03/29/ | 17.34    |
|                  |                |                                 | TOTAL:                     | 3,396.31 |
| NON-DEPARTMENTAL | Sewer Fund     | MO DEPT OF REVENUE              | State Withholding          | 357.13   |
|                  |                | INTERNAL REVENUE SERVICE        | Fed WH                     | 1,159.92 |
|                  |                |                                 | FICA                       | 495.33   |
|                  |                |                                 | Medicare                   | 171.00   |
|                  |                | ICMA                            | Retirement 457             | 45.00    |
|                  |                |                                 | Loan Repayments            | 149.90   |
|                  |                |                                 | Loan Repayments            | 56.78    |
|                  |                |                                 | 401 Loan Payment           | 108.67   |
|                  |                | CAMDEN COURT                    | Case #07CM-AC00640         | 131.12   |
|                  |                | CAMDEN COUNTY RECORDER OF DEEDS | SEWER LIEN                 | 40.50    |
|                  |                |                                 | TOTAL:                     | 2,715.35 |
| Sewer            | Sewer Fund     | AMEREN MISSOURI                 | GRINDER PUMPS & LIFT STATI | 2,549.88 |

| DEPARTMENT          | FUND               | VENDOR NAME                | DESCRIPTION                | AMOUNT    |
|---------------------|--------------------|----------------------------|----------------------------|-----------|
|                     |                    |                            | <b>000014</b>              |           |
|                     |                    |                            | LIFT STATIONS & GRNDER PUM | 3,671.99  |
|                     |                    |                            | LIFT STATIONS & GRINDER PU | 3,629.95  |
|                     |                    |                            | GRINDER PUMPS & LIFT STATI | 1,983.79  |
|                     |                    |                            | GRINDER PUMPS & LIFT STATI | 5,015.43  |
|                     |                    | FLEET ONE                  | SEWER FUEL                 | 416.21    |
|                     |                    | GARMANY, DAVID             | MILEAGE REIMB 03/23-03/29/ | 71.40     |
|                     |                    | ALLIED WASTE SERVICES #435 | TRASH SERVICES SEWER DEPT  | 82.62     |
|                     |                    | AMEREN MISSOURI            | WINDGATE BLDG SEWER        | 308.50    |
|                     |                    |                            | 1184 JEFFRIES RD LIFT STAT | 15.57     |
|                     |                    | INTERNAL REVENUE SERVICE   | FICA                       | 731.18    |
|                     |                    |                            | Medicare                   | 170.99    |
|                     |                    | OWENS, BRIAN               | MILEAGE REIMB 03/30-04/05/ | 54.06     |
|                     |                    | ICMA                       | Retirement 401             | 739.81    |
|                     |                    |                            | TOTAL:                     | 19,441.38 |
| NON-DEPARTMENTAL    | Ambulance Fund     | MO DEPT OF REVENUE         | State Withholding          | 362.00    |
|                     |                    | INTERNAL REVENUE SERVICE   | Fed WH                     | 1,175.76  |
|                     |                    |                            | FICA                       | 436.35    |
|                     |                    |                            | Medicare                   | 150.63    |
|                     |                    |                            | TOTAL:                     | 2,124.74  |
| Ambulance           | Ambulance Fund     | FLEET ONE                  | AMB FUEL                   | 45.01     |
|                     |                    | INTERNAL REVENUE SERVICE   | FICA                       | 151.46    |
|                     |                    |                            | FICA                       | 644.14    |
|                     |                    |                            | Medicare                   | 35.42     |
|                     |                    |                            | Medicare                   | 150.63    |
|                     |                    | ICMA                       | Retirement 401             | 525.01    |
|                     |                    |                            | TOTAL:                     | 1,551.67  |
| NON-DEPARTMENTAL    | Lee C. Fine Airpor | MO DEPT OF REVENUE         | State Withholding          | 128.80    |
|                     |                    | INTERNAL REVENUE SERVICE   | Fed WH                     | 450.05    |
|                     |                    |                            | FICA                       | 195.39    |
|                     |                    |                            | Medicare                   | 67.45     |
|                     |                    | ICMA                       | Retirment 457 &            | 112.30    |
|                     |                    |                            | Loan Repayments            | 16.89     |
|                     |                    |                            | TOTAL:                     | 970.88    |
| Lee C. Fine Airport | Lee C. Fine Airpor | FLEET ONE                  | LCF FUEL                   | 68.95     |
|                     |                    | ALLIED WASTE SERVICES #435 | LCF AIRPORT TRASH SERVICE  | 114.48    |
|                     |                    | AMEREN MISSOURI            | 1111 LEE C FINE RD WELL    | 9.33      |
|                     |                    |                            | LO STATE PARK LOCALZR      | 33.18     |
|                     |                    |                            | AIRPORT FIREHOUSE          | 165.39    |
|                     |                    |                            | LCF AIRPORT HANGAR RENTAL  | 257.03    |
|                     |                    |                            | LCF AIRPORT HANGAR         | 42.09     |
|                     |                    | INTERNAL REVENUE SERVICE   | FICA                       | 69.09     |
|                     |                    |                            | FICA                       | 288.42    |
|                     |                    |                            | Medicare                   | 16.16     |
|                     |                    |                            | Medicare                   | 67.45     |
|                     |                    | ICMA                       | Retirement 401             | 273.14    |
|                     |                    |                            | TOTAL:                     | 1,404.71  |
| NON-DEPARTMENTAL    | Grand Glaize Airpo | MO DEPT OF REVENUE         | State Withholding          | 91.20     |
|                     |                    | INTERNAL REVENUE SERVICE   | Fed WH                     | 304.98    |
|                     |                    |                            | FICA                       | 164.02    |
|                     |                    |                            | Medicare                   | 56.64     |
|                     |                    | ICMA                       | Retirment 457 &            | 74.86     |

| DEPARTMENT           | FUND               | VENDOR NAME                | DESCRIPTION              | 000015 | AMOUNT   |
|----------------------|--------------------|----------------------------|--------------------------|--------|----------|
|                      |                    |                            |                          | TOTAL: | 691.70   |
| Grand Glaize Airport | Grand Glaize Airpo | CITY OF OSAGE BEACH        | MAR UTILITY SERVICES     |        | 30.34    |
|                      |                    | ALLIED WASTE SERVICES #435 | GG AIRPORT TRASH SERVICE |        | 117.16   |
|                      |                    | AMEREN MISSOURI            | GG AIRPORT HANGAR        |        | 38.98    |
|                      |                    |                            | AIRPORT RD HWY 54        |        | 243.03   |
|                      |                    |                            | GG AIRPORT SHOP          |        | 42.71    |
|                      |                    |                            | 957 AIRPORT RD           |        | 10.28    |
|                      |                    |                            | TBLC EXT D GG AIRPORT    |        | 35.82    |
|                      |                    |                            | GG AIRPORT HANGAR        |        | 14.39    |
|                      |                    |                            | GG AIRPORT SLEEPY        |        | 28.63    |
|                      |                    | INTERNAL REVENUE SERVICE   | FICA                     |        | 242.14   |
|                      |                    |                            | Medicare                 |        | 56.64    |
|                      |                    | ICMA                       | Retirement 401           |        | 240.27   |
|                      |                    |                            | TOTAL:                   |        | 1,100.39 |

----- FUND TOTALS -----

|              |                           |           |
|--------------|---------------------------|-----------|
| 10           | General Fund              | 49,818.89 |
| 20           | Transportation            | 4,529.27  |
| 30           | Water Fund                | 4,667.99  |
| 35           | Sewer Fund                | 22,156.73 |
| 40           | Ambulance Fund            | 3,676.41  |
| 45           | Lee C. Fine Airport Fund  | 2,375.59  |
| 47           | Grand Glaize Airport Fund | 1,792.09  |
| GRAND TOTAL: |                           | 89,016.97 |

-----

| DEPARTMENT           | FUND         | VENDOR NAME                        | DESCRIPTION                | AMOUNT   |
|----------------------|--------------|------------------------------------|----------------------------|----------|
|                      |              |                                    | <b>000016</b>              |          |
| NON-DEPARTMENTAL     | General Fund | MO DEPT OF REVENUE                 | MAR BOOKS & MISC SALES TAX | 0.68     |
|                      |              |                                    | TOTAL:                     | 0.68     |
| Mayor & Board        | General Fund | PAUL'S CASH SAVER #602             | WATER FOR LOCLG MEETING    | 3.99     |
|                      |              | BANKCARD CENTER 5569               | VOLUNTEER APPRECIATION DIN | 1,632.98 |
|                      |              |                                    | TOTAL:                     | 1,636.97 |
| City Clerk           | General Fund | MO DEPT OF REVENUE                 | MAR SALES TAX REPORT       | 35.00    |
|                      |              |                                    | TOTAL:                     | 35.00    |
| Municipal Court      | General Fund | WASHBURN, WILLIAM F                | MUNICIPAL COURT JUDGE FEE  | 1,679.16 |
|                      |              |                                    | TOTAL:                     | 1,679.16 |
| City Attorney        | General Fund | WEST                               | INFORMATION CHARGES        | 215.54   |
|                      |              |                                    | TOTAL:                     | 215.54   |
| Building Inspection  | General Fund | FLEET ONE                          | BLDG DEPT FUEL             | 38.39    |
|                      |              |                                    | BLDG DEPT FUEL             | 57.20    |
|                      |              |                                    | TOTAL:                     | 95.59    |
| Building Maintenance | General Fund | ECO-PEST                           | PEST CONTROL               | 45.00    |
|                      |              | QUILL                              | FLOOR MATS                 | 151.16   |
|                      |              | ELECTRONICS UNLIMITED              | FRONT ENTRY DOOR REPAIR    | 239.50   |
|                      |              | EZARD'S ACE HARDWARE               | BATHRM PLUNGR, SOAP DIGEST | 13.98    |
|                      |              |                                    | GLUE, POTTING SOIL         | 10.28    |
|                      |              |                                    | INSECT FL&VG, TOP SOIL     | 8.98     |
|                      |              | GB MAINTENANCE SUPPLY              | 30 DAY AIR FRESH CABINETS  | 83.72    |
|                      |              |                                    | CUPS, TOWELS, TISSUE, LINE | 342.61   |
|                      |              |                                    | TOWELS, TP                 | 177.32   |
|                      |              |                                    | TOWELS, TP                 | 88.66    |
|                      |              | PRAIRIEFIRE COFFEE & ROASTERS      | COFFEE, HOT CHOCOLATE      | 230.90   |
|                      |              | LAKE RECHARGE & FIRE EQUIPMENT LLC | WATER COOLER RENTAL        | 38.51    |
|                      |              |                                    | POLICE DEPT FIRE EXTINGUIS | 105.50   |
|                      |              |                                    | AMB DEPT FIRE EXTINGUISHER | 134.00   |
|                      |              |                                    | CITY HALL FIRE EXTINGUISHE | 158.50   |
|                      |              |                                    | CITY HALL FIRE EXTINGUISHE | 297.25   |
|                      |              | SHANNON PAINTER DBA B & H CLEANING | 03/23-04/23/11 CLEANING SE | 1,416.66 |
|                      |              | CLARK PLUMBING                     | TOILET REPAIR              | 68.00    |
|                      |              | DULLE OVERHEAD DOORS INC           | AMB BAY DOOR & REMOTE REPA | 250.00   |
|                      |              | GEO-ENTERPRISES, INC               | PD RECORDS UNIT REPAIR     | 140.00   |
|                      |              |                                    | HVAC BELT REPLACEMENT      | 28.65    |
|                      |              |                                    | TOTAL:                     | 4,029.18 |
| Parks                | General Fund | QUALITY ELECTRIC                   | CHECK INSTANT HOT WATER HT | 65.00    |
|                      |              | MEEKS BUILDING CENTER              | NUTS, BOLTS, SCREWS, WASHE | 5.25     |
|                      |              |                                    | CAUTION TAPE               | 7.79     |
|                      |              | EZARD'S ACE HARDWARE               | EXTRA THICK WAX RING       | 31.43    |
|                      |              |                                    | KEYS                       | 17.47    |
|                      |              |                                    | CAULK, CAULK GUN, SPACKL   | 16.75    |
|                      |              |                                    | SCREWDRIVER SET            | 7.49     |
|                      |              | FLEET ONE                          | PARKS FUEL                 | 336.36   |
|                      |              |                                    | PARKS FUEL                 | 88.68    |
|                      |              | GB MAINTENANCE SUPPLY              | TOWELS, TP, LINERS, SPRAY  | 413.89   |
|                      |              | GRAHAM TRUCKING                    | TOPSOIL                    | 200.00   |
|                      |              | O'REILLY AUTO PARTS                | DIESEL CAN                 | 15.99    |
|                      |              |                                    | BUG & TAR CLEANER          | 11.98    |

| DEPARTMENT             | FUND         | VENDOR NAME                        | DESCRIPTION                | AMOUNT   |
|------------------------|--------------|------------------------------------|----------------------------|----------|
|                        |              |                                    | <b>000017</b>              |          |
|                        |              |                                    | CLEANER                    | 4.99     |
|                        |              |                                    | SCREWDRIVERS               | 6.99     |
|                        |              | CONSOLIDATED ELECTRICAL DISTR, INC | DIG MULTIMETER W/TRMS      | 45.00    |
|                        |              | LAKE OZARK SAND & GRAVEL INC       | CREEKSAND                  | 50.00    |
|                        |              | BANKCARD CENTER 3374               | ELEMENTS                   | 265.02   |
|                        |              | DAM STEEL SUPPLY                   | SOCCER GOAL STAKES         | 50.90    |
|                        |              | HD SUPPLY WATERWORKS LTD           | MEASURING WHEEL            | 85.00    |
|                        |              | SCOTT'S CONCRETE                   | CREEK SAND                 | 219.84   |
|                        |              | ROCK ISLAND COUNTRY STORE          | HAY-MIXED                  | 60.00    |
|                        |              | SOUTHWEST STONE SUPPLY INC         | LANDSCAPE FABRIC           | 263.94   |
|                        |              | KENNY CARROLL EXCAVATING INC       | CREEK SAND                 | 160.00   |
|                        |              |                                    | TOTAL:                     | 2,429.76 |
| Human Resources        | General Fund | NEW DIRECTIONS BEHAVIORAL HEALTH   | QUARTERLY EAP SERVICES     | 580.62   |
|                        |              | OCCUPATIONAL MEDICINE CLINIC       | RANDOM DRUG TESTING        | 285.00   |
|                        |              | BANKCARD CENTER 3374               | LUNCH-N-LEARN - YOGA       | 139.69   |
|                        |              |                                    | GIFT CARDS                 | 30.00    |
|                        |              |                                    | TOTAL:                     | 1,035.31 |
| Overhead               | General Fund | XEROX CORP                         | MARCH BASE CHARGE          | 547.32   |
|                        |              | BANKCARD CENTER 5569               | POSTAGE                    | 18.30    |
|                        |              | ALPHAGRAPHICS                      | ENVELOPES                  | 379.11   |
|                        |              |                                    | TOTAL:                     | 944.73   |
| Police                 | General Fund | EWERS TIRES INC                    | 4 TIRES PD19, 5 STOCK      | 1,064.14 |
|                        |              | FLEET ONE                          | PUBLIC SAFETY FUEL         | 1,211.39 |
|                        |              |                                    | PUBLIC SAFETY CAR WASH     | 54.00    |
|                        |              |                                    | PUBLIC SAFETY FUEL         | 1,306.87 |
|                        |              |                                    | PUBLIC SAFETY CAR WASH     | 42.00    |
|                        |              | STAPLES ADVANTAGE                  | STENO BKS, ENV, BNDR CLIPS | 42.26    |
|                        |              | O'REILLY AUTO PARTS                | SHEET TOWELS, TIRE FOAM    | 6.49     |
|                        |              | LAKE CLEANERS                      | UNIFORM CLEANING           | 801.25   |
|                        |              | LARRY'S LAKESIDE AUTO REPAIR INC   | WIPER ARM & BLADES #19     | 33.98    |
|                        |              |                                    | OIL CHG, ROTATE TIRES #31  | 54.04    |
|                        |              |                                    | OIL CHG, REPLACE SEAT BELT | 191.83   |
|                        |              |                                    | OIL CHG, ROTATE TIRES #34  | 62.93    |
|                        |              | FORD, SAM                          | CONFERENCE MEALS           | 250.00   |
|                        |              | SOUTHERN UNIFORM & EQUIPMENT       | BELT                       | 94.43    |
|                        |              | STAPLES ADVANTAGE                  | BATTERIES, ENVELOPES, COPY | 236.08   |
|                        |              |                                    | BATTERIES, COPY PPR, KEYBO | 163.59   |
|                        |              |                                    | TOTAL:                     | 5,615.28 |
| 911 Center             | General Fund | STAPLES ADVANTAGE                  | SHREDDER OIL SHEETS        | 6.81     |
|                        |              |                                    | TONER CARTRIDGES           | 129.54   |
|                        |              |                                    | TOTAL:                     | 136.35   |
| Planning               | General Fund | BANKCARD CENTER 3333               | NATIONAL ANIMAL CONTROL AS | 35.00    |
|                        |              | FLEET ONE                          | PLANNING FUEL              | 92.26    |
|                        |              |                                    | TOTAL:                     | 127.26   |
| Engineering            | General Fund | QUILL                              | RED PENS                   | 23.39    |
|                        |              | FLEET ONE                          | CITY ENG FUEL              | 110.19   |
|                        |              |                                    | CITY ENG FUEL              | 108.18   |
|                        |              |                                    | TOTAL:                     | 241.76   |
| Information Technology | General Fund | WORLD WIDE TECHNOLOGY, INC         | REPAIRED LEXMARK PRINTERS  | 790.00   |

| DEPARTMENT           | FUND           | VENDOR NAME                         | DESCRIPTION                | AMOUNT          |
|----------------------|----------------|-------------------------------------|----------------------------|-----------------|
|                      |                |                                     |                            | <b>000018</b>   |
|                      |                |                                     |                            | TOTAL: 790.00   |
| Economic Development | General Fund   | RSC EQUIPMENT RENTAL                | SKYJACK SCISSOR LIFT RENTA | 285.00          |
|                      |                | BILLS TREE AND CRANE SERVICE        | NEW POLES BRACKETS & BANNE | 200.00          |
|                      |                | JOY A HOWARD DBA                    | FINANCIAL ADVSRY-DIERBERGS | 885.00          |
|                      |                | ALPHAGRAPHICS                       | 2ND QTR DIRECT CONNECT     | <u>1,233.54</u> |
|                      |                |                                     |                            | TOTAL: 2,603.54 |
| Transportation       | Transportation | UMB BANK NA                         | GEN OBL BONDS 2003         | 173.61          |
|                      |                | MILLER CO RECORDER                  | FAX FEES                   | 2.50            |
|                      |                | EZARD'S ACE HARDWARE                | CHAIN LINK LAP 5/16X1/5"   | 1.49            |
|                      |                |                                     | SHACKLE SCR PIN 3/8 ZINC   | 7.98            |
|                      |                |                                     | ECHO POWER EQUIPMENT, FAST | 21.95           |
|                      |                |                                     | WINDEX                     | 2.99            |
|                      |                |                                     | ELECT TAPE, SPLIT BOLT     | 8.28            |
|                      |                |                                     | CONCRETE MIX               | 10.98           |
|                      |                |                                     | SHACKLE SCR PIN            | 7.98            |
|                      |                |                                     | GASKET                     | 6.49            |
|                      |                | FLEET ONE                           | TRANS FUEL                 | 455.60          |
|                      |                |                                     | TRANS FUEL                 | 495.31          |
|                      |                | ALLEN SURVEYING INC                 | WINN RD DRAINAGE EASEMENTS | 450.00          |
|                      |                | JACK'S MUNICIPAL SALE & SERVICE INC | STREET SIGNS               | 42.27           |
|                      |                | O'REILLY AUTO PARTS                 | PRORATED BATTERY, TERM CLE | 33.72           |
|                      |                | LAKE SUN LEADER 81525 & 1586450     | PASSOVER RD PHASE 2 BIDS   | 175.50          |
|                      |                | PRAIRIEFIRE COFFEE & ROASTERS       | COFFEE, CREAM, SUGAR, HOT  | 87.21           |
|                      |                | BILLS TREE AND CRANE SERVICE        | TREE REMOVAL HARBOR HEIGHT | 475.00          |
|                      |                | CAMDEN COUNTY RECORDER OF DEEDS     | FAXES                      | 12.00           |
|                      |                |                                     | FAXES                      | 25.00           |
|                      |                | UNIFIRST CORPORATION                | STREET DEPT UNIFORMS       | 30.08           |
|                      |                |                                     | STREET DEPT FLOOR MATS     | 5.17            |
|                      |                |                                     | STREET DEPT UNIFORMS       | 30.08           |
|                      |                |                                     | STREET DEPT FLOOR MATS     | 5.17            |
|                      |                | H R GREEN INC                       | OB11-001 HATCHERY-BEACH SI | <u>3,033.00</u> |
|                      |                |                                     |                            | TOTAL: 5,599.36 |
| NON-DEPARTMENTAL     | Water Fund     | MO DEPT OF REVENUE                  | MAR WATER SALES TAX        | <u>2,137.12</u> |
|                      |                |                                     |                            | TOTAL: 2,137.12 |
| Water                | Water Fund     | EZARD'S ACE HARDWARE                | WASTEBASKET, PAINT PAIL    | 16.78           |
|                      |                |                                     | SHOP TOWELS, HOME FOG, WA  | 16.06           |
|                      |                | FLEET ONE                           | WATER FUEL                 | 317.85          |
|                      |                |                                     | WATER FUEL                 | 440.84          |
|                      |                | SCHULTE SUPPLY INC                  | METER INTERFACE UNITS      | 670.50          |
|                      |                |                                     | IN-VEHICLE CHARGE KIT      | 207.23          |
|                      |                |                                     | COPPERHEAD TWIST CONNECTOR | 55.50           |
|                      |                | POSTMASTER                          | APR UTILITY BILL POSTAGE   | 325.00          |
|                      |                | PRAIRIEFIRE COFFEE & ROASTERS       | COFFEE, CREAM, SUGAR, HOT  | 87.22           |
|                      |                | HD SUPPLY WATERWORKS LTD            | 1/2" & 1'4" BEND, ADPT     | 274.76          |
|                      |                | PRECISION AUTO & TIRE SERVICE LLC   | TIRES #51                  | 686.00          |
|                      |                |                                     | OIL CHG, CK SEAT BLT, BRAK | 69.95           |
|                      |                | APAC MO INC                         | 2" CLEAN                   | 201.88          |
|                      |                | UNITED STATES PLASTIC CORP          | PVC NIPPLES, MALE CONNECTO | 14.52           |
|                      |                | UNIFIRST CORPORATION                | WATER DEPT UNIFORMS        | 30.62           |
|                      |                |                                     | WATER DEPT FLOOR MATS      | 5.18            |
|                      |                |                                     | WATER DEPT UNIFORMS        | 30.62           |
|                      |                |                                     | WATER DEPT FLOOR MATS      | 5.18            |

| DEPARTMENT | FUND       | VENDOR NAME                        | DESCRIPTION                | AMOUNT        |
|------------|------------|------------------------------------|----------------------------|---------------|
|            |            |                                    |                            | <b>000019</b> |
|            |            | HUTCHINS TELECOM LLC               | CONNECTING WATER           | 28,305.68     |
|            |            | GS ROBINS & CO                     | CHLORINE, FLUORIDE         | 1,161.91      |
|            |            |                                    | DRUM RETURNS               | 276.00-       |
|            |            |                                    | CHLORINE                   | 709.50        |
|            |            |                                    | DRUM RETURNS               | 120.00-       |
|            |            |                                    | TOTAL:                     | 33,236.78     |
| Sewer      | Sewer Fund | MCDUFFEY LAB                       | FECAL ANALYSIS             | 20.00         |
|            |            | AMOS SEPTIC SERVICE INC            | LIFT STATION PUMPING       | 1,495.00      |
|            |            |                                    | LIFT STATION PUMPING       | 115.00        |
|            |            |                                    | LIFT STATION PUMPING       | 14,950.00     |
|            |            |                                    | LIFT STATION PUMPING       | 2,530.00      |
|            |            | EZARD'S ACE HARDWARE               | FASTENERS                  | 16.92         |
|            |            |                                    | CORNER BRACES              | 3.56          |
|            |            |                                    | ECHO POWER EQUIPMENT       | 4.98          |
|            |            |                                    | ELEC BALLAST               | 29.99         |
|            |            |                                    | HAND TOOL                  | 5.28          |
|            |            |                                    | HAND TOOL                  | 10.62         |
|            |            |                                    | FASTENERS`                 | 1.32          |
|            |            |                                    | DRILL BIT                  | 18.98         |
|            |            |                                    | FASTENERS                  | 12.00         |
|            |            | FLEET ONE                          | SEWER FUEL                 | 686.01        |
|            |            |                                    | SEWER FUEL                 | 285.55        |
|            |            | SIEMENS WATER TECH CORP            | VALVES, ELBOW KITS, STRAIN | 281.32        |
|            |            |                                    | SCREEN WYE STRAINERS       | 14.00         |
|            |            |                                    | ODO-FREE                   | 7,582.53      |
|            |            | MUNICIPAL EQUIPMENT CO             | CHECK BALLS                | 441.59        |
|            |            |                                    | START RELAYS               | 646.83        |
|            |            |                                    | IMPELLER                   | 4,235.29      |
|            |            | O'REILLY AUTO PARTS                | WIPER BLADES               | 16.99         |
|            |            |                                    | WIPER FLUID                | 7.58          |
|            |            |                                    | WIPER FLUID                | 7.58-         |
|            |            |                                    | 5 GAL TRACTRFL             | 44.99         |
|            |            |                                    | TAP, S/W PULLER            | 20.68         |
|            |            |                                    | WIPER BLADES               | 9.48          |
|            |            |                                    | 12OZ GAS/ANTFZ             | 1.99          |
|            |            | OCCUPATIONAL MEDICINE CLINIC       | WORKMAN'S COMPENSATION     | 199.00        |
|            |            |                                    | WORKMAN'S COMPENSATION     | 254.00        |
|            |            |                                    | WORKMAN'S COMPENSATION     | 352.00        |
|            |            | CONSOLIDATED ELECTRICAL DISTR, INC | GALV NIPPLES, SEALS        | 339.00        |
|            |            |                                    | 12-10 INS BUTT SPLICES     | 65.14         |
|            |            |                                    | 500' TAPE MEASURE          | 102.20        |
|            |            | POSTMASTER                         | APR UTILITY BILL POSTAGE   | 325.00        |
|            |            | PRAIRIEFIRE COFFEE & ROASTERS      | COFFEE, CREAM, SUGAR, HOT  | 87.22         |
|            |            | BANKCARD CENTER 3374               | UBER BALL CART             | 1,589.00      |
|            |            | HD SUPPLY WATERWORKS LTD           | PVC                        | 258.24        |
|            |            | JCI                                | PUMP REPAIR SN: 0230185    | 995.00        |
|            |            |                                    | PUMP REPAIR SN: ILLEGIBLE  | 995.00        |
|            |            |                                    | PUMP REPAIR #0061684       | 995.00        |
|            |            |                                    | PUMP REPAIR #0013063       | 1,587.00      |
|            |            |                                    | PUMP REPAIR #0243894       | 995.00        |
|            |            |                                    | PUMP REPAIR #0261655       | 995.00        |
|            |            |                                    | PUMP REPAIR #0242027       | 995.00        |
|            |            |                                    | PUMP REPAIR #464           | 1,487.00      |
|            |            |                                    | PUMP REPAIR #529           | 1,487.00      |
|            |            |                                    | PUMP REPAIR SN: 796        | 1,487.00      |

| DEPARTMENT           | FUND               | VENDOR NAME                         | DESCRIPTION                | AMOUNT          |
|----------------------|--------------------|-------------------------------------|----------------------------|-----------------|
|                      |                    |                                     |                            | <b>000020</b>   |
|                      |                    |                                     | PUMP REPAIR #M11375        | 1,487.00        |
|                      |                    |                                     | PUMP REPAIR #M21456        | 1,487.00        |
|                      |                    |                                     | PUMP REPAIR #862           | 1,487.00        |
|                      |                    |                                     | PUMP REPAIR #963           | 1,487.00        |
|                      |                    | IMPERIAL INDUSTRIES INCORPORATED    | VALVES                     | 143.29          |
|                      |                    |                                     | COUPLER                    | 24.56           |
|                      |                    | UNIFIRST CORPORATION                | SEWER DEPT UNIFORMS        | 44.02           |
|                      |                    |                                     | SEWER DEPT FLOOR MATS      | 5.18            |
|                      |                    |                                     | SEWER DEPT UNIFORMS        | 43.59           |
|                      |                    |                                     | SEWER DEPT FLOOR MATS      | 5.18            |
|                      |                    | HUTCHINS TELECOM LLC                | CONNECTING SEWER           | 13,034.47       |
|                      |                    | GS ROBINS & CO                      | CAUSTIC SODA, CHLORINE     | 1,781.10        |
|                      |                    |                                     | DRUM RETURNS               | 126.00-         |
|                      |                    |                                     | CHLORINE, MURATIC ACID     | 1,440.43        |
|                      |                    |                                     | DRUM RETURNS               | 364.00-         |
|                      |                    | KEYSTONE EXCAVATING LLC             | OB10-030 LINE RELOCATE GP4 | <u>1,648.22</u> |
|                      |                    |                                     | TOTAL:                     | 72,697.74       |
| Ambulance            | Ambulance Fund     | FLEET ONE                           | AMB FUEL                   | 83.26           |
|                      |                    |                                     | AMB FUEL                   | 151.92          |
|                      |                    | LAKE REGIONAL HEALTH SYSTEM         | WORKMAN'S COMPENSATION     | 478.00          |
|                      |                    | BEMES INC                           | MEDICAL EQUIP INSPECTIONS  | 605.00          |
|                      |                    | ALLMED                              | MEDICAL SUPPLIES           | 4.43            |
|                      |                    |                                     | MEDICAL SUPPLIES FINANCE C | 1.76            |
|                      |                    |                                     | MEDICAL SUPPLIES           | 612.90          |
|                      |                    |                                     | MEDICAL SUPPLIES           | 25.94           |
|                      |                    |                                     | RETURNS                    | 11.53-          |
|                      |                    |                                     | MEDICAL SUPPLIES           | 26.60           |
|                      |                    |                                     | MEDICAL SUPPLIES           | 30.00           |
|                      |                    |                                     | MEDICAL SUPPLIES           | 121.54          |
|                      |                    |                                     | MEDICAL SUPPLIES           | 225.26          |
|                      |                    |                                     | MEDICAL SUPPLIES           | 90.29           |
|                      |                    |                                     | MEDICAL SUPPLIES           | 70.16           |
|                      |                    |                                     | MEDICAL SUPPLIES           | 1,366.06        |
|                      |                    |                                     | MEDICAL SUPPLIES           | 15.50           |
|                      |                    | KING, DR ROBERT D                   | MEDICAL DIRECTOR           | 1,000.00        |
|                      |                    | AMBULANCE REIMBURSEMENT SYSTEMS INC | AMBULANCE BILLING          | <u>446.96</u>   |
|                      |                    |                                     | TOTAL:                     | 5,344.05        |
| NON-DEPARTMENTAL     | Lee C. Fine Airpor | MO DEPT OF REVENUE                  | MAR LCF SALES TAX          | <u>728.04</u>   |
|                      |                    |                                     | TOTAL:                     | 728.04          |
| Lee C. Fine Airport  | Lee C. Fine Airpor | FLEET ONE                           | LCF FUEL                   | 66.08           |
|                      |                    |                                     | LCF FUEL                   | 39.71           |
|                      |                    |                                     | LCF CAR WASH               | 4.00            |
|                      |                    | NAEGLER OIL CO                      | SATELLITE EQUIP CONNECTION | 45.50           |
|                      |                    | O'REILLY AUTO PARTS                 | AIR FILTER, MINI BULBS DUM | 23.24           |
|                      |                    | PREFERRED AUTO RENTAL               | COURTESY CAR FEES          | 60.00           |
|                      |                    | APAC MO INC                         | RUNWAY HUMP MILLED OUT     | <u>640.00</u>   |
|                      |                    |                                     | TOTAL:                     | 878.53          |
| NON-DEPARTMENTAL     | Grand Glaize Airpo | MO DEPT OF REVENUE                  | MAR GG SALES TAX           | <u>2.30</u>     |
|                      |                    |                                     | TOTAL:                     | 2.30            |
| Grand Glaize Airport | Grand Glaize Airpo | EZARD'S ACE HARDWARE                | TRASH BAGS, SUPER CLEAN, T | 34.95           |
|                      |                    | NAEGLER OIL CO                      | SATELLITE EQUIP CONNECTION | 45.50           |

| DEPARTMENT | FUND | VENDOR NAME              | DESCRIPTION    | 000021 | AMOUNT |
|------------|------|--------------------------|----------------|--------|--------|
|            |      | O'REILLY AUTO PARTS      | BUSHING, GAUGE |        | 5.82   |
|            |      | BANKCARD CENTER 3374     | MOWER BLADE    |        | 217.10 |
|            |      | GENESIS LAMP CORPORATION | PAR LAMPS      |        | 378.82 |
|            |      |                          | TOTAL:         |        | 682.19 |

----- FUND TOTALS -----

|              |                           |            |
|--------------|---------------------------|------------|
| 10           | General Fund              | 21,616.11  |
| 20           | Transportation            | 5,599.36   |
| 30           | Water Fund                | 35,373.90  |
| 35           | Sewer Fund                | 72,697.74  |
| 40           | Ambulance Fund            | 5,344.05   |
| 45           | Lee C. Fine Airport Fund  | 1,606.57   |
| 47           | Grand Glaize Airport Fund | 684.49     |
| GRAND TOTAL: |                           | 142,922.22 |

-----

City of Osage Beach  
 1000 City Parkway  
 Osage Beach, MO 65065  
 573/302-2000 Phone  
 573/302-0528 Fax  
 www.osagebeach.org



000022 ✓1143  
 Planning Dept.: \_\_\_\_\_  
 Sewer Dept.: \_\_\_\_\_  
 License #: \_\_\_\_\_

**LIQUOR LICENSE APPLICATION**

Date of Application: 4-4-11 Date Application Received: APR 06 2011

Trade Name of Establishment: Formula Boats of Missouri

Mailing Address: 4815 Windjammer Dr. Osage Beach MO 65065

Applicant Name: Rick C. Ball  
*(as it is to appear on license, if corporation, name of corporation and managing officer)*

- Original Applications: Submit a copy of your Missouri voter registration card & background check performed by the Missouri State Patrol along with your application.
- Renewal Applications: Submit completed application only. (Background checks and voter registration documents do not need to be submitted with renewals.)

