

BILL NO. 4492

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AUTHORIZE THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WEST PLAINS, MISSOURI, THE BOARD OF GOVERNORS OF MISSOURI STATE UNIVERSITY AND THE BOARD OF EDUCATION OF WEST PLAINS R-7 SCHOOL DISTRICT PERTAINING TO THE LEASING OF PROPERTY OWNED BY THE CITY OF WEST PLAINS LOCATED AT 125 NORTH HOWELL AVENUE, WEST PLAINS, MISSOURI.

NOW THEREFORE, be it resolved by the City of West Plains as follows:

Section 1: That the Mayor is hereby authorized to execute the lease agreement between the City of West Plains, Missouri, the Board of Governors of Missouri State University and the Board of Education of West Plains R-7 School District pertaining to the leasing of property owned by the City of West Plains, located at 125 North Howell Avenue. (EXHIBIT A).

Section 2: That this Ordinance shall be in full force and effect from and after its day of passage and approval.

PASSED AND APPROVED THIS 20<sup>th</sup> DAY OF MARCH 2017.

CITY OF WEST PLAINS, MISSOURI

BY: \_\_\_\_\_  
MAYOR JACK PAHLMANN

ATTEST:

\_\_\_\_\_  
CITY CLERK MALLORY PREWETT

## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING, referred to as "MOU", made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2017, between THE CITY OF WEST PLAINS, MISSOURI referred to as "City," and THE BOARD OF GOVERNORS OF MISSOURI STATE UNIVERSITY, referred to as "University" and THE BOARD OF EDUCATION OF WEST PLAINS R-7 SCHOOL DISTRICT, referred to as "R-7."

### WITNESSETH:

- 1) Now, therefore, City does agree to let unto University and R-7, the following described real estate located at 125 North Howell Avenue, West Plains in Howell County, Missouri, referred to as the "Premises":

Beginning in the center of an access road at the south line of Cleveland Street and the north line of Broadway Avenue, thence in a northeasterly direction perpendicular to Broadway Avenue to the south line of Burlington Northern Railroad, thence in a southeasterly direction along the south line of said railroad to the west line of Howell Avenue, thence in a southerly direction along the west line of said Howell Avenue to the north line of said Broadway Avenue, thence in a northwesterly direction along Broadway Avenue to the point of beginning, same being part of Lots, 1, 2, 3, 4 and 5 in R. G. Smith Subdivision of part of SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 21, Township 24, Range 8 ; a part of Lots 1, 2 and 3 in Block 1 and Lots 1, 2, 3, 4, 5, 6 and 7 in Block 2 of Williams Addition to the City of West Plains, Missouri; a part of Lots 2 and 3 of Plez James' Subdivision of SW  $\frac{1}{4}$  of SE  $\frac{1}{4}$  of Section 21, Township 24, Range 8; and a part of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 21, Township 24, Range 8.

- 2) The term of this MOU shall be for a period of two (2) years, commencing on April 1, 2017, and expiring at midnight on March 31, 2019; provided, however, the parties may agree to additional one (1) year extensions as might be negotiated by the City, University, and R-7.
- 3) The City shall provide access to the Premises to the University and R-7 for purposes of conducting activities associated with the educational and training courses and programs to be delivered at the Premises (to be known upon the approval of this lease agreement as the "Greater Ozarks Center for Advanced Technology", or GOCAT) for the purpose of workforce development.
- 4) At any time during the term of this MOU, any party may terminate this MOU by providing each of the other parties at least ninety (90) days prior written notice of its intent to terminate and this MOU shall terminate upon the expiration of the ninety (90) day period, as specified by notice, with no further obligations due from any party.
- 5) In the event City desires to sell the Premises during the term of this MOU, City agrees to give University and R-7 a notice in writing of at least 90 days before placing the Premises on the market. University and/or R-7 shall have a right to purchase the Premises at fair market value and shall have the right of first refusal before the City enters into an agreement for the sale of the Premises.
- 6) City covenants and agrees as follows:
  - a) City is the owner of the Premises and has good right to lease the same and will warrant and defend the leasehold interest created.

