

AN ORDINANCE AUTHORIZING THE CITY TO CONTRACT WITH THE SOUTH CENTRAL OZARK COUNCIL OF GOVERNMENTS (“SCOCG”) FOR ASSISTANCE WITH AN APPLICATION FOR A GRANT FROM FEMA (THE “GRANT”) TO BE USED TO PAY A PORTION OF THE COST OF CONSTRUCTING A STORM SHELTER (THE “PROJECT”); AUTHORIZING AN AGREEMENT BETWEEN THE CITY AND SOUTHERN HILLS COMMUNITY IMPROVEMENT DISTRICT (THE “CID”) REGARDING ACCEPTANCE AND USE OF GRANT FUNDS FROM A GRANT AWARD IN AN AMOUNT UP TO \$1,383,750; AUTHORIZING THE CITY ADMINISTRATOR TO JOIN IN AN ENGAGEMENT AGREEMENT WITH CID TO ENGAGE THE SERVICES OF SAM A. WINN & ASSOCIATES, ARCHITECTS, FOR DESIGN AND GRANT APPLICATION CONSULTING; APPROVING THE CITY ADMINISTRATOR EXECUTING: (A) A GRANT AGREEMENT FOR USE OF UP TO \$1,383,750 FROM THE GRANT AWARD BY CID TOGETHER WITH \$461,250 INCLUDED IN ITS AMENDED FIVE YEAR PLAN TO CONSTRUCT THE PROJECT AND (B) A JOINT COOPERATION AGREEMENT CONTRACTING WITH THE CID TO PROVIDE STAFFING FOR RECREATION SERVICES BY AND THROUGH THE CITY’S PARKS AND RECREATION DEPARTMENT AT THE PROJECT DURING PERIODS WHEN THE PROJECT IS NOT OCCUPIED IN PROVIDING FOR PUBLIC SAFETY TO THE CITIZENS OF THE CITY AND AUTHORIZING SUCH OTHER AND FURTHER ACTIONS AS MAYBE NECESSARY AND REQUIRED TO ACCOMPLISH SUCH AUTHORIZATIONS AS SET FORTH HEREIN.

WHEREAS, the City Council has determined that it is in the best interest of the City to join with the CID in making an application for the Grant, and to approve and adopt the Southern Hills Community Improvement District’s (the “CID”) proposal regarding the mutual benefits to the City and the CID combining their resources to jointly operate the Project which will allow the City and the CID to apply for the Grant to be used to pay a portion of the costs of the Project with the ineligible costs coming from the Five Year Plan of the CID and with the Project to be located on leased real estate owned by the owners of the Southern Hills Shopping Center (the “Center”) and located adjacent to the public safety building already occupied by the City; and

WHEREAS, the City Council has given substantial consideration to the Project and the Grant and to entering into the Grant Agreement and the Joint Cooperation Agreement with the CID, and the City has received advice from various professionals to establish the reasonableness, fairness and feasibility of this Project, the Grant Agreement and the Joint Cooperation Agreement; and

WHEREAS, the owners of the real estate in the Center have also contracted with the CID agreeing, in addition to agreeing to lease the space for the Project at a nominal rental, to act as a construction manager for the construction for the Project, and the CID has offered to purchase and furnish the recreational equipment for the Project, at no costs to the City, which recreation equipment was not eligible to be included in the Grant; and

WHEREAS, the City has a Park and Recreation Department which is tasked with responsibility for providing recreation for the citizens of the City and the CID has proposed to permit the use of the Project, when not required for public safety to be available to the Parks and Recreation Department in fulfilling its mission to the citizens; and

WHEREAS, due to the foregoing arrangements, the minimal costs to the City from the foregoing arrangements with the only anticipated costs to the City to be for necessary staffing and collateral operation expense which will be provided for in the annual budget of the City; and

WHEREAS, the Grant meets the criteria for a grant of funds established in the City's Economic Development Incentive Policy and Conditions; and

WHEREAS, the Project will result in significant benefits to the City by providing jobs, assist in meeting public safety goals of the City and provide recreational facilities for the citizens in the area and visitors to the CID.

NOW THEREFORE, BE IT ORDAINED, by the City Council of the City of West Plains, Missouri that the making of the grant application and the proposed Joint Cooperation Agreement submitted by the CID pursuant to Section 70.220 RSMo., as amended, are hereby accepted and approved and the engagement of Sam A. Winn, Architects, to design and provide consulting services for the Project is consistent with powers of the City and the CID as is required by Section 70.220 RSMo.

SECTION 1. That there be and hereby is approved a joint application for the Grant for the CID in an amount expected to not exceed One Millions Three Hundred Eighty Three Thousand Seven Hundred Fifty-Three Dollars (\$1,383,750) to provide assistance for the Project to assist in the construction of new public safety Project in the City of West Plains, Missouri.

SECTION 2. That the City Administrator is hereby authorized and directed to enter into a Grant Agreement with the CID in substantially in the form in EXHIBIT A, attached hereto and made a part hereof, establishing the conditions for the use of grant proceeds, provided however that the City Administrator shall not be directed to sign said Agreement unless and until the Joint Cooperation Agreement in substantially the form of Exhibit B, attached hereto and made a part hereof, establishing the operational procedures associated with the Project is executed by the CID.

SECTION 3. This Ordinance shall become effective immediately upon adoption and signing by the Mayor of the City of West Plains, Missouri.

SECTION 4. .If any section, sub-section, paragraph, sentence, clause or word of this Ordinance shall be adjudged invalid by a court of competent jurisdiction then in such event said invalidity shall not affect the viability of the remaining portions of this Ordinance.

Adopted February, 2018

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PASSED AND APPROVED THIS 21ST DAY OF MAY 2018

CITY OF WEST PLAINS, MISSOURI

BY: _____
MAYOR JACK PAHLMANN

ATTEST:

CITY CLERK MALLORY SNODGRAS

EXHIBIT A

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "Grant") is made and entered into this ___ day of February, 2018 (the AEffective Date@), by and between the CITY OF WEST PLAINS, MISSOURI, a constitutional home rule municipal corporation with its offices at 1910 Holiday Lane, West Plains, Missouri 65775 (the ACity@), and SOUTHERN HILLS COMMUNITY IMPROVEMENT DISTRICT a public entity of the State of Missouri with its principal offices at 1307 Southern Hills Center, West Plains, Missouri 65775 (ACID@), (both collectively referred to herein as the AParties@).