19.75

| Item        | Fee    | License Description                                                                                                                                           | City Code |
|-------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| a. ___      | 375.00 | Manufacture and distribution (not sales) of intoxicating malt liquor not more than 5% alcohol by weight.                                                      | MDBWT     |
| b. ___      | 150.00 | Distribution or wholesale of intoxicating liquors not more than 5% alcohol by weight.                                                                         | DBLQWT    |
| c. ___      | 300.00 | Manufacture or distilling of intoxicating liquors in excess of 5% alcohol by weight.                                                                          | MLQWT     |
| d. ___      | 750.00 | Distribution or wholesale of intoxicating liquors in excess of 5% alcohol by weight.                                                                          | DLQWT     |
| e. ___      | 375.00 | Retail sales of intoxicating liquors not more than 5% alcohol by weight in original package to be consumed on premises. (Includes Sunday Sales.)              | BPR       |
| f. <u>X</u> | 375.00 | Retail sales of intoxicating liquors not more than 5% alcohol by weight in original package not to be consumed on premises. (Includes Sunday Sales.)          | BPK       |
| g. ___      | 450.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight to be consumed on premises.                                                            | LDRK1     |
| h. ___      | 750.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight to be consumed on premises. (Includes Sunday Sales.)                                   | LDRK2     |
| i. ___      | 150.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight in original package not to be consumed or opened on premises.                          | LPKG1     |
| j. ___      | 450.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight in original package not to be consumed or opened on premises. (Includes Sunday Sales.) | LPKG2     |
| k. ___      | 75.00  | Retail sales of malt liquor not more than 5% alcohol by weight /or light wines containing in excess of 14% alcohol by weight.                                 | BWDRK1    |
| l. ___      | 375.00 | Retail sales of malt liquor in excess of 5% alcohol by weight /or light wines containing in excess of 14% alcohol by weight. (Includes Sunday Sales.)         | BWDRK2    |
| m. ___      | 300.00 | Sunday Liquor Sales                                                                                                                                           | LSUN      |
| n. ___      | 15.00  | *Caterer per day.                                                                                                                                             | CTLQDY    |
| o. ___      | 10.00  | Picnic per day.                                                                                                                                               | PCLQDY    |
| p. ___      | N/C    | Change of managing officer.                                                                                                                                   | MGO       |
| q. ___      | N/C    | Wine tasting.                                                                                                                                                 | WTG       |

\* If you are applying for a Caterer per day license you must state the event name, location, time and date of event.  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

*All renewal applications must be received by May 1st.*

City of Osage Beach  
 1000 City Parkway  
 Osage Beach, MO 65065  
 573/302-2000 Phone  
 573/302-0528 Fax  
[www.usagebeach.org](http://www.usagebeach.org)



000023

Planning Dept.: \_\_\_\_\_  
 Sewer Dept.: \_\_\_\_\_  
 License #: \_\_\_\_\_

**LIQUOR LICENSE APPLICATION**

Date of Application: 4/7/11 Date Application Received: 4-8-11  
 Trade Name of Establishment: MoloToft Cocktails Bar \* Grill  
 Mailing Address: P.O. Box 1541 Osage Beach, MO 65065  
 Applicant Name: MoloToft Cocktails, LLC Aaron Paul Toft - Managing Officer  
*(as it is to appear on license, if corporation, name of corporation and managing officer)*

- Original Applications: Submit a copy of your Missouri voter registration card & background check performed by the Missouri State Patrol along with your application.
- Renewal Applications: Submit completed application only. (Background checks and voter registration documents do not need to be submitted with renewals.)

| Item        | Fee    | License Description                                                                                                                                           | City Code |
|-------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| a. ___      | 375.00 | Manufacture and distribution (not sales) of intoxicating malt liquor not more than 5% alcohol by weight.                                                      | MDBWT     |
| b. ___      | 150.00 | Distribution or wholesale of intoxicating liquors not more than 5% alcohol by weight.                                                                         | DBLQWT    |
| c. ___      | 300.00 | Manufacture or distilling of intoxicating liquors in excess of 5% alcohol by weight.                                                                          | MLQWT     |
| d. ___      | 750.00 | Distribution or wholesale of intoxicating liquors in excess of 5% alcohol by weight.                                                                          | DLQWT     |
| e. ___      | 375.00 | Retail sales of intoxicating liquors not more than 5% alcohol by weight in original package to be consumed on premises. (Includes Sunday Sales.)              | BPR       |
| f. ___      | 375.00 | Retail sales of intoxicating liquors not more than 5% alcohol by weight in original package not to be consumed on premises. (Includes Sunday Sales.)          | BPK       |
| g. ___      | 450.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight to be consumed on premises.                                                            | LDRK1     |
| h. <u>X</u> | 750.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight to be consumed on premises. (Includes Sunday Sales.)                                   | LDRK2     |
| i. ___      | 150.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight in original package not to be consumed or opened on premises.                          | LPKG1     |
| j. ___      | 450.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight in original package not to be consumed or opened on premises. (Includes Sunday Sales.) | LPKG2     |
| k. ___      | 75.00  | Retail sales of malt liquor not more than 5% alcohol by weight /or light wines containing in excess of 14% alcohol by weight.                                 | BWDRK1    |
| l. ___      | 375.00 | Retail sales of malt liquor in excess of 5% alcohol by weight /or light wines containing in excess of 14% alcohol by weight. (Includes Sunday Sales.)         | BWDRK2    |
| m. ___      | 300.00 | Sunday Liquor Sales                                                                                                                                           | LSUN      |
| n. ___      | 15.00  | *Caterer per day.                                                                                                                                             | CTLQDY    |
| o. ___      | 10.00  | Picnic per day.                                                                                                                                               | PCLQDY    |
| p. ___      | N/C    | Change of managing officer.                                                                                                                                   | MGO       |
| q. ___      | N/C    | Wine tasting.                                                                                                                                                 | WTG       |

\* If you are applying for a Caterer per day license you must state the event name, location, time and date of event.

**All renewal applications must be received by May 1st.**

001 Cade

City of Osage Beach  
1000 City Parkway  
Osage Beach, MO 65065  
573/302-2000 Phone  
573/302-0528 Fax  
www.osagebeach.org



000024

Planning Dept.: \_\_\_\_\_  
Sewer Dept.: \_\_\_\_\_  
License #: \_\_\_\_\_

**LIQUOR LICENSE APPLICATION**

Date of Application: 3/31/11 Date Application Received: APR 04 2011

Trade Name of Establishment: SEVEN SPRINGS WINERY

Mailing Address: P. O. Box 7, OSAGE BEACH, MO. 65065

Applicant Name: MIKE BLEILE  
(as it is to appear on license, if corporation, name of corporation and managing officer)

- Original Applications: Submit a copy of your Missouri voter registration card & background check performed by the Missouri State Patrol along with your application.
- Renewal Applications: Submit completed application only. (Background checks and voter registration documents do not need to be submitted with renewals.)

| Item                                   | Fee    | License Description                                                                                                                                           | City Code |
|----------------------------------------|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| a. ___                                 | 375.00 | Manufacture and distribution (not sales) of intoxicating malt liquor not more than 5% alcohol by weight.                                                      | MDBWT     |
| b. ___                                 | 150.00 | Distribution or wholesale of intoxicating liquors not more than 5% alcohol by weight.                                                                         | DBLQWT    |
| c. ___                                 | 300.00 | Manufacture or distilling of intoxicating liquors in excess of 5% alcohol by weight.                                                                          | MLQWT     |
| d. ___                                 | 750.00 | Distribution or wholesale of intoxicating liquors in excess of 5% alcohol by weight.                                                                          | DLQWT     |
| e. ___                                 | 375.00 | Retail sales of intoxicating liquors not more than 5% alcohol by weight in original package to be consumed on premises. (Includes Sunday Sales.)              | BPR       |
| f. ___                                 | 375.00 | Retail sales of intoxicating liquors not more than 5% alcohol by weight in original package not to be consumed on premises. (Includes Sunday Sales.)          | BPK       |
| g. ___                                 | 450.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight to be consumed on premises.                                                            | LDRK1     |
| h. ___                                 | 750.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight to be consumed on premises. (Includes Sunday Sales.)                                   | LDRK2     |
| i. ___                                 | 150.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight in original package not to be consumed or opened on premises.                          | LPKG1     |
| j. ___                                 | 450.00 | Retail sales of intoxicating liquors in excess of 5% alcohol by weight in original package not to be consumed or opened on premises. (Includes Sunday Sales.) | LPKG2     |
| k. ___                                 | 75.00  | Retail sales of malt liquor not more than 5% alcohol by weight /or light wines containing in excess of 14% alcohol by weight.                                 | BWDRK1    |
| l. ___                                 | 375.00 | Retail sales of malt liquor in excess of 5% alcohol by weight /or light wines containing in excess of 14% alcohol by weight. (Includes Sunday Sales.)         | BWDRK2    |
| m. ___                                 | 300.00 | Sunday Liquor Sales                                                                                                                                           | LSUN      |
| n. <input checked="" type="checkbox"/> | 15.00  | *Caterer per day.                                                                                                                                             | CTLQDY    |
| o. ___                                 | 10.00  | Picnic per day.                                                                                                                                               | PCLQDY    |
| p. ___                                 | N/C    | Change of managing officer.                                                                                                                                   | MGO       |
| q. ___                                 | N/C    | Wine tasting.                                                                                                                                                 | WTG       |

\* If you are applying for a Caterer per day license you must state the event name, location, time and date of event.

BNI SOCIAL @ THE CLAY GROUND 1011 MAIN STREET OSAGE BCH MO  
APRIL 15TH 5:00 pm - 11:00 pm.

All renewal applications must be received by May 1st.

**Submission Date:** April 11, 2011

000025

**Submitted By:** City Clerk

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Certification of Election Results

**Names of Persons, Businesses, Organizations affected by this action:**

City, elected officials, citizens of Osage Beach

**Why is Board Action Required?**

Board must accept the election results.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Motion to accept the election results.

**Are there any deadlines associated with this action?**

Yes. Election results must be certified before elected officials take the oath of office.

**Department Comments:**

**Camden County**

|                                       |    |
|---------------------------------------|----|
| <u>Alderman Ward I</u><br>Ron Schmitt | 40 |
|---------------------------------------|----|

|                                        |    |
|----------------------------------------|----|
| <u>Alderman Ward II</u><br>Steve Kahrs | 98 |
|----------------------------------------|----|

|                                           |    |
|-------------------------------------------|----|
| <u>Alderman Ward III</u><br>John Olivarri | 45 |
|-------------------------------------------|----|

**Miller County**

|                                       |    |
|---------------------------------------|----|
| <u>Alderman Ward 1</u><br>Ron Schmitt | 17 |
|---------------------------------------|----|

**City Administrator Comments and Recommendation:**

Request that the Board accept the election results.

000026

**CERTIFICATION OF ELECTION RESULTS  
ROWLAND A. TODD, COUNTY CLERK  
CAMDEN COUNTY, MISSOURI**

TO: CITY OF OSAGE BEACH

THE FOLLOWING IS AN OFFICIAL CERTIFICATION OF THE ELECTION RESULTS OF THE  
GENERAL MUNICIPAL ELECTION HELD IN CAMDEN COUNTY, MISSOURI ON APRIL 5, 2011.

WE HEREBY CERTIFY THAT THE ELECTION RESULTS FOR CAMDEN COUNTY ARE:

|                           |              |
|---------------------------|--------------|
| <b>OSAGE BEACH WARD I</b> |              |
| <b>ALDERMAN</b>           | <b>Total</b> |
| Number of Precincts       | 2            |
| Precincts Reporting       | 2 100.0 %    |
| Total Votes               | 40           |
| <b>RON SCHMITT</b>        | 40 100.00%   |
| Write-in Votes            | 0 0.00%      |

|                            |              |
|----------------------------|--------------|
| <b>OSAGE BEACH WARD II</b> |              |
| <b>ALDERMAN</b>            | <b>Total</b> |
| Number of Precincts        | 3            |
| Precincts Reporting        | 3 100.0 %    |
| Total Votes                | 99           |
| <b>STEVE KAHRS</b>         | 98 98.99%    |
| Write-in Votes             | 1 1.01%      |

|                             |              |
|-----------------------------|--------------|
| <b>OSAGE BEACH WARD III</b> |              |
| <b>ALDERMAN</b>             | <b>Total</b> |
| Number of Precincts         | 2            |
| Precincts Reporting         | 2 100.0 %    |
| Total Votes                 | 49           |
| <b>JOHN OLIVARRI</b>        | 45 91.84%    |
| Write-in Votes              | 4 8.16%      |

I, ROWLAND A. TODD, COUNTY CLERK OF CAMDEN COUNTY, MISSOURI, DO HEREBY  
CERTIFY THAT THE FOREGOING IS A FULL AND ACCURATE RETURN OF ALL VOTES CAST  
FOR OR AGAINST SAID ISSUES OR CANDIDATES AT SAID ELECTION AS CERTIFIED TO ME  
BY THE DULY QUALIFIED AND ACTING JUDGES OF SAID ELECTION.

SENT THIS 7<sup>TH</sup> DAY OF APRIL, 2011



*Rowland A Todd*  
\_\_\_\_\_  
COUNTY CLERK  
CAMDEN COUNTY, MISSOURI

| OSAGE BEACH WARD I  |        |         |
|---------------------|--------|---------|
|                     | Total  |         |
| Number of Precincts | 2      |         |
| Precincts Reporting | 2      | 100.0 % |
| Times Counted       | 25/251 | 10.0 %  |
| Total Votes         | 17     |         |
| <hr/>               |        |         |
| RON SCHMITT         | 17     | 100.00% |
| Write-in Votes      | 0      | 0.00%   |

I, CLAYTON E. JENKINS, COUNTY CLERK OF MILLER COUNTY, MISSOURI, DO HEREBY CERTIFY THAT THE FOREGOING IS A FULL AND ACCURATE RETURN OF ALL VOTES CAST BOTH FOR AND AGAINST ALL PROPOSITIONS AND FOR ALL CANDIDATES AT SAID ELECTION AS CERTIFIED TO ME BY THE DULY QUALIFIED AND ACTING JUDGES OF SAID ELECTION.

CERTIFIED THIS 7<sup>TH</sup> DAY OF APRIL 2011.



CLAYTON E. JENKINS  
COUNTY CLERK MILLER COUNTY, MISSOURI

**Submission Date:** April 11, 2011

**Submitted By:** City Clerk

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Resolution 2011-03. Resolution of Intent to Annex –Lazy Days Condominiums

**Names of Persons, Businesses, Organizations affected by this action:**

The City, citizens, Lazy Days Condominium Association

**Why is Board Action Required?**

Required by RSMo. Section 71.012.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Resolution 2011-03 establishes a date of May 5, 2011 for a public hearing to be held concerning the voluntary annexation.

**Are there any deadlines associated with this action?**

Yes. The resolution is part of the process to annex property.

**Comments and Recommendation of Department:**

This is the first step in a voluntary annexation by a landowner. Staff recommends approval.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the City Clerk.

RESOLUTION 2011-03

RESOLUTION CONCERNING ANNEXATION OF PROPERTY

BE IT RESOLVED by the Board of Aldermen of the City of Osage Beach, Missouri, as follows:

Section 1. That there has been presented, on this date, to the Board of Aldermen of the City of Osage Beach, a verified petition signed by the owners of all fee interests of record in all tracts of real property located within the area described in the petition, which area is proposed to be annexed to the City of Osage Beach, and which petition requests annexation of such area into the City of Osage Beach, Missouri, a copy of which petition is attached hereto and made a part hereof.

Section 2. That no part of the said real property is now included in any incorporated municipality.

Section 3. That the said real property is contiguous to the existing corporate limits of the City of Osage Beach, Missouri.

Section 4. That in accordance with Section 71.012, RSMo, a public hearing shall be held concerning the matter, and this public hearing shall be held on the 5<sup>th</sup> day of May 2011, at 6:30 p.m. at City Hall in Osage Beach, Missouri.

Section 5. The City Clerk is authorized and directed to cause a notice of such hearing to be published at least seven days prior to the date of the hearing in a newspaper of general circulation in Camden County, Missouri, which is qualified to publish legal matters.

I hereby certify that Resolution 2011-03 was duly passed on April 21, 2011 by the Board of Aldermen of the City of Osage Beach, Missouri. The votes thereon were as follows:

Ayes \_\_\_\_\_

Nays \_\_\_\_\_

Abstaining \_\_\_\_\_

Absent \_\_\_\_\_

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker  
City Attorney

**000030**

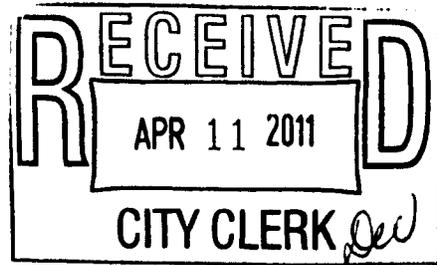
Legal Description for Lazy Days Condominiums

The following described tract of land, being and situated in the county of Camden, State of Missouri, to-wit:

All of the following described land lying above contour elevation 662 feet. All that part of the southeast quarter of the northeast quarter of Section 22, Township 39, Range 16, Camden County, Missouri, lying west of the Lake of the Ozarks.

Except the minerals underlying the surface of said land and all rights and easements in favor of the estate of said minerals as reserved in Warranty Deed recorded in Book 85, Page 195, records of Camden County, Missouri.

Subject to all restrictions, reservations, conditions and easements of record and to all existing roads and power lines, whether of record or not.



PETITION REQUESTING ANNEXATION

We, the undersigned LAZY DAYS CONDO ASSOC and ROBERT MATULA, ~~husband and wife~~, hereinafter referred to as the Petitioners, for our petition to the Board of Aldermen of the City of Osage Beach, Missouri, state and allege as follows:

- 1. That we are the owners of all fee interests of record in the real estate in CAMDEN County, Missouri, as described. (Attach legal description.)
- 2. That the said real estate is not now a part of any incorporated municipality.
- 3. That the said real estate is contiguous to the existing corporate limits of the City of Osage Beach, Missouri.
- 4. That we request that the said real estate be annexed to, and be included within the corporate limits of the City of Osage Beach, Missouri as authorized by the provisions of Section 71.012, RSMo.
- 5. That we request that the Board of Aldermen of the City of Osage Beach to cause the required notice to be published and to conduct the public hearing required by law and to thereafter adopt an ordinance extending the limits of the City of Osage Beach to include the real estate as described.

Dated this 22<sup>nd</sup> day of March, 2011.

1st LAZY DAYS CONDO ASSOC  
Name

613 LAZY DAYS Rd.  
Address

1st Robert Matula  
Name

573 348 2930  
Phone Number

INDIVIDUAL(S) ACKNOWLEDGEMENT

State of Missouri )  
County of Camden )

On this 22<sup>nd</sup> day of March, 2011, before me, the undersigned notary public, personally appeared Robert Matula known to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged that he/she/they executed the same as for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

(Seal)

[Signature]  
Notary Public



SHERRI A. JONES  
My Commission Expires  
April 13, 2013  
Camden County  
Commission #09685942

CITY OF OSAGE BEACH  
1000 CITY PARKWAY  
OSAGE BEACH, MO 65065  
573-302-2000 Phone - 573-302-0528 FAX

**000032**

March 22, 2011

**Legal Description:**

The following described tract of land, being and situated in the county of Camden, State of Missouri, to-wit,

**ALL OF THE FOLLOWING DESCRIBED LAND LYING ABOVE CONTOUR ELEVATION 662 FEET. ALL THAT PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 22, TOWNSHIP 39, RANGE 16, CAMDEN COUNTY, MISSOURI, LYING WEST OF THE LAKE OF THE OZARKS.**

**EXCEPT THE MINERALS UNDERLYING THE SURFACE OF SAID LAND AND ALL RIGHTS AND EASEMENTS IN FAVOR OF THE ESTATE OF SAID MINERALS AS RESERVED IN WARRANTY DEED RECORDED IN BOOK 85, PAGE 195, RECORDS OF CAMDEN COUNTY, MISSOURI.**

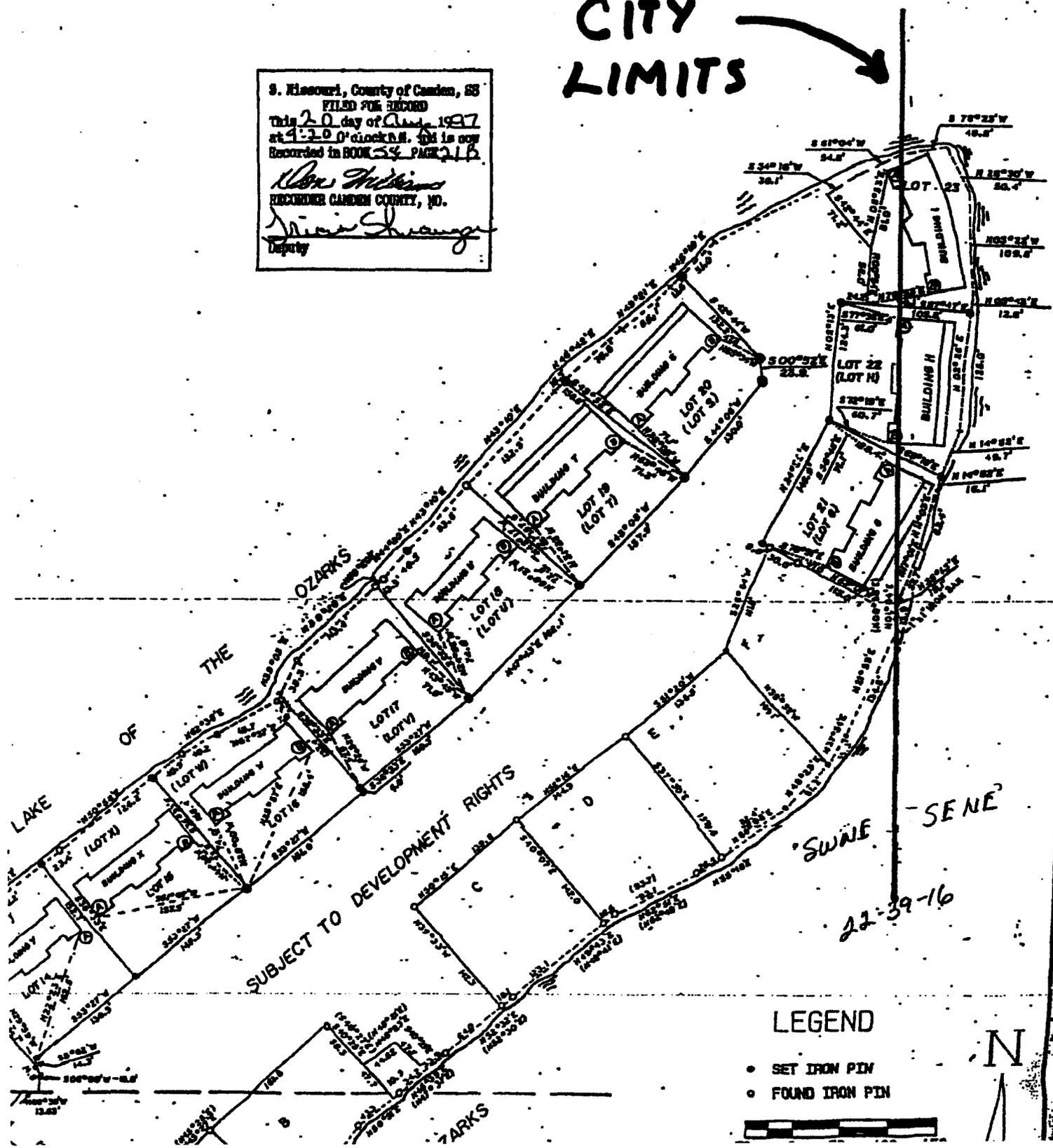
**SUBJECT TO ALL RETRICTIONS, RESERVATIONS, CONDITIONS AND EASMENTS OF RECORD AND TO ALL EXSISTING ROADS AND POWER LINES, WHETHER OF RECORD OR NOT.**

# AYS CONDOMINIUMS, AMENDED PLAT

SHEET: 2 OF 2

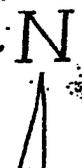
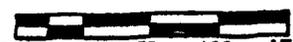
## CITY LIMITS

9. Missouri, County of Camden, SS  
 FILED FOR RECORD  
 This 20 day of Aug. 1997  
 at 4:20 o'clock P.M. 4th is now  
 Recorded in BOOK 54 PAGE 218.  
*Alan Williams*  
 RECORDER CAMDEN COUNTY, MO.  
*Missi Shrage*  
 Deputy



### LEGEND

- SET IRON PIN
- FOUND IRON PIN



**Submission Date:** April 6, 2011  
**Submitted By:** City Engineer  
**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-14 - To allow the Mayor to sign State Block Grant Agreement with the Missouri Department of Transportation for environmental assessment services for Grand Glaize Airport

**Names of Persons, Businesses, Organizations affected by this action:**

Citizens of Osage Beach, City Staff, and Missouri Department of Transportation

**Why is Board Action Required?**

Board approval required for Ordinance.

**Type of Action Requested (Ordinance, Resolution, Motion):**

A motion to approve first and second readings of Bill 11-14.

**Are there any deadlines associated with this action?**

In order to receive this funding, we have to execute this agreement by April 30, 2011.

**Comments and Recommendation of Department:**

This is the agreement for State Block Grants funds for the environmental assessment services for Grand Glaize Airport. In order for the city to receive these funds, we have to execute this agreement.

The Engineering department recommends approval. A first and second reading is requested.

**City Administrator's Comments and Recommendation:**

Concur with the recommendation of the City Engineer.

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION STATE BLOCK GRANT AGREEMENT, PROJECT NUMBER 11-045A-1 TO CONDUCT AN ENVIRONMENTAL ASSESSMENT, PHASE 1 ENVIRONMENTAL SITE ASSESSMENT AND BOUNDARY SURVEY AT THE GRAND GLAIZE OSAGE BEACH AIRPORT.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS:

Section 1. That the Board of Aldermen of the City of Osage Beach has determined it is in the best interest of the City to authorize the Missouri Highways and Transportation Commission State Block Grant Agreement, Project Number 11-045A-1 to conduct an environmental assessment, Phase 1 environmental site assessment, and boundary survey at the Grand Glaize Osage Beach Airport.

Section 2. That the Board of Aldermen agrees to the terms and conditions as set out in the attached Missouri Highways and Transportation Commission State Block Grant Agreement and hereby authorizes the Mayor to execute same on behalf of the City of Osage Beach.

Section 3. That this Ordinance shall be in full force and effect upon date of passage.

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

I hereby certify that the above Ordinance No. 11.14 was duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_

Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby APPROVE Ordinance No. 11.14.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Diann Warner, City Clerk

35a

CCO FORM: AC10  
Approved: 03/91 (KR)  
Revised: 12/10 (AML)  
Modified:

Sponsor City of Osage Beach  
Project No. 11-045A-1  
Airport Name Grand Glaize-Osage Beach

CFDA Number: CFDA #20.106  
CFDA Title: Airport Improvement Program  
Federal Agency: Federal Aviation Administration, Department of Transportation

**STATE BLOCK GRANT AGREEMENT**

**SECTION I - TITLE, AUTHORIZATION, PROJECT DESCRIPTION**

- State Block Grant Agreement
- Federal Authorization - Airport and Airway Improvement Act of 1982 (as amended)
- Project Description - Planning, Land/Easement Appraisals and Acquisitions, Surveying, Engineering Design, Construction

**SECTION II - STANDARD AGREEMENT ITEMS**

1. PURPOSE
2. PROJECT TIME PERIOD
3. TITLE EVIDENCE TO EXISTING AIRPORT PROPERTY
4. AMOUNT OF GRANT
5. AMOUNT OF MATCHING FUNDS
6. ALLOWABLE COSTS
7. WITHDRAWAL OF GRANT OFFER
8. EXPIRATION OF GRANT OFFER
9. FEDERAL SHARE OF COSTS
10. RECOVERY OF FEDERAL FUNDS
11. PAYMENT
12. ADMINISTRATIVE/AUDIT REQUIREMENTS
13. APPENDIX
14. ASSURANCES/COMPLIANCE
15. LEASES/AGREEMENTS
16. NONDISCRIMINATION ASSURANCE
17. CANCELLATION
18. VENUE
19. LAW OF MISSOURI TO GOVERN
20. WORK PRODUCT
21. CONFIDENTIALITY
22. NONSOLICITATION
23. DISPUTES
24. INDEMNIFICATION
25. HOLD HARMLESS
26. NOTIFICATION OF CHANGE
27. DURATION OF GRANT OBLIGATIONS
28. AMENDMENTS
29. PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS
30. ASSIGNMENT
31. BANKRUPTCY
32. COMMISSION REPRESENTATIVE
33. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006
34. SPECIAL CONDITIONS

### SECTION III – PLANNING

- 35. AIRPORT LAYOUT PLAN
- 36. AIRPORT PROPERTY MAP
- 37. ENVIRONMENTAL IMPACT EVALUATION
- 38. EXHIBIT "A" PROPERTY MAP

### SECTION IV - LAND/EASEMENT APPRAISALS AND ACQUISITIONS

- 39. RUNWAY PROTECTION ZONE
- 40. FEE APPRAISALS
- 41. ACQUISITION OF LAND - FEE SIMPLE TITLE
- 42. ACQUISITION OF AVIGATION EASEMENTS
- 43. LAND/EASEMENT ACQUISITION - FEDERAL REQUIREMENTS
- 44. GEOMETRIC DESIGN CRITERIA

### SECTION V - GRANT ACCEPTANCE

- Signature by sponsor constitutes acceptance of grant terms and conditions. Failure to comply with grant requirements will jeopardize funding eligibility.
- Certificate of sponsor's attorney

Sponsor: City of Osage Beach  
Project No. 11-045A-1  
Airport Name Grand Glaize-Osage Beach

CFDA Number: CFDA #20.106  
CFDA Title: Airport Improvement Program  
Federal Agency: Federal Aviation Administration, Department of Transportation

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
STATE BLOCK GRANT AGREEMENT**

THIS GRANT AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and City of Osage Beach (hereinafter, "Sponsor"). Reference will also be made to the Federal Aviation Administration (hereinafter, "FAA") and the Federal Airport Improvement Program (hereinafter, "AIP").

**WITNESSETH:**

WHEREAS, Section 116 of the federal Airport and Airway Safety and Capacity Expansion Act of 1987 amended the previous Act of 1982 by adding new section 534 entitled "State Block Grant Pilot Program", (Title 49 United States Code Section 47128); and

WHEREAS, the Federal Aviation Reauthorization Act of 1996 declared the State Block Grant Program to be permanent; and

WHEREAS, the Commission has been selected by the FAA to administer state block grant federal funds under said program; and

WHEREAS, the Sponsor has applied to the Commission for a sub grant under said program; and

WHEREAS, the Commission has agreed to award funds to the Sponsor with the understanding that such funds will be used for a project pursuant to this Agreement for the purposes generally described as follows:

Environmental Assessment; Phase I Environmental Site Assessment; and Boundary Survey;

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

(1) **PURPOSE:** The purpose of this Agreement is to provide financial assistance to the Sponsor under the State Block Grant Program.

(2) **PROJECT TIME PERIOD:** The project period shall be from the date of execution by the Commission to December 31, 2011. The Commission's chief engineer may, for good cause as shown by the Sponsor in writing, extend the project time period.

(3) **TITLE EVIDENCE TO EXISTING AIRPORT PROPERTY:** The Sponsor shall provide satisfactory evidence of title to all existing airport property and aviation

easements and address any and all encumbrances. Satisfactory evidence will consist of the Sponsor's execution of a Certificate of Title form provided by the Commission.

(4) AMOUNT OF GRANT: The initial amount of this grant is not to exceed Thirty-three Thousand Seven Hundred Twenty-five dollars (\$33,725.00) for eligible preliminary project costs and/or land/easement acquisition. A grant amendment to cover the balance of eligible project costs will be provided after construction bids are received.

(A) The amount of this grant stated above represents ninety-five percent (95%) of eligible project costs.

(B) The designation of this grant does not create a lump sum quantity contract, but rather only represents the amount of funding available for qualifying expenses. In no event will the Commission provide the Sponsor funding for improvements or work that are not actually performed. The release of all funding under this Agreement is subject to review and approval of all project expenses to ensure that they are qualifying expenses under this program.

(5) AMOUNT OF MATCHING FUNDS: The initial amount of local matching funds to be furnished by the Sponsor is not to exceed One Thousand Seven Hundred Seventy-five dollars (\$1,775.00).

(A) The amount of matching funds stated above represents five percent (5%) of eligible project costs.

(B) The Sponsor warrants to the Commission that it has sufficient cash on deposit to provide the local matching funds identified above, as well as to cover one hundred percent (100%) of any ineligible items included in the scope of work.

(6) ALLOWABLE COSTS: Block grant funds shall not be used for any costs that are ineligible as defined in the Airport and Airway Improvement Act of 1982 (as amended) and in Title 49, Code of Federal Regulations (hereinafter, "CFR"), Part 18.

(7) WITHDRAWAL OF GRANT OFFER: The Commission reserves the right to amend or withdraw this grant offer at any time prior to acceptance by the Sponsor.

(8) EXPIRATION OF GRANT OFFER: This grant offer shall expire and the Commission shall not be obligated to pay any part of the costs of the project unless this grant Agreement has been executed by the Sponsor on or before April 30, 2011, or such subsequent date as may be prescribed in writing by the Commission.

(9) FEDERAL SHARE OF COSTS: Payment of the United States' share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary of the United States Department of Transportation (hereinafter, "USDOT") shall practice. Final determination of the United States' share will be based upon the audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the federal share of costs.

