

COOPERATIVE AGREEMENT FOR HOWARD HILLS FACILITY FENCING UPGRADES

THIS COOPERATIVE AGREEMENT (this "Agreement") is made and entered into as of this 15th day of July, 2024 (the "Effective Date") by and between the **CITY OF MOBERLY**, a city of the third class and a Missouri municipality having a principal office at 101 West Reed Street, Moberly, Missouri, 65270 (the "City") and **MOBERLY AREA COMMUNITY COLLEGE**, 101 College Avenue, Moberly, Missouri, 65270 (the "College"). ("City" together with "College", the "Parties")

RECITALS

- A. The parties have previously cooperated to create agreements improving facilities at Howard Hills Athletic Complex so that the College could establish baseball and softball programs.
- B. The College is desirous of installing permanent fencing at a shorter distance for use at the softball field known as Green 4.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and the mutual promises and covenants set forth in this Agreement, the City and College each hereby agrees as follows:

ARTICLE I. FACILITY UPGRADES

Section 1.1. Fencing. Installation of permanent outfield fencing at softball diamond Green 4.

ARTICLE II. CONSTRUCTION AND PAYMENT

Section 2.1. Construction. The City shall be responsible for arranging for bidding the construction of the upgrade described above using outside vendors upon receipt of complete, bid-ready specifications from College. The project will be bid upon mutual agreement of bid-ready specifications as provided and revised. The City will work cooperatively with the College to ensure that the upgrade meets the College's expectations. The City will complete construction in a timely manner.

Section 2.2. Payment for Upgrades. The City shall front all costs associated with the upgrades and the College will repay the City for the total cost of the project. City agrees to provide College written documentation of costs associated with the upgrades on a regular basis or upon request.

Section 2.3. Payments are Contractual. The payments provided for in Section 2.2, above are contractual and not mere recitals. It is expressly understood and agreed that the repayment terms and agreement for upgrades described in Section 2.2 of this Agreement is contractual and must be paid by the College to the City regardless of the status of other agreements between the Parties for rental of the City ball fields.

ARTICLE III

DEFAULT

Section 3.1. Remedies in Default. Nonpayment of any amounts due hereunder shall constitute a default and breach of this Agreement by College. City agrees to provide College written Notice of Default. College shall remedy any default within ten (10) days of the date of Notice. In the event College fails to remedy a default, City may at any time thereafter avail itself of the following remedies which are cumulative and not exclusive:

a. City shall be entitled to recover from College all damages incurred by City by reason of College's default, including, but not limited to, all payments due hereunder for upgrades to Howard Hills ball fields, the cost of recovering possession of the ball fields, interest in the maximum amount allowed by law for damages, and reasonable attorneys' fees.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 4.1. No Assignment. Neither Party shall be permitted to sell, assign or otherwise transfer its interest in the Agreement in whole or in part to any other individual or entity.

Section 4.2. Notices. Whenever notice or other communication is called for in this Agreement to be given or is otherwise given, such notice shall be in writing addressed to the addressees at the address set forth below, and transmitted by first class mail:

City: City of Moberly
Attention: Troy Bock
101 West Reed Street
Moberly, Missouri 65270

College: _____

Section 4.3. Choice of Law; Venue; Waiver of Objections. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. The Parties agree that any action at law, suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri and waive any objection based upon venue or forum non conveniens or otherwise.

Section 4.4. Entire Agreement; Amendments; No Waiver by Prior Actions. The Parties agree that this Agreement constitutes the entire agreement between them and no other agreements or

representations have been made by the Parties. This Agreement shall only be amended in writing and effective when signed by the duly authorized agents of the Parties. The failure of any Party to insist in any one or more cases upon the strict performance of any term, covenant or condition shall not constitute a waiver or relinquishment for the future of any such term, covenant or condition.

Section 4.5. No Waiver of Sovereign Immunity; Public Liability Strictly Limited. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the either parties' Sovereign Immunity. The Parties agree that in no event shall the City, or any of its officials, officers, agents, attorneys, employees, or representatives have any liability in damages or any other monetary liability to the Developer or any lessee, sublessee, assign, heir or personal representative of the Developer in respect of any suit, claim, or cause of action arising out of this Agreement.

Section 4.6. Execution in Counterparts. Each person executing this Agreement warrants and represents that he or she has authority to do so on behalf of the entity he or she represents. This Agreement may be executed in two or more counterparts, and all counterparts so executed shall for all purposes constitute one and same instrument, binding on the Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY OF MOBERLY

By: _____
Brandon L. Lucas, Mayor

ATTEST:

Shannon Hance, City Clerk

COLLEGE

By: _____