RECITALS

WHEREAS, pursuant to Ordinance No. 4090 as amended by, Ordinance No. 4143 (the AApproval Ordinances@), and consistent with its goal of encouraging the development and maintenance of commercial and industrial businesses within the City and to provide for the creation of jobs and employment opportunities and enhancing the tax base of the City, the City has established an Economic Development Incentive Policy and Considerations (the APolicy@); and

WHEREAS, West Plains City Council stated its intention in the Approval Ordinances to assist with the development of the area within the CID to foster economic development within the City by the use of grants and other funding vehicles to encourage the productive use and development of targeted properties within the CID and to aid in overcoming blight that was found to exist; and

WHEREAS, as authorized by the Missouri Constitution and in accordance with the guidelines established under the Policy of the City, the City has offered to join with the CID in applying for FEMA safety grant and as an economic development incentive to encourage the CID to assist with the development of safety and recreational space located within the City and to assist its Parks and Recreation Department in provision of such added recreational opportunities within the CID and the City (the AProject@), as more fully described and set forth in Exhibit A-1, Scope of Work, attached hereto and incorporated herein; and

WHEREAS, the Project features a FEMA Shelter building will be constructed so when it is not needed for storm shelter protection it can be used to provide recreation opportunities and which but for such added use would be left vacant and unused and which building, if used by the City=s Parks and Recreation Department, could provide dual purpose of safety and recreation (the ARecreation Use@), which will require s significant additional facility and equipment acquisition in order to render it recreation-viable; and

WHEREAS, the CID has agreed to enter into this Grant Agreement, which sets forth the City=s and the CID=s respective rights and obligations concerning the Grant and the anticipated operations under the Joint Cooperation Agreement and to contribute to the furnishing of the recreational and non-eligible FEMA Grant costs) as a budget expense of the CID.

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

Section 1. Terms of the Grant. The City shall join with the CID in applying for the Grant to provide to the CID a development grant in amounts set forth in this section (the AGrant@), which the CID shall use in connection with the development to occur under the Project, defined above, and situated within the City of West Plains, Missouri. The payment under this Section shall be provided to the CID following notice to the City of grant award provided that this Agreement has been fully executed by both Parties. By accepting the Grant, the CID agrees to meet the Grant Objectives defined in Section 3 below.

The Grant shall be payable to the CID upon award.

Section 2. City's Obligation to Pay Operating Expenses for Parks and Recreation Department Employees Not Debt: Payments Limited to Appropriated Expenditures. Notwithstanding anything to the contrary herein, the obligations of the City, pursuant to this Agreement, shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the CID shall have no right to have taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. The City=s obligation shall be an annual budget obligation of the City payable only from the amounts payable from appropriations made by the City Council.

Section 3. Grant Objectives. In consideration of the City=s agreement to provide the Grant to the CID, the CID agrees to comply with all the following objectives throughout the Term (the AGrant Objectives@):

(a) Within thirty-six (36) months after the Grant Award, the CID will construct the Project in accordance with plans drawn by Sam A. Winn and reviewed and approved by the City;

(b) The CID shall remain current on all real estate tax obligations relevant to the Project, including any payments in lieu of taxes otherwise due, during the Term.

Section 4. Annual Review of Grant Objectives: Actions by City. The CID shall make annual reports, in such detail as may reasonably be requested by the City, as to the actual progress of the CID simultaneous with the annual budget submission by the CID to the City and shall include reports with respect to the Project and the terms of this Agreement. Information requested by the City may include the amount of investment made, number of new jobs created, and such other information related to carrying out this Agreement as the City reasonably requires.

Section 5. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by a recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail,

in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, Notices shall be addressed to:

If to City: City of West Plains, Missouri
 Attn: City Administrator
 West Plains, Missouri _____

to CID: Southern Hills Community Improvement District
 Attn: President

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

(b) Extent of Provisions: No Personal Liability. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation, or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future official, member, officer, agent or employee of the City or the CID in other than its or their official capacity. No official executing or approving the City's or the CID's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the issuance thereof.

(c) Successors. This Agreement shall be binding upon and inure to the benefit of the Company and its successors and assigns.

(d) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(e) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(f) Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

(i) that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into, or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein;

(ii) the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and

(iii) each section, provision, covenant, agreement, obligation or action, or part thereof shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the fullest extent permitted by law.

(g) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of the Agreement.

(h) Governing Law and Choice of Forum. This Agreement shall be governed by and constructed in accordance with the laws of the State of Missouri or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and the CID, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Howell County, Missouri.

IN WITNESS WHEREOF, the City and the CID have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date written above.

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CITY OF WEST PLAINS, MISSOURI

By: _____

Name: _____

Title: City Administrator

**SOUTHERN HILLS COMMUNITY
IMPROVEMENT DISTRICT**

By: _____
Name: _____
Title: _____

Exhibit A-1

SCOPE OF WORK

[Sam Winn to Provide]

FEMA PROJECT DEVELOPMENT AGREEMENT

This FEMA Project Development Agreement ("Agreement") is entered into by and among the CITY OF WEST PLAINS, MISSOURI ("City"), a constitutional home rule charter municipal corporation; SOUTHERN HILLS COMMUNITY IMPROVEMENT DISTRICT, a public entity organized under Sections 67.1401 to 67.1571 RSMo., as amended (the ACID@) and SOUTHERN HILLS CENTER V, LLC, a Missouri limited liability company ("Developer"). Together, the City, the CID and the Developer shall be referred to as the "Parties."

WHEREAS, Developer submitted to the City a Second Amended Petition requesting approval of an amendment to the boundaries of the CID to add real estate to the CID cite situated within the City and commonly known as the Southern Hills Shopping Center ("Development"); and

WHEREAS, the Developer intends, with the joinder of the City, to submit to the Federal Emergency Management Agency ("FEMA") an application that requests approval of a project by requesting a grant for the construction of a FEMA Shelter to be located in the Development (the "FEMA Project"); and

WHEREAS, completion of the FEMA Project in accordance with its terms of the grant award will result in providing for the protection of the general public and the employees of retail and service establishments located in the Development and visitors to the Development by providing a safe room or storm shelter in the event of severe weather happening within the City; and

WHEREAS, the Developer has with the concurrence of the City engaged the services of Sam Winn, Architects who has commenced design documents and costs estimates for the construction of the FEMA Project and the Developer, with assistance provided by the CID, has committed to completing the design, making application for, and upon receipt of the grant, constructing the FEMA Project in order to provide storm protection for the citizens of the City and visitors to the Development and after receipt of conformation of grant award from FEMA to cause construction of the FEMA Project to its completion; and

WHEREAS, the Developer, as the representative of the Owners, has submitted the Second Amended Petition with an accompanying Amended Five Year Plan which includes estimates of the costs of the FEMA Project which has been filed with the City and the Board of Directors of the CID has adopted a Resolution supporting the amendment to the boundaries of the CID and have agreed on behalf of the CID to provide assistance to pay the estimated costs of the nonqualifying portions of the FEMA costs estimates prepared by the Architects on the FEMA Project; and

WHEREAS, the Developer desires to proceed with the completion of the design cost estimate while insuring that all issues are adequately addressed, in compliance with all City=s codes and ordinances so the grant application can proceed.