(10) RECOVERY OF FEDERAL FUNDS: The Sponsor shall take all steps, including litigation if necessary, to recover federal funds spent fraudulently, wastefully, in violation of federal antitrust statutes, or misused in any other manner for any project upon which federal funds have been expended. For the purpose of this grant Agreement, the term "federal funds" means funds used or disbursed by the Sponsor that were originally paid pursuant to this or any other federal grant Agreement. The Sponsor shall return the recovered federal share, including funds recovered by settlement, in order or judgment, to the Commission. It shall furnish to the Commission, upon request, all documents and records pertaining to the determination of the amount of the federal share or to any settlement, litigation, negotiation, or other effort taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such federal share shall be approved in advance by the Commission.

(11) PAYMENT: Payments to the Sponsor are made on an advance basis. The Sponsor may request incremental payments during the course of the project or a lump sum payment upon completion of the work. However, this advance payment is subject to the limitations imposed by paragraph 11(B) of this Agreement.

(A) The Sponsor may request payment at any time subsequent to the execution of this Agreement by both parties. Requests for reimbursement shall be supported with invoices. After the Sponsor pays incurred costs, copies of checks used to pay providers must be submitted to the Commission.

(B) It is understood and agreed by and between the parties that the Commission shall make no payment which could cause the aggregate of all payments under this Agreement to exceed ninety percent (90%) of the maximum federal (block grant) obligation stated in this Agreement or eighty-six percent (86%) of actual total eligible project cost, whichever is lower, until the Sponsor has met and/or performed all requirements of this grant Agreement to the satisfaction of the Commission.

(C) Within ninety (90) days of final inspection of the project funded under this grant, the Sponsor shall provide to the Commission a final payment request and all financial, performance and other reports as required by the conditions of this grant, with the exception of the final audit report. This report shall be provided when the Sponsor's normal annual audit is completed.

(D) When force account or donations are used, the costs for land, engineering, administration, in-kind labor, equipment and materials, etc., may be submitted in letter form with a breakdown of the number of hours and the hourly charges for labor and equipment. Quantities of materials used and unit costs must also be included. All force account activity, donations, etc., must be pre-approved by the Commission to ensure eligibility for funding.

(12) ADMINISTRATIVE/AUDIT REQUIREMENTS: This grant shall be governed by the administrative and audit requirements as prescribed in Title 49 CFR Parts 18 and 90, respectively.

(A) If the Sponsor expends five hundred thousand dollars (\$500,000) or more in a year in federal financial assistance, it is required to have an independent annual audit conducted in accordance with Office of Management and Budget (hereinafter, "OMB") Circular A-133. A copy of the audit report shall be submitted to the Missouri Department of Transportation (hereinafter, "MoDOT") within the earlier of thirty (30) days after receipt of the auditor's report or nine (9) months after the end of the audit period. Subject to the requirements of OMB Circular A-133, if the Sponsor expends less than five hundred thousand dollars (\$500,000) in a year, the Sponsor may be exempt from auditing requirements for that year, but records must be available for review or audit by applicable state and federal authorities.

(B) When the Sponsor's normal annual audit is completed, the Sponsor shall provide to the Commission a copy of an audit report that includes the disposition of all federal funds involved in this project.

(C) In the event a final audit has not been performed prior to the closing of the grant, the Commission retains the right to recover any appropriate amount of funding after fully considering interest accrued or recommendations on disallowed costs identified during the final audit.

(D) The Commission reserves the right to conduct its own audit of the Sponsor's records to confirm compliance with grant requirements and to ensure that all costs and fees are appropriate and acceptable.

(13) APPENDIX: An appendix to this Agreement is attached. The appendix consists of standards, forms and guidelines that the Sponsor shall use to accomplish the requirements of this Agreement. The appendix items are hereby provided to the Sponsor and incorporated into and made part of this Agreement.

(14) ASSURANCES/COMPLIANCE: The Sponsor shall adhere to the FAA standard airport Sponsor assurances, current FAA advisory circulars (hereinafter, "ACs") for AIP projects and/or the Commission's specifications, including but not limited to those as outlined in attached Exhibit 1. These assurances, ACs and the Commission's specifications are hereby incorporated into and made part of this Agreement. The Sponsor shall review the assurances, ACs, Commission's specifications and FAA Order 5190.6B entitled "FAA Airport Compliance Manual" dated September 30, 2009, included in the grant appendix, and notify the Commission of any areas of non-compliance within its existing facility and/or operations. All non-compliance situations must be addressed and a plan to remedy areas of non-compliance must be established before final acceptance of this project and before final payment is made to the Sponsor.

(15) LEASES/AGREEMENTS: The Sponsor shall incorporate the FAA Standard Airport Lease/Agreement provisions into all leases/agreements for use of airport property other than the public use areas. In addition to these provisions, these leases/agreements must provide for fair market value income and prohibit exclusive rights.

(A) Long term commitments (longer than 5 years) must provide for renegotiation of the leases'/agreements' terms and payments at least every five (5) years.

(B) Leases/agreements shall not contain provisions that adversely affect the Sponsor's possession and control of the airport or interfere with the Sponsor's ability to comply with the obligations and covenants set forth in this grant Agreement.

(16) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the Sponsor agrees as follows:

(A) Civil Rights Statutes: The Sponsor shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d and 2000e, *et seq.*), as well as any applicable titles of the Americans with Disabilities Act. In addition, if the Sponsor is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the Americans with Disabilities Act.

(B) Administrative Rules: The Sponsor shall comply with the administrative rules of the USDOT relative to nondiscrimination in federally-assisted programs of the USDOT (49 CFR Subtitle A, Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The Sponsor shall not discriminate on grounds of the race, color, religion, creed, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Sponsor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Subtitle A, Part 21, Section 21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the Sponsor. These apply to all solicitations either by competitive bidding or negotiation made by the Sponsor for work to be performed under a subcontract, including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the Sponsor of the requirements of this Agreement relative to nondiscrimination on grounds of the race, color, religion, creed, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The Sponsor shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Commission or the USDOT to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the Sponsor is in the exclusive possession of another who fails or refuses to furnish this information, the Sponsor shall so certify to the Commission or the USDOT as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the Sponsor fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the USDOT may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the Sponsor complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The Sponsor shall include the provisions of Paragraph (16) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the USDOT. The Sponsor will take such action with respect to any subcontract or procurement as the Commission or the USDOT may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the Sponsor becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Sponsor may request the United States to enter into such litigation to protect the interests of the United States.

(17) CANCELLATION: The Commission may cancel this Agreement at any time the Sponsor breaches the contractual obligations by providing the Sponsor with written notice of cancellation. Should the Commission exercise its right to cancel the Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Sponsor.

(A) Upon written notice to the Sponsor, the Commission reserves the right to suspend or terminate all or part of the grant when the Sponsor is, or has been, in violation of the terms of this Agreement. Any lack of progress that significantly endangers substantial performance of the project within the specified time shall be deemed a violation of the terms of this Agreement. The determination of lack of progress shall be solely within the discretion of the Commission. Once such determination is made, the Commission shall so notify the Sponsor in writing. Termination of any part of the grant will not invalidate obligations properly incurred by the Sponsor prior to the date of termination.

(B) The Commission shall have the right to suspend funding of the project at any time and for so long as the Sponsor fails to substantially comply with all the material terms and conditions of this Agreement. If the Commission determines that substantial noncompliance cannot be cured within thirty (30) days, then the Commission may terminate the funding for the project. If the Sponsor fails to perform its obligations in substantial accordance with the Agreement (except if the project has been terminated for the convenience of the parties) and the FAA requires the Commission to repay grant funds that have already been expended by the Sponsor, then the Sponsor shall repay the Commission such federal funds.

(18) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(19) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Sponsor shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(20) WORK PRODUCT: All documents, reports, exhibits, etc. produced by the Sponsor at the direction of the Commission shall remain the property of the Sponsor. However, Sponsor shall provide to the Commission a copy of magnetic discs that contain computer aided design and drafting (CADD) drawings and other documents generated under this grant. Information supplied by the Commission shall remain the property of the Commission. The Sponsor shall also supply to the Commission hard copies of any working documents such as reports, plans, specifications, etc., as requested by the Commission.

(21) CONFIDENTIALITY: The Sponsor shall not disclose to third parties confidential factual matter provided by the Commission except as may be required by statute, ordinance, or order of court, or as authorized by the Commission. The Sponsor shall notify the Commission immediately of any request for such information.

(22) NONSOLICITATION: The Sponsor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Sponsor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

(23) DISPUTES: Any disputes that arise under this Agreement shall be decided by the Commission or its representative.

(24) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the Sponsor shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Sponsor's wrongful or negligent performance of its obligations under this Agreement.

(B) The Sponsor will require any contractor procured by the Sponsor to work under this Agreement:

(1) To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an

authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

(2) To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and the Missouri Department of Transportation and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities (\$500,000 per claimant and \$3,000,000 per occurrence) as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(25) HOLD HARMLESS: The Sponsor shall hold the Commission harmless from any and all claims for liens of labor, services or materials furnished to the Sponsor in connection with the performance of its obligations under this Agreement. Certification statements from construction contractors must be provided to ensure all workers, material suppliers, etc., have been paid.

(26) NOTIFICATION OF CHANGE: The Sponsor shall immediately notify the Commission of any changes in conditions or law which may significantly affect its ability to perform the project in accordance with the provisions of this Agreement. Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery by United States mail, regular mail postage prepaid, or upon receipt by personal, facsimile or electronic mail (email) delivery, addressed as follows:

Commission: Joseph Pestka  
Administrator of Aviation  
Missouri Department of Transportation  
P.O. Box 270  
Jefferson City, MO 65102  
(573) 751-7912  
(573) 526-4709 FAX  
Email: Joseph.Pestka@modot.mo.gov

Sponsor: Penny Lyons  
Mayor  
City of Osage Beach  
1000 City Parkway  
Osage Beach, MO 65065  
(573) 302.2000  
(573) 302-0528 FAX  
Email: pylons@osagebeach.org

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile or email delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of the facsimile or email transmission of the document.

(27) DURATION OF GRANT OBLIGATIONS: Grant obligations are effective for the useful life of any facilities/equipment installed with grant funds as stipulated in attached Exhibit 1, but in any event not to exceed twenty (20) years. There shall be no limit on the duration of the assurance, referenced in paragraph B of said Exhibit 1 against exclusive rights or terms, conditions and assurances, referenced in paragraph B-1 of said Exhibit 1, with respect to real property acquired with federal funds. Paragraph (27) equally applies to a private sponsor. However, in the case of a private sponsor, the useful life for improvements shall not be less than ten (10) years.

(A) The financial assistance provided hereunder constitutes a grant to the Sponsor. Neither the Commission nor the FAA will have title to the improvements covered by this grant, as title to same shall vest in the Sponsor.

(B) For the period as specified in this Paragraph, the Sponsor becomes obligated, upon any sale or disposition of the airport or discontinuation of operation of the airport to immediately repay, in full, the grant proceeds or proportionate amount thereof based upon the number of years remaining in the original obligation to the Commission. The Commission and the Sponsor hereby agree that during said period, the property and improvements which constitute the subject airport are subject to sale, if necessary, for the recovery of the federal pro rata share of improvement costs should this Agreement be terminated by a breach of contract on the part of the Sponsor or should the aforementioned obligations not be met.

(C) In this Section, the term "any sale or disposition of the airport" shall mean any sale or disposition of the airport: (i) for a use inconsistent with the purpose for which the Commission's share was originally granted pursuant to this Agreement; or (ii) for a use consistent with such purposes wherein the transferee in the sale or disposition does not enter into an assignment and assumption Agreement with the Sponsor with respect to the Sponsor's obligation under the instrument so that the transferee becomes obligated there under as if the transferee had been the original owner thereof.

(28) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the Sponsor and the Commission.

(29) PROFESSIONAL SERVICES BY COMPETITIVE PROPOSALS: Contracts for professional services are to be procured by competitive proposals per federal procurement requirements (Title 49 CFR, Section 18.36). Requests for proposals/qualifications are to be publicly announced for services expected to cost more than one hundred thousand dollars (\$100,000) in the aggregate. Small purchase procedures (telephone solicitations or direct mail) may be used for services costing one hundred thousand dollars (\$100,000) or less. All professional services contracts are subject to review and acceptance by the Commission prior to execution by the Sponsor to ensure funding eligibility.

(30) ASSIGNMENT: The Sponsor shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the Commission.

(31) BANKRUPTCY: Upon filing for any bankruptcy or insolvency proceeding by or against the Sponsor, whether voluntarily, or upon the appointment of a receiver, trustee, or assignee, for the benefit of creditors, the Commission reserves the right and sole discretion to either cancel this Agreement or affirm this Agreement and hold the Sponsor responsible for damages.

(32) COMMISSION REPRESENTATIVE: The Commission's chief engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(33) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The Sponsor shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 CFR Part 170.

(34) SPECIAL CONDITIONS: The following special conditions are hereby made part of this Agreement:

(A) Lobbying and Influencing Federal Employees: All contracts awarded by the Sponsor shall include the requirement for the recipient to execute the form entitled "CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS" included in the grant appendix.

This requirement affects grants or portions of a grant exceeding one hundred thousand dollars (\$100,000).

(B) Safety Inspection: The Sponsor shall eliminate all deficiencies identified in its most recent annual safety inspection report (FAA Airport Master Record Form 5010-1). If immediate elimination is not feasible, as determined by the Commission, the Sponsor shall provide a satisfactory plan to eliminate the deficiencies and shall include this plan with phased development as outlined in a current and approved airport layout plan.

(C) Navigational Aids: Except for instrument landing systems acquired with the AIP (block grant) funds and later donated to and accepted by the FAA, the Sponsor must provide for the continuous operation and maintenance of any navigational aid funded under the AIP (block grant) program during the useful life of the equipment. The Sponsor must check the facility, including instrument landing systems, prior to commissioning to ensure it meets operational standards. The Sponsor must also remove, relocate, or lower each obstruction on the approach or provide for the adequate lighting or marking of the obstruction if any aeronautical study conducted under Federal Aviation Regulation Part 77 determines that to be acceptable; and mark and light the runway, as appropriate. The FAA will not take over the ownership, operation, or

maintenance of any Sponsor-acquired equipment, except for instrument landing systems.

(D) Environmental Due Diligence Audit: The Sponsor shall conduct an Environmental Due Diligence Audit (EDDA) of all NAVAID (electronic navigational equipment) sites that will be established or relocated with federal (block grant) funds. This audit shall include existing equipment currently owned and operated by the FAA Airways Facilities Branch and new equipment for which the Sponsor will be requesting FAA maintenance.

(E) Sponsor's Disadvantaged Business Enterprise (DBE) Program: When the grant amount exceeds two hundred fifty thousand dollars (\$250,000), the Sponsor hereby adopts the Commission's Disadvantaged Business Enterprise (hereinafter, "DBE") program that is incorporated into this grant agreement by reference. Only DBE firms certified by the Commission will qualify when considering DBE goal accomplishments.

(F) Disadvantaged Business Enterprise Required Statements:

(1) Policy: It is the policy of the USDOT that DBEs, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

(2) Contract Assurance: The Commission and the Sponsor will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

"The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out the applicable requirements of Title 49 Code of Federal Regulations, Part 26 in the award and administration of any United States Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

(This assurance shall be included in each subcontract the prime contractor signs with a subcontractor.)

(3) Federal Financial Assistance Agreement Assurance: The Commission and the Sponsor agree to and incorporate the following assurance into their day-to-day operations and into the administration of all USDOT-assisted contracts; where "recipient" means MoDOT and/or any MoDOT grantee receiving USDOT assistance:

"MoDOT and the Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United

States Department of Transportation-assisted contract or in the administration of the United States Department of Transportation's DBE Program or the requirements of Title 49 Code of Federal Regulations, Part 26. The recipient shall take all necessary and reasonable steps under Title 49 Code of Federal Regulations, Part 26 to ensure nondiscrimination in the award and administration of United States Department of Transportation-assisted contracts. The recipient's DBE Program, as required by Title 49 Code of Federal Regulations, Part 26 and as approved by the United States Department of Transportation, is incorporated by reference into this agreement. Implementation of this program is a legal obligation and for failure to carry out its approved program, the United States Department of Transportation may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under Title 18 United States Code, Section 1001 and/or the Program Fraud Civil Remedies Act of 1986 (Title 31 United States Code, Section 3801 *et seq.*)”

The Commission and the Sponsor shall ensure that all recipients of USDOT-assisted contracts, funds, or grants incorporate, agree to and comply with the assurance statement.

(4) Prompt Payment: The Commission and the Sponsor shall require all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with section 34.057 RSMo, Missouri's prompt payment statute. Pursuant to section 34.057 RSMo, the Commission and the Sponsor also require the prompt return of all retainage held on all subcontractors after the subcontractors' work is satisfactorily completed, as determined by the Sponsor and the Commission.

All contractors and subcontractors must retain records of all payments made or received for three (3) years from the date of final payment, and these records must be available for inspection upon request by any authorized representative of the Commission, the Sponsor or the USDOT. The Commission and the Sponsor will maintain records of actual payments to DBE firms for work committed to at the time of the contract award.

The Commission and the Sponsor will perform audits of contract payments to DBE firms. The audits will review payments to subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation and that payment was made in compliance with section 34.057 RSMo.

(5) MoDOT DBE Program Regulations: The Sponsor, contractor and each subcontractor are bound by MoDOT's DBE Program regulations, located at Title 7 Code of State Regulations, Division 10, Chapter 8.

(G) DISADVANTAGED BUSINESS ENTERPRISES - PROFESSIONAL SERVICES: DBEs that provide professional services, such as architectural, engineering, surveying, real estate appraisals, accounting, legal, etc., will be afforded

full and affirmative opportunity to submit qualification statements/proposals and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for selection for this project. The DBE goals for professional services will be determined by the Commission at the time each proposed service contract is submitted for the Commission's approval.

(35) AIRPORT LAYOUT PLAN: All improvements must be consistent with a current and approved Airport Layout Plan (hereinafter, "ALP"). The Sponsor shall update and keep the ALP drawings and corresponding narrative report current with regard to the FAA Standards and physical or operational changes at the airport.

(A) ALP approval shall be governed by FAA Order 5100.38B, entitled "Airport Improvement Program Handbook."

(36) AIRPORT PROPERTY MAP: The Sponsor shall develop (or update), as a part of the ALP, a drawing which indicates how various tracts/parcels of land within the airport's boundaries were acquired (i.e., federal funds, surplus property, local funds only, etc.). Easement interests in areas outside the fee property line shall also be included. A screened reproducible of the Airport Layout Drawing may be used as the base for the property map.

(37) ENVIRONMENTAL IMPACT EVALUATION: The Sponsor shall evaluate the potential environmental impact of this project per FAA Order 5050.4B, entitled "National Environmental Policy Act Implementing Instructions for Airport Actions." Evaluation must include coordination with all resource agencies that have jurisdiction over areas of potential environmental impact and a recommended finding such as categorical exclusion, no significant impact, level of impact and proposed mitigation, etc.

(38) EXHIBIT "A" PROPERTY MAP: The Sponsor shall develop (or update) an Exhibit "A" Property Map, which clearly shows by appropriate legal description all airport land owned by the Sponsor, including land and interests in land in the runway approach areas, plus any areas or tracts/parcels of land proposed to be acquired in connection with this project. In addition, the map must indicate by appropriate symbols or other markings the property interest (fee title, avigation easement, etc.) the Sponsor holds in each tract/parcel of airport land and the property interest to be acquired in each tract/parcel of land in connection with this project.

(39) RUNWAY PROTECTION ZONE: The Sponsor agrees to prevent the erection or creation of any obstruction, residence, structure or place of public assembly in the Runway Protection Zone, as depicted on the Exhibit "A" Property Map and the approved ALP, except for NAVAIDS that are fixed by their functional purposes or any other structure approved by the Commission and the FAA. Any existing obstructions, structures, facilities or uses, including use of equipment that could interfere with electronic guidance or communication systems for aircraft, within the Runway Protection Zone shall be cleared or discontinued unless approved by the Commission and the FAA. The Sponsor shall also take any and all steps necessary by fee ownership or avigation easement to ensure that the land within the designated Runway Protection Zone will not include anything that violates FAA standards, is an airport hazard or which might create glare or misleading lights or lead to the construction of residences, fuel

handling and storage facilities, smoke generating activities, or places of public assembly, such as churches, schools, office buildings, shopping centers, and stadiums, golf courses or any other uses restricted by FAA standards.

(40) FEE APPRAISALS: The Sponsor shall submit the qualifications of the selected fee appraisers to the Commission for review prior to executing a contract with said fee appraisers, unless said fee appraisers have been prequalified by the Commission.

(A) Projects involving land and/or easement acquisitions shall be governed by the Commission's Local Public Agency Manual.

(B) Prior to making purchase offers to property owners, the Sponsor shall submit complete primary and review appraisals to the Commission so the Commission can ensure that the Sponsor is in compliance with state and federal requirements.

(41) ACQUISITION OF LAND - FEE SIMPLE TITLE: The Sponsor shall obtain a qualified attorney's title opinion or title insurance to assure the Sponsor receives fee simple title, free and clear of any encumbrance that could adversely affect the operation, maintenance or development of the airport. The title opinion or title insurance must be tied to a current Exhibit "A" property map. The Sponsor shall acquire the property in fee simple absolute by general warranty deed from the grantors. The Sponsor shall thereafter cause the deed to be recorded in the land records of the county recorder's office in the county where the airport is located.

(42) ACQUISITION OF AVIGATION EASEMENTS: The Sponsor shall obtain a qualified attorney's title opinion to assure that the Sponsor has obtained the required interest in and to the easements to be acquired, free and clear of any encumbrances that would be incompatible with or would interfere with the exercise and enjoyment by the Sponsor of the rights and interests conveyed, and that grantors of easements constituted all of the owners of the land affected by the easements. General requirements in Paragraph (42) above shall also apply.

(43) LAND/EASEMENT ACQUISITION - FEDERAL REQUIREMENTS: The Sponsor shall comply with all federal requirements specified in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (commonly referred to as the "Uniform Act") and in Title 49 CFR, Part 24.

(44) GEOMETRIC DESIGN CRITERIA: The Sponsor shall use the geometric design criteria promulgated by the FAA in the AC series and in FAA Orders. The Sponsor may request and receive approval for adaptation of said criteria where the FAA and the Commission concur that such adaptation is appropriate considering safety, economy and efficiency of operation.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the parties have entered into and accepted this Agreement on the last date written below.

Executed by the Sponsor this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the Commission this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION

CITY OF OSAGE BEACH

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Attest:

Attest:

\_\_\_\_\_  
Secretary to the Commission

By \_\_\_\_\_

Title \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Commission Counsel

Ordinance No. \_\_\_\_\_  
(if applicable)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, \_\_\_\_\_, acting as attorney for the Sponsor, do hereby certify that in my opinion, the Sponsor is empowered to enter into the foregoing grant Agreement under the laws of the State of Missouri. Further, I have examined the foregoing grant Agreement, and the actions taken by said Sponsor and Sponsor's official representative have been duly authorized and the execution thereof is in all respects due and proper and in accordance with the laws of the said state and the Airport and Airway Improvement Act of 1982, as amended. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said grant constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

SPONSOR: City of Osage Beach

\_\_\_\_\_  
Name of Sponsor's Attorney (typed)

\_\_\_\_\_  
Signature of Sponsor's Attorney

Date \_\_\_\_\_

**Submission Date:** April 14, 2011

**Submitted By:** City Attorney

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-20 - Authorizes the City to enter into an agreement with the Osage Beach Fire Protection District [OBFPD] and memorializes the fire district's rights under section 99.847 R.S.Mo concerning emergency service districts and the revenues they receive for providing services in TIF areas. Pursuant to this agreement the OBFPD will receive 50% of the payment in lieu of taxes received by the city attributable to the fire districts real property tax in the TIF project area.

**Names of Persons, Businesses, Organizations affected by this action:**

Osage Beach Fire Protection District, Dierbergs Markets, developer and the City

**Why is Board Action Required?**

Action is required to approve an ordinance.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Motion to approve first and second readings of Bill 11-20.

**Are there any deadlines associated with this action?**

No.

**Comments and Recommendation of Department:**

The City Attorney recommends first and second reading of Bill 11-20 as part of the Dierberg's Osage Beach Tax Increment Financing Redevelopment Plan for the vacant High Point Shopping Center.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the City Attorney.

BILL NO. 11-20

ORDINANCE NO. 11.20

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT WITH THE OSAGE BEACH FIRE PROTECTION DISTRICT (OBFPD) AND MEMORIALIZES THE FIRE DISTRICT'S RIGHTS UNDER SECTION 99.847 R.S.Mo. CONCERNING EMERGENCY SERVICE DISTRICTS AND THE REVENUES THEY RECEIVE FOR PROVIDING SERVICES IN THE TIF AREAS.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS:

Section 1. That the Board of Aldermen of the City of Osage Beach has determined it is in the best interest of the City to authorize the agreement with the Osage Beach Fire Protection District (OBFPD) and memorialize the Fire District's rights under Section 99.847 RSMo. concerning emergency service districts and the revenues they receive for providing services in the TIF Areas.

Section 2. That the Board of Aldermen agrees to the terms and conditions as set out in the attached agreement with the Osage Beach Fire Protection District and hereby authorizes the Mayor to execute same on behalf of the City of Osage Beach, attached hereto as Exhibit A.

Section 3. That this Ordinance shall be in full force and effect upon date of passage.

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.

I hereby certify that the above Ordinance No. 11.20 was duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_

Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby APPROVE Ordinance No. 11.20.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

**000038**

Bill No. 11-20  
Page 2

Ordinance No. 11.20

ATTEST:

---

Diann Warner, City Clerk

## AGREEMENT

This Agreement is entered into this 22 day of March, 2011, by and between the OSAGE BEACH FIRE PROTECTION DISTRICT (the "District") and the CITY OF OSAGE BEACH, MISSOURI (the "City").

### RECITALS

The following are the circumstances that led the parties to enter into this Agreement:

1. On December 16, 2010, the City adopted Ordinance No. 10.81 which approved a tax increment financing redevelopment plan known as the "Dierbergs Osage Beach Tax Increment Financing Plan" (the "TIF Plan") pursuant to Sections 99.800 to 99.865 of the Missouri Revised Statutes, as amended (the "TIF Act") to eliminate blighting conditions and promote economic development for an area which contains approximately 14.47 acres, is generally located in Osage Beach, Missouri, on the northeast side of Highway 54 between Links Road and Old Missouri Route 16 (the "Redevelopment Area"), as more fully described in the TIF Plan. The TIF Plan designates one redevelopment project area that is identical to the Redevelopment Area (the "Redevelopment Project Area") in which tax increment financing has been activated by the City through the adoption of Ordinance No. 10.81.
2. The District receives revenue from a real property tax which is imposed within the Redevelopment Area. The District will provide fire protection services to the Redevelopment Area.
3. Pursuant to the TIF Act, 100% of the payments in lieu of taxes for the District attributable to the increase in the current equalized assessed valuation of each parcel of real property within the Redevelopment Project Area over and above the total initial equalized assessed value as determined by Section 99.855 of the TIF Act ("PILOTs") are to be deposited in the City's special allocation fund for the TIF Plan (the "Special Allocation Fund") to pay for project costs associated with the TIF Plan.
4. During the period that tax increment financing is in effect, which commenced on December 16, 2010 through the adoption of Ordinance No. 10.81, taxing jurisdictions continue to collect other tax revenues, such as the remaining 50% of the incremental sales and utility taxes, as well as 100% of the personal property taxes and 100% of the commercial surcharge on real property.
5. In 1996, the Missouri General Assembly amended Section 99.847 of the TIF Act to permit emergency service districts to seek reimbursement from a tax increment financing special allocation fund for any direct costs associated with providing service to TIF redevelopment areas. Without this provision, emergency service districts had no means to pay the direct costs of providing service to new development within a TIF redevelopment area because the increased real property tax revenue of new development in the TIF redevelopment project area was designated as PILOTs and captured by the TIF special allocation fund.
6. The relevant language in Section 99.847 has since been repealed, and similar language has been enacted as Section 99.848 of the TIF Act, which now establishes the District's right to reimbursement from the District's tax increments which are collected in the Special Allocation Fund, as a result of the provision of fire protection services to the Redevelopment Area.
7. The City and the District desire to enter into this agreement to provide for the terms and conditions under which the City will implement Section 99.848 of the TIF Act, with respect to the District.

**NOW, THEREFORE**, in consideration of the Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and District do hereby agree as follows:

1. Treatment of PILOTs. The City will receive from the county 100% of the PILOTs that result from the imposition of the District's real property tax within the Redevelopment Project Area. After depositing all of such PILOTs in the Special Allocation Fund, 50% of the PILOTs received by the City and attributable to the District's real property tax in such Redevelopment Area (each a "Reimbursement Payment") shall be transferred by the City to the District for the purpose of reimbursement to the District for any increased costs of providing emergency services to the Redevelopment Project Area while tax increment financing is in effect in the Redevelopment Project Area.

2. District Rights Under 99.848, RSMo. This Agreement sets forth the terms and conditions under which the District is entitled to receive reimbursement pursuant to Section 99.848, RSMo. Except as set forth in this Agreement, the District waives its right to all other reimbursement payments from the special allocation fund for the TIF Plan pursuant to Section 99.848, RSMo. The District agrees that the Reimbursement Payment shall fully reimburse the District for any and all actual increased costs incurred by the District for providing emergency services to the Redevelopment Project Area. The District does not waive any other tax payments to which the District is entitled and which are not deposited into the special allocation fund for the TIF Plan, including (a) tax revenues attributable to the initial equalized assessed valuation of the property in the Redevelopment Project Area, (b) tax revenues resulting from the District's personal property tax levy, (c) tax revenues resulting from the commercial surcharge.

3. Authority. Each Party represents and warrants that it has all necessary power and authority to execute, deliver and perform the terms and obligations of this Agreement, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of each Party, enforceable in accordance with its terms.

4. Severability. If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement, or the application thereof to any person, entity or circumstance, is to any extent adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement, and the application thereof to other persons, entities or circumstances, will not be affected thereby and will be valid and enforceable to the fullest extent permitted by law. In addition, the terms and provisions of this Agreement shall be valid and enforceable against the parties hereto to the fullest extent permitted by law, regardless of any future amendments to the TIF Act or any future judicial interpretations of Sections 99.847 and 99.848 of the TIF Act.

IN WITNESS WHEREOF, the parties hereto have executed the above agreement the day and year first above written.

**OSAGE BEACH FIRE PROTECTION DISTRICT**

By: Anthony Cicelli

Name: Anthony Cicelli

Title: CHAIR PERSON

**CITY OF OSAGE BEACH, MISSOURI**

By: \_\_\_\_\_  
Penny Lyons, Mayor

**Submission Date:** April 6, 2011  
**Submitted By:** City Engineer  
**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-21 - Request to amend the 2011 Budget by increasing MoDOT Mandated Projects by \$76,009.

**Names of Persons, Businesses, Organizations affected by this action:**

Citizens and City Staff

**Why is Board Action Required?**

Board action required to amend an ordinance

**Type of Action Requested (Ordinance, Resolution, Motion):**

Request first and second readings of Bill 11-21.

**Are there any deadlines associated with this action?**

In order for the Contractor, Hutchins Telecom, to complete the Connecting Sewer project, this Budget Amendment needs to be completed.

**Comments and Recommendation of Department:**

This budget amendment is for additional work required on the water side of the Connecting Sewer Contract. The increase is for items that are 100% reimbursable by MoDOT. This will increase the amount in MODOT Mandated Projects to \$272,548.

The Engineering Department recommends approval of this ordinance. We would like a first and second reading of this ordinance.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the City Engineer.

BILL NO. 11-21

ORDINANCE NO. 11.21

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AMENDING ORDINANCE 10.75 ADOPTING THE 2011 ANNUAL BUDGET, TRANSFERRING APPROPRIATIONS FOR NECESSARY EXPENSES.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS, TO WIT:

Section 1. That the 2011 Annual Budget adopted as Ordinance 10.75 is hereby amended by appropriating an additional \$76,009 to line item 30-00-773182 designated as MoDOT Mandated Projects total appropriations as follows:

|                                      | Original Item | Amended Item |
|--------------------------------------|---------------|--------------|
| 30-00-773182 MoDOT Mandated Projects | \$196,539     | \$272,548    |

Section 2. In all other respects the 2011 Annual Budget adopted in Ordinance No. 10.75 shall remain in full force and effect.

Section 3. That this Ordinance shall be in full force and effect upon date of passage.

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011.

I hereby certify that the above Ordinance No. 11.21 was duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_  
 Abstentions: \_\_\_\_\_ Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby APPROVE Ordinance 11.21

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Diann Warner, City Clerk

**Submission Date:** April 14, 2011

**Submitted By:** City Clerk

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill No. 11-22. Ordinance Approving Voluntary Annexation for MoDOT right of way.

**Names of Persons, Businesses, Organizations affected by this action:**

The City, citizens, MoDOT, Police Department.

**Why is Board Action Required?**

Board approval is required to enact ordinances.

**Type of Action Requested (Ordinance, Resolution, Motion):**

First and second readings of Bill No. 11-22 are requested.

**Are there any deadlines associated with this action?**

No.

**Comments and Recommendation of Department:**

A public hearing as required by RSMo. Section 71.012 was held April 7, 2011. If no written objections to the proposed annexation are filed by April 21, 2011, the Board may approve the ordinance annexing the property. No one was present at the public hearing who voiced any opposition to this annexation.

**City Administrator Comments and Recommendation:**

If no objections are received as noted above, the board may approve the ordinance annexing the property.

BILL NO. 11-22

ORDINANCE NO. 11.22

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ANNEXING CERTAIN ADJACENT TERRITORY INTO THE CITY OF OSAGE BEACH, MISSOURI.