- b) City shall deliver the Premises to University and R-7 in a safe, clean, dry and habitable condition and in good order and repair, including electrical, plumbing, and all other facilities serving the Premises.
  - c) University and R-7 may peacefully and quietly hold and enjoy the Premises during the term without any interruption from City or any other persons claiming under City, subject, however, to the right of City to inspect the Premises at reasonable times and intervals, upon reasonable notice to University and R-7.
  - d) City shall maintain the HVAC, electrical, plumbing, roof, and outdoor area of the Premises. City agrees to maintain the Premises so that the building is dry and habitable at all times.
  - e) City agrees to pay for all utility services for the Premises during the term of this MOU.
  - f) City shall, at its expense, before commencement of the term of this MOU, have the air conditioning, heating, electrical, and plumbing equipment ("equipment") serving the premises inspected and placed in good operating condition. The equipment will be maintained by City at its expense. Should replacement of equipment become necessary through ordinary wear and tear or otherwise, City, at its expense, agrees to replace same with another or others of at least equal efficiency and capacity to present equipment.
  - g) City shall maintain during the term of this MOU standard property and casualty insurance, insuring the Premises against fire and other casualty for the full value of the building and improvements. In the event of a casualty loss that cannot be repaired within 60 days, this MOU will terminate and any insurance proceeds shall be retained by City. The City shall carry liability insurance with regard to the Premises. University and R-7 shall maintain during the term of this MOU standard insurance for the full value of University-owned and R-7 owned contents of the facility.
  - h) Property taxes, if any, shall be paid by City.
  - i) City covenants and agrees that at its own expense, and without any right of reimbursement from University or R-7, it shall effect such improvements, alterations, repairs, additions or replacements to the exterior areas of the Premises to fully and timely comply with the requirements of all governmental authorities applicable to the exterior areas, including, without limitation, planning and zoning rules and regulations, building, health and fire codes, the "American with Disabilities Act" of 1990 as amended and the Federal regulations promulgated thereunder (the "Disabilities Act"); provided, however, that with respect to the Disabilities Act, the parties agree as follows:
    - (i) Each party shall have responsibility under the Disabilities Act for its own standards, criteria, policies, practices, and procedures.
    - (ii) University and R-7 shall have the responsibility for the provision of "auxiliary aids and services" (as such term is used in the Disabilities Act) to its customers, if and to the extent required in connection with its operation of its business on the Premises.
    - (iii) Unless specifically provided to the contrary elsewhere in this MOU, City shall have responsibility for the removal of barriers in the Common Areas, where such removal is required by the Disabilities Act.
    - (iv) Where barrier removal is not required by the Disabilities Act, but the use of alternative methods of providing access is required, City, University, or R-7, as required in this Section, shall have responsibility for the use of such methods except to the extent that the Disabilities Act required alternative methods that involve services by University's/R-7's employees for the retrieval or delivery of University's/R-7's inventory.
- 7) University and R-7 covenant and agree as follows:
- a) The University and R-7, during the term of this MOU, may renovate, remodel, recondition, rehabilitate, convert, change, and alter the interior of the Premises, and attach fixtures, and make any improvements, at the expense of the University or R-7, and University or R-7 shall have full power and right, at any time during the term of this MOU, provided University or R-7 is not then in default in the performance of any of its obligations, to tear down, remove any fixture on the Premises, or to alter or

change the same in material respects, at the University's or R-7's expense; *provided, however*, that these rights may be exercised only in accordance with plans and specifications submitted to and approved in writing by City. All such renovating, remodeling, reconditioning, rehabilitating, converting, changing, and altering of the Premises, and all additions, structures, and fixtures added to the Premises by the University or R-7 which are remaining at the termination of this MOU, shall then become the property of City.

- b) University or R-7 may erect such signs on or about the premises as shall conform with applicable ordinances.
  - c) University agrees to provide custodial services for the interior of the Premises during the term of this MOU.
  - d) University represents that it is protected by the State Legal Expense Fund, 105.711 RS Mo et seq. University agrees to assume responsibility for its own acts during the performance of this MOU and will not be responsible for the acts of City or R-7.
  - e) R-7 agrees to assume responsibility for its own acts during the performance of this MOU and will not be responsible for the acts of City or University.
- 8) In the event that it shall become necessary for City, University, or R-7 to institute legal action as a result of the default by a party under any terms of this MOU, the prevailing party shall be entitled to court and legal fees, including a reasonable attorney's fee.
- 9) Any notices authorized or required to be given may be personally delivered to the addresses below or by depositing the same in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, and if intended for City, addressed as follows: City of West Plains, Attention: Tom Stehn, 1910 Holiday Lane, P.O. Box 710, West Plains, MO 65775; if addressed to University, addressed as follows: Missouri State University-West Plains; Attention, Scott Schneider, 128 Garfield Avenue, West Plains, MO 65775; and if addressed to R-7, addressed as follows: West Plains R-7 School District; Attention, Dr. John Mulford, 305 Valley View Drive, West Plains, MO 65775. Properly addressed and mailed, delivery shall be deemed upon mailing.
- 10) This MOU may be modified or extended only as provided in the MOU.
- 11) This MOU shall be binding upon the parties, their successors, and assigns.

**IN WITNESS WHEREOF**, the parties, by their duly authorized representatives, have hereunto set their hands the day and year first above written.

THE CITY OF WEST PLAINS, MISSOURI,

By: \_\_\_\_\_  
Date

BOARD OF GOVERNORS OF MISSOURI STATE UNIVERSITY – WEST PLAINS,

By: \_\_\_\_\_

Date

BOARD OF EDUCATION OF WEST PLAINS R-7 SCHOOL DISTRICT,

By: \_\_\_\_\_

Date