NOW, THEREFORE, the Town and Developer agree to the following:

1. Recitals Incorporated by Reference. The representations, covenants, and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this paragraph.
2. City acknowledges the Developer has included the cost estimates for the FEMA Project in the Amended Five Year Plan. Developer has included the FEMA Project in the Amended Five Year Plan for consideration and requested approval of such Amended Five Year Plan by the City Council.

3. No Building Permit will be requested and none is expected or approvals will be requested pending Receipt of Grant. If the Second Amended Petition is approved by the City Council, no application for permit will be made for the FEMA Project or other approval of any kind that will allow construction on FEMA Project until such time as FEMA issues a grant for the qualifying parts of the FEMA Project

4. FEMA Failure or Refusal to Issue Grant. If the Second Amended CID Petition is approved, and FEMA does not issue a grant for the FEMA Shelter then Developer shall complete the Additional Storm Walter Improvements, the New Road, Parking Lot improvements, the excavation of the Hill real estate, the lighting, signage, and utility relocation set forth in the Amended Five Year Plan.

5. Entire Agreement. This Agreement contains the entire agreement between the parties hereto in reference to the FEMA Shelter and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

6. No Oral Modification. No modifications or amendments to this Agreement shall be valid unless in writing and signed by the parties.

7. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, and all obligations of the parties created hereunder are performable in Howell County, Missouri. Venue for any action arising under this Agreement shall lie in Howell County, Missouri. Nothing in this Agreement shall vest any development rights in Developer, nor shall any property rights be conveyed or created relative to any building permit referenced herein.

8. Ordinances. Developer shall be subject to all ordinances of the City, whether now existing or in the future arising.

9. Binding Obligation. This Agreement shall become a binding obligation on the parties upon execution by all parties hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual(s) executing this Agreement on its behalf have full authority to execute this Agreement and bind it to the same.

10. Authorized Signatory. The City Council shall authorize the Mayor of the City to execute this Agreement on behalf of the City.

11. Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provisions were not a part hereof.

12. Agreement Runs With the Land. It is specifically agreed and understood by the parties that this Agreement shall be a covenant running with the land and that this Agreement shall be filed in the deed records of Howell County, Missouri.

13. Agreement Binding on Developer's Successors. This Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

14. **Waiver of Claims and Indemnification.** Developer specifically understands and agrees that the inclusion of the FEMA Shelter in the Amended Five Year Plan prior to the issuance of a grant by FEMA, Developer specifically understands and agrees that in the absence of this Agreement, the Amended Five Year Plan for the FEMA Shelter would not be approved by the City Council. In the event FEMA fails or refuses to issue a grant, Developer hereby agrees to fully indemnify, protect and hold the City harmless.

[Remainder of page is intentionally left blank. Signature pages follow.]

CITY:

CITY OF WEST PLAINS, MISSOURI

By: _____, Mayor

ATTEST:

By: _____ City Clerk

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss
COUNTY OF HOWELL)

On this ___ day of _____, in the year 2018, before me, a Notary Public in and for said state, personally appeared _____, the Mayor known to me to be the person who executed this Restated Cooperative Agreement on behalf of the City of West Plains, Missouri and acknowledged to me that he executed the same for the purposes therein stated.

Subscribed and affirmed before me this ___ day of _____, 2018.

Notary Public

My Commission Expires: _____

DEVELOPER:

SOUTHERN HILLS CENTER V, LLC

By: _____
Name: Travis Smith
Title: President

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF MISSOURI)
)ss
COUNTY OF _____)

On this ____ day of _____ in the year 2018 before me, a Notary Public in and for said state, personally appeared Travis Smith, President of Southern Hills Center V, LLC, known to me to be the person who executed the within Restated Cooperative Agreement on behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

Subscribed and affirmed before me this ____ day of _____, 2018.

Notary Public

My Commission Expires: _____

CID:

**SOUTHERN HILLS COMMUNITY
IMPROVEMENT DISTRICT**

By: _____
_____, Chairman

ATTEST:

By: _____
_____, Secretary

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF MISSOURI)
) ss
COUNTY OF HOWELL)

On this ____ day of _____, in the year 2018, before me, a Notary Public in and for said state, personally appeared _____, the Chairman of the Southern Hills Community Improvement District, known to me to be the person who executed the within Restated Cooperative Agreement on behalf of the Southern Hills Community Improvement District and acknowledged to me that he/she executed the same for the purposes therein stated.

Subscribed and affirmed before me this ____ day of _____, 2018.

Notary Public

My Commission Expires: _____

FUNDING AGREEMENT

This Funding Agreement (“Agreement”) is entered into this _____ day of May, 2018, by City of West Plains, Missouri, (“City”), a constitutional home rule constitutional charter municipal corporation of the State of Missouri (the “State”); Southern Hills Community Improvement District, a public entity of the State (the “CID”) and Southern Hills Center V, LLC, a Missouri limited liability corporation of the State (“Developer”).

RECITALS

WHEREAS, after consultation and study, the City has determined that, despite any conclusion to the contrary that may have been drawn from Ordinance No. 4467, the City Council intention in adopting Ordinance No. 4467 was to enable the City and the CID to cooperatively accomplish a needed public safety facility for the City and that while ownership of the FEMA Shelter is not now within the established budgetary objectives or immediate available resources of the City, and desires to have the CID own the constructed shelter and ownership by the CID could provide to the citizens of the City the same public safety protection, thus satisfying the same public purposes as City ownership with the added potential benefit of providing recreational facilities when not in use as a shelter; and

WHEREAS, the CID has determined that undertaking ownership of the FEMA Shelter, if the grant is awarded which will enable to CID to provide public safety within its boundaries and will be an aid to the City and the citizens of the City, while at the same time providing to the CID another tool to accomplish the public purposes for which it was created by the City Council; and

WHEREAS, this Agreement, when executed and delivered will assist in accomplishing this alignment of public purposes by setting forth a set of principles concerning the ownership, financing, and operation of the FEMA Shelter, if and when a grant for assistance is awarded for the FEMA Shelter; and

WHEREAS, the Developer, as one of the owners of Southern Hills Shopping Center (the “Center”), is engaged in the business of development in the City, with specific emphasis on the Center, and in such capacity, the Developer was advised of a possible grant which might be available for providing a storm shelter to be located in the City and possibly within the CID and the Developer was therefore requested to support an application to FEMA for a grant for the creation of a FEMA Shelter (the “Application”), by the City which was approved by the City Council, with the adoption of Ordinance No.4467, and the Developer was likewise requested to provide support and assistance as may be required to implement and administer the Application through the completion of the FEMA Shelter Project; and

WHEREAS, the City does not presently have any other source of funds to finance costs for direct out-of-pocket expenses and other costs resulting from services rendered to the CID or the Developer to review, evaluate, process and consider the Application or payment of the non-FEMA qualifying costs of financing authorized by the CID Act; and

WHEREAS, the parties desire to enter into this Agreement to provide for the funding of costs of completing the Application, and the design and construction of the FEMA Project, if a grant is awarded, and an intention to provide a structured means to accomplish the stated public purpose of the Application.