WHEREAS, on April 11, 2011 a verified petition signed by all owners of the real estate hereinafter described requesting annexation of said territory into the City of Osage Beach, Missouri, was filed with the City Clerk; and

WHEREAS, said real estate as hereinafter described is adjacent and contiguous to the present corporate limits of the City of Osage Beach, Missouri; and

WHEREAS, a public hearing concerning said matter was held at the City Hall in Osage Beach, Missouri, at the hour of 6:30 p.m. on April 7, 2011; and

WHEREAS, notice of said public hearing was given by publication of notice thereof, on March 28, 2011, in the Lake Sun, a daily newspaper of general circulation in the County of Camden, State of Missouri; and

WHEREAS, at said public hearing, all interested persons, corporations or political subdivision were afforded the opportunity to present evidence regarding the proposed annexation; and

WHEREAS, no written objection to the proposed annexation was filed with the Board of Aldermen of the City of Osage Beach, Missouri within fourteen days after the public hearing; and

WHEREAS, the Board of Aldermen of the City of Osage Beach, Missouri, does find and determine that said annexation is reasonable and necessary to the proper development of the City; and

WHEREAS, the City is able to furnish normal municipal services to said area within a reasonable time after annexation.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS, TO WIT:

Section 1. Pursuant to the provisions of Section 71.012 RSMo, the following real estate as described in Exhibit A is hereby annexed into the City of Osage Beach, Missouri.

Section 2. The boundaries of the City of Osage Beach, Missouri, hereby are altered so as to encompass the above described tract of land lying adjacent and contiguous to the present corporate limits.

Section 3. The City Clerk of the City of Osage Beach is hereby ordered to cause three certified copies of this Ordinance to be filed with the Camden County Clerk.

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

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

I hereby certify that Ordinance No. 11.22 was duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_

Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby APPROVE Ordinance 11.22.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Diann Warner, City Clerk

**000047**

Bill No. 11-22  
Page 3

Ordinance No. 11.22

**EXHIBIT A**

**Legal Description for the Missouri Highways and Transportation Commission Voluntary Annexation**

**A DESCRIPTION FOR:**

CITY OF OSAGE BEACH

**SECTION:** 06  
**TOWNSHIP:** 39  
**RANGE:** 15  
**COUNTY:** CAMDEN  
**DATE:** 09 NOVEMBER 2010

**TRACT ONE**

All that part of U.S. Highway No. 54 located in the south half of Government Lot No. 2 of the southwest quarter of Section 06, Township 39 North, Range 15 West, Camden County, Missouri and being more particularly described as follows:

"Commencing at an existing angle iron marking the southwest corner of Section 06, Township 39 North, Range 15 West and running North 01 degree 12 minutes 10 seconds East along and with the west line of the south half of Government Lot No. 2 of the southwest quarter of said Section 6 a distance of 284.51 feet to a point located on the southeasterly right-of-way of U.S. Highway No. 54 for the POINT OF BEGINNING; thence departing the said southeasterly right-of-way and continuing North 01 degrees 12 minutes 10 seconds East along and with the said west line a distance of 377.81 feet to a point located on the northwesterly right-of-way of said U.S. Highway No. 54; thence departing the said west line along and with the said northwesterly right-of-way the following three (3) bearings and distances: (1) North 71 degrees 07 minutes 29 seconds East a distance of 66.24 feet, (2) North 48 degrees 55 minutes 04 seconds East a distance of 487.10 feet and (3) North 41 degrees 25 minutes 49 seconds East a distance of 415.36 feet to a point located on the north line of the said south half of Government Lot No. 2 of the southwest quarter; thence departing the said northwesterly right-of-way South 88 degrees 47 minutes 12 seconds East along and with the said north line a distance of 496.54 feet to a point located on the said southeasterly right-of-way of U.S. Highway No. 54; thence departing the said north line along and with the said southeasterly right-of-way the following six (6) bearings and distances: (1) South 38 degrees 58 minutes 24 seconds West a distance of 1.15 feet, (2) South 38 degrees 58 minutes 18 seconds West a distance of 385.92 feet, (3) South 45 degrees 14 minutes 58 seconds West a distance of 281.48 feet, (4) South 43 degrees 08 minutes 56 seconds West a distance of 395.99 feet, (5) South 68 degrees 59 minutes 08 seconds West a distance of 381.02 feet and (6) South 55 degrees 32 minutes 51 seconds West a distance of 168.81 feet, returning to the point of beginning."

Subject to any rights-of-way, easements or restrictions of record.

The basis of bearings for the above description is the call of North 01 degree 12 minutes 10 seconds East along the west line of south half of Government Lot 2 of the southwest quarter of Section 06, Township 39 North, Range 15 West, Miller County, Missouri.

"TRACT ONE" is for identification purposes only and is not part of the above description.

**END OF DESCRIPTION**

**A DESCRIPTION FOR:**

**SECTION: 06**  
**TOWNSHIP: 39**  
**RANGE: 15**  
**COUNTY: CAMDEN**  
**DATE: 09 NOVEMBER 2010**

**CITY OF OSAGE BEACH****TRACT TWO**

All that part of U.S. Highway No. 54 located in the north half of Government Lot No. 1 of the southwest quarter of Section 06, Township 39 North, Range 15 West, Camden County, Missouri and being more particularly described as follows:

"Commencing at an existing angle iron marking the southwest corner of Section 06, Township 39 North, Range 15 West and running North 46 degrees 43 minutes 19 seconds East a distance of 2,187.93 feet to a point located on the west line of the north half of Government Lot No. 1 of the southwest quarter of said Section 06 as located on the southeasterly right-of-way of U.S. Highway No. 54 for the POINT OF BEGINNING; thence departing the said southeasterly right-of-way North 01 degree 02 minutes 32 seconds East along and with the said west line a distance of 640.62 feet to a point located on the northwesterly right-of-way of said U.S. Highway No. 54; thence departing the said west line along and with the said northwesterly right-of-way the following three (3) bearings and distances: (1) North 47 degrees 09 minutes 30 seconds East a distance of 350.37 feet, (2) North 52 degrees 50 minutes 38 seconds East a distance of 302.65 feet and (3) North 39 degrees 32 minutes 19 seconds East a distance of 64.27 feet to a point located on the north line of the said north half of Government Lot No. 1 of the southwest quarter; thence departing the said northwesterly right-of-way South 88 degrees 43 minutes 10 seconds East along and with the said north line a distance of 473.37 feet to a point located on the southeasterly right-of-way of U.S. Highway No. 54; thence departing the said north line along and with the said southeasterly right-of-way the following six (6) bearings and distances: (1) South 42 degrees 57 minutes 31 seconds West a distance of 392.91 feet, (2) South 64 degrees 32 minutes 22 seconds West a distance of 211.90 feet, (3) South 35 degrees 47 minutes 13 seconds West a distance of 304.14 feet, (4) South 43 degrees 48 minutes 43 seconds West a distance of 550.17 feet, (5) South 44 degrees 45 minutes 02 seconds East a distance of 51.20 feet and (6) South 45 degrees 14 minutes 58 seconds West a distance of 59.38 feet, returning to the point of beginning."

Subject to any rights-of-way, easements or restrictions of record.

The basis of bearings for the above description is the call of North 01 degree 12 minutes 10 seconds East along the west line of south half of Government Lot 2 of the southwest quarter of Section 06, Township 39 North, Range 15 West, Miller County, Missouri.

"TRACT TWO" is for identification purposes only and is not part of the above description.

**END OF DESCRIPTION**

**A DESCRIPTION FOR:**

**SECTION:** 06  
**TOWNSHIP:** 39  
**RANGE:** 15  
**COUNTY:** CAMDEN  
**DATE:** 09 NOVEMBER 2010

**CITY OF OSAGE BEACH**

**TRACT THREE**

All that part of U.S. Highway No. 54 located in Government Lot No. 1 of the northeast quarter of Section 06, Township 39 North, Range 15 West, Camden County, Missouri and being more particularly described as follows:

"Commencing at an existing angle iron marking the southwest corner of Section 06, Township 39 North, Range 15 West and running North 45 degrees 02 minutes 48 seconds East a distance of 4,171.63 feet to a point located on the west line of Government Lot No. 1 of the northeast quarter of said Section 06 as located on the southeasterly right-of-way of U.S. Highway No. 54 for the POINT OF BEGINNING; thence departing the said southeasterly right-of-way North 01 degree 24 minutes 57 seconds East along and with the said west line a distance of 757.48 feet to a point located on the northwesterly right-of-way of said U.S. Highway No. 54; thence departing the said west line along and with the said northwesterly right-of-way the following four (4) bearings and distances: (1) North 24 degrees 45 minutes 57 seconds East a distance of 44.18 feet, (2) North 25 degrees 24 minutes 34 seconds East a distance of 50.60 feet, (3) North 15 degrees 04 minutes 09 seconds East a distance of 121.20 feet and (4) North 15 degrees 32 minutes 25 seconds East a distance of 7.21 feet to a point located on the north line of said Government Lot No. 1; thence departing the said northwesterly right-of-way South 88 degrees 55 minutes 58 seconds East along and with the said north line a distance of 476.88 feet to a point located on the said southeasterly right-of-way of U.S. Highway No. 54; thence departing the said north line along and with the said southeasterly right-of-way the following eight (8) bearings and distances: (1) South 20 degrees 23 minutes 34 seconds West a distance of 9.68 feet, (2) South 20 degrees 24 minutes 54 seconds West a distance of 531.05 feet, (3) South 29 degrees 46 minutes 57 seconds West a distance of 218.69 feet, (4) South 37 degrees 42 minutes 06 seconds West a distance of 125.91 feet, (5) South 54 degrees 36 minutes 30 seconds East a distance of 47.60 feet, (6) South 36 degrees 23 minutes 30 seconds West a distance of 110.82 feet, (7) North 52 degrees 36 minutes 30 seconds West a distance of 56.00 feet and (8) South 57 degrees 19 minutes 35 seconds West a distance of 146.72 feet, returning to the point of beginning."

Subject to any rights-of-way, easements or restrictions of record.

The basis of bearings for the above description is the call of North 01 degree 12 minutes 10 seconds East along the west line of south half of Government Lot 2 of the southwest quarter of Section 06, Township 39 North, Range 15 West, Miller County, Missouri.

"TRACT THREE" is for identification purposes only and is not part of the above description.

000051

**END OF DESCRIPTION**

**Submission Date:** April 13, 2011

**Submitted By:** City Engineer

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-23 – To remove established legally Electrically Operated Traffic Signals at various intersections along Highway 54 by ordinance

**Names of Persons, Businesses, Organizations affected by this action:**

Residents, visitors, and city staff

**Why is Board Action Required?**

Board action is required to modify existing ordinances.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Request first and second readings of Bill 11-23.

**Are there any deadlines associated with this action?**

The signals are no longer on Highway 54 they are on Osage Beach Parkway.

**Comments and Recommendation of Department:**

When the Highway 54 Expressway project was opened on the east side of town, the “Old Highway 54” was renamed to Osage Beach Parkway. There are multiple electronic signals that need to be removed. The following traffic signals need to be deleted in the ordinances:

- Hwy 54 at Barry Prewitt Memorial Drive
- Hwy 54 at Factory Outlet Village
- Hwy 54 at High Pointe Center
- Hwy 54 at Highway 42
- Hwy 54 at Home Depot

Hwy 54 at Wal-Mart  
Hwy 54 at Passover

The Engineering Department recommends approval of the ordinance. A first and second reading is requested.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the City Engineer.

BILL NO. 11-23

ORDINANCE NO. 11.23

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, DELETING ELECTRICALLY OPERATED TRAFFIC SIGNALS FROM SCHEDULE VII. ELECTRIC SIGNALS.

Whereas, the Board of Aldermen find that the City Traffic Engineer acting under the authority of City Code Section 315.010 has conducted a traffic study and under the authority of City Code Section 335.030 recommends eliminating the Electrically Operated Traffic Signals at the following locations::

- Highway 54 at Barry Prewitt Memorial Drive
- Highway 54 at Factory Outlet Village
- Highway 54 at High Pointe Center
- Highway 54 at Highway 42
- Highway 54 at Home Depot
- Highway 54 at Wal-Mart
- Highway 54 at Passover

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS, TO WIT:

Section 1. That the Code of Ordinances of the City of Osage Beach, Missouri, be amended by deleting from Schedule VII. Electric Signals, the following Electrically Operated Traffic Signals:

- Highway 54 at Barry Prewitt Memorial Drive
- Highway 54 at Factory Outlet Village
- Highway 54 at High Pointe Center
- Highway 54 at Highway 42
- Highway 54 at Home Depot
- Highway 54 at Wal-Mart
- Highway 54 at Passover

Section 2. All ordinances or parts of ordinances in conflict with this ordinance are, in so much as they conflict with this ordinance, hereby repealed.

Section 3. This Ordinance shall be in full force and effect upon the date of passage and approval by the Mayor.

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

I hereby certify that the above Ordinance No. 11.23 was duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_ Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby APPROVE the above ordinance 11.23.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Diann Warner, City Clerk

**Submission Date:** April 14, 2011

**Submitted By:** City Engineer

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-24 – To establish legally Electrically Operated Traffic Signals at various intersections along Osage Beach Parkway by ordinance

**Names of Persons, Businesses, Organizations affected by this action:**

Residents, visitors, and city staff

**Why is Board Action Required?**

Board action is required to modify existing ordinances.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Motion to approve first and second readings of Bill 11-24.

**Are there any deadlines associated with this action?**

The signals are no longer on Highway 54 they are on Osage Beach Parkway.

**Comments and Recommendation of Department:**

When the Highway 54 Expressway project was opened on the east side of town, the "Old Highway 54" was renamed to Osage Beach Parkway. There are multiple electronic signals that need to be established. The following traffic signals need to be established in the ordinances:

Osage Beach Parkway at Barry Prewitt Memorial Drive  
Osage Beach Parkway at Factory Outlet Village  
Osage Beach Parkway at High Pointe Center  
Osage Beach Parkway at Wal-Mart  
Osage Beach Parkway at Passover Road

The Engineering Department recommends approval of the ordinance. A first and second reading is requested.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the City Engineer.

BILL NO. 11-24

ORDINANCE NO. 11.24

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ESTABLISHING THE LOCATION OF ELECTRICALLY OPERATED TRAFFIC SIGNALS AS INDICATED HEREIN.

Whereas, the Board of Aldermen find that the City Traffic Engineer acting under the authority of City Code Section 315.010 has conducted a traffic study and under the authority of City Code Section 335.030 recommends placement of Electrically Operated Traffic Signals at the following locations:

- Osage Beach Parkway at Barry Prewitt Memorial Drive
- Osage Beach Parkway at Factory Outlet Village
- Osage Beach Parkway at High Pointe Center
- Osage Beach Parkway at Wal-Mart
- Osage Beach Parkway at Passover Road

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS, TO WIT:

Section 1. That the Code of Ordinances of the City of Osage Beach, Missouri, be amended by adding to Schedule VII. Electric Signals the following Electrically Operated Traffic Signals:

- Osage Beach Parkway at Barry Prewitt Memorial Drive
- Osage Beach Parkway at Factory Outlet Village
- Osage Beach Parkway at High Pointe Center
- Osage Beach Parkway at Wal-Mart
- Osage Beach Parkway at Passover Road

Section 2. All drivers of motor vehicles shall obey the Electrically Operated Traffic Signals as located herein as prescribed in the City Traffic Code. Failure to abide shall be considered a misdemeanor offense and the violator subject to citation and fine.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are, in so much as they conflict with this ordinance, hereby repealed.

Section 4. This Ordinance shall be in full force and effect upon the date of passage and approval by the Mayor.

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

I hereby certify that the above Ordinance No. 11.24 was duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_ Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_ Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby APPROVE the above ordinance 11.24.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Diann Warner, City Clerk

**Submission Date:** April 13, 2011

**Submitted By:** City Engineer

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-25 - To establish a stop sign at the intersection of Highway 54 and Key Largo Road

**Names of Persons, Businesses, Organizations affected by this action:**

Residents living on Key Largo, Department of Public Safety, and other City Staff.

**Why is Board Action Required?**

In order to be legally enforceable, regulatory signs must be located and established as such by ordinance.

**Type of Action Requested (Ordinance, Resolution, Motion):**

A motion to approve first and second readings of Bill 11-25.

**Are there any deadlines associated with this action?**

The stop sign installed needs to be legally enforceable.

**Comments and Recommendation of Department:**

MoDOT is redirecting the traffic from Key Largo to a new location. They will be installing a stop sign for the intersection of Key Largo and Highway 54.

In order for the stop sign to be legally enforceable the stop sign needs to be established by ordinance.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the City Engineer.

000061

BILL NO. 11-25

ORDINANCE NO. 11.25

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, ESTABLISHING THE LOCATION OF A STOP SIGN AS INDICATED HEREIN.

Whereas, the Board of Aldermen find that the City Traffic Engineer acting under the authority of City Code Section 315.010 has conducted a traffic study and found that a hazard exists and under the authority of City Code Section 335.030 recommends placement of a STOP sign at the following location:

At the intersection of Highway 54 and Key Largo Road

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS, TO WIT:

Section 1. That the Code of Ordinances of the City of Osage Beach, Missouri, be amended by adding to Schedule II Stop Signs the following location:

At the intersection of Highway 54 and Key Largo Road

Section 2. All drivers of motor vehicles shall stop at the STOP sign as located herein as prescribed in the City Traffic Code. Failure to stop shall be considered a misdemeanor offense and the violator subject to citation and fine.

Section 3. All ordinances or parts of ordinances in conflict with this ordinance are, in so much as they conflict with this ordinance, hereby repealed.

Section 4. That this ordinance shall be in full force and effect from and after its date of passage.

READ FIRST TIME: \_\_\_\_\_ : READ SECOND TIME: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2011.

I hereby certify that the above Ordinance No. 11.25 duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_

Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Bill No. 11-25  
Page 2

Ordinance No. 11.25

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby approve Ordinance No. 11.25.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Diann Warner, City Clerk

**Submission Date:** April 14, 2011

**Submitted By:** City Attorney

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-26 - Authorizes the issuance of the notes as provided for in the Dierbergs Osage Beach Tax Increment Financing Agreement. The payment of these Notes is restricted to the funds generated by the Dierbergs Osage Beach TIF project. The project will redevelop the vacant High Point Shopping Center.

**Names of Persons, Businesses, Organizations affected by this action:**

Dierbergs Markets, developer and the City.

**Why is Board Action Required?**

Action is required to approve an ordinance.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Motion to approve first and second readings of Bill 11-26.

**Are there any deadlines associated with this action?**

No. Developer would like to proceed with the land purchase and close on the property this month. This ordinance would enable developer to close the property purchase.

**Comments and Recommendation of Department:**

The City Attorney recommends first and second reading approval of Bill 11-26 as the next step in the Dierbergs Osage Beach Tax Increment Financing Redevelopment Plan for the vacant High Point Shopping Center.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the City Attorney.

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAX INCREMENT REVENUE NOTES (DIERBERGS OSAGE BEACH PROJECT), SERIES 2011, OF THE CITY OF OSAGE BEACH, MISSOURI, TO PROVIDE FUNDS TO FINANCE CERTAIN REDEVELOPMENT PROJECT COSTS RELATING TO THE AMENDED DIERBERGS OSAGE BEACH TAX INCREMENT FINANCING REDEVELOPMENT PLAN AND PROJECT; AND APPROVING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE NOTES.**

**WHEREAS**, the City of Osage Beach, Missouri (the "City") is authorized and empowered under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "Act"), to issue notes for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of such notes; and

**WHEREAS**, the Board of Aldermen has heretofore created the Tax Increment Financing Commission of the City of Osage Beach, Missouri (the "Commission"); and

**WHEREAS**, pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the "TIF Act"), Dierbergs Osage Beach, LLC ("Developer"), submitted a proposal for approval of the Dierbergs Osage Beach Tax Increment Financing Redevelopment Plan and Project ("Original Redevelopment Plan") on September 29, 2010, requesting that the City of Osage Beach, Missouri ("City") establish a tax increment financing district on approximately 14.45 acres of property generally located West of Highway 54 and South of Old Highway 27 in Osage Beach, Missouri (the "Redevelopment Area"), in one redevelopment project area with boundaries coterminous with the Redevelopment Area (the "Redevelopment Project"); and

**WHEREAS**, pursuant to the provisions of the Act, the Osage Beach Tax Increment Financing Commission ("TIF Commission") was composed of representatives from the City and from the affected taxing jurisdictions for the purpose of conducting a public hearing and making recommendations with respect to the Original Redevelopment Plan to the Board of Aldermen of the City of Osage Beach, Missouri ("Board"); and

**WHEREAS**, on December 1, 2010, after due notice in accordance with the Act, the TIF Commission held a public hearing and thereafter voted 11-0 to recommend approval of the Original Redevelopment Plan, the designation of the Redevelopment Area, approval of the Redevelopment Project, the approval of tax increment financing for the Redevelopment Area, the designation of Developer as the developer of record for the Redevelopment Project; and

**WHEREAS**, on December 16, 2010, the Board of Aldermen adopted Ordinance No. 10.81, which made certain factual findings, approved the Original Redevelopment Plan and Redevelopment Project, designated the Redevelopment Area and the Redevelopment Project Area, initiated tax increment financing in the Redevelopment Project Area, and designated the Developer as the developer of record for the Original Redevelopment Plan and the Redevelopment Project; and

**WHEREAS**, the Amended Dierbergs Osage Beach Tax Increment Financing Redevelopment Plan and Project (the "Amended Redevelopment Plan") was filed with the City Clerk; and

**WHEREAS**, on March 2, 2011, after due notice in accordance with the Act, the TIF Commission opened a public hearing, at which all interested persons and taxing districts affected by the Amended Redevelopment Plan were afforded an opportunity to make comments, file written objections, protests, and be heard orally regarding adoption of the Amended Redevelopment Plan; and

**WHEREAS**, on March 2, 2011, the TIF Commission having heard and considered the objections, protests, comments, and other evidence adduced at the public hearing, closed the public hearing and adopted Resolution 2011-1 by an 11-0 vote to recommend approval of the Amended Redevelopment Plan; and

**WHEREAS**, on March 17, 2011, at a regularly scheduled meeting, the Board considered the Amended Redevelopment Plan, the recommendation of the TIF Commission, the recommendations of City staff, and considered the public objections, protests, comments, and other evidence and thereafter adopted Ordinance No. 11.13 which approved the Amended Redevelopment Plan; and

**WHEREAS**, the City finds it necessary and desirable to issue its Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011 (the "Notes"), to provide funds to carry out the Redevelopment Project.

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

**Section 1. Authorization of the Notes.** To accomplish the purposes of the Act and to provide for the payment of a portion of the costs of the Redevelopment Project, the City hereby authorizes the issuance of the Notes in a principal amount of not to exceed \$5,100,000, which shall be issued under and secured by and shall have the terms and provisions set forth in the hereinafter described Indenture. The Notes shall bear such dates, shall mature at such times and in the amounts, shall be in such denominations, shall bear interest at such rates, shall be in such forms, shall be subject to redemption, shall have such other terms and provisions, and shall be issued, executed and delivered in such manner subject to such provisions, covenants and agreements as are set forth in the Indenture. The Notes shall be issued in two series designated the Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011A (the "Series 2011A Notes") in an aggregate principal amount not to exceed \$3,000,000 and the Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011B (the "Series 2011B Notes") in an aggregate principal amount not to exceed \$2,100,000. The Notes shall be executed on behalf of the City by the Mayor and attested by the City Clerk, and shall have the corporate seal of the City affixed thereto.

**Section 2. Limited Obligations.** The Notes and the interest thereon shall constitute special, limited obligations of the City payable as to principal, premium, if any, and interest solely from Pledged Revenues (as defined in the Indenture) and other moneys pledged thereto and held by the Trustee (as herein defined) pursuant to the Indenture. The Notes shall not constitute debts or liabilities of the City, the State of Missouri or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. Neither the City, the Commission, the commissioners of said Commission, the officers, employees and agents of the City nor any person executing the Notes shall be personally liable for such obligations by reason of the issuance thereof.

**Section 3. Authorization and Approval of Indenture.** The Trust Indenture (the "Indenture") between the City and UMB Bank, N.A., as trustee (the "Trustee"), providing for the issuance thereunder of the Notes and setting forth the terms and provisions applicable to the Notes, is hereby approved in substantially the form on file with the City. The Mayor and City Clerk are hereby authorized and directed to execute and deliver the Indenture with such changes therein as shall be

approved by such officials, such officials' signatures thereon being conclusive evidence of their approval and the City's approval thereof.

**Section 4. Execution of Notes.** The Mayor is hereby authorized and directed to execute, by manual or facsimile signature, the Notes at the times set forth in the Redevelopment Agreement and the Indenture, and to deliver the Notes to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The City Clerk is hereby authorized and directed to attest, by manual or facsimile signature, to the Notes and to such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

**Section 5. Further Authority.** The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Notes, the Indenture and the Redevelopment Agreement.

**Section 6. Severability.** The sections of this Ordinance shall be severable. If any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections shall remain valid, unless the court finds that (a) the valid sections are so essential to and inseparably connected with and dependent upon the void section that it cannot be presumed that the Board of Aldermen has or would have enacted the valid sections without the void ones, and (b) the valid sections, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

**Section 8. Effectiveness.** This Ordinance shall be in full force and effect from and after the date of its passage by the Board of Aldermen and approval by the Mayor.

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF APRIL, 2011.

I hereby certify that the above Ordinance No. 11.26 was duly passed on April \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Abstaining \_\_\_\_\_ Absent \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker,  
City Attorney

I hereby APPROVE Ordinance 11.26.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Diann Warner, City Clerk

**EXHIBIT A**

**Form of Trust Indenture**

---

**CITY OF OSAGE BEACH, MISSOURI**

**and**

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

---

**TRUST INDENTURE**

**Dated as of May 1, 2011**

---

**Relating to**

**Not to Exceed  
\$5,100,000  
City of Osage Beach, Missouri  
Tax Increment Revenue Notes  
(Dierbergs Osage Beach Project)  
Series 2011**

**consisting of the following two series of notes:**

**Not to Exceed  
\$3,000,000  
City of Osage Beach, Missouri  
Tax Increment Revenue Notes  
(Dierbergs Osage Beach Project)  
Series 2011A**

**Not to Exceed  
\$2,100,000  
City of Osage Beach, Missouri  
Tax Increment Revenue Notes  
(Dierbergs Osage Beach Project)  
Series 2011B**

---



## TABLE OF CONTENTS

|                        | Page |
|------------------------|------|
| Parties .....          | 1    |
| Recitals .....         | 1    |
| Granting Clauses ..... | 2    |

### ARTICLE I

#### DEFINITIONS; RULES OF CONSTRUCTION

|              |                                      |    |
|--------------|--------------------------------------|----|
| Section 101. | Definitions of Words and Terms ..... | 3  |
| Section 102. | Rules of Construction .....          | 10 |

### ARTICLE II

#### THE NOTES

|              |                                                         |    |
|--------------|---------------------------------------------------------|----|
| Section 201. | Terms of the Notes .....                                | 10 |
| Section 202. | Nature of Obligations .....                             | 11 |
| Section 203. | Execution, Authentication and Delivery of Notes .....   | 12 |
| Section 204. | Registration, Transfer and Exchange of Notes .....      | 13 |
| Section 205. | Authorization of Notes .....                            | 14 |
| Section 206. | Mutilated, Lost, Stolen or Destroyed Notes.....         | 15 |
| Section 207. | Cancellation and Destruction of Notes Upon Payment..... | 15 |

### ARTICLE III

#### REDEMPTION OF NOTES

|              |                                        |    |
|--------------|----------------------------------------|----|
| Section 301. | Redemption of Notes Generally .....    | 15 |
| Section 302. | Redemption of Notes.....               | 15 |
| Section 303. | Selection of Notes to be Redeemed..... | 16 |
| Section 304. | Notice of Redemption of Notes .....    | 16 |
| Section 305. | Effect of Call for Redemption .....    | 17 |

### ARTICLE IV

#### FUNDS AND REVENUES

|              |                               |    |
|--------------|-------------------------------|----|
| Section 401. | Creation of Funds .....       | 17 |
| Section 402. | Revenue Fund .....            | 17 |
| Section 403. | Debt Service Fund.....        | 19 |
| Section 404. | Project Fund .....            | 19 |
| Section 405. | Non-Presentment of Notes..... | 20 |

**ARTICLE V****SECURITY FOR DEPOSITS AND INVESTMENT OF MONEYS**

|              |                                 |    |
|--------------|---------------------------------|----|
| Section 501. | Moneys to be Held in Trust..... | 20 |
| Section 502. | Investment of Moneys .....      | 20 |

**ARTICLE VI****PARTICULAR COVENANTS AND PROVISIONS**

|              |                                                                                 |    |
|--------------|---------------------------------------------------------------------------------|----|
| Section 601. | Authority to Issue Notes and Execute Indenture .....                            | 21 |
| Section 602. | Covenant to Request Appropriations.....                                         | 21 |
| Section 603. | Performance of Covenants.....                                                   | 21 |
| Section 604. | Instruments of Further Assurance.....                                           | 21 |
| Section 605. | General Limitation on City Obligations .....                                    | 21 |
| Section 606. | Recording and Filing .....                                                      | 21 |
| Section 607. | Possession and Inspection of Books and Documents .....                          | 22 |
| Section 608. | Reserved.....                                                                   | 22 |
| Section 609. | Collection of Payments in Lieu of Taxes and Economic Activity Tax Revenues..... | 22 |
| Section 610. | Enforcement of Redevelopment Agreement.....                                     | 22 |

**ARTICLE VII****DEFAULT AND REMEDIES**

|              |                                                                                          |    |
|--------------|------------------------------------------------------------------------------------------|----|
| Section 701. | Events of Default.....                                                                   | 22 |
| Section 702. | Acceleration .....                                                                       | 23 |
| Section 703. | Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession..... | 23 |
| Section 704. | Appointment of Receivers in Event of Default.....                                        | 24 |
| Section 705. | Exercise of Remedies by the Trustee.....                                                 | 24 |
| Section 706. | Limitation on Exercise of Remedies by Owners.....                                        | 24 |
| Section 707. | Right of Owners to Direct Proceedings.....                                               | 25 |
| Section 708. | Application of Moneys in Event of Default.....                                           | 25 |
| Section 709. | Remedies Cumulative.....                                                                 | 26 |
| Section 710. | Delay or Omission Not Waiver .....                                                       | 26 |
| Section 711. | Effect of Discontinuance of Proceedings.....                                             | 26 |
| Section 712. | Waivers of Events of Default .....                                                       | 26 |

**ARTICLE VIII****THE TRUSTEE**

|              |                                                            |    |
|--------------|------------------------------------------------------------|----|
| Section 801. | Acceptance of Trusts .....                                 | 27 |
| Section 802. | Fees, Charges and Expenses of the Trustee.....             | 29 |
| Section 803. | Notice of Default.....                                     | 30 |
| Section 804. | Intervention by the Trustee.....                           | 30 |
| Section 805. | Successor Trustee Upon Merger, Consolidation or Sale ..... | 30 |
| Section 806. | Resignation or Removal of Trustee .....                    | 30 |
| Section 807. | Appointment of Successor Trustee.....                      | 30 |

|              |                                                                               |    |
|--------------|-------------------------------------------------------------------------------|----|
| Section 808. | Qualifications of Trustee and Successor Trustees .....                        | 31 |
| Section 809. | Vesting of Trusts in Successor Trustee .....                                  | 31 |
| Section 810. | Trust Estate May be Vested in Co-Trustee .....                                | 31 |
| Section 811. | Annual Statement .....                                                        | 32 |
| Section 812. | Paying Agents; Registrar; Appointment and Acceptance of Duties; Removal ..... | 32 |

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF THE INDENTURE

|              |                                                   |    |
|--------------|---------------------------------------------------|----|
| Section 901. | Satisfaction and Discharge of the Indenture ..... | 33 |
| Section 902. | Notes Deemed to Be Paid.....                      | 33 |

## ARTICLE X

### SUPPLEMENTAL INDENTURES

|               |                                                              |    |
|---------------|--------------------------------------------------------------|----|
| Section 1001. | Supplemental Indentures Not Requiring Consent of Owners..... | 34 |
| Section 1002. | Supplemental Indentures Requiring Consent of Owners.....     | 34 |
| Section 1003. | Developer's Consent to Supplemental Indentures.....          | 35 |
| Section 1004. | Opinion of Bond Counsel.....                                 | 35 |

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

|               |                                                           |    |
|---------------|-----------------------------------------------------------|----|
| Section 1101. | Consents and Other Instruments by Owners.....             | 35 |
| Section 1102. | Notices.....                                              | 36 |
| Section 1103. | Limitation of Rights Under the Indenture.....             | 37 |
| Section 1104. | Suspension of Mail Service .....                          | 37 |
| Section 1105. | Business Days .....                                       | 37 |
| Section 1106. | Immunity of Officers, Employees and Members of City ..... | 38 |
| Section 1107. | No Sale.....                                              | 38 |
| Section 1108. | Severability.....                                         | 38 |
| Section 1109. | Execution in Counterparts.....                            | 38 |
| Section 1110. | Governing Law.....                                        | 38 |

|                            |    |
|----------------------------|----|
| Signatures and Seals ..... | 39 |
|----------------------------|----|

|                                                        |  |
|--------------------------------------------------------|--|
| Exhibit A - Form of TIF Notes                          |  |
| Exhibit B - Purchaser's Letter of Representations      |  |
| Exhibit C - Form of Monthly Report                     |  |
| Exhibit D - Application for Reimbursable Project Costs |  |

**TRUST INDENTURE**

**THIS TRUST INDENTURE** (the "Indenture"), made and entered into as of May 1, 2011, by and between the **CITY OF OSAGE BEACH, MISSOURI**, a fourth-class city and political subdivision of the State of Missouri (the "City"), and **UMB BANK, N.A.**, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, and having a corporate trust office located in St. Louis, Missouri, as trustee (the "Trustee");

**RECITALS:**

1. The City is authorized and empowered under the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "Act"), to issue notes for the purpose of providing funds to finance the costs of certain redevelopment projects and to pay certain costs related to the issuance of such notes.
2. The Board of Aldermen has heretofore created the Tax Increment Financing Commission of the City of Osage Beach, Missouri (the "Commission").
3. Pursuant to the Act, Dierbergs Osage Beach, LLC (the "Developer") submitted a proposal for approval of the Dierbergs Osage Beach Tax Increment Financing Redevelopment Plan and Project, ("Original Redevelopment Plan") on September 29, 2010, requesting that the City establish a tax increment financing district on approximately 14.45 acres of property generally located West of Highway 54 and South of Old Highway 27 in Osage Beach, Missouri (the "Redevelopment Area"), in one redevelopment project area with boundaries coterminous with the Redevelopment Area (the "Redevelopment Project").
4. Pursuant to the provisions of the Act, the Commission was composed of representatives from the City and from the affected taxing jurisdictions for the purpose of conducting a public hearing and making recommendations with respect to the Original Redevelopment Plan to the Board of Aldermen.
5. On December 1, 2010, after due notice in accordance with the Act, the Commission held a public hearing and thereafter voted 11-0 to recommend approval of the Original Redevelopment Plan, the designation of the Redevelopment Area, approval of the Redevelopment Project, the approval of tax increment financing for the Redevelopment Area, the designation of Developer as the developer of record for the Redevelopment Project.
6. On December 16, 2010, the Board of Aldermen adopted Ordinance No. 10.81, which made certain factual findings, approved the Original Redevelopment Plan and Redevelopment Project, designated the Redevelopment Area and the Redevelopment Project Area, initiated tax increment financing in the Redevelopment Area, and designated the Developer as the developer of record for the Original Redevelopment Plan and the Redevelopment Project.
7. The Amended Dierbergs Osage Beach Tax Increment Financing Redevelopment Plan and Project (the "Amended Redevelopment Plan" and together with the Original Redevelopment Plan, the "Redevelopment Plan") was filed with the City Clerk of the City; and
8. On March 2, 2011, after due notice in accordance with the Act, the Commission opened a public hearing, at which all interested persons and taxing districts affected by the Amended

Redevelopment Plan were afforded an opportunity to make comments, file written objections, protests, and be heard orally regarding adoption of the Amended Redevelopment Plan.

9. On March 2, 2011, the Commission having heard and considered the objections, protests, comments, and other evidence adduced at the public hearing, closed the public hearing and adopted Resolution 2011-1 by an 11-0 vote to recommend approval of the Amended Redevelopment Plan.

10. On March 17, 2011, at a regularly scheduled meeting, the Board of Aldermen considered the Amended Redevelopment Plan, the recommendation of the Commission, the recommendations of City staff, and considered the public objections, protests, comments, and other evidence and thereafter adopted Ordinance No. 11.13 which approved the Amended Redevelopment Plan.

11. On April 7, 2011, at a regularly scheduled meeting, the Board of Aldermen adopted Ordinance No. \_\_\_\_ which approved the form of Tax Increment Financing Redevelopment Agreement (the "Redevelopment Agreement") between the City and the Developer.

12. On April \_\_, 2011, the Board of Aldermen adopted Ordinance No. \_\_\_\_ (the "Note Ordinance") authorizing the City to issue its Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011, in the aggregate principal amount of not to exceed \$5,100,000 (the "Notes"), consisting of the Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011A in the aggregate principal amount of not to exceed \$3,000,000 (the "Series 2011A Notes") and the Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011B in the aggregate principal amount of not to exceed \$2,100,000 (the "Series 2011B Notes"), to provide funds to pay for certain Redevelopment Project Costs (as defined in the Redevelopment Agreement) incurred or to be incurred in connection with the Redevelopment Project.

13. Pursuant to the Note Ordinance, the City is authorized to execute and deliver this Indenture for the purpose of issuing and securing the Notes as hereinafter provided.

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

**NOW THEREFORE, THIS INDENTURE WITNESSETH:**

**GRANTING CLAUSES**

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

(a) All Net Proceeds (defined herein) derived by the City under and pursuant to and subject to the provisions of the Redevelopment Agreement or otherwise (excluding the City's rights to payment of its fees and expenses and to be indemnified in certain instances); and

(b) All moneys and securities from time to time held by the Trustee under the terms of this Indenture and any and all other property (real, personal or mixed) of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

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

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

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

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

## ARTICLE I

### DEFINITIONS; RULES OF CONSTRUCTION

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

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

**“Administrative Costs”** means all documented costs and expenses for planning, legal, financial, administrative and other costs associated with the review, consideration, approval and implementation of

the Redevelopment Plan, the Redevelopment Agreement and the Project, including without limitation all consultants engaged by the City. Costs and expenses incurred for City staff time shall be documented in a summary statement not to exceed \$5,000, but detailed hourly billing records shall not be required for such work. City shall provide itemized detail and hourly billing records for annual Administrative Costs in excess of \$5,000.

**“Amended Redevelopment Plan”** shall have the meaning set forth in the recitals of this Indenture.

**“Application for Reimbursable Project Costs”** means the document substantially in the form of **Exhibit D** hereto, provided by the Developer to the City evidencing Reimbursable Redevelopment Project Costs, in accordance with **Sections 3.1 and 3.2** of the Redevelopment Agreement.

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

**“Authorized City Representative”** means the Mayor, the City Administrator or such other person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Developer and the Trustee containing the specimen signature of such person and signed on behalf of the City by the Mayor. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized City Representative.

**“Authorized Denominations”** means one cent (\$0.01) or any integral multiple thereof.

**“Authorized Developer Representative”** means such person at the time designated to act on behalf of the Developer as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such person and signed on behalf of the Developer by a member. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Developer Representative.

**“Board of Aldermen”** means the Board of Aldermen of the City of Osage Beach, Missouri.

**“Bond Counsel”** means Gilmore & Bell, P.C. or any other attorney or firm of attorneys with a nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

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

**“City”** means the City of Osage Beach, Missouri, a fourth class city and political subdivision of the State.

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

**“Commission”** shall mean the Tax Increment Financing Commission of the City of Osage Beach, Missouri.

**“Debt Service Fund”** means the fund by that name created in **Section 401**.

**“Debt Service Requirements”** means, for any period of time for which calculated, the aggregate of the payments to be made on the Notes during such period in respect of principal (whether by redemption, at maturity or otherwise) and interest on such Notes; provided that such payments are excluded from Debt Service Requirements to the extent that cash or non-callable Government Securities are on deposit in an irrevocable escrow or trust account in accordance with **Section 902** and such amounts (including, where appropriate, the earnings or other increment to accrue thereon) are required to be applied to pay such principal or interest and are sufficient to pay such principal or interest.

**“Developer”** means Dierbergs Osage Beach, LLC, a Missouri limited liability company, its successors and assigns, or any affiliate thereof.

**“Developer Entity”** means (i) the Dierberg Family Group which shall include (a) Robert J. Dierberg, (b) wife and descendants of Robert J. Dierberg, and spouses of such descendants, and (c) trusts for the benefit of Robert J. Dierberg, his wife and his descendants, and the spouse of such descendants; and (ii) any entity owned or controlled directly or indirectly by the Dierbergs Family Group.

**“Developer Phase 1 Private Improvements”** means the first phase of improvements, excluding the Public Improvements, constructed by the Developer for the Redevelopment Project in accordance with the Redevelopment Plan, including a grocery store of approximately 77,500 square feet and additional commercial retail shops, stores, services and restaurants of approximately 4,200 square feet, along with buildings, landscaping, parking spaces, internal vehicle and pedestrian roads and paths (if not paid for with TDD Sales Tax Revenues), signage and other private improvements that will serve such improvements.

**“Developer Phase 2 Private Improvements”** means the second phase of improvements, excluding the Public Improvements, constructed by the Developer for the Project in accordance with the Redevelopment Plan, including approximately 45,500 to 61,100 square feet of commercial retail shops, stores, services and restaurants, along with buildings, landscaping, parking spaces, internal vehicle and pedestrian roads and paths (if not paid for with TDD Sales Tax Revenues), signage and other private improvements that will serve such improvements.

**“Economic Activity Tax Revenues”** means 50% of the total additional revenues from taxes which are imposed by the City or any other taxing district (as that term is defined in Section 99.805(16) of the Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 2009 (subject to annual appropriation by the City as provided in the Act), but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments and taxes imposed pursuant to Section 94.660, R.S.Mo.

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

**“Financing Costs”** means all costs reasonably incurred in furtherance of the issuance of the Notes including but not limited to reasonable financing loan origination fees and expenses (with loan origination fees and expenses not to exceed 2% of the principal amount of the loan) and interest payable to banks, similar financing institutions or other entities that loan money, the City’s attorneys (including City Attorney, special TIF counsel and Bond Counsel), the City’s administrative fees and expenses (including Planning Consultants), underwriters’ discounts and fees, trustee fees, the costs of printing any Obligations

and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any Obligations, all accrued and anticipated interest on the Obligations and/or Private Loans; provided, however, that any interest in excess of 6.50% per annum or the maximum rate allowed by law on any Private Loan shall not constitute Financing Costs.

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

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

**“Interest Payment Date”** means any date on which the principal of or interest on any Notes are payable.

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

- (a) Government Securities;
- (b) bonds, notes or other obligations of the State or any political subdivision of the State that at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized rating service;
- (c) repurchase agreements with any bank, bank holding company, savings and loan association, trust company, or other financial institution organized under the laws of the United States or any state, including the Trustee or any of its affiliates, that are continuously and fully secured by any one or more of the securities described in clause (a) or (b) above and have a market value at all times at least equal to the principal amount of such repurchase agreement and are held in a custodial or trust account for the benefit of the City;
- (d) obligations of the Government National Mortgage Association, the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, Federal Home Loan Banks, Farmers Home Administration and Federal Home Loan Mortgage Corporation;
- (e) certificates of deposit or time deposits, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of the United States or any state, including the Trustee or any of its affiliates, provided that such certificates of deposit or time deposits shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) and (b) above, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit or time deposits;
- (f) money market mutual funds that are invested in Government Securities or agreements to repurchase such Government Securities; and

(g) any other securities or investments that are lawful for the investment of moneys held in such funds or accounts under the laws of the State.

**“Net Proceeds”** means (a) all Payments in Lieu of Taxes on deposit in the PILOTS Account of the Special Allocation Fund and (b) all Economic Activity Tax Revenues on deposit in the EATS Account of the Special Allocation Fund that have been appropriated to the repayment of the Notes. Net Proceeds do not include (1) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer and (2) any sum received by the City that is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum. If the Notes have not been fully repaid by May 1, 2023 (subject to extension as provided in the Redevelopment Agreement), interest on the outstanding Notes will cease to be paid from the Net Proceeds associated with all taxing districts except the TDD (the **“Non-TDD TIF Revenue”**). Thereafter, the Non-TDD TIF Revenue will be used to repay only the outstanding principal amount of the outstanding Notes, and the TDD Sales Tax Revenues captured by the TIF Plan (the **“TDD EATs”**) will continue to be used to pay interest on the outstanding principal amount of the Notes. At Developer’s election, at the conclusion of the initial Notes Amortization Period (as defined in the Redevelopment Agreement), all or a designated portion of the TDD EATs may also be used to repay principal on the outstanding Notes. The payments from such sources shall continue until the principal amount of the outstanding Notes has been fully repaid from the Non-TDD TIF Revenues.

**“Note Ordinance”** means Ordinance No. \_\_\_ of the City adopted on April \_\_, 2011, authorizing the execution and delivery of this Indenture and the issuance of the Notes.

**“Notes”** means any note or notes authenticated and delivered under and pursuant to this Indenture.

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

**“Original Redevelopment Plan”** shall have the meaning set forth in the recitals to this Indenture.

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

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

**“Owner”** means the Person in whose name any Note is registered on the Register.

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

**“Payments in Lieu of Taxes”** means those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Area over and above the certified total initial equalized assessed valuation of the real property in the Redevelopment Area, as provided for by Section 99.855 of the Act.

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

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

**“Prime Rate”** means the prime rate reported in the “Money Rates” column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks. If *The Wall Street Journal* ceases publication of the Prime Rate, then “Prime Rate” shall mean the “prime rate” or “base rate” announced by Bank of America, N.A., or any successor thereto.

**“Private Loans”** means loans or indebtedness incurred by the Developer or any other private entity or individual to pay for Reimbursable Project Costs incurred or estimated to be incurred, to carry out the Redevelopment Project, to finance the creation of such Private Loans, to establish reserves, to fund or secure such Private Loans, to finance interest costs associated with such Private Loans, or to refund or refinance any such outstanding Private Loans.

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

**“Public Improvements”** means that portion of the Redevelopment Project which consists of improvements in public rights-of-way which will be dedicated to, owned and maintained by a public entity.

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

**“Redevelopment Agreement”** means the Redevelopment Agreement dated as of April \_\_\_\_, 2011, by and between the City and the Developer, and all further amendments and supplements thereto as approved from time to time.

**“Redevelopment Area”** means the area legally described as such in **Exhibit B** to the Redevelopment Agreement.

**“Redevelopment Plan”** shall have the meaning set forth in the recitals to this Indenture.

**“Redevelopment Project”** means the Developer Phase 1 Private Improvements, the Developer Phase 2 Private Improvements and the Public Improvements as provided in the Redevelopment Plan.

**“Redevelopment Project Costs”** shall have the meaning assigned to such term in the Redevelopment Agreement.

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

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

**“Reimbursable Redevelopment Project Costs”** shall have the meaning assigned to such term in the Redevelopment Agreement.

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

**“Series 2011A Notes”** means the City’s Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011A.

**“Series 2011B Notes”** means the City’s Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011B.

**“Special Allocation Fund”** means the “Dierbergs Osage Beach Special Allocation Fund,” created within the Treasury of the City in accordance with Section 99.845 of the Act and the TIF Ordinance, and within the Special Allocation Fund, a PILOTS Account and an EATS Account.

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

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

**“TDD”** means a transportation development district formed in accordance with the TDD Act which has boundaries coterminous with the Redevelopment Area.

**“TDD Act”** means the Missouri Transportation Development District Act, Sections 238.200 through 238.280 of the Revised Statutes of Missouri.

**“TDD Sales Tax”** means the sales tax imposed by the TDD in accordance with the TDD Act.

**“TDD Sales Tax Revenues”** means the gross revenues generated by operation of the TDD Sales Tax.

**“TIF Bonds”** means tax increment revenue bonds issued by the City to refund the Notes in accordance with **Section 5.5** of the Redevelopment Agreement.

**“TIF Ordinance”** means Ordinance No. 10.81, adopted by the Board of Aldermen on December 16, 2010, which approved the Redevelopment Plan and took other actions related to the Redevelopment Plan including the adoption of tax increment financing within the Redevelopment Area, along with Ordinance No. 11.13, approved by the Board of Aldermen on March 17, 2011, which approved the amended Redevelopment Plan.

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

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

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

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

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

(b) Words importing the singular number shall include the plural and vice versa and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) The table of contents hereto and the headings and captions herein are not a part of this document.

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

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

## **ARTICLE II**

### **THE NOTES**

#### **Section 201. Terms of the Notes.**

(a) *Authorized Amount of Notes.* No Notes may be issued under the provisions of this Indenture except in accordance with this Article. The total aggregate principal amount of Notes that may be issued hereunder is expressly limited to \$5,100,000. The Notes shall be issued in two series: the Series 2011A Notes in an aggregate principal amount not to exceed \$3,000,000, and the Series 2011B Notes in an aggregate principal amount not to exceed \$2,100,000. The Notes shall be issued to evidence the City’s obligation to reimburse the Developer for verified Reimbursable Project Costs, in amounts not to exceed the respective maximum amounts, with the Series 2011A Notes to be issued for each of the Reimbursable Redevelopment Project Costs for the Developer Phase 1 Private Improvements and the Series 2011B Notes to be issued for each of the Reimbursable Redevelopment Project Costs for the Developer Phase 2 Private Improvements. In connection with the site preparation, development and construction of the Redevelopment Project Area, the Developer shall submit an Application for Reimbursable Project Costs in substantial compliance with **Exhibit D** for the Reimbursable Redevelopment Project Costs associated with construction in the Redevelopment Project Area.

(b) *Title of Notes.* The Series 2011A Notes shall be designated “Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011A.” The Series 2011B Notes shall be designated “Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011B.” The Notes may have such

further appropriate particular designation added to or incorporated in such title for the Notes of any particular series as the City may determine.

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

(d) *Denominations.* The Notes shall be issuable as fully-registered Notes in Authorized Denominations.

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

(f) *Dating.* The Notes shall be dated as provided in **Section 203(d)**, as evidenced by the Trustee's signature on **Schedule A** to each Note.

(g) *Method and Place of Payment.* The principal of and interest on the Notes shall be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of debts due the United States of America. The principal shall be payable at the payment office of the Trustee or such other office as the Trustee may designate. Payment of interest on any Note shall be made (1) by check or draft of the Trustee mailed to the Person in whose name such Note is registered on the Note Register as of the close of business of the Trustee on the Record Date for such Interest Payment Date, or (2) in the case of a principal or interest payment to any Owner of either (A) all of a series of the Notes Outstanding or (B) \$500,000 or more in aggregate principal amount of Notes, by electronic transfer to such Owner upon written notice delivered to the Trustee at least 5 days prior to any Record Date and signed by such Owner containing the electronic transfer instructions including the name and address of the bank (which shall be in the continental United States), its ABA routing number and the account name and account number to which such Owner wishes to have such transfer directed. Except as otherwise provided in subsection (h) with respect to Notes held by the Trustee, no principal on the Notes is payable unless the Owner thereof has surrendered such Notes at the payment office of the Trustee or such other office as the Trustee may designate.

(h) *Evidence of Principal Payments.* The payment of principal of the Notes on each Interest Payment Date shall be noted on the Notes on **Schedule A** thereto. The Notes and the original **Schedule A** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner thereof. If the Notes are held by the Trustee, the Trustee shall, on each Interest Payment Date, send a revised copy of **Schedule A** via facsimile to the Owner, the City and the Developer. Absent manifest error, the amounts shown on **Schedule A** held by the Trustee shall be conclusive evidence of the principal amount paid on the Notes.

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

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

(b) The Notes and the interest thereon do not constitute a debt of the City, the State or any political subdivision thereof, and do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction. Notwithstanding any other term or provision of this Indenture, Notes issued by the City for Reimbursable Project Costs are payable only from the Special Allocation Fund and Note Proceeds and from no other source. In no event will the City appropriate funds from the City's general fund or from any fund other than the Special Allocation Fund to pay for Reimbursable Project Costs or to repay or prepay Notes.

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

**(d) NOTWITHSTANDING ANY PROVISION HEREIN OR IN THE NOTES TO THE CONTRARY, (1) THE NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN PART WITHOUT PAYMENT UNDER THE CONDITIONS DESCRIBED IN SECTIONS 4.2 AND 8.3 OF THE REDEVELOPMENT AGREEMENT, (2) THE PRINCIPAL AMOUNT OF THE NOTES IS SUBJECT TO REDUCTION IN ACCORDANCE WITH SECTIONS 4.2 AND 4.5 OF THE REDEVELOPMENT AGREEMENT, AND (3) INTEREST ON THE NOTES IS SUBJECT TO ABATEMENT PURSUANT TO SECTION 4.3 OF THE REDEVELOPMENT AGREEMENT IF THE NOTES ARE NOT FULLY REPAID WITHIN THE EXPECTED AMORTIZATION PERIOD. THE OBLIGATIONS OF THE CITY WITH RESPECT TO THE SERIES 2011 NOTES TERMINATE ON DECEMBER 15, 2033, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST THEREON HAS BEEN PAID IN FULL.**

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

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

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

(c) Upon the submission to the Trustee by the City of each Application for Reimbursable Project Costs, the Trustee shall (1) endorse an Outstanding Series 2011A Note and/or Series 2011B Note on **Schedule A** thereto to evidence an increase in the aggregate principal amount equal to such Reimbursable Project Costs, in each case indicating that portion that is attributable to costs of the Redevelopment Project (based on the information contained in each Application for Reimbursable Redevelopment Project Costs) and (2) send a revised copy of **Schedule A** via facsimile to the Owner, the City and the Developer. The date of registration of each such Note shall be the date of acceptance by the City of each Application for Reimbursable Redevelopment Project Costs.

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

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

(b) **The Notes and beneficial interests therein may only be purchased by or transferred to Approved Investors and only upon the execution by the proposed purchaser or transferee of a letter in substantially the form attached as Exhibit B hereto.** Subject to the limitations of the preceding sentence, any Note may be transferred only upon the Register upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Note a new fully registered Note or Notes, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture.

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

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

(e) The City or the Trustee may make a charge against each Owner requesting a transfer or exchange of Notes for every such transfer or exchange of Notes sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such transfer or exchange, the cost of printing, if any, each new Note issued upon any transfer or exchange and the reasonable expenses of the City and the Trustee in connection therewith, and such charge shall be paid before any such new Note shall be delivered. The City or the Trustee may levy a charge against an Owner sufficient to reimburse it for any governmental charge required to be paid in the event the Owner fails to provide a correct taxpayer identification number to the Trustee. Such charge may be deducted from amounts otherwise due to such Owner hereunder or under the Notes.

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

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

#### **Section 205. Authorization of Notes.**

(a) There shall be issued and secured by this Indenture two series of Notes in an aggregate principal amount not to exceed \$5,100,000, as described in **Section 201(a)**.

(b) The Notes, as originally issued or issued upon transfer, exchange or substitution, shall be substantially in the form set forth in **Exhibit A** attached hereto. The Notes shall mature (subject to redemption and payment prior to maturity as provided in **Article III**), on December 15, 2033, and shall bear interest (computed on the basis of a 360-day year of twelve 30-day months) at the rate of 6.50% per annum. The Notes shall bear interest from their registration date related to each Application for Reimbursable Redevelopment Project Costs or from the most recent Interest Payment Date to which interest has been paid or duly provided for. Interest shall be payable on May 1 and November 1 in each year, beginning on the first Interest Payment Date following the initial transfer of money from the Special Allocation Fund to the Revenue Fund and at maturity. Interest that accrues but remains unpaid on any Interest Payment Date shall not be compounded.

(c) Notwithstanding anything to the contrary, interest on the Notes is subject to adjustment or abatement as provided in **Section 4.3** of the Redevelopment Agreement.

(d) The Trustee is hereby designated as the Paying Agent for the payment of the principal of and interest on the Notes.

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

- (1) A copy of the Note Ordinance, certified by the City Clerk of the City, approving the issuance of the Notes and authorizing the execution of this Indenture.
- (2) An original executed counterpart of this Indenture.
- (3) A copy of the Redevelopment Agreement, certified by the City Clerk.
- (4) An Opinion of Bond Counsel to the effect that the Notes constitute valid and legally binding obligations of the City.
- (5) A copy of the Redevelopment Plan, certified by the City Clerk of the City.

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

(7) Such other certificates, statements, receipts, opinions and documents required by any of the foregoing documents or as the Trustee shall reasonably require for the delivery of the Notes.

(f) When the documents mentioned in paragraph (e) of this Section have been filed with the Trustee, and when the Notes have been executed and authenticated as required by this Indenture, the Trustee shall hold the Notes in trust or deliver the Notes to or upon the order of the purchasers thereof pursuant to **Section 201(h)**.

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

**Section 207. Cancellation and Destruction of Notes Upon Payment.** All Notes which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity, shall be immediately cancelled upon the payment, redemption or purchase of such Notes and the surrender thereof to the Trustee and periodically destroyed by the Trustee in accordance with applicable record retention requirements. The Trustee shall execute a certificate describing the Notes so cancelled, and shall file an executed counterpart of such certificate with the City.

### ARTICLE III

#### REDEMPTION OF NOTES

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

**Section 302. Redemption of Notes.**

(a) *Optional Redemption.* The Notes are subject to optional redemption by the City, in whole at any time or in part on any Interest Payment Date, at a redemption price of 100% of the principal amount of the Notes to be redeemed, plus accrued interest thereon to the date fixed for redemption.

(b) *Special Mandatory Redemption.* The Notes are subject to special mandatory redemption by the City on any Interest Payment Date beginning with the first Payment Date after the City's acceptance of the Certificate of Substantial Completion for either phase of the Project, at the redemption price of

100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount (subject to **Section 303**) equal to the amount which, 40 days (20 days if all of a series of the Notes are owned by a Developer Entity) prior to each Interest Payment Date, is on deposit in the Debt Service Fund and which will not be required for the payment of interest on such Interest Payment Date.

**Section 303. Selection of Notes to be Redeemed.**

(a) Notes shall be redeemed only in Authorized Denominations. Except as otherwise provided in **Section 302**, when less than all of the Outstanding Notes are to be redeemed and paid prior to maturity, the Series 2011A Notes shall be redeemed first and then any Series 2011B Notes shall be redeemed, and within any maturity the Trustee shall select the Notes to be redeemed in Authorized Denominations in such equitable manner as it may determine.

(b) In the case of a partial redemption of Notes when Notes of denominations greater than the minimum Authorized Denomination are then Outstanding, then for all purposes in connection with such redemption each Authorized Denomination unit of face value shall be treated as though it was a separate Note of the denomination of the minimum Authorized Denomination.

**Section 304. Notice of Redemption of Notes.**

(a) In the case of Notes called for redemption under **Section 302(a)**, the Trustee shall call Notes for redemption and payment as herein provided and shall give notice of redemption as provided below upon receipt by the Trustee at least 45 days (15 days if all of a series of the Notes are owned by a Developer Entity) prior to the redemption date of a written request of the City. Unless waived by any Owner of Notes to be redeemed, official notice of any redemption of any Note shall be given by the Trustee on behalf of the City by mailing a copy of an official redemption notice by first class mail, postage prepaid, at least 30 days (5 days if all of a series of the Notes are owned by a Developer Entity) prior to the date fixed for redemption to the Owner of the Note or Notes to be redeemed at the address shown on the Register; provided, however, that failure of any Owner to receive notice given as provided in this Section or any defect therein as to any particular Note shall not affect the validity of any proceedings for the redemption of any Notes.

(b) All official notices of redemption shall be dated and shall state:

- (1) the redemption date,
- (2) the redemption price,
- (3) if less than all Outstanding Notes are to be redeemed, the identification number, series and maturity date(s) (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed,
- (4) that on the redemption date the redemption price will become due and payable upon each such Note or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date, and
- (5) the place where such Notes are to be surrendered for payment of the redemption price, which place of payment shall be the principal corporate trust office of the Trustee or such other office as the Trustee may designate.

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

**Section 305. Effect of Call for Redemption.** On or prior to the date fixed for redemption, the City shall deposit moneys or Government Securities with the Trustee as provided in Sections 402 and 902 to pay the Notes called for redemption, including accrued interest thereon to the redemption date. Upon the happening of the above conditions, and notice having been given as provided in Section 304, the Notes or the portions of the principal amount of Notes thus called for redemption shall cease to bear interest on the specified redemption date, provided moneys sufficient for the payment of the redemption price are on deposit at the place of payment at the time, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture.

## ARTICLE IV

### FUNDS AND REVENUES

**Section 401. Creation of Funds.** The following funds of the City are hereby created and established with the Trustee:

- (a) Revenue Fund, which shall contain a PILOTS Account and an EATS Account, and within the EATS Account, a TIF Subaccount and a TDD Subaccount.
- (b) Debt Service Fund.
- (c) Project Fund.

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

#### **Section 402. Revenue Fund.**

(a) On or before the 15th calendar day of each month (or the next Business Day thereafter if the 15th is not a Business Day) while the Notes remain Outstanding following the initial receipt of Payments in Lieu of Taxes and Economic Activity Tax Revenues, the City shall transfer (i) 50% of all Net Proceeds constituting Payments in Lieu of Taxes as of the last day of the preceding month to the Trustee for deposit into the PILOTS Account of the Revenue Fund and (ii) all Net Proceeds constituting Economic Activity Tax Revenues as of the last day of the preceding month to the Trustee for deposit into the EATS Account of the Revenue Fund, with all Economic Activity Tax Revenues (excluding TDD Sales Tax Revenues captured as Economic Activity Tax Revenues) to be deposited into the TIF Subaccount and TDD Sales Tax Revenues that are Economic Activity Tax Revenues to be deposited into the TDD Subaccount.

If the Notes have not been fully repaid by May 1, 2023 (subject to extension as provided in the Redevelopment Agreement), interest on the Outstanding Notes will cease to be paid from the Economic Activity Taxes associated with all taxing districts except the TDD (the "Non-TDD TIF Revenue")

deposited into the TIF Subaccount. Thereafter, the Non-TDD TIF Revenue in the TIF Subaccount will be used to repay only the outstanding principal amount of the outstanding Notes, and the TDD Sales Tax Revenues captured by the TIF Plan (the "TDD EATs") deposited into the TDD Subaccount will continue to be used to pay interest on the outstanding principal amount of the Notes. At Developer's election, at the conclusion of the initial Notes Amortization Period, all or a designated portion of the TDD EATs deposited into the TDD Subaccount may also be used to repay principal on the outstanding Notes. The payments from such sources shall continue until the principal amount of the outstanding Notes has been fully repaid from the Non-TDD TIF Revenues.

Each such transfer shall be accompanied by a written report in substantially the form attached hereto as **Exhibit C**. If the City has no Net Proceeds to transfer to the Trustee pursuant to the preceding sentence, the City shall so notify the Trustee in writing on or before the date on which such transfer would otherwise be required.

(b) Subject to **Section 402(a)** related to allocation of Net Proceeds, on each Interest Payment Date, moneys which, according to the Trustee's records, were on deposit in the Revenue Fund on the 40th day (20th day if all of the Notes are owned by a Developer Entity) prior to each Interest Payment Date, shall be applied, paid, transferred or deposited by the Trustee (first from moneys on deposit in the EATS Account and then from the PILOTS Account) for the purposes and in the amounts as follows:

(1) Payment of arbitrage rebate, if any, owed with respect to the Notes under Section 148 of the Internal Revenue Code of 1986, as amended, including any costs of calculating arbitrage rebate;

(2) Payment of fees and expenses owing to any Trustee for the Notes, upon delivery to the City of an invoice for such amount;

(3) Reimbursement to the Developer and the City (paid in priority based on when the amount has been incurred and paid) for Financing Costs and Administrative Costs incurred (i) pursuant to **Section 2.5** of the Redevelopment Agreement, and (ii) in connection with the issuance of the Notes;

(4) Payment of the fees and expenses incurred by the City in the administration of the Redevelopment Plan (but not to exceed \$20,000 per year for the first two years following execution of the Redevelopment Agreement and then not to exceed \$10,000 per calendar year);

(5) Reimbursement to any district providing emergency services within the Redevelopment Area, to the extent required by Section 99.848 of the TIF Act or, in lieu thereof, such amount (if any) as may be set forth in a cooperative agreement between the City and any such district;

(6) Payment of interest becoming due on the Series 2011A Notes and then on the Series 2011B Notes on each Interest Payment Date;

(7) Payment of principal of (by reason of maturity or mandatory redemption) the Series 2011A Notes on each interest payment date; and

(8) Payment of principal of (by reason of maturity or mandatory redemption) the Series 2011B Notes on each interest payment date.

(c) If the money in the Debt Service Fund is insufficient to pay all accrued interest on the Notes on any Interest Payment Date, then such money shall be applied first to the payment of the Series 2011A Notes and then to the Series 2011B Notes ratably to the payment of interest, according to the amounts due on such installment, to the persons entitled thereto without any discrimination or privilege. Any unpaid interest on the Notes shall not be compounded.

(d) Upon the payment in full of the principal of and interest on the Notes (or provision has been made for the payment thereof as specified in this Indenture) and the fees, charges and expenses of the Trustee and any Paying Agents, and any other amounts required to be paid under this Indenture, all amounts remaining on deposit in the PILOTS Account of the Revenue Fund and the EATS Account of the Revenue Fund shall be paid to the City for deposit into the Special Allocation Fund.

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

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

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

(c) The Trustee shall use any moneys remaining in the Debt Service Fund to redeem all or part of the Notes Outstanding and interest to accrue thereon prior to such redemption, in accordance with and to the extent permitted by **Article III**, so long as said moneys are in excess of the amount required for payment of Notes theretofore matured or called for redemption.

(d) After payment in full of the principal of and interest on the Notes (or provision has been made for the payment thereof as specified in this Indenture), and the fees, charges and expenses of the Trustee and any Paying Agents and any other amounts required to be paid under this Indenture, all amounts remaining in the Debt Service Fund shall be paid to the City for deposit into the Special Allocation Fund.

**Section 404. Project Fund.** Upon (a) the Developer's submission of a Application for Reimbursable Project Costs in accordance with **Exhibit D** hereto and the City's approval thereof and (b) the endorsement of a Note pursuant to **Section 203(c)**, the Developer shall be deemed to have advanced funds necessary to purchase such Note and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to have reimbursed the Developer in full for such costs from the amounts deemed to be on deposit in the Project Fund. The City shall promptly provide a copy of each Application for Reimbursable Project Costs and the Certificate of Substantial Completion (as defined in the Redevelopment Agreement) to the Trustee upon the City's approval thereof.

**Section 405. Non-Presentation of Notes.**

(a) If any Note is not presented for payment when the principal thereof becomes due, either at maturity or at the date fixed for redemption thereof, and provided the Trustee is holding sufficient funds for the payment thereof, all liability of the City to the Owner thereof for the payment of such Note shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such moneys, without liability for interest thereon, for the benefit of the Owner of such Note who shall thereafter be restricted exclusively to such moneys, for any claim of whatever nature on such Owner's part under this Indenture or on, or with respect to, said Note. The Trustee shall give notice to the Owners of the Notes that it is holding for their benefit sufficient funds for the payment thereof.

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

**ARTICLE V**

**SECURITY FOR DEPOSITS AND INVESTMENT OF MONEYS**

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

**Section 502. Investment of Moneys.**

(a) Moneys in all funds under any provision of this Indenture shall be continuously invested and reinvested by the Trustee in Investment Securities at the written direction of the City given by the Authorized City Representative or, if such written directions are not received, then the Trustee is authorized to invest such moneys in Investment Securities described in subparagraph (f) of the definition thereof. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees, which may be deducted from income earned on investments. Moneys on deposit in all funds may be invested only in Investment Securities which mature or are subject to redemption at the option of the owner thereof prior to the date such funds are expected to be needed. The Trustee may make investments through its investment division or short-term investment department. The Trustee shall not be liable for any loss resulting from any investments made in accordance herewith.

(b) All investments shall constitute a part of the fund from which the moneys used to acquire such investments have come. The Trustee shall sell and reduce to cash a sufficient amount of investments in a fund whenever the cash balance therein is insufficient to pay the amounts required to be paid therefrom. The Trustee may transfer investments from any fund to any other fund in lieu of cash when required or permitted by the provisions of this Indenture. In determining the balance in any fund,

investments shall be valued at the lower of their original cost or their fair market value on the date of such valuation.