AGREEMENT

1. Services to be Performed by the City. The City has:
 - A. Prepared and will consult with the Developer and the CID in the presentation and consideration of the Application in accordance with the provisions of the CID Act, provide planning

information and support, provide and give all notices, make all publications and hold hearings as required by the CID Act;

B. Provide necessary staff, legal, financial, and planning assistance to prepare and present the Application to FEMA and to prepare and present required ordinances to the City Council of the City, including the use of outside counsel and consultants;

C. If the Development and Construction Management Agreement is entered into between the City, the CID and the Developer, to provide the necessary staff, financial and planning assistance to administer such agreement;

D. if the Application is approved and the grant is awarded so the FEMA Project can proceed, to provide to the CID and the Developer such assistance as it may provide, within the limits of the City Code and State law, regarding the FEMA Project development; and

E. Assist the CID and the Developer in securing the Park Board's approval of the Cooperation Agreement between the Park Board, the Developer and the CID for the operation of the recreational facilities that have been discussed for the FEMA Shelter when it is not in use for shelter purposes.

2. Actions to be undertaken by the Developer. Upon completion of the FEMA Project, together with all other projects set forth and described in the Amended Five Year Plan as CID Improvements, collectively the FEMA Project and the Amended Five Year Projects (the "CID Improvements"), to the extent the CID Improvements are not dedicated to and accepted as public rights-of-way by the City or MoDOT, the Developer shall enter into a long term ground lease, or other mechanism which satisfies the requirement for an incident of public ownership, with the CID regarding such CID Improvements. Such lease or other mechanism shall, at a minimum, confer upon the CID or other public entity the rights to operate, maintain and control the CID Improvements for the term of the lease or other mechanism, which shall not be the shorter of the useful life of the CID Improvements or the duration of the CID.

A. Develop CID Financing Plan with City. After the Amendment to CID has been approved, Developer shall use good faith efforts to cause the CID board of directors to immediately work with the Director of Finance of the City to develop a financing plan for the CID Improvements in a form reasonably acceptable to the City with regard to funding of the CID Costs ("CID Financing Plan").

B. A CID Financing Plan which shall include, without limitation, provisions like those contained in the Amended and Restated Cooperative Agreement granting the City (1) the right to review and reasonably approve the CID's annual budget prior to adoption thereof by the CID; (2) the right to collect, on behalf of the CID, the CID Revenue, and to collect a fee therefor, not to exceed one and one-half percent (1and 1/2%) of the collected CID Revenue; and (3) the right to certify CID Costs incurred by Developer as eligible for funding from CID Revenue in a manner similar to the certification of Reimbursable Project Costs set forth in Development and Construction Management Agreement; and (4) such other provisions as City shall reasonably determine to be necessary for the CID's role in the implementation and funding of the FEMA Project.

C. The CID Financing Plan shall further provide that the CID may pledge that portion of the CID Sales Tax revenue to the payment of Reimbursable Project Costs, subject to the limitations of the CID Act, and less operating and administrative expenses of the CID and the City and any costs reasonably incurred by Developer or City in amending the CID. The parties acknowledge that

only a portion of the Reimbursable Project Costs will qualify as CID-eligible expenses. The CID Revenue shall be used to pay for or reimburse the CID Costs.

D. It is the intent of all parties that the provisions of the Amended CID Petition, use of CID Revenue, and provisions of the CID Financing Plan be designed and implemented with the purpose that CID Revenue will be used to the maximum extent possible to fund CID Costs so as to allow for the termination of the Financing Plan and this Agreement at the earliest possible date.

E. The Financing Plan together with the Amended Cooperative Agreement shall obligate the CID to levy and maintain the CID Sales Tax until all CID-eligible Reimbursable Project Costs are repaid with CID Revenue.

F. The Developer shall use good faith efforts to cause the CID board of directors, prior to the start of construction of the Project Improvements identified on the Annual Budget, to approve costs eligible for reimbursement from CID Revenue, and to continue to impose and collect the CID Sales Tax to fund CID Costs adopted by the CID.

G. Neither Developer nor its successors in the ownership of any parcel in the CID Area shall (i) contest the imposition of the CID Sales Tax or (ii) advocate for or support the early termination of the CID Sales Tax. Developer shall either (a) include in any instrument in which Developer transfers ownership of any parcel in the CID Area language whereby the transferee accepts and agrees to comply with the above covenants or (b) record a document of record against the property Developer owns in the CID Area binding Developer's successors to comply with the above covenants, which document shall be recorded prior to Developer transferring ownership of any parcel in the Redevelopment Area.

H. City shall take all reasonable efforts to cooperate with Developer in Developer's obligation to operate the amended CID, including considering in good faith and due course any necessary City approvals related to the amendment of the CID, provided that any approval by City of a petition for the amended establishment of the CID shall be predicated and conditioned upon the petition's conformance to and compliance with the terms of this Agreement, the Financing Plan and Legal Requirements.

I. The term of the CID's existence shall not exceed the time necessary to reimburse the CID-eligible portion of Developer's Reimbursable Project Costs. The CID Petition requests that the CID terminate upon the earlier of reimbursement of the portion of Developer's Reimbursable Project Costs that are CID-eligible, or thirty (30) years from the date of the ordinance approving the creation of the CID.

3. Conditions Precedent to Developer's Duties. Developer's obligations hereunder are expressly conditioned upon the occurrence of each of the following events:

A. Acquisition by the CID of a fee simple interest in the Hills real property and a long term leasehold interest in the FEMA Shelter footprint all within the boundaries of the CID Area which have been approved for inclusion within the CID in accordance with and as provided in the Amended Five-Year Plan.

B. The continued collection of the CID Sales Tax by DOR.

C. Execution of the Amended Cooperative Agreement, the Development and Construction Agreement, the Advertising and Marketing Agreement, this Funding Agreement and by the CID and City.

D. City granting approval of any necessary Land Use Approvals.

E. Grant Award by FEMA and completion of the Final Design Documents for the FEMA Shelter by Sam A. Winn and Associates, Architects, and satisfactory negotiation of the Cooperation Agreement in substantially the form attached hereto as Exhibit "A" with the Park Board for the operation of the SURF recreation facilities.

4. Conditions Precedent to City's Duties. City's obligations hereunder are expressly conditioned upon the occurrence of all of the following events:

A. Ownership by the Developer of all real property within the boundaries of the CID Area, except the additional real estate to be owned by the CID for which a long-term lease is required to secure ownership in the Developer as provided herein;

B. The continued collection by DOR of the CID Sales Tax;

C. The adoption of the CID Financing Plan by the CID and City; and

D. City approval of any necessary Land Use Approvals.

5. Conditions to the CID's Duties. The CID's obligations hereunder are expressly conditioned upon the occurrence of all of the following events:

A. The transfer by the City of the Hill tract as described in the Amended Petition to the CID and the satisfactory negotiation and execution of a long-term lease by the CID with the Developer;

B. Execution of the Amended Cooperative Agreement, the Development and Construction Agreement and the Advertising and Marketing Agreement by the CID and City;

C. Regarding the FEMA Project, award of the FEMA grant prior to any obligation of the CID to proceed and negotiation of a satisfactory long-term lease of the complete FEMA Shelter with the Developer;

D. Approval of a CID Financing Plan by the City; and

E. The continued collection by DOR of the CID Sales Tax.

6. Funding.

A. The City shall submit an itemized statement for administrative expenses and actual out-of-pocket expenses necessary to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City. Such statements shall be submitted on a regular periodic basis, but no more often than monthly. The CID shall authorize the payment to the City of the amounts set forth on such statements (the "Reimbursement Funds") within thirty (30) days of receipt thereof. If such Reimbursement Funds are not so received, the unpaid balance shall be subject to a penalty of one percent (1%) per month until paid, but in no event shall such penalty exceed twelve percent (12%) per annum, and City shall be relieved of any and all obligations hereunder until paid or may terminate this Agreement pursuant to Section 9.a.

B. The City and the Developer agree that the Reimbursement Funds will be used to reimburse the City for its administrative expenses and actual out-of-pocket expenses necessary to perform the City's obligations hereunder. The City shall advise the CID in writing if it intends to utilize the services of any consultant to perform any of its obligations under the terms of this Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected and the duration of the engagement. If the CID, in writing, within fifteen (15) business days from receipt of the City's notice, objects to either the consultant named or the service to be performed, the City and CID shall negotiate in good faith to resolve the CID's objections. If the City and CID cannot agree on the consultant to be used or the service to be performed, the City shall have no obligation to perform that service under the terms of this Agreement and the CID shall have no obligation to pay for such service under the terms of this Agreement.

7. Disbursement of Funds. The City shall disburse the Sales Tax Revenues for reimbursement of costs to the City on or before the thirtieth (30th) day of each month, and for consulting fees and the payment of all out-of-pocket expenses incurred by the City in connection with the performance of its obligations under this Agreement as payment for such expenses become due. Upon reasonable notice, the City shall make its records available for inspection by the CID with respect to such disbursements.

8. Reimbursement of Funds. Notwithstanding anything in this Agreement to the contrary, City and CID acknowledge and agree that all funds disbursed to the City, in accordance with this Agreement, shall constitute "project costs" as defined in the Act, and shall be eligible for reimbursement from any obligations issued under the Act pursuant to a project financing plan contained in any annual budget considered by the City Council in accordance with the Act, regardless of whether the funds were paid or disbursed before the amendment of the CID under the Act. If a redevelopment project plan is considered by the City but no obligations are issued under the Act, then the Developer may seek reimbursement of such funds disbursed under this Agreement by utilizing the "direct reimbursement or pay as you go method."

A. Following the adoption of Ordinance No. 4467, the City entered into a contract for architectural services with Sam A. Winn & Associates to provide design and consulting services on the Southern Hills Community Safe Room (the "Architectural Contract"). Now that the City has determined that it would be a better course of development if the CID were to own the Safe Room, the City and the CID need to take the actions necessary to assign the obligations under the Architectural Contract to the CID, so the CID can pay the Architect for his services. Therefore, upon securing the consent of the Architect to the assignment, the parties intend to assign the Architectural Contract to the CID.

B. Subject to annual appropriation by the Board of Directors of the CID, CID Sales Tax Revenues (except those necessary to fund the Discretionary Funds Account, and pay the cost of the City's Administrative Fee, and the CID's Operating Costs, in accordance with the approved annual budget) may be pledged to pay the annual debt service due for any obligations incurred to pay project costs associated with CID Projects.

C. The CID agrees to develop in cooperation with the City's Director of Finance, a specific Finance Plan (including but not limited to general type, basic terms, proposed issuer, and estimated interest), explaining how the remaining segments of the CID Project will be funded, and present such plan to the Board of Directors within a reasonable time prior to the proposed closing date on any of

the financing components that would allow the CID Board an opportunity to consider the proposal, and provide meaningful input.

D. The presentation of the Finance Plan, or amended Finance Plan, to the CID Board should not occur less than 30 days prior to the proposed closing date for any of the financing components, nor should the CID Board's input on the Finance Plan be communicated back to the City later than 15 days after presentation.

E. The City agrees to consider, within the context of the Finance Plan, requests for pledging its CID Sales Tax Revenues, and approval of such pledge shall not be unreasonably withheld. The specific allocation of the CID Sales Tax Revenues shall be determined by the Annual Budget of the CID.

9. Termination.

A. In the event the CID or the Developer fails to perform any of its obligations herein, the City may terminate this Agreement, and any other agreement between the parties, at its sole discretion if the Developer or the CID fails to cure the default within ten (10) days after written notice to the CID and Developer of the default. Termination by the City shall also terminate any duties and obligations of the City with respect to this Agreement, including, but not limited to, the City's processing of Developer's Request. Upon such termination, the City shall return all of the collected and unspent funds on deposit with the City in the Sales Tax Revenue Fund, if any, less only such amounts as are necessary to reimburse the City for approved expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

B. The parties hereto acknowledge that the Developer may determine to abandon the Request. Upon notice of abandonment by the Developer, this Agreement shall terminate and the City may terminate any other agreement between the parties and shall retain the Deposit and Additional Funds, if any, necessary to reimburse the City for all expenses incurred under this Agreement to the date of termination and any monies due and owing to the City pursuant to any other agreement.

C. In the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City payable hereunder, the Developer shall reimburse the City as set forth in Section 3. Any amounts remaining from the Deposit and the Additional Funds after all amounts have either been paid as directed by, or reimbursed to, the City shall be returned to the Developer.