## ARTICLE VI

### PARTICULAR COVENANTS AND PROVISIONS

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

**Section 602. Covenant to Request Appropriations.** The City covenants and agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the budget proposal submitted to the Board of Aldermen for each fiscal year that the Notes are Outstanding a request for an appropriation of moneys in the Economic Activity Tax Account for transfer to the Trustee for deposit in the Revenue Fund at the times and in the manner provided in **Section 402.**

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

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

**Section 605. General Limitation on City Obligations.** ANY OTHER TERM OR PROVISION OF THIS INDENTURE OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THE TRANSACTION WHICH IS THE SUBJECT HEREOF TO THE CONTRARY NOTWITHSTANDING, THE CITY SHALL NOT BE REQUIRED TO TAKE OR OMIT TO TAKE, OR REQUIRE ANY OTHER PERSON OR ENTITY TO TAKE OR OMIT TO TAKE, ANY ACTION WHICH WOULD CAUSE IT OR ANY PERSON OR ENTITY TO BE, OR RESULT IN IT OR ANY PERSON OR ENTITY BEING, IN VIOLATION OF ANY LAW OF THE STATE.

**Section 606. Recording and Filing.** The City shall file or cause to be kept and filed all financing statements and such other documents as may be necessary to be kept and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the owners of the Notes and the rights of the Trustee hereunder. The Trustee shall file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture and all supplements hereto. The City hereby authorizes the filing of financing statements under the Uniform Commercial Code in connection with any security interest granted hereunder. In carrying out its

duties under this Section, the Trustee shall be entitled to rely on an Opinion of Counsel specifying what actions are required to comply with this Section.

**Section 607. Possession and Inspection of Books and Documents.** The City and the Trustee covenant and agree that all books and documents in their possession relating to the Notes, the Special Allocation Fund and to the distribution of proceeds thereof shall at all reasonable times be open to inspection by such accountants or other agencies or persons as the other party or the Developer may from time to time designate.

**Section 608. Reserved.**

**Section 609. Collection of Payments in Lieu of Taxes and Economic Activity Tax Revenues.** The City shall, at the written request of the Owners of a majority in aggregate principal amount of Notes then Outstanding and upon receipt by the City from said Owners of an amount deemed necessary, in the sole judgment of the City, to enable the City to comply with this Section, (a) take all lawful action within its control to cause the Assessor of Camden County, Missouri to assess the real property and improvements within the Redevelopment Area at the times and in the manner required by the Act, and (b) take such action as may be required to cause the Collector of Revenue of Camden County, Missouri and all other persons to pay all Economic Activity Tax Revenues which are due to the City under the Act.

**Section 610. Enforcement of Redevelopment Agreement.**

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

(b) The City shall notify the Trustee in writing as to any material failure of performance under the Redevelopment Agreement, and at the time of such notification the City shall also advise the Trustee what action the City proposes to take in enforcing available remedies. If, in the sole judgment of the Trustee, such action is less likely to be effective than some other or additional action, the Trustee shall so advise the City promptly in writing. If, within thirty (30) days following advice by the Trustee that some additional or other action would be more effective, the City has not taken such other or additional action, and the Trustee has not, after consultation with the City, withdrawn such advice, upon receipt of indemnification satisfactory to it, the Trustee is hereby authorized to take such action, whether the action suggested by the Trustee or otherwise, as the Trustee may deem most expedient and in the interest of the Owners of the Notes. In furtherance of the rights granted to the Trustee by this Section, the City hereby assigns to the Trustee all of the rights it may have in the enforcement of the Redevelopment Agreement, further authorizing the Trustee in its own name or in the name of the City to bring such actions, employ such counsel, execute such documents and do such other things as may in the judgment of the Trustee be necessary or appropriate under the circumstance at the expense of the Trust Estate.

## ARTICLE VII

### DEFAULT AND REMEDIES

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

(a) Default in the performance or observance of any of the covenants, agreements or conditions on the part of the City in this Indenture or in the Notes contained, and the continuance thereof for a period of 30 days after written notice thereof has been given (1) to the City by the Trustee, or (2) to the Trustee (which notice of default the Trustee shall be required to accept) and the City by the Owners of not less than 25% in aggregate principal amount of Notes then Outstanding; provided, however, if any default is such that it cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected; or

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

The Trustee shall give written notice of any Event of Default to the City and the Developer as promptly as practicable after the occurrence of an Event of Default becomes known to the Trustee.

**Section 702. Acceleration.**

(a) If an Event of Default has occurred and is continuing, the Trustee may, and shall upon the written request of the Owners of a majority in aggregate principal amount of the Notes then Outstanding, by notice in writing delivered to the City and the Developer, declare the principal of all Notes then Outstanding and the interest accrued thereon immediately due and payable.

(b) In case of any rescission pursuant to **Section 712**, the Trustee, the City, the Developer and the Owners shall be restored to their former positions and rights hereunder respectively, but no such rescission shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

**Section 703. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.**

(a) If an Event of Default has occurred and is continuing, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and out of the same and any moneys received from any receiver of any part thereof pay and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including, but not limited to, (1) reasonable compensation to the Trustee, its agents and counsel, and (2) any reasonable charges of the Trustee hereunder, and the Trustee shall apply the remainder of the moneys so received in accordance with **Section 708**. Whenever all that is due upon the Notes has been paid and all defaults made good, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default.

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

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

**Section 705. Exercise of Remedies by the Trustee.**

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

(b) If an Event of Default has occurred and is continuing, and if requested so to do by the Owners of not less than 25% in aggregate principal amount of the Notes then Outstanding and indemnified as provided in **Section 801(I)**, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, deems most expedient in the interests of the Owners.

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

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

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

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

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

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

and such notification, request and indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other

remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Notes then Outstanding. Nothing in this Indenture, however, shall affect or impair the right of any Owner to payment of the principal of and interest on any Note at and after its maturity or the obligation of the City to pay the principal of and interest on each of the Notes to the respective Owners thereof at the time, place, from the source and in the manner herein and in such Note expressed.

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

**Section 708. Application of Moneys in Event of Default.** Upon an Event of Default, all moneys held or received by the Trustee pursuant to this Indenture or pursuant to any right given or action taken under this Article shall, after payment of the reasonable costs, advances and expenses of the proceedings resulting in the collection of such moneys, and subject to the provisions of **Section 703**, be deposited in the Debt Service Fund. All moneys in the Debt Service Fund and the Revenue Fund shall be applied as follows:

(a) If the principal of all the Notes has not become or has not been declared due and payable, all such moneys shall be applied:

(1) *First* – To the payment to the Persons entitled thereto of all installments of interest then due and payable on the Notes, in the order in which such installments of interest became due and payable, with interest thereon at the rate or rates specified in the respective Notes to the extent permitted by law, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege.

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

(b) If the principal of all the Notes has become due or has been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid on all of the Notes, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Note

over any other Note, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or privilege.

(c) If the principal of all the Notes has been declared due and payable, and if such declaration thereafter is rescinded and annulled under the provisions of **Section 712**, then, subject to the provisions of subsection (b) above of this Section in the event that the principal of all the Notes shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (a) of this Section.

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

Whenever all of the Notes and interest thereon have been paid under this Section, and all fees, expenses and charges of the Trustee have been paid (including without limitation those of its agents or counsel), and any other amounts required to be paid under this Indenture, any balance remaining in the PILOTS Account of the Revenue Fund and the EATS Account of the Revenue Fund shall be paid to the City for deposit into the Special Allocation Fund.

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

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

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

**Section 712. Waivers of Events of Default.** The Trustee shall waive any Event of Default and its consequences and rescind any declaration of maturity of principal upon the written request of the Owners of a majority in aggregate principal amount of the Notes then Outstanding. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such Event of Default have been discontinued or abandoned or determined adversely, then and in every such case the City, the Developer, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

## ARTICLE VIII

### THE TRUSTEE

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

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

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

(c) The Trustee shall not be responsible for any recital herein or in the Notes (except with respect to the Certificate of Authentication of the Trustee endorsed on the Notes), or for the recording or rerecording, filing or refiling of this Indenture or any security agreements in connection therewith, or for insuring any of the improvements constructed in the Redevelopment Area or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any or instruments of further assurance, or for the sufficiency of the security for the Notes. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article V**.

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

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

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

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

(h) The Trustee shall not be required to take notice of any Event of Default unless the Trustee is specifically notified in writing of such Event of Default by the City, the Developer, or by the Owners of at least 25% in aggregate principal amount of all Notes then Outstanding.

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

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

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

(l) Anything herein to the contrary notwithstanding, before taking any action under this Indenture, other than any action under **Article II** concerning the payment of principal and interest on the Notes, declaring an Event of Default and accelerating the maturity of the Notes, the Trustee may, in its discretion, require that satisfactory indemnity be furnished to it by the Owners or other parties for the reimbursement of all reasonable fees, costs liabilities, losses, claims and expenses to which it or its agents or counsel may be put and to protect it against all liability including environmental, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) All moneys received by the Trustee or any Paying Agent shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent

required by this Indenture or by law. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except as provided herein.

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

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

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than 75% in principal amount of the Notes then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(4) subject to subsection (1) above, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial or environmental liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; and

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

(o) Notwithstanding any other provision of this Indenture to the contrary, any provision intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee shall be interpreted to include any action of the Trustee whether it is deemed to be in its capacity as Trustee and Paying Agent.

**Section 802. Fees, Charges and Expenses of the Trustee.** The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all agent and counsel fees and other ordinary costs and expenses reasonably and necessarily made or incurred by the Trustee in connection with such ordinary services and, if it becomes necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable and necessary extraordinary costs and expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent and as Registrar for the Notes. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment prior to payment on account of principal or interest on any Note, upon all moneys in its possession under any provisions hereof for the foregoing

advances, fees, costs and expenses incurred. Notwithstanding the foregoing, if moneys in the Revenue Fund are insufficient to make payment to the Trustee for its fees and expenses, as provided in subparagraph (2) of **Section 402(b)** on any Interest Payment Date, the unpaid portion shall be carried forward to the next Interest Payment Date, together with interest thereon at the Prime Rate plus 2%.

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

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

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

**Section 806. Resignation or Removal of Trustee.** The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Developer and the Owners. If at any time the Trustee ceases to be eligible in accordance with the provisions of this Indenture, it shall resign immediately in the manner provided in this Section. The Trustee may be removed for cause or without cause at any time by an instrument or concurrent instruments in writing delivered to the Trustee and the Developer and signed by the Owners of a majority in aggregate principal amount of Notes then Outstanding. If no Event of Default has occurred and is continuing, or no event exists that constitutes or with the giving of notice or passage of time would constitute a default or Event of Default, the Trustee may be removed for cause or without cause (including the failure of the City and the Trustee to agree on the reasonableness of the fees and expenses of the Trustee under this Indenture) at any time by an instrument or concurrent instruments in writing delivered to the Developer and the Trustee, and signed by the City, with the consent of the Developer (which consent will not be unreasonably withheld and will only be required while a Developer Entity is the owner of all the Notes). The City, the Developer or the Owners of a majority in aggregate principal amount of the Notes then Outstanding may at any time petition any court of competent jurisdiction for the removal for cause of the Trustee. No resignation or removal of the Trustee shall become effective until a successor Trustee has been appointed pursuant to **Section 807** and has accepted its appointment under **Section 809**.

**Section 807. Appointment of Successor Trustee.** If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee may be appointed by the

City (provided no Event of Default has occurred and is continuing), with the consent of the Developer (which consent will not be unreasonably withheld and will only be required while a Developer Entity is the owner of all the Notes) or the Owners of a majority in aggregate principal amount of Notes then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy the City, by an instrument executed and signed by the Authorized City Representative, may appoint a temporary Trustee to fill such vacancy until a successor Trustee is appointed by the City or the Owners in the manner above provided; and any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed by the City or such Owners. If a successor Trustee or a temporary Trustee has not been so appointed and accepted such appointment within 30 days of a notice of resignation or removal of the current Trustee, the Trustee may petition a court of competent jurisdiction for the appointment of a successor Trustee to act until such time, if any, as a successor has so accepted its appointment. No resignation or removal of the Trustee and no appointment of a successor Trustee shall become effective until the successor Trustee has accepted its appointment under **Section 809**.

**Section 808. Qualifications of Successor Trustees.** Any trustee appointed in succession to the Trustee hereunder shall be a trust institution or commercial bank with a corporate trust office located in the State, shall be in good standing and qualified to accept such trusts, shall be subject to examination by a federal or state bank regulatory authority, and shall have a reported capital and surplus of not less than \$50,000,000. If such institution publishes reports of conditions at least annually pursuant to law or regulation, then for the purposes of this Section the capital and surplus of such institution shall be deemed to be its capital and surplus as set forth in its most recent report of condition so published.

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

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

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

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

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

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

**Section 811. Annual Statement.** The Trustee shall render an annual statement for each calendar year ending December 31 to the City and the Developer and, if so requested and the expense thereof is paid, to any Owner requesting the same, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds created by this Indenture as of the beginning and close of such accounting period.

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

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

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

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

(d) If the City fails to appoint a Paying Agent hereunder, or the Paying Agent resigns or is removed, or is dissolved, or if the property or affairs of the Paying Agent are taken under the control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason,

and the City has not appointed its successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the City of the Paying Agent or successor Paying Agent, as the case may be. The Trustee shall give each Owner notice by first-class mail of the appointment of a Paying Agent or successor Paying Agent.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF THE INDENTURE

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

(a) When the principal of and interest on all the Notes have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 902**, and provision also is made for paying all other sums payable hereunder, including the fees, charges and expenses of the Trustee and the Paying Agent to the date of payment of the Notes, then the right, title and interest of the Trustee under this Indenture shall thereupon cease, determine and be void, and thereupon the Trustee shall cancel, discharge and release this Indenture and shall execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City any property at the time subject to this Indenture which may then be in the Trustee's possession, except amounts in the Debt Service Fund required to be paid to the Owners under **Section 403**, except amounts set aside for payment of arbitrage rebate, if any, and except funds or securities in which such moneys are invested and held by the Trustee for the payment of the principal of and interest on the Notes.

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

#### Section 902. Notes Deemed to Be Paid.

(a) Notes shall be deemed to be paid within the meaning of this Article when payment of the principal on such Notes, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) has been made or caused to be made in accordance with the terms hereof, or (2) provision therefor has been made by depositing with the Trustee, in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment or (ii) non-callable Government Securities maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment. At such time as a Note is deemed to be paid hereunder as aforesaid, such Note shall no longer be secured by or be entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Government Securities.

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

(c) Notwithstanding any provision of any other Section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Notes and interest thereon shall be applied to and be used solely for the payment of the particular Notes and interest thereon with respect to which such moneys and Government Securities have been so set aside in trust.

## ARTICLE X

### SUPPLEMENTAL INDENTURES

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

- (a) To cure any ambiguity or formal defect or omission in this Indenture or to release property from the Trust Estate which was included by reason of an error or other mistake;
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;
- (c) To subject to this Indenture additional revenues, properties or collateral;
- (d) To modify, amend or supplement this Indenture or any indenture supplemental hereto in such manner as to permit the qualification of the Indenture under the Trust Indenture Act of 1939, as then amended, or any similar federal statute hereafter in effect, or to permit the qualification of the Notes for sale under the securities laws of any state of the United States;
- (e) To provide for the refunding of any Notes in accordance with the terms hereof;
- (f) To evidence the appointment of a separate trustee or the succession of a new trustee hereunder; or
- (g) To make any other change which, in the sole judgment of the Trustee, does not materially adversely affect the security of the Owners. In exercising such judgment the Trustee may rely on an Opinion of Counsel.

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

- (a) an extension of the maturity of the principal of or the scheduled date of payment of interest on any Note;

- (b) a reduction in the principal amount, redemption premium or any interest payable on any Note;
- (c) a privilege or priority of any Note or Notes over any other Note or Notes;
- (d) a reduction in the aggregate principal amount of Notes the Owners of which are required for consent to any such Supplemental Indenture; or
- (e) the modification of the rights, duties or immunities of the Trustee, without the written consent of the Trustee.

If at any time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed by first-class mail to each Owner. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal corporate trust office of the Trustee or such other office as the Trustee may designate for inspection by all Owners. If within 60 days or such longer period as shall be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Notes Outstanding at the time of the execution of any such Supplemental Indenture have consented to and approved the execution thereof as herein provided, no Owner of any Note shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such Supplemental Indenture as in this Section permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

**Section 1003. Developer's Consent to Supplemental Indentures.** Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article which affects any rights or obligations of the Developer shall not become effective unless and until the Developer has consented in writing to the execution and delivery of such Supplemental Indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed to the Developer at least 45 days prior to the proposed date of execution and delivery of any such Supplemental Indenture.

**Section 1004. Opinion of Bond Counsel.** Notwithstanding anything to the contrary in Sections 1001 or 1002, before the City and the Trustee enter into any Supplemental Indenture pursuant to Section 1001 or 1002, there shall have been delivered to the Trustee an Opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms, and will, upon the execution and delivery thereof, be valid and binding upon the City in accordance with its terms.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

**Section 1101. Consents and Other Instruments by Owners.** Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such

Owners in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Notes, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument (other than the assignment of a Note) may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of Notes and the amount or amounts, numbers and other identification of such Notes, and the date of holding the same shall be proved by the Register.

**Section 1102. Notices.** Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given to or filed with the City, the Trustee or the Developer if the same is duly mailed by registered or certified mail, postage pre-paid, return receipt requested, or sent by telegram, telecopy or telex or other similar communication, confirmed by telephone, on the same day, addressed as follows, provided that notice to the Trustee shall be effective only upon receipt:

(a) To the City at:

City of Osage Beach, Missouri  
Osage Beach City Hall  
1000 City Parkway  
Osage Beach, Missouri 65065  
Attention: City Administrator  
Fax: (573) 302-2009

With a copy to:

City of Osage Beach, Missouri  
Osage Beach City Hall  
1000 City Parkway  
Osage Beach, Missouri 65065  
Attention: City Attorney  
Fax: (573) 302-0528

and

Gilmore & Bell, P.C.  
2405 Grand Blvd., Suite 1100  
Kansas City, Missouri 64108  
Attention: E. Sid Douglas III  
Fax: (816) 221-1018

(b) To the Trustee at:

UMB Bank, N.A.  
2 South Broadway, Suite 600  
St. Louis, Missouri 63102  
Attention: Corporate Trust Department  
Fax: (314) 612-8498

(c) To the Developer at:

Dierbergs Osage Beach, LLC  
16690 Swingley Ridge Road  
Chesterfield, Missouri 63017  
Attention: Jerry Ebest  
Fax: (636) 812-1607

With a copy to:

Lewis, Rice & Fingersh, L.C.  
600 Washington Ave., Suite 2500  
St. Louis, MO 63101  
Attention: Beverly Marcin  
Fax: (314) 612-7678

(d) To the Owners:

By first class mail addressed to each of the Owners of all Notes at the time Outstanding, as shown by the Register. Any notice so mailed to the Owners of the Notes shall be deemed given at the time of mailing whether or not actually received by the Owners of the Notes.

In the event of any notice to a party other than the City, a copy of said notice shall be provided to the City. The above parties may from time to time designate, by notice given hereunder to the other parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 1103. Limitation of Rights Under the Indenture.** With the exception of rights herein expressly conferred and as otherwise provided in this Section, nothing expressed or mentioned in or to be implied by this Indenture or the Notes is intended or shall be construed to give any person other than the parties hereto, the Developer and the Owners of the Notes, any right, remedy or claim under or in respect to this Indenture. This Indenture and all of the covenants, conditions and provisions hereof are, except as otherwise provided in this Section, intended to be and are for the sole and exclusive benefit of the parties hereto, the Developer and the Owners of the Notes as herein provided.

**Section 1104. Suspension of Mail Service.** If, because of the temporary or permanent suspension of mail service or for any other reason, it is impossible or impractical to mail any notice in the manner herein provided, then such delivery of notice in lieu thereof as shall be made with the approval of the Trustee shall constitute a sufficient notice.

**Section 1105. Business Days.** If any date for the payment of principal of or interest on the Notes or the taking of any other action hereunder is not a Business Day, then such payment shall be due, or such action shall be taken, on the first Business Day thereafter; provided, however, any interest that accrues on

any unmatured or unredeemed Notes from the due date shall be payable on the next succeeding Payment Date.

**Section 1106. Immunity of Officers, Employees and Members of City.** No recourse shall be had for the payment of the principal of or interest on any of the Notes or for any claim based thereon or upon any obligation, covenant or agreement in this Indenture contained against any past, present or future officer, director, member, employee or agent of the City, the governing body of the City, or of any successor public corporation, as such, either directly or through the City or any successor public corporation, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, directors, members, employees or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Indenture and the issuance of such Notes.

**Section 1107. No Sale.** The City covenants and agrees that, except as provided herein, it will not sell, convey, assign, pledge, encumber or otherwise dispose of any part of the moneys subject to this Indenture.

**Section 1108. Severability.** If any provision of this Indenture is held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections in this Indenture contained shall not affect the remaining portions of this Indenture, or any part thereof.

**Section 1109. Execution in Counterparts.** This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 1110. Governing Law.** This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

[Remainder of Page Intentionally Left Blank.]

**000112**

**IN WITNESS WHEREOF**, the City of Osage Beach, Missouri has caused these presents to be signed in its name and behalf and its corporate seal to be hereunto affixed and attested by its duly authorized officers, and to evidence its acceptance of the trusts hereby created, UMB Bank, N.A. has caused these presents to be signed in its name by a duly authorized officer, all as of the day and year first above written.

**CITY OF OSAGE BEACH, MISSOURI**

[SEAL]

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**000113**

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

By: \_\_\_\_\_  
Title: Senior Vice President

EXHIBIT A

FORM OF TIF NOTES

**THIS NOTE OR ANY PORTION HEREOF MAY BE TRANSFERRED,  
ASSIGNED OR NEGOTIATED ONLY TO AN APPROVED INVESTOR  
AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.**

**UNITED STATES OF AMERICA  
STATE OF MISSOURI**

**Registered  
No. R-\_\_**

**Registered  
Up to \$ \_\_\_\_\_<sup>(1), (2)</sup>  
(See Schedule A attached)**

**CITY OF OSAGE BEACH, MISSOURI**

**TAX INCREMENT REVENUE NOTE  
(DIERBERGS OSAGE BEACH PROJECT)  
SERIES 2011[A] [B]**

Interest Rate: 6.50%<sup>(3)</sup>

Maturity Date: \_\_\_\_<sup>(4)</sup>

REGISTERED OWNER:

PRINCIPAL AMOUNT: NOT TO EXCEED \_\_\_\_\_.

The **CITY OF OSAGE BEACH, MISSOURI**, a fourth class city and political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the "City"), for value received, hereby promises to pay to the Registered Owner shown above, or registered assigns, the Principal Amount shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above unless called for redemption prior to the Maturity Date, and to pay interest thereon from the effective date of registration shown from time to time on **Schedule A** attached hereto or from the most

<sup>(1)</sup> Principal amount is subject to reduction as provided in **Section 202** of the Indenture. The City may also withhold endorsement of the final 10% of the maximum principal amount until it accepts the Certificate of Substantial Completion.

<sup>(2)</sup> Includes the aggregate principal amount of Notes actually authenticated and endorsed by the Trustee as provided in **Section 201** of the Indenture.

<sup>(3)</sup> Interest Rate subject to abatement as provided in **Section 4.3** of the Redevelopment Agreement.

<sup>(4)</sup> The Notes are subject to cancellation prior to the Maturity Date as provided in the Indenture and the Redevelopment Agreement.

recent Interest Payment Date to which interest has been paid or duly provided for (computed on the basis of a 360-day year of twelve 30-day months) at the Interest Rate shown above. Interest shall be payable semiannually on May 1 and November 1 in each year (each, an "Interest Payment Date"), beginning on the first Interest Payment Date following the initial transfer of money from the Special Allocation Fund to the Revenue Fund, and at maturity. Interest that remains unpaid on any Interest Payment Date shall not be compounded. Interest on the Notes is subject to abatement and adjustment as provided in the Redevelopment Agreement.

*Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Indenture or the Redevelopment Agreement (as hereinafter defined).*

NOTWITHSTANDING ANY PROVISION HEREIN OR IN THE NOTES TO THE CONTRARY, (1) THE NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN PART WITHOUT PAYMENT UNDER THE CONDITIONS DESCRIBED IN SECTIONS 4.2 AND 8.3 OF THE REDEVELOPMENT AGREEMENT, (2) THE PRINCIPAL AMOUNT OF THE NOTES IS SUBJECT TO REDUCTION IN ACCORDANCE WITH SECTIONS 4.2 AND 4.5 OF THE REDEVELOPMENT AGREEMENT, AND (3) INTEREST ON THE NOTES IS SUBJECT TO ABATEMENT PURSUANT TO SECTION 4.3 OF THE REDEVELOPMENT AGREEMENT IF THE NOTES ARE NOT FULLY REPAID WITHIN THE EXPECTED AMORTIZATION PERIOD. THE OBLIGATIONS OF THE CITY WITH RESPECT TO THE SERIES 2011 NOTES TERMINATE ON DECEMBER 15, 2033, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST THEREON HAS BEEN PAID IN FULL. REFERENCE IS MADE TO THE INDENTURE FOR A COMPLETE DESCRIPTION OF THE CITY'S OBLIGATIONS HEREUNDER.

The principal of this Note shall be paid at maturity or upon earlier redemption to the Person in whose name this Note is registered on the Register at the maturity or redemption date hereof, upon presentation and surrender of this Note at the principal corporate trust office of UMB Bank, N.A., St. Louis, Missouri (the "Trustee") or such other office as the Trustee shall designate. The interest payable on this Note on any Interest Payment Date shall be paid to the Person in whose name this Note is registered on the Register at the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Trustee to the address of such registered Owner shown on the Register or (b) in the case of a principal or interest payment to any registered owner of either (i) all of the Notes Outstanding of a particular series of the Notes, or (ii) \$500,000 or more in aggregate principal amount of Notes, by electronic transfer to such registered owner upon written notice given to the Trustee by such registered Owner, not less than 5 days prior to the Record Date for such interest, containing the electronic transfer instructions including the name and address of the bank (which shall be in the continental United States), its ABA routing number and the name and account number to which such registered Owner wishes to have such transfer directed. The principal or redemption price of and interest on the Notes shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Note is one of an authorized series of fully-registered notes of the City designated "City of Osage Beach, Missouri, Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011[A][B]," which aggregate a principal amount of up to \$5,100,000 (the "Notes"). The Notes are being issued for the purpose of paying a portion of the Redevelopment Project Costs in connection with the Redevelopment Plan, Dierbergs Osage Beach Redevelopment Area, under the authority of and in full compliance with the Constitution and laws of the State of Missouri, including particularly the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "Act"), and pursuant to a Trust Indenture dated as of May 1,

2011, between the City and the Trustee (said Trust Indenture, as amended and supplemented in accordance with the terms thereof, being herein called the "Indenture").

The Notes constitute special, limited obligations of the City payable as to principal, premium, if any, and interest solely from the Pledged Revenues and other moneys pledged thereto and held by the Trustee pursuant to the Indenture. "Pledged Revenues" means all Net Proceeds and all moneys held in the Revenue Fund and the Debt Service Fund under the Indenture, together with investment earnings thereon. "Net Proceeds" means (a) all Payments in Lieu of Taxes on deposit in the PILOTS Account of the Special Allocation Fund and (b) all Economic Activity Tax Revenues on deposit in the EATS Account of the Special Allocation Fund that have been appropriated to the repayment of the Notes. Net Proceeds do not include (1) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer and (2) any sum received by the City that is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum. If the Notes have not been fully repaid by May 1, 2023 (subject to extension as provided in the Redevelopment Agreement), interest on the outstanding Notes will cease to be paid from the Net Proceeds associated with all taxing districts except the TDD (the "Non-TDD TIF Revenue"). Thereafter, the Non-TDD TIF Revenue will be used to repay only the outstanding principal amount of the outstanding Notes, and the TDD Sales Tax Revenues captured by the TIF Plan (the "TDD EATs") will continue to be used to pay interest on the outstanding principal amount of the Notes. At Developer's election, at the conclusion of the initial Notes Amortization Period (as defined in the Redevelopment Agreement), all or a designated portion of the TDD EATs may also be used to repay principal on the outstanding Notes. The payments from such sources shall continue until the principal amount of the outstanding Notes has been fully repaid from the Non-TDD TIF Revenues.

"Payments in Lieu of Taxes" on deposit in the Pilots Account of the Special Allocation Fund are those payments in lieu of taxes (as defined in Sections 99.805(10) and 99.845 of the Act) attributable to the increase in the current equalized assessed valuation of all taxable lots, blocks, tracts and parcels of real property in the Redevelopment Area over and above the certified total initial equalized assessed valuation of such Redevelopment Area, as provided for by Section 99.855 of the Act.

"Economic Activity Tax Revenues" on deposit in the Economic Activity Tax Account of the Special Allocation Fund are amounts equal to 50% of the total additional revenues from taxes which are imposed by the City or any other taxing district (as that term is defined in Section 99.805(16) of the Act) and which are generated by economic activities within the Redevelopment Area over the amount of such taxes generated by economic activities within the Redevelopment Area in the calendar year ending December 31, 2009 (subject to annual appropriation by the City as provided in the Act), but excluding therefrom personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments or taxes imposed pursuant to Section 94.660, R.S.Mo.

The Notes shall not constitute debts or liabilities of the City, the State of Missouri or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. Neither the City, the Tax Increment Financing Commission of the City of Osage Beach, the commissioners of said Commission, the officers and employees of the City nor any person executing the Notes shall be personally liable for such obligations by reason of the issuance thereof.

Pledged Revenues shall be applied to payments on the Notes as set forth in the Indenture.

The Notes are subject to optional redemption by the City in whole at any time or in part on any Interest Payment Date at a redemption price of 100% of the principal amount of the Notes to be redeemed, plus accrued interest thereon to the date fixed for redemption, as provided in the Indenture.

The Notes are subject to special mandatory redemption by the City on any Interest Payment Date, beginning with the first Interest Payment Date after the City's acceptance of the Certificate of Substantial Completion, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which, 40 days (20 days if all of the Notes are owned by a Developer Entity) prior to each Interest Payment Date, is on deposit in the Debt Service Fund and which will not be required for the payment of interest on such Interest Payment Date.

If any of the Notes are to be called for redemption as aforesaid, notice of redemption, unless waived, is to be given by the Trustee by mailing an official redemption notice by first class mail at least 30 days (5 days if all of the Notes are owned by a Developer Entity) prior to the date fixed for redemption to the registered owner of each Note to be redeemed at the address shown on the Register as of the date of such notice, as more fully described in the Indenture. Notice of redemption having been given as aforesaid, and provided that moneys are on deposit with the Trustee to effect the required redemption, the Notes or portions of Notes so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City defaults in the payment of the redemption price) such Notes or portions of Notes so called for redemption shall cease to bear interest, shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture. Any defect in any notice or the failure of any parties to receive any notice of redemption shall not cause any Note called for redemption to remain Outstanding.

Notes shall be redeemed in Authorized Denominations. When less than all of the Outstanding Notes are to be redeemed and paid prior to maturity, such Notes or portions of Notes shall be redeemed in the order of maturity designated by the City, and within any maturity the Notes shall be redeemed in Authorized Denominations by the Trustee in such equitable manner as it may determine.

The Notes are issuable in the form of fully-registered Notes in the denomination of one cent or any integral multiple thereof.

This Note may be transferred or exchanged, as provided in the Indenture, only upon the Register, upon surrender of this Note together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or the registered owner's duly authorized agent. THE OWNER HEREOF EXPRESSLY AGREES, BY SUCH OWNER'S ACCEPTANCE HEREOF, THAT THE RIGHT TO TRANSFER, ASSIGN OR NEGOTIATE THIS NOTE SHALL BE LIMITED TO TRANSFER, ASSIGNMENT OR NEGOTIATION TO APPROVED INVESTORS, AS THAT TERM IS DEFINED IN THE INDENTURE. Accordingly, this Note will be transferable only upon prior delivery to the Trustee of a letter in substantially the form attached to the Indenture as **Exhibit B**, signed by the transferee, showing that such transferee is an Approved Investor. After the Trustee receives the foregoing statement, a new Note of the same maturity and in the same principal amount outstanding as the Note which was presented for transfer or exchange shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City and the Trustee may deem and treat the Person in whose name this Note is registered on the Register as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

000118

This Note shall not be valid or binding on the City or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon has been executed by the Trustee.

**IT IS HEREBY CERTIFIED AND DECLARED** that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Notes have existed, happened and been performed in due time, form and manner as required by law.

**IN WITNESS WHEREOF**, the **CITY OF OSAGE BEACH, MISSOURI** has executed this Note by causing it to be signed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, and its official seal to be affixed or imprinted hereon, and this Note to be dated as of the effective date of registration as shown on **Schedule A**.

**CITY OF OSAGE BEACH, MISSOURI**

(Seal)

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

---

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

---

(Print or Type Name, Address and Social Security Number  
or other Taxpayer Identification Number of Transferee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ agent to transfer the within Note on the books kept by the Trustee for the registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_.

---

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Note in every particular.

Signature Guaranteed By:

---

(Name of Eligible Guarantor Institution)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15).

SCHEDULE A

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Note is one of the Notes described in the within-mentioned Indenture.

| <u>Date</u> <sup>(1)</sup> | <u>Additions to Principal Amount</u> | <u>Principal Amount Paid</u> | <u>Outstanding Principal Amount</u> | <u>Authorized Signatory of Trustee</u> |
|----------------------------|--------------------------------------|------------------------------|-------------------------------------|----------------------------------------|
| _____, 20__                | \$                                   | \$                           | \$                                  |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |
| _____, 20__                |                                      |                              |                                     |                                        |

---

<sup>(1)</sup> Date of Acceptance by the City of related to an Application for Reimbursable Project Costs (which constitutes Date of Registration with respect to such portion of the Note).

**EXHIBIT B****PURCHASER'S LETTER OF REPRESENTATIONS**

[Date]

City of Osage Beach  
Osage Beach City Hall  
1000 City Parkway  
Osage Beach, Missouri 65065  
Attention: City Administrator

UMB Bank, N.A.  
2 South Broadway, Suite 600  
St. Louis, Missouri 63102  
Attention: Corporate Trust Department

Re: City of Osage Beach, Missouri, Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011

Ladies and Gentlemen:

This letter is to provide you with certain representations and agreements with respect to the purchase by the undersigned of not to exceed \$5,100,000 principal amount of Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series 2011 (the "Notes"), issued by the City of Osage Beach, Missouri (the "City"). The Notes are secured in the manner set forth in Ordinance No. \_\_\_\_\_ of the City, adopted on April \_\_, 2011 (the "Ordinance") and in the Trust Indenture dated as of May 1, 2011 (the "Indenture"), between the City and UMB Bank, N.A., as Trustee. The undersigned hereby represents to each of you and agrees with each of you, as follows:

1. The undersigned has sufficient knowledge and experience in financial and business matters, including the purchase and ownership of limited revenue obligations and other municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase by the undersigned of the Notes. The undersigned is able to bear the economic risk represented by the purchase by the undersigned of the Notes. The undersigned understands that the Notes are repayable solely from Pledged Revenues (as defined in the Indenture) and, with respect to a portion of the funds therein, subject to annual appropriation by the Board of Aldermen.

2. The undersigned has made its own inquiry and analysis with respect to or affecting the likelihood of the payment of the Notes. The undersigned acknowledges that the City and Dierbergs Osage Beach, LLC (the "Developer") have offered to give access, without restriction or limitation, to all information to which a reasonable investor would attach significance in making investment decisions, and the undersigned has had the opportunity to ask questions of and receive answers from knowledgeable individuals concerning the Notes, this financing transaction, the City and the Developer.

3. The undersigned acknowledges that the City has not made any representation or warranty concerning the accuracy or completeness of any information furnished in connection with the purchase by the undersigned of the Notes. Accordingly, the undersigned has not relied upon the City as to the accuracy or completeness of such information. As a sophisticated investor, the undersigned has made its own decision to purchase the Notes based solely upon its own inquiry and analysis.

4. The undersigned understands that the Notes do not constitute an indebtedness of the City or a loan or credit thereof within the meaning of any constitutional or statutory debt limitation or restriction. The Notes issued by the City are payable only from the Special Allocation Fund and Note Proceeds and from no other source. In no event will the City appropriate funds from the City's general fund or from any fund other than the Special Allocation Fund to repay or prepay Notes.

5. The undersigned is familiar with and has counsel who are familiar with the federal and state legislation, rules, regulations and case law pertaining to the transfer and distribution of securities, including, but not limited to, disclosure obligations of the seller incident to any such transfer or distribution. The undersigned hereby covenants and agrees that the undersigned will not sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the Notes or any interest therein in violation of applicable federal or state law or in violation of restrictions on sale, assignment, negotiation or transfer of the Notes as set forth in paragraph 7 below.

6. The undersigned is purchasing the Notes for its own account for investment (and not on behalf of another) and has no present intention of reselling the Notes or dividing its interest therein; but the undersigned reserves the right to sell, offer for sale, pledge, transfer, convey, hypothecate, mortgage or dispose of the Notes at some future date determined by it, provided that such disposition is not in violation of restrictions on sale, assignment, negotiation or transfer of the Notes as set forth in paragraph 7 below.

7. The undersigned acknowledges that the right to sell, assign, negotiate or otherwise transfer the Notes shall be limited to the sale, assignment, negotiation or transfer to an Approved Investor (as defined in the Indenture).

8. The undersigned agrees to indemnify and hold you harmless from any and all claims, judgments, attorneys' fees and expenses of whatsoever nature, whether relating to litigation or otherwise, resulting from any attempted or effected sale, offer for sale, pledge, transfer, conveyance, hypothecation, mortgage or disposition of the Notes in violation of this letter.

9. The undersigned has satisfied itself that the Notes may be legally purchased by the undersigned.

10. The undersigned represents to each of you that the undersigned is an Approved Investor.

Sincerely,

\_\_\_\_\_  
as Purchaser

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT C

FORM OF MONTHLY REPORT

[Date]

UMB Bank, N.A., as Trustee  
2 South Broadway, Suite 600  
St. Louis, Missouri 63102  
Attention: Corporate Trust Department

Re: City of Osage Beach, Missouri, Tax Increment Revenue Notes (Dierbergs Osage Beach Project), Series A and B

Ladies and Gentlemen:

The City herewith transfers to the Trustee the following sums which were received by the City during the month of \_\_\_\_\_, [year]:

\$ \_\_\_\_\_ Net Proceeds constituting **Payments in Lieu of Taxes**  
(for deposit into the PILOTS Account of the Revenue Fund)

\$ \_\_\_\_\_ Net Proceeds constituting **Economic Activity Tax Revenues**  
(for deposit into the EATS Account of the Revenue Fund)

All moneys so received, totaling \$ \_\_\_\_\_, have been transferred to UMB Bank, N.A., as Trustee (the "Trustee") under the Trust Indenture dated as of May 1, 2011, between the Trustee and the City. All capitalized terms not defined herein shall have the meanings ascribed for them in said Indenture.

The City has retained Net Proceeds constituting Payments in Lieu of Taxes in the amount of \$ \_\_\_\_\_ as surplus funds to be distributed to affected taxing jurisdictions in compliance with the Redevelopment Agreement.

**CITY OF OSAGE BEACH, MISSOURI**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT D

APPLICATION FOR REIMBURSABLE PROJECT COSTS

TO: City of Osage Beach, Missouri  
Attention: City Administrator

Re: Dierbergs Osage Beach Redevelopment Project Area

*Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Tax Increment Financing Redevelopment Agreement dated as of \_\_, 2011 (the "Agreement") between the City of Osage Beach, Missouri (the "City") and Dierbergs Osage Beach, LLC (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:*

1. Each item listed on *Schedule 1* hereto is a Reimbursable Project Cost and was incurred in connection with the construction of the Project.
2. These Reimbursable Project Costs have been paid by the Developer and are reimbursable under the Redevelopment Plan Ordinance and the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to an Ordinance authorizing the issuance of Obligations, and no part thereof has been included in any other Application previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the Work for which this certificate relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. If any cost item to be reimbursed under this Certificate Application is deemed not to constitute a Redevelopment Project Cost within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Project Costs for payment hereunder.
8. The Developer is not in default or breach of any term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
9. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

10. Construction of the Project is in compliance with the Project Schedule set forth in **Exhibit D** to the Agreement.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DIERBERGS OSAGE BEACH, LLC**

a Missouri limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved for Payment this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, and represents an increase in the principal amount of the Series 2011[A][B] Notes as of the date approved by the City:

**CITY OF OSAGE BEACH, MISSOURI**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**Submission Date:** April 15, 2011

**Submitted By:** City Engineer

**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Bill 11-27 - To allow the Mayor to sign an Agreement with the Missouri Department of Transportation for the 4<sup>th</sup> ramp at the Nichols Road-Highway 54 Expressway Interchange

**Names of Persons, Businesses, Organizations affected by this action:**

Citizens of Osage Beach, Missouri Department of Transportation, and City Staff

**Why is Board Action Required?**

Board approval required for Ordinance.

**Type of Action Requested (Ordinance, Resolution, Motion):**

A motion to approve first and second readings of Bill 11-27.

**Are there any deadlines associated with this action?**

MoDOT's contractor is working on the Highway 54 Expressway Project. In order for this work to be completed prior to the opening of the Expressway this agreement needs to be executed.

**Comments and Recommendation of Department:**

The City has been working on the Nichols Road – Highway 54 Interchange with the Missouri Department of Transportation. They have agreed to cost share the project with the City. The agreement will be delivered prior to the Board of Aldermen Meeting.

If this agreement is approved, a Budget Amendment will be required. There are funds available in the Hatchery Road (self –restricted) fund in the amount of \$544,320. This project will not be under construction this year.

**000128**

**City Administrator's Comments and Recommendation:**

Further information will be sent to the Board as soon as we receive the documentation from MoDOT. The Osage Beach Special Road District has agreed to contribute \$100,000.

128a

BILL NO. 11-27

ORDINANCE NO. 11.27

AN ORDINANCE OF THE CITY OF OSAGE BEACH, MISSOURI, AUTHORIZING THE MAYOR TO EXECUTE THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION COST APPORTIONMENT AGREEMENT FOR THE CONSTRUCTION OF A ROUTE 54 EASTBOUND ON-RAMP FROM NICHOLS ROAD

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF OSAGE BEACH, AS FOLLOWS:

Section 1. That the Board of Aldermen of the City of Osage Beach has determined it is in the best interest of the City to authorize the Missouri Highways and Transportation Commission Cost Apportionment Agreement for the construction of a Route 54 Eastbound On-Ramp from Nichols Road, Job Number J5P0347G.

Section 2. That the Board of Aldermen agrees to the terms and conditions as set out in the attached Missouri Highways and Transportation Commission Cost Apportionment Agreement and hereby authorizes the Mayor to execute same on behalf of the City of Osage Beach.

Section 3. That this Ordinance shall be in full force and effect upon date of passage.

READ FIRST TIME: \_\_\_\_\_ READ SECOND TIME: \_\_\_\_\_

I hereby certify that the above Ordinance No.11.27 was duly passed on \_\_\_\_\_, 2011 by the Board of Aldermen of the City of Osage Beach. The votes thereon were as follows:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Abstentions: \_\_\_\_\_

Absent: \_\_\_\_\_

This Ordinance is hereby transmitted to the Mayor for her signature.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Diann Warner, City Clerk

Approved as to form:

\_\_\_\_\_  
Edward B. Rucker, City Attorney

I hereby APPROVE Ordinance 11.27.

\_\_\_\_\_  
Penny Lyons, Mayor

\_\_\_\_\_  
Date

ATTEST:

CCO Form: DE07  
Approved: 07/97 (DPP)  
Revised: 02/11 (AR)  
Modified:

Cost Apportionment Agreement  
Route: 54  
County: Camden  
Job No.: J5P0347G

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION  
COST APPORTIONMENT AGREEMENT**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Osage Beach (hereinafter, "Entity").

WITNESSETH:

WHEREAS, the Commission owns and maintains Route 54 in Camden County as part of the State Highway System;

WHEREAS, the parties desire the improvement or reconstruction of Route 54, extending generally from the Grand Glaize Bridge to 1.4 miles west of Route KK, including a Route 54 eastbound on-ramp from Nichols Road located within the City of Osage Beach; and

WHEREAS, the Entity is willing to provide assistance in the construction or reconstruction of the improvements subject to the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) PURPOSE: The purpose of this agreement is to coordinate participation by the Entity in the cost of the Commission's public improvement for Route 54 and Nichols Road, in the County of Camden, designated as Job No. J5P0347G. This public improvement will involve Commission design, construction, and inspection of an eastbound on-ramp for the new Route 54 Expressway at Nichols Road. These improvements are shown on an attached sketch marked "Exhibit A" and made a part of this Agreement.

(2) LOCATION: The transportation improvement that is the subject of this Agreement is contemplated at the following location:

Improvement of Route 54 – Beginning at Station 268+00, a point where the centerline and profile of modified Route 54 intersects with the eastern centerline and profile of proposed Route 54, run in a generally westerly direction along proposed Route 54 to Station 285+00, a point where the centerline and profile of modified Route 54 intersects with the western

centerline and profile of proposed Route 54. The improvement includes the addition of an eastbound on-ramp and acceleration lane from existing Nichols Road to modified Route 54. Length of improvement is 0.32 miles.

The general location of the public improvement is shown in "Exhibit A." The detailed location of the improvement will be shown on the plans prepared by the Commission for the above-designated route and project.

(3) USE OF RIGHT-OF-WAY: The Entity grants the right to use the right-of-way of public roads, streets, and alleys as necessary for construction and maintenance of said public improvements.

(4) COMMISSION REPRESENTATIVE: The Commission's district engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(5) PROJECT RESPONSIBILITIES: With regard to project responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The Commission will be responsible for the preparation of detailed right-of-way and construction plans and project specifications. This includes design, letting of project, and inspection of project. The plans shall be prepared in accordance with and conform to Commission requirements.

(B) The Commission will acquire right-of-way as needed for the project in accordance with Commission requirements.

(C) The Commission will be responsible for construction of the herein improvements, which includes administration of the construction contract and inspection of the project work. The project shall be constructed in accordance with and conform to Commission requirements.

(6) PAYMENT RESPONSIBILITIES: With regard to payment responsibilities under this Agreement, the parties agree to contribute as follows:

(A) The currently estimated cost of the change order to the existing project is five hundred ninety thousand nine hundred twelve dollars (\$590,912.00). The details of the estimated cost breakdown may be seen in "Exhibit B," which is incorporated herein and attached hereto. The total project cost will include preliminary engineering, right of way acquisition, utility relocation, project construction, and work inspection.

(B) The Commission will pay two hundred ninety five thousand four hundred fifty six dollars (\$295,456.00) toward the actual project costs. In addition, the

Commission will also be responsible for the costs associated with administration of the construction contract and inspection of the work performed by the construction contractor, at no cost or expense to the Entity. The Commission will also be responsible for anything in excess of the estimated cost of the change order in the amount of five hundred ninety thousand nine hundred twelve dollars (\$590,912.00).

(C) The Entity shall remit a check to pay the Commission in the amount of two hundred ninety five thousand four hundred fifty six dollars (\$295,456.00), no more and no less, by June 1, 2011. This payment is the Entities maximum financial obligation under this agreement. This check shall be made payable to the "Director of Revenue, Credit State Road Fund." If the Entity fails to make this payment, the Commission is under no obligation to continue with the project.

(7) ADDITIONAL FUNDING: In the event the Commission obtains additional federal, state, local, private or other funds to construct the improvement being constructed pursuant to this Agreement that are not obligated at the time of execution of this Agreement, the Entity shall not receive an off-set for the deposited funds, a reduction in obligation, or a return of, a refund of, or a release of any funds deposited by the Entity with the Commission pursuant to this Agreement. Any claim for an off-set, refund, release, reduction, or return shall constitute a breach of this Agreement by the Entity, and the Commission, in its sole discretion may cancel this Agreement and remove any portion of the constructed improvement from the Commission's right-of-way at the Entity's expense.

(8) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the Entity and the Commission.

(9) ASSIGNMENT: The Entity and the Commission shall not assign, transfer or delegate any interest in this Agreement without the prior written consent of the other party.

(10) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Entity shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement. The Commission shall comply with all state and federal laws and regulations relating to the performance of this Agreement.

(11) APPROVAL OF FHWA AND AVAILABILITY OF FUNDS: This Agreement is entered into subject to the approval of the Federal Highway Administration and is further subject to the availability of federal and state funds for this construction.

(12) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations or for convenience by providing the Entity with written notice of cancellation. Should the Commission exercise its right to cancel this Agreement for such reasons, cancellation will become effective upon the

date specified in the notice of cancellation sent to the Entity, and the Commission will refund to the Entity the payment received from the Entity in the amount of two hundred ninety five thousand four hundred fifty six dollars (\$295,456.00) required in paragraph 6C.

(13) COMMISSION RIGHT OF WAY: All improvements made within the state-owned right-of-way shall become the Commission's property, and all future alterations, modifications, or maintenance thereof, will be the responsibility of the Commission, except as otherwise provided by this Agreement or a separate written agreement.

(14) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(15) SOLE BENEFICIARY: This Agreement is made for the sole benefit of the parties hereto and nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Commission and the Entity.

(16) NO INTEREST: By contributing to the cost of this project or improvement, the Entity gains no interest in the constructed roadway or improvements whatsoever. The Commission shall not be obligated to keep the constructed improvements or roadway in place if the Commission, in its sole discretion, determines removal or modification of the roadway or improvements, is in the best interests of the state highway system. In the event the Commission decides to remove the landscaping, roadway, or improvements, the Entity shall not be entitled to a refund of the funds contributed by the Entity pursuant to this Agreement.

(17) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(18) SECTION HEADINGS: All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

(19) ENTIRE AGREEMENT: This Agreement represents the entire understanding between the parties regarding this subject and supersedes all prior written or oral communications between the parties regarding this subject.

(20) NO ADVERSE INFERENCE: This Agreement shall not be construed more strongly against one party or the other. The parties to this Agreement had equal access to, input with respect to, and influence over the provisions of this Agreement. Accordingly, no rule of construction which requires that any allegedly ambiguous provision be interpreted more strongly against one party than the other shall be used in interpreting this Agreement.

(21) VOLUNTARY NATURE OF AGREEMENT: Each party to this Agreement warrants and certifies that it enters into this transaction and executes this Agreement freely and voluntarily and without being in a state of duress or under threats or coercion.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the Entity this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Executed by the Commission this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION**

**CITY OF OSAGE BEACH**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

ATTEST: (Commission seal)

By \_\_\_\_\_

\_\_\_\_\_  
Secretary to the Commission

Title \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_

\_\_\_\_\_  
Commission Counsel

Title \_\_\_\_\_

ATTEST: (Entity seal, if existing)

By \_\_\_\_\_

Title \_\_\_\_\_

APPROVED AS TO FORM:

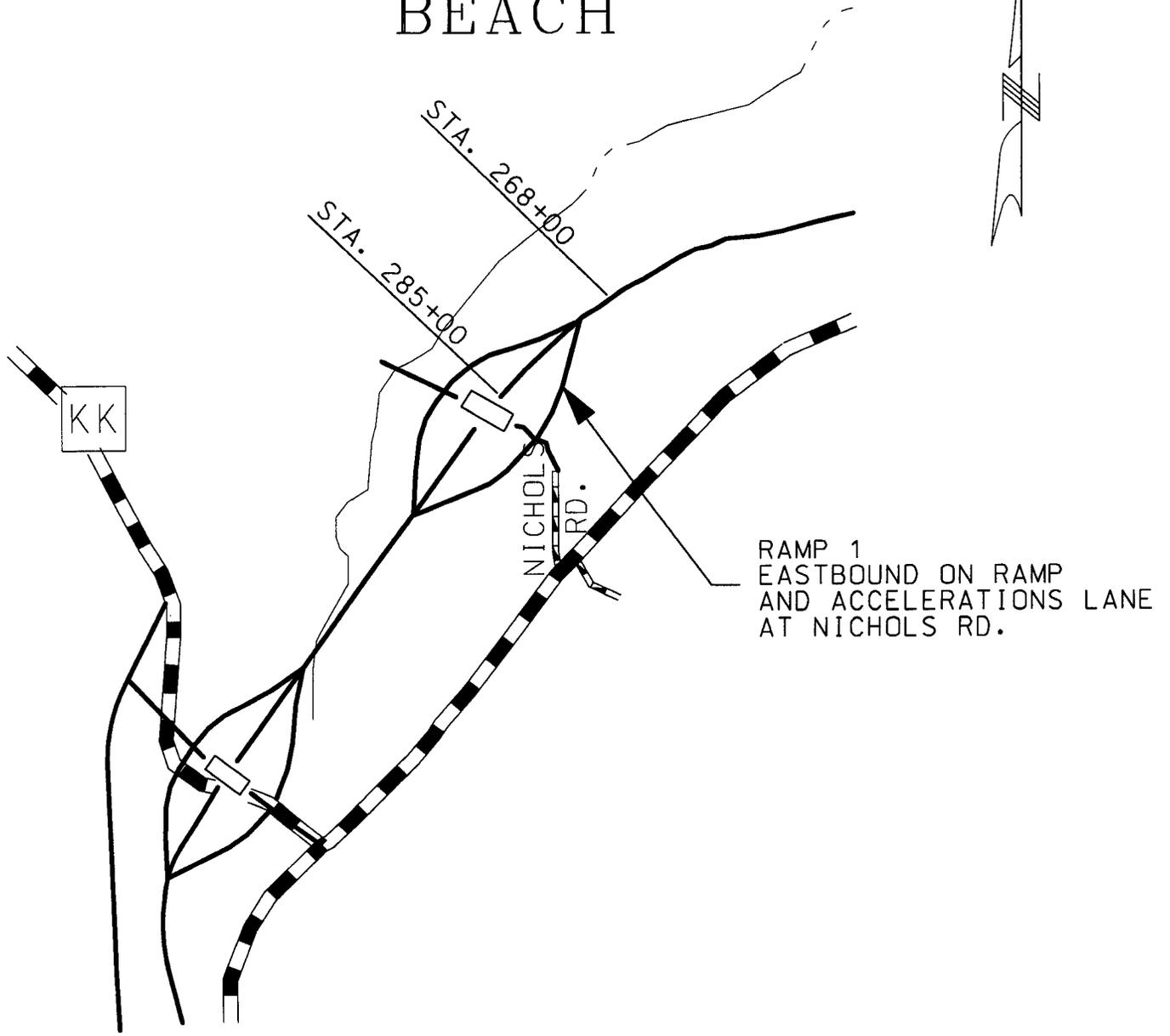
By \_\_\_\_\_

Title \_\_\_\_\_

If Entity is a City – City Ordinance Number \_\_\_\_\_

# EXHIBIT A

## CITY OF OSAGE BEACH



NOT TO SCALE

## EAST BOUND ON-RAMP AT NICHOLS ROAD COST SUMMARY

| ITEM                          | QTY     | UNIT | UNIT COST | TOTAL COST              |
|-------------------------------|---------|------|-----------|-------------------------|
| 8" CONCRETE PAVEMENT(ALT)     | 2432.93 | SY   | 35.10     | 85,395.84               |
| 9" CONCRETE PAVEMENT (ALT)    | 733.33  | SY   | 34.65     | 25,409.88               |
| A3 SHOULDER                   | 1234.80 | SY   | 17.15     | 21,176.82               |
| PLACING ROCK BASE (12" THICK) | 4241    | SY   | 1.40      | 5,937.40                |
| PLACING ROCK BASE (18" THICK) | 409     | SY   | 1.40      | 572.81                  |
| 6" WHITE HIGH BUILD PAINT     | 1738    | LF   | 0.14      | 243.32                  |
| 6" YELLOW HIGH BUILD PAINT    | 1930    | LF   | 0.14      | 270.20                  |
| 12" WHITE HIGH BUILD PAINT    | 600     | LF   | 0.30      | 180.00                  |
| TYPE A GUARDRAIL              | 350     | LF   | 16.00     | 5,600.00                |
| UNCLASSIFIED EXC*             | 58,189  | CY   | 6.25      | 363,681.25              |
| COMPACTING EMBANKMENT         | 1,638   | CY   | 0.25      | 409.43                  |
| CONCRETE                      | 7.30    | CY   | 793.66    | 5793.72                 |
| CLASS 1 PREFORM PULL BOX      | 4.00    | EA   | 818.96    | 3275.84                 |
| CLASS 2 PREFORM PULL BOX      | 1.00    | EA   | 1000.5    | 1000.50                 |
| POST TYPE C 45' ARM           | 1.00    | EA   | 6700      | 6700.00                 |
| POST TYPE B 25' LONGEST ARM   | 1.00    | EA   | 6300      | 6300.00                 |
| SIGNAL HEAD 3B                | 6.00    | EA   | 1444.06   | 8664.36                 |
| SIGNAL HEAD 5B                | 1.00    | EA   | 1230.66   | 1230.66                 |
| SIGNS                         | 6.70    | SF   | 26.62     | 178.35                  |
| CONDUIT 1" LOOP DETECT        | 18.00   | LF   | 6.02      | 108.36                  |
| CONDUIT 2" TRENCH             | 453.00  | LF   | 8.14      | 3687.42                 |
| CONDUIT 3" TRENCH             | 195.00  | LF   | 7.61      | 1483.95                 |
| 1C #3 POWER                   | 1530.00 | LF   | 1.67      | 2555.10                 |
| 7C #16 CABLE                  | 680.00  | LF   | 4         | 2720.00                 |
| OPTIONAL DETECT               | 1.00    | EA   | 25000     | 25000.00                |
| UPS                           | 1.00    | EA   | 4000      | 4000.00                 |
| NEMA CONTROLLER               | 1.00    | EA   | 9336.76   | 9336.76                 |
|                               |         |      |           | <b><u>\$590,912</u></b> |

**Exhibit B**

**Submission Date:** April 13, 2011  
**Submitted By:** Airport Manager  
**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Authorization for the Mayor to execute a 12-month renewal contract with Vaisala for maintenance of localizer at Lee C. Fine Airport.

**Names of Persons, Businesses, Organizations affected by this action:**

Customers and employees at Lee C Fine Airport, residents, visitors of the city and City staff

**Why is Board Action Required?**

Board action is required to enter into a contract.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Motion to authorize the Mayor to execute the renewal contract with Vaisala.

**Are there any deadlines associated with this action?**

Yes. The current contract term is from May 1, 2010 thru April 2011 and needs to be renewed prior to this date.

**Comments and Recommendation of Department:**

This is a FAA mandated maintenance service agreement for the airport "Localizer" instrument approach system at the Lee C Fine Airport. This service has been provided to the City of Osage Beach since 1999 with one rate increase. There is a rate increase for the upcoming year for this service. The company is based in Lenexa, KS and maintains over 60 airport instrument approach systems nationwide. They will perform the FAA required monthly inspections and attend all FAA facility visits and scheduled FAA flight checks at a cost of \$2450.00 per quarter. The rates have been researched and found to be

**000130**

competitive with other vendors nationwide. This item is budgeted annually in account #45-00-733000 although the \$200.00 increase was not known at time of budgeting. Airport Manager recommends approval of this contract.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the Airport Manager.

## MAINTENANCE AGREEMENT AGREEMENT SUMMARY

|                                                                                                                                  |                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| <b>Vaisala:</b><br>Vaisala Inc.<br>194 South Taylor Ave.<br>Louisville, CO 80027<br>Contact email: jerry.kirkpatrick@vaisala.com | <b>Customer:</b><br>City of Osage Beach (AIZ)<br>1000 City Parkway<br>Osage Beach, MO 65065<br>Contact email: |
|----------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|

Vaisala agrees to provide and Customer agrees to accept the indicated Services in accordance with this Maintenance Agreement which consists of this Summary and the Maintenance Agreement Terms and Conditions (Revised 04/10, V1) attached hereto.

The Effective Date of this Agreement is 01 May, 2011.

The Initial Term of this Agreement is 1 year(s).

|                                       |                                              |
|---------------------------------------|----------------------------------------------|
| <b>Services</b> (check as applicable) |                                              |
| <input checked="" type="checkbox"/>   | Preventive Maintenance and Scheduled Service |
| <input checked="" type="checkbox"/>   | Equipment Restoration                        |
| <input type="checkbox"/>              | Data Service                                 |

|                                         |                           |
|-----------------------------------------|---------------------------|
| <b>Equipment</b> (check as applicable)  | <b>Manufacturer/Model</b> |
| <input type="checkbox"/> VOR            |                           |
| <input type="checkbox"/> DME            |                           |
| <input checked="" type="checkbox"/> LOC | Wilcox Mark 1F            |
| <input type="checkbox"/> GS             |                           |
| <input type="checkbox"/> AWOS           |                           |
| <input type="checkbox"/> RVR            |                           |
| <input type="checkbox"/> RWIS           |                           |
| <input type="checkbox"/> NDB            |                           |
| <input type="checkbox"/> Control Tower  |                           |

|                                            |                           |
|--------------------------------------------|---------------------------|
| <b>Data Services</b> (check as applicable) |                           |
| <input type="checkbox"/>                   | AviMet Data Link          |
| <input type="checkbox"/>                   | NLDN Data - Service Size: |
| <input type="checkbox"/>                   | GLD 360 - Service Size:   |

|                        |               |                                   |
|------------------------|---------------|-----------------------------------|
| <b>Fees</b>            |               |                                   |
| Annual Fee             | \$ 9800.00/yr | , billed \$2,450.00 per Quarterly |
| Unplanned Outage Fee   | \$ 1,500.00   | per day                           |
| Facility Visit Fee     | \$ 1,500.00   | per day                           |
| Holiday Fee            | \$ 500.00     | per day                           |
| Cancellation/Delay Fee | \$ 500.00     | per day                           |

| Customer Spare Parts  | Customer Test Equipment |
|-----------------------|-------------------------|
| MK-1F spare parts kit | Oscilloscope            |
| 1) Monitor boards     | Frequency counter       |
| 1) Transmitter boards | Bird wattmeter          |
| 2) RF modules         |                         |
|                       |                         |
|                       |                         |
|                       |                         |
|                       |                         |
|                       |                         |
|                       |                         |

**Additional Terms**

Section 1. Term shall be amended.  
 "... thereafter be automatically renewed for successive one-year terms..." will be deleted and replaced with "... be a one-year term ..."

**Invoice Contact:**

**Airport Manager/Authority:**

|                                     |                                    |
|-------------------------------------|------------------------------------|
| Name: <u>City of Osage Beach</u>    | Name: <u>Budd Hyde</u>             |
| Title: <u>1000 City Parkway</u>     | Title: <u>Airport Manager, AIZ</u> |
| Phone: <u>Osage Beach, MO 65065</u> | Phone: <u>573 302 2003</u>         |
| Email: _____                        | Email: <u>bhyde@osagebeach.org</u> |

**Vaisala Inc.**

**City of Osage Beach**

|                              |              |
|------------------------------|--------------|
| By: <u>Jerry Kirkpatrick</u> | By: _____    |
| Title: <u>Sales Manager</u>  | Title: _____ |
| Date: _____                  | Date: _____  |

## MAINTENANCE AGREEMENT TERMS AND CONDITIONS

1. **Term.** Unless earlier terminated as provided in this Agreement, this Agreement will commence on the Effective Date for the Initial Term. This Agreement shall thereafter be automatically renewed for successive one-year terms until either party delivers to the other written notice not less than one hundred eighty (180) days prior to the end of the then current term of such party's intent to terminate this Agreement as of the end of the then-current term. Customer agrees that Vaisala may increase each of the fees provided for in this Agreement by up to 3% upon each renewal of the term of this Agreement without additional notice to or the additional agreement of Customer.

### 2. Description of Equipment Services.

2.1. Preventive Maintenance consists of inspection, functional checks, adjustments, replacement of failed components and cleaning in accordance with the equipment manufacturer's published guidelines and requirements.

2.2. Scheduled Service consists of such periodic routine tests and adjustments as may be required by the equipment manufacturer and by the FAA for non-Federal facilities in accordance with 14 C.F.R. Part 171 and AC 150/5220-16C as they may be modified or superseded from time to time.

2.3. Equipment Restoration. In the event of an unplanned equipment failure or outage, Vaisala shall commence restoration work within one (1) business day after the outage is reported and complete restoration services in a reasonable prompt manner. Diagnosis may be performed remotely and render the system inoperable until which time replacement equipment/parts can arrive to Customer's site.

2.4. All services provided by Vaisala shall be performed by qualified field technicians and other personnel having all required certifications and licenses required by the FAA. Vaisala shall record test results in a station log and maintain the required 6000 series records, copies of which will be provided to the FAA as required.

### 3. Description of Data Services.

3.1. AviMet Data Link is an automated weather dissemination service for the distribution of Automated Weather Observation System ("AWOS") data to the FAA's Weather Message Switching Center Replacement ("WMSCR") System. Vaisala shall provide the AWOS observations to WMSCR in accordance with FAA specifications, every twenty (20) minutes twenty-four (24) hours per day, seven (7) days per week. Vaisala will activate service within one hundred twenty (120) days of receipt of the Effective Date.

3.2. NLDN Data Service- National Lightning Detection Network is a lightning detection service which provides flash and stroke lightning data measuring location, polarity, amplitude and multiplicity of cloud-to-ground lightning. Data service is provided (24) hours a day, (7) days per week, (365) days a year for the Service Size area shown on the Agreement Summary.

3.3. GLD360 Data Service is a service which provides real-time lightning data for accurate and early detection and tracking of severe weather. The data provided by GLD360 is generated by Vaisala owned and operated worldwide network. Data service is provided (24) hours a day, (7) days per week, (365) days a year for the Service Size area shown on the Agreement Summary.

#### 4. **Testing Equipment and Replacement Parts.**

4.1. Customer shall at its own expense furnish, maintain and calibrate test equipment in accordance with FAA requirements.

4.2. Customer shall maintain at its own expense an inventory of replacement parts for the Equipment to be utilized by Vaisala when providing Services under this Agreement. In the event parts necessary for maintenance or restoration of the Equipment are not available in Customer's inventory, Vaisala will provide such part(s) and invoice Customer for the required part(s).

4.3. Vaisala and Customer agree that, as of the date of this Agreement, the lists of Customer Spare Parts and Customer Test Equipment are accurate and complete.

#### 5. **Customer Responsibilities.**

5.1. Customer shall be responsible for monitoring the status of the systems following maintenance by Vaisala;

5.2. Customer shall be responsible for providing transportation and/or access for Vaisala personnel between the airport and the location of the Equipment;

5.3. Customer shall be responsible for providing security in and around the Equipment to be maintained under the Agreement;

5.4. Customer shall be responsible for any loss or damage to the Equipment for reasons other than the fault of Vaisala and for providing any insurance Customer may desire to cover any such loss or damage.;

5.5. Customer shall be responsible for the issuance of all NOTAMS (Notice to Airmen) relating to the status of the facilities to be maintained under this Agreement; and

5.6. Customer shall be responsible for maintaining the grounds and buildings associated with the NAVAIDS (Navigational Aids) and Equipment in good repair and in compliance with all FAA and all applicable laws.

6. **Compensation.** Customer shall pay Vaisala for providing the Services and for other work as follows:

6.1. Annual Fee. Except for the services provided below, Customer agrees to pay Vaisala the annual fee shown on the Agreement Summary for each year of the Initial Term and for each renewal term.

6.2. Restoration Services for Unplanned Outages. If restoration, repairs or other maintenance are required for an unplanned equipment failure or outage, Customer shall pay Vaisala the Unplanned Outage Fee shown on the Agreement Summary. The Unplanned Outage Fee is billed in half-day increments, portal to portal, plus travel costs and expenses.

6.3. Holidays. The following holidays are recognized by Vaisala staff: New Year's Eve, New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve and Christmas Day. If an equipment failure or outage occurs on any holiday, Customer shall pay Vaisala the Holiday Fee shown on the Agreement Summary in addition to the Unplanned Outage Fee and any other charges due to Vaisala. The Unplanned Outage Fee is billed for each day or part thereof that services are required.