10. Notice. Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City Administrator
City of West Plains, Missouri
1910 Holiday Lane
West Plains, Missouri 65775

With a copy to:

To the Developer:

Southern Hills Center
c/o Travis Smith
1307 Southern Hills
West Plains, Missouri 65775

With a copy to:

To the CID

Southern Hills Community Improvement District
c/o Travis Smith, President
1307 Southern Hills
West Plains, Missouri 65775

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

The parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF WEST PLAINS, MISSOURI

By: _____

Name: _____

Title: City Administrator

Attest:

By: _____

Name: _____

Title: City Clerk

Approved as to form:

City Attorney

SOUTHERN HILLS CENTER V, LLC

By: _____

Name: _____

Title: _____

**SOUTHERN HILLS COMMUNITY
IMPROVEMENT DISTRICT**

By: _____
Name: _____
Title: _____

**CITY OF WEST PLAINS/SOUTHERN HILLS
COMMUNITY IMPROVEMENT DISTRICT**

Interlocal Recreation Operations Agreement

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COOPERATION AGREEMENT

THIS INTERLOCAL AGREEMENT (the ACoop Agreement), is made and entered into under the authority of the Cooperation by Political Subdivisions under Contract, Section 70.220 RSMo., as amended, and Article 6, Section 16 of the Missouri Constitution (the AInterlocal Cooperative Act@), by and between the City of West Plains, Missouri, a constitutional home rule municipal corporation (the "City"), Southern Hills Community Improvement District, a political subdivision of the State of Missouri (the "CID"), and the City of West Plains Park Board and its Parks and Recreation Department (the AParks Department@ and the APark Board@ and collectively the "Parks Department"), by which the City agrees to cause the Parks Department to assist the CID in the planning, development, construction, acquisition and operating of recreation facilities which are proposed to be located in the FEMA Project proposed to be constructed by the CID under the Grant Agreement by and between the City and the CID executed simultaneous with this Coop Agreement in which the Park Department undertakes to operate and manage recreational facilities within the FEMA Project building during the periods when the storm shelter is not occupied as a storm shelter such facility being designated as the Southern Hills Recreation Facility (the ASHRF@) under the direct supervision of the Director of the City=s Parks and Recreation Department. No new or separate legal or administrative entity is created or is planned to be created to administer the SHRF under the provisions of this Coop Agreement. As used herein, the term "Parties" shall refer only to the City and the CID unless otherwise specifically indicated;

WHEREAS, pursuant to Section 70.220 of the Revised Statutes of the State of Missouri, one or more public entities may contract with one another to jointly design and develop a public project and to perform government services which each is by law authorized to perform; and

WHEREAS, under the City Code, Section 30-30, the Park Board is created by the City and in Section 30-34 is given management and supervisory responsibility over all parks and recreational facilities in the City; and

WHEREAS, pursuant to the Grant Agreement dated as of the date hereof, the City and the CID agreed to cooperatively act regarding securing of a FEMA Grant and when and if awarded contemplated using the FEMA Project (when not in use for a storm shelter) to provide recreational activities for the citizens of the City and this Coop Agreement is entered into to fulfill that expectation by the parties.

NOW, THEREFORE, THE CITY AND CID agree as follows:

SECTION 1. BACKGROUND.

The CID was created by the City by Ordinance No. 4090 and has since its creation operated with a mission identified in its Five Year Plan as being to construct, reconstruct, install, repair, maintain and equip certain public improvements within the boundaries of the CID and prior to the execution of this Coop Agreement, the CID authorized the filing of the Second Amended Petition with the City requesting approval of an Amended Five Year Plan for the CID which included the adding of a FEMA Project, as defined in the Grant Agreement, as a qualified purpose for the CID and the City has after consideration approved this Amended Fire Year Plan. As a part of the planning for the FEMA Project the CID and the City entered into the Grant Agreement simultaneously with the existing Coop Agreement with the objective of the parties being to create an additional recreational opportunity for the citizens of the City. This agreement between the City, acting for the benefit of and to accomplish fulfillment of the purposes of the Park Board, and the

CID intend to provide for the operation of the new recreation facility at the FEMA Project when it is constructed and available and not being used to provide safety protection to the citizens of the City and visitors to and employees working within retail service establishments located within the CID. For these reasons, and for reasons of cost savings, efficiencies, and improved convenience to the public, the CID, with the Park Department assuming the administrative and operational authority over the recreational facilities, will allow the CID to focus its efforts on advertising and marketing issues for the CID including the FEMA Project. It is expected that this division of efforts will produce the type of synergy necessary to make the use of recreational space most advantageous to the public purposes that all parties have agreed they desire to accomplish.

SECTION 2. PURPOSE.

The Parties agree that it is to their mutual benefit, and the benefit of the citizenry, to continue to improve park and recreation systems within the City and providing such services in one consolidated parks and recreation department which will serve the entire City and coordinate the planning, financing and development of recreation opportunities.

To this purpose, the CID is contracting with the City, in this Coop Agreement, to provide certain park and recreation equipment and furnishings to the City with the understanding the City will through its Parks Department provide staffing services to the next recreational opportunity. By entering into this Coop Agreement, the City is not precluded from entering into agreements with other public entities or private parties regarding the planning, construction or operation of recreation facilities for the City. Additionally, this Cooperation Agreement does not obligate the City or its Parks Department to expenditure of any definite amount in the provision of recreation services but instead contemplates utilization of the City=s budgetary process to determine the correct amount necessary to satisfy the obligations.

The sharing of resources for recreation services provides the City and CID with an integrated approach to providing recreation opportunities, improved cost efficiencies, and improved system effectiveness. Efficiencies are increased by reducing overhead and eliminating duplication of efforts; coordination of service delivery to the public is improved by not duplicating staff or resources and by providing a single source for accessing CID and Park Department recreation services.

SECTION 3. GUIDING PRINCIPLES.

The City and CID agree that the following guiding principles should apply to this cooperative undertaking:

- A. The Park Board through the Parks and Recreation Department will be providing recreational opportunities at the FEMA Shelter building resulting in cost efficiencies, improved service effectiveness, and comprehensive, community wide planning.
- B. Achieving efficiencies is a goal of the cooperation, but an equally important goal is considering the interests and needs of both the City and CID to assure they are responsive to constituents in project design and delivery. Accordingly, each party may choose to manage portions of the project design and delivery through their respective systems.

- C. Superior communication within the Parks Department, between City, the CID and Parks Department staff and citizens, and between the Parks Department staff and elected or appointed officials are essential to the success of this Coop Agreement.
- D. Coordinating the imposition, collection and use of recreational fees and charges for the development of recreational opportunities within the CID area benefits the citizens of the City and the CID.

SECTION 4. PERSONNEL.

The hiring, firing, or appointment of the Parks and Recreation Department staffing for the FEMA Project shall be made by the Parks and Recreation Department Director with advice from and consent from the Park Board and notification and concurrence by the CID. The hiring and firing shall be made after consultation with the CID. All other Parks and Recreation Department personnel matters shall be the responsibility of the Parks and Recreation Director subject to approval, as necessary from the Park Board.

SECTION 5: DURATION OF AGREEMENT.

This Agreement shall be effective commencing effective with the Grant Award and shall remain effective until the end of the calendar year of the year of the Grant Award. It shall renew automatically thereafter; PROVIDED, that either party herein shall have the right to terminate this Coop Agreement at the end of any calendar year only, for any reason whatsoever, upon giving the other party a minimum of one hundred eighty (180) days written notice in advance of the date sought for such termination. Any notice required or permitted to be given under this Coop Agreement shall be deemed sufficient if given in writing and sent by registered or certified mail to the official mailing address of the CID Attention: President and the City, Attention, City Manager.

SECTION 6. ADMINISTRATION.