6.4. Facility Visits. At Customer's written request, Vaisala will attend facility visits as required by the FAA provided that these occur at a mutually agreeable time. Customer agrees to compensate Vaisala for facility visits at the Facility Visit Fee shown on the Agreement Summary. The Facility Visit Fee is billed in half-day increments portal to portal, plus travel costs and expenses.

6.5. Cancellations or Delays. If cancellations or excessive delays occur during the facility visits of Vaisala for the provision of the Services that are caused by Customer, Customer shall pay Vaisala the Cancellation/Delay Fee shown on the Agreement Summary. The Cancellation/Delay Fee is billed in half-day increments, portal to portal, plus travel costs and expenses.

**7. Invoices and Past Due Accounts.**

7.1. Invoices. Invoices will be sent via email to the Customer's Contact Email as shown on page 1 of this Agreement unless Vaisala is otherwise instructed in writing.

7.2. Past Due Amounts. Any sum due Vaisala under this Agreement which is not paid when due shall thereafter bear interest until paid at a rate of eighteen percent (18%) per annum, but in no event at a rate greater than that permitted under applicable law.

8. **Insurance.** Vaisala shall maintain aviation products and completion liability and general liability insurance during any terms of this Agreement. Vaisala shall also maintain workers compensation and unemployment insurance as required by law.

9. **Termination.** If either party should materially breach a material provision of this Agreement, the other party may terminate this Agreement upon thirty (30) calendar days' notice unless the breach is cured within such thirty (30) day notice period. In the event of the termination of this Agreement for any reason other than a material breach by Vaisala, Customer shall immediately pay Vaisala for all services provided by Vaisala up to the effective date of termination. Either party shall be entitled to terminate this Agreement immediately by notice in writing to the other party in the event that either party files for bankruptcy, has a petition for bankruptcy filed against it, becomes insolvent, or ceases to carry on business.

**10. Indemnification.**

10.1. By Vaisala. Unless resulting from the negligent, willful or intentional acts or omissions of Customer or its agents, Vaisala agrees to indemnify defend and hold Customer, its officers, directors, employees and agents (collectively, the "Customer Parties") and hold each of them harmless from and against any claims, actions, damages, losses, liabilities, costs and expenses, including but not limited to, attorneys' fees and litigation costs (collectively, the "Losses"), to which any Customer Party becomes subject to the extent that such Losses arise out of or are based upon any breach by Vaisala of any of its obligations, representations, warranties, or covenants under this Agreement. Vaisala's obligations to indemnify defend and hold harmless will survive the termination of this Agreement for a period of one (1) year from the date of termination. Customer agrees to notify Vaisala within five (5) business days after it has received written notification of such Loss.

10.2. By Customer. Unless resulting from the negligent, willful or intentional acts or omissions of Vaisala or its agents, Customer agrees to indemnify defend and hold Vaisala, its officers, directors, employees and agents (collectively, the "Vaisala Parties") and hold each of them harmless from and against any Losses to which any Vaisala Party becomes

subject to the extent that such Losses arise out of or are based upon any breach by Customer of any of its obligations, representations, warranties, or covenants under this Agreement. Customer's obligations to indemnify defend and hold harmless will survive the termination of this Agreement for a period of one (1) year from the date of termination. Vaisala agrees to notify Customer within five (5) business days after it has received written notification of such Loss.

11. **Disclaimer of Warranties.** THIS IS A SERVICE AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, VAISALA'S SERVICES UNDER THIS AGREEMENT ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, VAISALA MAKES NO WARRANTIES AND EXPLICITLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER VAISALA NOR ANY OF ITS EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS OR AGENTS SHALL BE LIABLE IN CONTRACT, WARRANTY, TORT OR OTHERWISE, FOR ANY LOSS OF GOODWILL, FOR PUNITIVE DAMAGES, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OR EXPENSE, WHETHER FORSEEABLE OR UNFORSEEABLE. IN NO EVENT SHALL VAISALA'S LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO VAISALA FOR THE SERVICES OUT OF WHICH THE LIABILITY ARISES.

13. **Force Majeure; Other Acts.** Vaisala shall not be responsible for damages or delay in performance caused by acts of God, power outages, lightening, flood, windstorm, rain, snow, strikes, lockouts, accidents and other events beyond the control of Vaisala (each a "Force Majeure Event") provided that Vaisala is without fault in causing or failing to prevent such occurrence. In addition, Vaisala is not responsible for damage due to vandalism or tampering by unauthorized individuals or for any design, engineering, installation or manufacturing defects.

14. **Notices.** The parties must submit any notice, demand, consent or other communication required or provided under this Agreement in writing and address or delivered to the address identified on page 1 of this Agreement unless a party notifies the other party in writing of a change of such address. Notice will be deemed received: (i) upon delivery, when personally delivered; (ii) upon receipt, when sent via registered or certified mail; (iii) the next business day, when sent via overnight courier, and (iv) upon sender's receipt of an electronic receipt or acknowledgment, when sent via email.

15. **Miscellaneous.**

15.1. **Compliance with Laws.** Vaisala, its employees and agents shall comply with all applicable rules and regulations applicable to the airport at which Vaisala is providing the Services.

15.2. **Relationship of the Parties.** Vaisala is acting as an independent contractor providing services to Customer. Nothing contained in this Agreement will be interpreted or construed to characterize the relationship between Vaisala and Customer as a joint venture or partnership for any purpose. Nothing contained in this Agreement shall create a fiduciary duty between the parties.

15.3. Enforceability. A party's failure to insist upon strict performance of any term of this Agreement or to exercise any right under this Agreement will not be construed as a waiver or relinquishment of that right or of the party's right to assert or rely upon the terms and conditions of this Agreement.

15.4. Assignment. Neither party shall have any right or ability to assign or transfer any obligations or benefit under this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld or delayed, except that a party may assign or transfer any rights to receive payments hereunder without the consent of the other party.

15.5. Amendment; Waiver. An amendment or waiver of any term of this Agreement will not be effective unless agreed in writing and properly signed by both parties.

15.6. Severability. If any terms of this Agreement are determined to be invalid or inoperative, this Agreement will be construed as though the invalid or inoperative provisions were deleted. The parties' rights and obligations will be construed and enforced to reflect the parties' original intent to the extent possible.

15.7. Complete Agreement. This Agreement, including the exhibits and attachments, constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or understandings with respect to the subject matter. This Agreement will take precedence with respect to any inconsistency or conflict between this Agreement and an exhibit, attachment or purchase order. No course of dealing, usage of trade or course of performance will be construed to supplement, amend or construe any term, condition or instruction of this Agreement.

15.8. Counterparts. This Agreement may be executed in counterparts each of which will be considered an original, but all of which will constitute one and the same agreement. The signature of any party to a counterpart will be deemed a signature to the Agreement and may be appended to any other counterpart. Facsimile transmission of an executed signature page will be sufficient to bind the executing party.

15.9. Headings. Headings of the sections and paragraphs are inserted for convenience and will not affect the interpretation or construction of this Agreement.

15.10. Choice of Law. This Agreement is governed by the laws of the state of Colorado without regard to its conflicts of law provisions. COMPANY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED TO THIS AGREEMENT.

15.11. Prevailing Party. The prevailing party in any dispute and/or legal action brought hereunder shall be entitled to recover all out-of-pocket costs and expenses (including, but not limited to, court costs and reasonable attorneys' fees) incurred as a result thereof.

15.12. Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto. This Agreement is not intended to and shall not be construed to give any person or entity, other than the parties hereto, any interest, rights or remedies (including, without limitation, any third party beneficiary rights) in connection with this Agreement.

**Submission Date:** May 15, 2011  
**Submitted By:** Airport Manager  
**Board Meeting Date:** April 21, 2011

**City of Osage Beach  
BOARD OF ALDERMEN  
AGENDA ITEM SUMMARY SHEET**

**Description of Item:**

Authorization for the Mayor to approve terms of contract for the grounds sublease at Lee C. Fine Airport. These land leases are for tenants to build and maintain private hangars.

**Names of Persons, Businesses, Organizations affected by this action:**

Customers and employees at Lee C. Fine Airport, residents, visitors of the city and City staff

**Why is Board Action Required?**

Board action is required to enter into a contract.

**Type of Action Requested (Ordinance, Resolution, Motion):**

Motion to authorize the Mayor to execute land lease contracts with tenants.

**Are there any deadlines associated with this action?**

No, but the aircraft owners are waiting for approval so that they may move forward with building design.

**Comments and Recommendation of Department:**

This contract has been a work in progress for years now. With the help of the City Attorney and staff at DNR we have put a contract together that will work for all parties involved. City Attorney and DNR both have read and agree with the language of this contract. Airport Manager recommends approval.

**City Administrator Comments and Recommendation:**

Concur with the recommendation of the Airport Manager.

**LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND**

**THIS SUBSUBLEASE**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between City of Osage Beach, Missouri, (hereinafter referred to as "LESSEE"), and \_\_\_\_\_ (hereinafter referred to as "SUBLESSEE").

**WITNESSETH:**

**WHEREAS**, LESSEE is the lessor of a tract of land (hereinafter called Lot\_\_\_\_, located at the Lee C. Fine Memorial Airport, Lake of the Ozarks State Park, Miller County, Missouri (hereinafter referred to as the "AIRPORT"); and

**WHEREAS**, LESSEE is desirous of allowing aircraft storage hangars to be constructed on property known as being a portion of the Lee C. Fine Memorial Airport and leased by LESSEE pursuant to the above-referenced Lease agreement between the Department of Natural Resources and the LESSEE whereby LESSEE operates the Lee C. Fine Memorial Airport; and,

**WHEREAS**, LESSEE desires to Sublease the Lot \_\_\_\_\_ at the Lee C. Fine Memorial Airport (hereinafter referred as the "DEMISED PREMISES") to SUBLESSEE; and,

**WHEREAS**, the Mayor is authorized by Ordinance No. \_\_\_\_\_ to enter into this Sublease with SUBLESSEE upon the terms and conditions set forth herein;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual promises, covenants and obligations hereinafter stated, the parties mutually agree as follows, to wit:

**ARTICLE I – TERM OF SUBLEASE**

**1.1 ORIGINAL SUBLEASE TERM.** The original term of this Sublease shall be for a period of Twenty (20) years commencing on \_\_\_\_\_ and terminating on \_\_\_\_\_. SUBLESSEE shall have the right to extend this Sublease for 2 periods of 5 years upon giving proper notice. The rental rate for such additional terms shall be agreed by the parties, prior to the beginning of each additional 5 year term. In the event the parties cannot agree on the rental rate, this sublease shall terminate. The failure to reach a new agreement shall not create a cause of action for failing to reach a new sublease agreement.

**ARTICLE II – COMPENSATION**

**2.1 ANNUAL INSTALLMENTS.** SUBLESSEE shall make annual rental payments to LESSEE in advance beginning on the Commencement Date of this Sublease, and on the 1st day of each year thereafter. The initial and final payment shall be prorated against the annual rental amount. Payment shall be delivered to the LESSEE at Lee C. Fine Memorial Airport, 1111 Lee C Fine Road, Brumley, Missouri 65017 or at such other place as LESSEE may designate.

LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND

000140

**2.2 ANNUAL RENT.** The initial annual rent shall be \_\_\_\_\_, which rent shall continue in effect until modified in accordance with paragraph 2.3 below.

**2.3 NO ABATEMENT.** No abatement, diminution or reduction of the annual rent or of any additional rent or other charges required to be paid by the SUBLESSEE pursuant to the terms of this Sublease, shall be claimed by, or allowed to, the SUBLESSEE for any inconvenience, interruption, cessation or loss of business or otherwise caused, directly or indirectly, by any present or future laws, order or regulations, whether federal, state, or municipal, or by any other cause or causes beyond the control of LESSEE.

**2.4 COMPLIANCE WITH 49 CFR PART 21.** The SUBLESSEE for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this Sublease for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the SUBLESSEE shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

**2.5 NONDISCRIMINATION.** The SUBLESSEE for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

a. No person on the grounds of race, color, sex, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in use of said facilities.

b. That in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination with regard to use of the facilities.

c. The building and improvements constructed in accordance with this agreement shall be constructed in compliance with the Missouri Prevailing Wage Act for construction upon public premises if applicable.

**2.6 UTILITY SERVICE.** All installation and ongoing charges for utility service is at the exclusive cost and risk of the SUBLESSEE. Installation plans and work must be conducted according to LESSEE Code and such specification as may also be required by the Missouri Department of Natural Resources.

**ARTICLE III – DESCRIPTION OF PREMISES**

**3.1 DEMISED PREMISES.** The LESSEE does hereby sublease to SUBLESSEE the premises described in Exhibit “A,” as Lot \_\_\_\_, which is attached hereto and incorporated by reference for the construction and maintenance of a single building for the purpose of private aircraft storage and for no other purpose whatsoever. SUBLESSEE shall own and retain title to all personal property placed upon premises with the exception of any personal property not removed at the termination or end of the term of this sublease.

**ARTICLE IV – USE AND OWNERSHIP**

**4.1 USE.** The premises herein demised are to be used solely for aircraft storage for personal use only.

**4.2 PARKING.** SUBLESSEE is hereby granted the exclusive right to park vehicles inside the hangar or along side the hangar on paved surface or more specifically shown on Exhibit “B”.

**4.3 COMMERCIAL AERONAUTICAL ACTIVITIES PROHIBITED.** SUBLESSEE shall not conduct or allow to be conducted any commercial aeronautical activities on the Demised Premise.

**4.4 ASSIGNMENT.** The SUBLESSEE may not assign or transfer this sublease, or any interest therein, or sublet the premises or any part thereof without the prior written consent of the LESSEE and the Missouri Department of Natural Resources, and any attempt at assignment, transfer or subletting shall be void and at the option of the LESSEE, deemed sufficient grounds for the cancellation and termination of this sublease. Such assignment or sublease shall be subject to the terms of this sublease.

**4.5 MODIFICATION TO PREMISES.** With written permission from LESSEE, which will not be unreasonably withheld, SUBLESSEE shall be entitled to build such removable partitions in the rented space as it deems suitable at its sole cost and expense. Before any modification to space, SUBLESSEE agrees to provide LESSEE with such reasonable assurance and security as LESSEE shall require to secure LESSEE against any mechanics liens on the premises occasioned by SUBLESSEE’S construction hereunder. In the event mechanics liens are threatened because of any activity by SUBLESSEE, SUBLESSEE agrees to indemnify LESSEE in protection of its interest, including but not limited to attorney’s fees.

**4.6 MAINTENANCE.** It shall be the responsibility of the SUBLESSEE to insure the cleanliness of the DEMISED PREMISES and to provide all maintenance, including, but not limited to, painting and floor treatment, and janitorial services required for maintaining the DEMISED PREMISES in a clean, safe and operational condition.

**ARTICLE 5 - COVENANTS**

5.1 **SUBLESSEE'S COVENANTS.** SUBLESSEE covenants and agrees as follows:

a. To build a single hangar building according to plans and specifications attached hereto as Exhibit "B" after the approval of those plans by the LESSEE, the Missouri Department of Natural Resources and all other necessary agencies prior to the commencement of construction.

b. To provide a policy of liability insurance which names as additional insureds and further indemnifies and holds harmless the LESSEE and the Missouri Department of Natural Resources from any liability caused by the construction or operation of the building contemplated in this agreement.

c. To provide all interior and exterior maintenance to the hangar and to insure that the hangar is kept in a neat and clean manner.

d. To provide electricity, non-potable water and sewer service connections to the hangar at SUBLESSEE's expense with such services being provided in a manner approved by LESSEE at SUBLESSEE's cost.

e. To maintain fire insurance and extended coverage casualty insurance on the hangar and improvements with an insurance company agreeable to both LESSEE and SUBLESSEE in an amount of not less than the total replacement cost of the building and upon compensation for a loss of the building to cause the building to be reconstructed, unless such reconstruction is excused by the LESSEE.

f. To do nothing which would cause Missouri Department of Transportation, the Missouri Department of Natural Resources, the Federal Aviation Administration (FAA) or other governmental agency to cause LESSEE to lose any grants, funding or other income or to receive any type of fines, reprimand or loss of permits for the airport.

g. To comply with the Missouri Prevailing Wage Law, R.S.Mo. 290.210 et seq. where applicable, in the construction, repair or replacement of the hangar building constructed pursuant to this sublease.

**ARTICLE VI – INSURANCE AND INDEMNIFICATION**

6.1 **GENERAL LIABILITY INSURANCE.** SUBLESSEE covenants and agrees to hold LESSEE and Missouri Department of Natural Resources free and harmless from loss from each and every claim and demand of whatever nature made by or on behalf of any person or persons for any wrongful act or omission arising out of the use of the AIRPORT on the part of

the SUBLESSEE, its agents, servants, invitees and employees, and for such purpose SUBLESSEE agrees to carry liability insurance to have limits of not less than the following:

- i) \$1,000,000 for personal injury per person;
- ii) \$3,000,000 for personal injury per accident;
- iii) \$ 25,000.00 for property damage.

SUBLESSEE further agrees to file a certificate of insurance with LESSEE evidencing that such insurance has been furnished, and that the same will not be cancelled without thirty (30) days notice to LESSEE and that such policy shall additionally name the LESSEE and the Missouri Department of Natural Resources as additional insureds.

**6.2 INDEMNIFICATION AGAINST ALL CLAIMS.** The SUBLESSEE shall indemnify, defend and hold the LESSEE and Missouri Department of Natural Resources harmless against any and all claims, damages, suits, and causes of action for damages arising after the commencement of the term hereof and against any order, decrees and judgments which may be entered thereon, brought for damages or alleged damages resulting from any injury or alleged injury to person or property or for loss of life alleged to have been sustained in or about the DEMISED PREMISES or upon the parking lot or upon the public areas whenever any said alleged liability arises because of any action or inaction of SUBLESSEE, their agents, contractors or subcontractors. SUBLESSEE'S indemnification obligations shall include but not be limited to payment of all LESSEE'S attorney fees involved in defending such claims, damages, suits and causes of action. However, SUBLESSEE shall not hold harmless LESSEE from any claims or damages arising out of the negligence or willful conduct or omission of LESSEE or its agents.

**6.3 CONTENTS INSURANCE COVERAGE.** SUBLESSEE shall be responsible for maintaining contents insurance coverage to insure against all risk property perils including flood losses.

## ARTICLE VII – FAA PROVISION

**7.1 LANDING AREA.** LESSEE reserves the right (but shall not be obligated to SUBLESSEE) to maintain and keep in repair the landing area of the AIRPORT and all publicly-owned facilities of the AIRPORT, together with the right to direct and control all activities of the SUBLESSEE in this regard.

**7.2 LESSEE IMPROVEMENTS.** LESSEE reserves the right to further develop or improve the landing area and all publicly-owned air navigation facilities of the AIRPORT as it sees fit, regardless of the desires or views of SUBLESSEE, and without interference or hindrance.

**LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND**

**000144**

**7.3 NO OBSTRUCTIONS.** LESSEE reserves the right to take any action it considers necessary to protect the aerial approaches of the AIRPORT against obstruction, together with the right to prevent SUBLESSEE from erecting, or permitting to be erected, any building or other structure on the AIRPORT which in the opinion of LESSEE would limit the usefulness of the AIRPORT or constitute a hazard to aircraft.

**7.4 MILITARY USE.** During time of war or national emergency, LESSEE shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the AIRPORT. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

**7.5 SUBORDINATION OF SUBLEASE.** This Sublease shall be subordinate and junior to the Master Lease Agreement with the Missouri Department of Natural Resources dated March 5, 1999, and to the provisions of any outstanding agreement or future amendments thereto or other agreements between LESSEE and the Missouri Department of Natural Resources or any agency thereof relative to the maintenance, operation or development of the AIRPORT, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the AIRPORT.

**7.6 NO INTERFERENCE.** It is understood and agreed that the rights granted by this Sublease will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance, or development of the AIRPORT.

**7.7 PUBLIC AIRSPACE.** There is hereby reserved to LESSEE, its successors and assigns, for the use and benefit of the public, a free and unrestricted right of flight for the passage of aircraft in the airspace above the surface of the DEMISED PREMISES together with a right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, or navigation of or flight in the air using said airspace for landing, taking off or operating on or about the AIRPORT.

**7.8 RADIO COMMUNICATION.** SUBLESSEE shall not, by its activities, interfere with radio communications, instrument landing systems, navigational aids, or flight operations of AIRPORT. SUBLESSEE shall not transmit or send any radio signal from the DEMISED PREMISES with the exception that aircraft on said DEMISED PREMISES may send or transmit to the AIRPORT'S control tower. The prohibition against transmission of radio signals from the DEMISED PREMISES shall not be held to apply to routine maintenance checks and ordinary communications between SUBLESSEE'S aircraft and the DEMISED PREMISES so long as such transmission checks do not interfere with radio communications, instrument landing systems, navigational aids or flight operations of AIRPORT.

**7.9 COMPLIANCE WITH LAWS.** A SUBLESSEE shall comply with all ordinances, rules, and regulations pertaining to the AIRPORT and the design of any facility (building or restroom facility) shall comply with the "Americans with Disabilities Act of 1990 Accessibility Guidelines", unless variances are received.

**7.10 LABOR LAWS.** For construction of the hangar SUBLESSEE will comply with all relevant provisions of the Missouri Prevailing Wage Act, Fair Labor Standards Act (29 USC Section 201 et. seq.), Section 504 of the Vocational Rehabilitation Act of 1963 (29 USC Section 794), and the Age Discrimination in Employment Act of 1967 (29 USC 6101 et. seq.), and Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq.). SUBLESSEE, and all persons employed by SUBLESSEE, shall work the DEMISED PREMISES according to SUBLESSEE's own methods and entirely free from any manner of direction or control by, or on the part of the LESSEE or anyone in the employ of LESSEE, except that the LESSEE shall comply with the Missouri Prevailing Wage Act where applicable.

#### ARTICLE VIII – GENERAL PROVISIONS

**8.1 RIGHT OF INSPECTION.** LESSEE shall have the right at all reasonable times during the Original Term of this Sublease and any Renewal thereof to enter upon the DEMISED PREMISES for the following purposes:

- a. To inspect the DEMISED PREMISES and improvements thereon;
- b. To effect compliance with any law, order or regulation of any lawful authority;
- c. To make or supervise major repairs, alterations or additions; (This subparagraph shall not be interpreted to impose any duty upon LESSEE to make or supervise any such major repairs, alterations or additions);
- d. To exhibit the DEMISED PREMISES to prospective SUBLESSEES, purchasers or other persons after receipt from SUBLESSEE of SUBLESSEE'S intent not to renew this Sublease;
- e. After receipt of SUBLESSEE'S notice not to renew this Sublease, LESSEE may place upon the DEMISED PREMISES signs indicating that it is available for rent in such form as shall be deemed suitable by LESSEE, which signs SUBLESSEE shall permit to remain thereon without molestation. No authorized entry by LESSEE shall constitute an eviction of SUBLESSEE or a deprivation of SUBLESSEE'S rights, alter the obligations of SUBLESSEE, or create any right in SUBLESSEE adverse to LESSEE'S interests hereunder.

**8.2 REDELIVERY OF PREMISES.** SUBLESSEE shall pay the rent and all other sums required to be paid by SUBLESSEE hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all the terms and conditions hereof on its part to be kept and performed, and, at the expiration or sooner termination of this Sublease, peaceably and quietly quit and surrender to LESSEE the premises in good order, reasonable wear and tear excepted. In the event of the non-performance by SUBLESSEE of any of the covenants of SUBLESSEE undertaken herein, this Sublease may be terminated as herein provided. In the event of any Sublease termination, ownership of the hangar and improvements shall be retained by the LESSEE as airport property and SUBLESSEE shall have Thirty (30) days from notice of termination to remove the all personal property. In the event such property is not removed within such time, the property shall automatically be forfeited to the ownership of LESSEE.

**8.3 REMEDIES CUMULATIVE.** All remedies hereinbefore and hereafter conferred on LESSEE or SUBLESSEE shall be deemed cumulative and in no way exclusive of the other, or of any other remedy conferred by law.

**8.4 PARTIES BOUND.** The covenants and conditions herein contained shall, subject to the provisions as to assignment, transfer, and subletting, apply to and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

**8.5 "SUBLESSEE" and "LESSEE".** As used in this Sublease the term "SUBLESSEE" means the trustees, officers, employees, legal representatives or successors of the SUBLESSEE; and the term "LESSEE" means the officers, employees, legal representatives or successors of the LESSEE.

**8.6 NO WAIVERS.** Failure of the LESSEE to insist on performance of any of the terms of this Sublease shall not be construed as a waiver of such terms and the same shall remain in full force and effect for the Original Term and any renewal thereof.

**8.7 ACTS OF GOD.** Except as otherwise provided herein, neither the LESSEE nor the SUBLESSEE shall be liable for delays or defaults in the performance of this Sublease due to Acts of God or the public enemy, riots, strikes, fires, floods, explosions, accidents, governmental action of any kind or any other causes of a similar character beyond the control and without the fault or negligence of either party.

**8.8 WHOLE CONTRACT.** This document contains the entire agreement between the parties and cannot be amended orally, but only by an instrument in writing signed by both parties.

**8.9 NOTICE.** Any permission, notice, invoice or communication provided for herein shall be in writing and considered completed and received twenty-four (24) hours after said

LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND

000147

notice, invoice or communication is deposited in the United States mail by certified or registered mail, return receipt requested, addressed to the SUBLESSEE at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

And to the LESSEE at:

Airport Manger  
Lee C. Fine Memorial Airport  
1111 Lee C. Fine Road  
Brumley, Missouri 65017

And

City Administrator  
City of Osage Beach  
1000 City Parkway  
Osage Beach, Missouri 65065.

**8.10 TIME OF ESSENCE.** Time is expressly declared to be of the essence of this Sublease, and of each and every covenant, term, condition and provision hereof.

**8.11 VENUE.** In the event that any actions or proceedings are initiated with respect to this Sublease, the SUBLESSEE and the LESSEE agree that the venue thereof shall be Miller County, Missouri, and that this Sublease shall be governed by the laws of the State of Missouri.

**8.12 SEVERABILITY.** If any term, covenant or condition of this Sublease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Sublease shall be valid and be enforced to the fullest extent permitted by law.

**8.13 HOLDING OVER BY SUBLESSEE.** SUBLESSEE shall not acquire any right or interest in the DEMISED PREMISES by remaining in possession after termination of this Sublease. During any such period of holding over, SUBLESSEE shall be a SUBLESSEE at will subject to all the obligations imposed upon it by this Sublease.

**8.14 WITHHOLDING REQUIRED APPROVALS.** Whenever the approval of the LESSEE or the SUBLESSEE is required herein, no such approval shall be unreasonably requested or withheld.

**ARTICLE IX – SPECIAL CONDITIONS**

**9.1 PUBLIC ASSISTANCE.** SUBLESSEE shall conform to any Federal, State or Local laws and/or regulations that apply to public assistance to airports, and shall agree to modify this Sublease to the extent necessary or useful to obtain such assistance.

**9.2 SURETY BOND.** SUBLESSEE and any contractor or subcontractors hired by SUBLESSEE to construct improvements on the premises shall comply with Section 107.170, RS MO by furnishing to LESSEE a bond with good and sufficient sureties, in an amount fixed by LESSEE, and such bond shall be conditioned for the payment of any and all materials, equipment and tools used in connection with the construction of such improvements, and all insurance premiums, both for compensation and for all other kinds of insurance on said work, and for all labor performed in such work whether by subcontractor or otherwise.

**9.3 SECURITY.** SUBLESSEE shall be responsible for reporting any unusual activities or suspicious person to the Osage Beach Police Department as soon as possible.

**ARTICLE X – TERMINATION**

**10.1 DEFAULT-SUBLESSEE.** If the SUBLESSEE shall fail to perform, keep and observe any of the terms, covenants, conditions, or agreements herein contained in this sublease, SUBLESSEE shall be in default. Upon such default LESSEE may give the SUBLESSEE written notice to correct or cure such default which notice shall set forth in detail the facts alleged to constitute said default. If any such default shall continue for ten (10) days after receipt of such notice by the SUBLESSEE, the LESSEE may give the SUBLESSEE written notice of termination. If such default is not corrected or cured prior to the termination date specified in such notice, this Sublease shall then terminate on such date as if it were the day herein definitely fixed for the end and expiration of this Sublease and the term hereof. Notwithstanding anything herein to the contrary, if SUBLESSEE fails to pay rent or charges on the date said rent or charges are due, said failure shall constitute default, whether LESSEE gives notice of said failure or not. If said charges and rents, plus interest hereinafter specified, are not received within ten (10) days of the date due, LESSEE may terminate this Sublease for said default.

**10.2 REMEDIES FOR DEFAULT.** In the event that LESSEE shall at any time terminate this Sublease for any default, all title to SUBLESSEE'S improvements shall pass to LESSEE upon the date of default. Furthermore, in addition to any other remedy it may have, LESSEE may recover from SUBLESSEE all damages incurred by reason of such default, including, but not limited to the cost of recovering the premises and amount of rent and charges owed to LESSEE for the remainder of the Original Term or any Renewal Term, all of which amounts shall be immediately due and payable from SUBLESSEE to LESSEE.

**10.3 LESSEE'S RIGHT TO PERFORM.** In the event that SUBLESSEE by failing or neglecting to do or perform any act or thing herein provided by it to be done or performed,

**LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND**

**000149**

shall be in default hereunder and such failure shall continue for a period of ten (10) days after written notice from LESSEE specifying the nature of the act or thing to be done or performed, then LESSEE may, but shall not be required to, do or perform or cause to be done or performed, such act or thing (entering on the DEMISED PREMISES for such purposes, if LESSEE shall so elect), and LESSEE shall not be held in any way responsible for any loss, inconvenience, annoyance, or damage resulting to SUBLESSEE on account thereof, and SUBLESSEE shall repay to LESSEE on demand the entire expense thereof including compensation to the agents and employees of LESSEE. Any act or thing done by LESSEE pursuant to the provisions of this section shall not be construed as a waiver of any such default by SUBLESSEE, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of LESSEE, hereunder or otherwise. All amounts payable by SUBLESSEE to LESSEE under any of the provisions of this Sublease, if not paid when the same become due as in this Sublease provided, shall bear interest from the date they become due until paid at the rate of fifteen percent (15%) per annum, compounded annually.

**10.4 DEFAULT – LESSEE.** Failure on the part of LESSEE to comply with the terms and provisions of this Sublease shall constitute a default and shall authorize the SUBLESSEE to terminate this Sublease in addition to all of its other legal remedies. Provided, however that LESSEE shall in no event be charged with default in the performance of any of its obligations hereunder unless and until LESSEE shall have failed to perform such obligations within sixty (60) days after written notice by SUBLESSEE to LESSEE properly specifying wherein LESSEE has failed to perform any such obligation; notwithstanding anything to the contrary contained herein, no default shall be declared under this paragraph so long as LESSEE takes reasonable action, (considering time of year, weather, availability of workmen, materials and the like) within the sixty (60) day period to remedy the default or agrees to remedy the same as soon as possible. Under no circumstances shall LESSEE'S obligation to remedy exceed a total of 90 days from the date of receipt of notice. SUBLESSEE'S responsibility to pay rent or other charges under this Sublease shall abate during LESSEE'S time period to remedy.

**10.5 CONFLICT OF INTEREST.** SUBLESSEE represents and warrants that no officer, employee, or agent of LESSEE has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration by or from SUBLESSEE, or any of SUBLESSEE'S officers, employees or agents in connection with obtaining, arranging, or negotiation of this Sublease or other documents or agreements entered into or executed in connection therewith.

**10.6 RIGHT OF FIRST REFUSAL.** In the event SUBLESSEE desires to sell the building which is the subject of this sublease, LESSEE shall be given 90 days written notice of such along with a written copy of the proposed agreement to sell the building. LESSEE shall within said 30 days have the primary right to purchase the building or business on the same terms and conditions as set forth therein. If LESSEE does not respond within said 30 days, it shall be deemed that they have refused such purchase.

LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND

000150

**10.7 NON ASSIGNABILITY.** The SUBLESSEE may not assign or transfer this sublease, or any interest therein, or sublet the premises or any part thereof without the prior written consent of the LESSEE and the Missouri Department of Natural Resources, and any attempt at assignment, transfer or subletting shall be void and at the option of the LESSEE, deemed sufficient grounds for the cancellation and termination of this sublease. Such assignment or sublease shall be subject to the terms of this sublease.

**10.8 COMPLIANCE WITH LEASE.** The parties acknowledge that the Lease Agreement dated March 5, 1999 is incorporated herein by reference and the restrictions contained in that Lease are binding upon both LESSEE and SUBLESSEE and the rights of Missouri Department of Nautral Resources are binding upon both LESSEE and SUBLESSEE.

**10.9 EFFECT OF LESSOR'S CONSENT.** This sublease requires the consent of the Missouri Department of Natural Resources but the granting of such consent does not create any duty, liability, obligation or responsibility on the part of the Missouri Department of Nautral Resources or the State of Missouri to the subleasee.

**10.10 PARAGRAPH HEADINGS.** The paragraph headings herein set forth are not to be construed as a part of this Agreement, rather they are a guide to the location of the provisions of this Agreement.

Attest: SUBLESSEE

\_\_\_\_\_ BY \_\_\_\_\_  
President

Attest: LESSEE of Osage Beach, MISSOURI

By \_\_\_\_\_  
Penny Lyons, Mayor

Approved as to Legal Form:

\_\_\_\_\_  
LESSEE Attorney

LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND

000151

STATE OF MISSOURI     )  
                                          ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2011 before me appeared \_\_\_\_\_  
\_\_\_\_\_ to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_  
\_\_\_\_\_ of a corporation of the State of Missouri, and that the attached Sublease was  
signed on behalf of said corporation, by authority of its Board of Directors, and said  
acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal  
in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND**

**000152**

**Exhibit A  
Lee C. Fine Memorial Airport Hangar Lots**

**LEE C. FINE MEMORIAL AIRPORT  
SUBSUBLEASE OF LAND**

**000153**

**Exhibit B  
SUBLESSEE's Individual Hangar Design and Layout**