Except as specifically provided in this Coop Agreement, and without limiting the Parks Department's obligations set forth herein, the Parks Department shall be responsible for the administration of the FEMA recreation facilities. These duties shall include the following:

- A. Provide assistance to the public during standard working hours, Monday through Friday, excluding legal holidays, as to information requests made by the public relating to FEMA recreation facilities.
- B. Assess current and future recreation needs of the community and provide the assessment to the CID.
- C. Subject to budget limitations, provide the services described in this Coop Agreement to assist the CID in implementing the provisions of the Grant Agreement and providing information for the annual report to be made by the CID to the City under the Amended Five Year Plan.
- D. Update planning documents in compliance with the requirements of grant funding awards or requirements of grant agencies.

- E. Provide services for the management of CID owned recreation facilities to include consulting with CID on necessary maintenance, to develop, review, and monitor the annual maintenance budget levels, actual expenditures, service standards and staffing including the goal of meeting the program objectives of establishing user fees in accordance with the Facilities Plan hereinafter established.
- F. Provide recreation operation functions including, but not limited to, responding to public issues, complaints, and concerns as it relates to the public's use of the FEMA Project.
- G. Manage and supervise the recreation fee structure and its collection, use agreements regarding the recreational facilities, special use permits, reservations, recreational security program, and volunteer coordination program.
- H. Participate in committees or groups of partners where the operation of the FEMA Project likely to be is impacted.

SECTION 7. ASSISTANCE WITH DESIGN, PERMITTING AND MANAGEMENT.

The Parks Department shall provide conceptual planning as provided herein, and for the necessary equipment acquisition for operation of the FEMA recreation facilities. The CID shall be responsible for project management, oversight of the recreational design, environmental permitting assistance, costs estimating, land surveying, engineering and management of the construction of FEMA Project.

SECTION 8. GRANT APPLICATIONS.

The Parks Department will provide services, as requested by the CID or the Architect engaged by the City and the CID, in providing recreation facilities equipment description and operational staffing concerns in completing the application for the FEMA Grant to fund a portion of the costs of the FEMA Project. Additionally, the Parks Department will provide consultation services, as requested by the CID and the Architect concerning the design of the recreation space and the equipment necessary for operations.

Public Information and Outreach

The Parties responsibilities for public outreach and information shall be as follows:

- A. Planning, Design and Construction of FEMA Project Recreation:

The CID is responsible for all public information and outreach work for the FEMA Project Recreation availability. This includes development of public involvement or communications plans, preparing and printing newsletters and postcards, developing and maintaining project Web pages, coordinating and staffing public meetings, open houses and other special events, gathering and summarizing public comments, providing information to news media, giving public presentations, and responding to customer e-mails and phone calls.

The Parks Department is responsible for providing support to the CID for all public information and outreach activities for the recreational facilities for the FEMA Project

Recreation. This includes providing information, advice, and expertise related to recreational activities planning and design communication efforts, providing graphics and display materials as needed, staffing public meetings, open houses, public presentations and other special events, and occasionally providing information to media and the general public.

B. Maintenance, Operations and Improvement of Park Facilities:

The CID is responsible for coordinating and supporting public information and outreach of the FEMA Project Recreation. The Parks Department is responsible for activities related to maintenance and operations of recreational facilities as needed. This includes public notification of initial development following completion of construction (cleanup, etc.), activities or situations that may require full or partial closure of a recreational facility and minor improvement projects. It also includes responding to customer e-mails and phone calls, both when received directly or when referred by other City or Parks Department staff.

SECTION 9: JOINT ADMINISTRATION OF RECREATION USAGE FEES

A. Purpose. The purpose of this section is to develop a coordinated and integrated joint City/CID program of usage fees for the recreation facilities and space.

B. Impact fee ordinance. The City and CID shall agree upon a plan for development of an estimate and a budget necessary to maintain and replace recreational equipment for the FEMA Project (the AEquipment Facilities Plan@) a draft of a fee ordinance meeting the requirements of providing revenues to assure the Facilities Equipment Plan can satisfy life expectancy for the recreational equipment and the expected maintenance to insure the expectancy can be met.

1. In the event the City fails to enact the fee ordinance as required, the CID may either (i) request the City upon failing to establish a fee ordinance, include in its annual budget an amount necessary to satisfy the Equipment Facilities Plan by the City to appropriating an equivalent amount of public funds to the usage fee program or (ii) reduction in the public usage availability by an equal amount sufficient to overcome the budgetary shortfall.

C. Administration.

1. *Usage fee fund.* The City shall establish and maintain a special purpose fund in the treasury of the City designated as the ARecreational Equipment Restoration Fund of the City which shall be segregated. All interest and earnings shall be retained in the fund. Account deposits and interest thereon shall be expended for the purpose or purposes for which the usage fees were imposed.

2. *Collections.* The Parks Department shall collect usage fees in accordance with the user fee ordinance and shall daily deposit such receipts with the Director of Finance of the City. The Director of Finance shall deposit usage fees received directly to the fund.
3. *Credits.* The City Financial Director shall maintain ledgers of impact fee credit accruals and shall maintain appropriate systems to accurately track the transfer and application of impact fee credits.
4. *Fund distribution.* The City shall disburse all funds in accordance with the Equipment Funding Facilities Plan, this Coop Agreement and the City annual budget for the Parks Department.
5. *Reports.*
 - 5.1. Semiannual. The City Finance Director shall provide a semiannual report to the CID on the status of the fund specifying current balances, accrued interest, deposits, withdrawals, grants and donations received outstanding credit accruals, applications and balances, and user fee exemptions.
 - 5.2. Annual. The City Finance Director shall provide an annual calendar-year report to the CID one month into the City=s fiscal year of the following year which shall:
 - 5.2.1. Provide an annual summary of the information detailed in Section 5.1.; and
 - 5.2.2. Summarize the relative age of unexpended user fees in the fund; and
 - 5.3. Inspection. Upon the CID's request, the City shall promptly provide or make available for inspection by the CID any and all records and data that are in its possession relating to the joint administration of park impact fees.

SECTION 10. BUDGET DEVELOPMENT

The City and the CID shall determine the costs for providing services and submit a budget proposal pursuant to this Coop Agreement as follows:

- A. Definitions. For the purposes of this section the following terms shall have the meaning indicated.
 1. *Jurisdiction.* Either the City or the CID.

2. *Cost centers.* The sum total of all direct costs, departmental overhead costs and organizational indirect costs required to provide a specific service.
 3. *Allocation.* That portion of the cost center that is directly attributable to the provision of services.
 4. *Direct costs.* Those costs that can be identified specifically with a particular final cost objective.
- B. Cost of Services for the Recreational Operation of the FEMA Project.

In calculating the cost of services, the following shall apply.

1. *Cost center calculation.* Costs for services shall be calculated using the City's current year adopted budget; e.g. 2018 service costs will be based on the City's 2018 adopted budget for recreational cost of other Park Department facilities. The cost center shall be the sum total of all direct costs, departmental overhead costs and interdepartmental indirect costs.
2. *Direct cost calculation.* Direct costs shall include all personnel salaries, benefits, supplies and services of those programs which are directly involved in the provision of services.
3. *Equipment Rental and Replacement costs.* Equipment Rental and Replacement costs related to providing Parks Department operations and maintenance shall be included in the City's cost center at full value.
4. *Parks Departmental overhead costs.* Parks Department overhead shall include all administrative and support costs related to service operations and shall be proportionate to the direct cost of services. Capital contract services shall be excluded from overhead charges.

SECTION 11. DISPUTE RESOLUTION.

In the event of a dispute between the City and CID regarding the delivery of services under this Coop Agreement, the City Manager and the CID President or their designated representatives shall review such dispute and options for resolution.

A. Dispute Resolution. Resolution of any and all disputes arising from or in connection with this Coop Agreement, whether based on contract, tort, or otherwise (collectively, "Disputes"), shall be exclusively governed by and settled in accordance with the provisions of this Section 18.

1. *Negotiation.* The parties shall make a good faith attempt to resolve any Dispute arising out of or relating to this Coop Agreement through negotiation. Within thirty (30) days after notice of a Dispute is given by either party to the other party, each party shall select one or more representatives who are chief executive officers of such party, which representatives shall meet and make a good faith attempt to resolve such Dispute and shall continue to negotiate in good faith in an effort to resolve the Dispute or renegotiate the applicable section or provision without the necessity of any formal proceedings. If such representatives fail to resolve a Dispute within thirty (30) days after the first meeting of the representatives, such Dispute shall be referred to the chief executive officers of each of the parties for resolution. During the course of negotiations under this Section 18.1., all reasonable requests made by one party to the other for information, including requests for copies of relevant documents, will be honored. The specific format for such negotiations will be left to the discretion of the designated representatives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party.
2. *Mediation.* In the event that any Dispute arising out of or related to this Agreement is not settled by the parties within thirty (30) days after the referral of such Dispute to the chief executive officers of the parties under Section 18.1., the parties will attempt in good faith to resolve such Dispute by non-binding mediation in accordance with the American Arbitration Association Commercial Mediation Rules. The mediation shall be held within thirty (30) days of the end of such thirty (30) day negotiation period of the chief executive officers. Except as provided below in Section 18.3., no litigation for the resolution of such dispute may be commenced until the parties try in good faith to settle the dispute by such mediation in accordance with such rules and either party has concluded in good faith that amicable resolution through continued mediation of the matter does not appear likely. The costs of mediation shall be shared equally by the parties to the mediation. Any settlement reached by mediation shall be recorded in writing, signed by the parties, and shall be binding on them.
3. *Proceedings.* Nothing herein, however, shall prohibit either party from initiating litigation or other judicial or administrative proceedings if such party would be substantially harmed by a failure to act during the time that such good faith efforts are being made to resolve the Dispute through negotiation or mediation. In the event that litigation is commenced under this Section 18.3., the parties agree to continue to attempt to resolve any Dispute

according to the terms of Sections 18.1. and 18.2. during the course of such litigation proceedings under this Section 18.3.

SECTION 12. HOLD HARMLESS AND INDEMNIFICATION.

The City agrees to indemnify, defend, save and hold harmless the CID, its officials, employees, volunteers and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance by the City of this Coop Agreement.

Without limiting the generality of the foregoing, the City further expressly agrees to indemnify, defend, save and hold harmless the CID, its officials, employees, volunteers, and agents, from and against any and all liability, claims including property damage and personal injury, demands, losses, damage, costs, causes of action, suits or judgments, including attorney fees, costs or expenses incurred in connection therewith, for claims related to refunds of impact fees or the contribution of public share and for deaths or injuries to person arising out of, in connection with, or incident to the performance of this Agreement, by the City, its officials, employees, or agents.

To the extent possible the City shall include the FEMA Project recreational facilities operations as a separate insured location on the City's comprehensive general liability insurance policy with the same limits as are provided on other Park Department recreational facilities.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the CID, the CID retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the County by an employee of the City or subcontractor or agent of the City, even if the City is thus otherwise immune from liability pursuant to the workers' compensation statute.

If a particular work plan, service level, or service delivery method requested by the CID creates additional liability beyond the types of liability the City assumed through its parks and recreation programs prior to this Coop Agreement, the City shall determine the value of such exposure within its self insurance program and additional assumption of liability. Such amount shall be included in the indirect costs used to calculate the "fees" paid by the user for administering the recreational facility by the Parks Department. The City shall notify the CID of proposed additional fees and the CID shall have the option of withdrawing or modifying said proposal.

The CID agrees to indemnify, defend, save and hold harmless the City, its officials, employees, volunteers and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance by the CID of this Agreement.

Without limiting the generality of the foregoing, the CID further expressly agrees to indemnify, defend, save and hold harmless the City, its officials, employees, volunteers, and agents, from and against any and all liability, claims including property damage and personal injury, demands, losses, damage, costs, causes of action, suits or judgments, including attorney fees, costs or expenses incurred in connection therewith, for deaths or injuries to person arising out of, in connection with, or incident to the performance of this Coop Agreement, by the CID, its officials, employees, or agents.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the City, the City retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the City by an employee of the CID or subcontractor or agent of the CID, even if the CID is thus otherwise immune from liability pursuant to the workers' compensation statute.

In the event of litigation between the Parties to enforce rights under this section, reasonable attorney's fees and costs shall be allowed to the prevailing party.

SECTION 13. NO THIRD PARTY BENEFICIARY.

The City does not intend by this Coop Agreement to assume any contractual obligations to anyone other than the CID. The CID does not intend by the Coop Agreement to assume any contractual obligations to anyone other than the City. The City and CID do not intend there be any third-party beneficiary to this Coop Agreement.

SECTION 14. DISPOSITION OF CAPITAL UPON TERMINATION OF AGREEMENT.

In the event of a termination of this Coop Agreement, any equipment or personal property used to effectuate this Coop Agreement shall become the sole property of the party originally providing the equipment or personal property, unless it has been disposed of or is otherwise no longer available. The City shall become the sole owner of any equipment, personal property or improvements purchased or obtained to operate the Parks Department with funds separate from the CID or the Fund from the effective date of this Coop Agreement.

The provisions of this Coop Agreement may be amended with the mutual consent of the Parties. No additions to, or alterations of the terms of this Coop Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both Parties.

[Remainder of page intentionally left blank]

CITY OF WEST PLAINS, MISSOURI

By: _____
Name: _____
Title: _____

**SOUTHERN HILLS COMMUNITY
IMPROVEMENT DISTRICT**

By: _____
Name: _____
Title: _____

CONSENT AND AGREED TO:

**CITY OF WEST PLAINS, MISSOURI
PARK BOARD**

By: _____
Name: _____
Title: _____