

BILL NO. 9792

ORDINANCE NO. 9792

AN ORDINANCE AUTHORIZING A COOPERATIVE AGREEMENT FOR INFILL DEVELOPMENT WITH R & D PROPERTIES, A MISSOURI LIMITED LIABILITY COMPANY.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MOBERLY, MISSOURI, TO-WIT:

SECTION ONE: The City of Moberly has adopted a policy and practice of encouraging infill development of housing on property acquired by the City.

SECTION TWO: R & D Properties, a Missouri Limited Liability Company, (“R & D”) has agreed to a build residence at 1032 Franklin Street which will comply in all respects with city codes and development plans.

SECTION THREE: R & D has negotiated a cooperative agreement with city staff to develop the address listed above for infill development as provided in the attached Cooperative Agreement for Infill Development and said Cooperative Agreement is hereby authorized and the City Manager is hereby authorized to execute said Cooperative Agreement.

SECTION FOUR: This Ordinance shall be in full force and effect from and after its passage and adoption by the Council of the City of Moberly, Missouri, and its signature by the officer presiding at the meeting at which it was passed and adopted.

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri, this 16th day of October, 2023.



Presiding Officer at Meeting

ATTEST:

Shannon Hance
Shannon Hance, MRCC, City Clerk

COOPERATIVE AGREEMENT FOR INFILL DEVELOPMENT

THIS COOPERATIVE AGREEMENT FOR INFILL DEVELOPMENT (this "Agreement") is made and entered into as of this 11th day of October, 2023 (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 R&D Properties, a Missouri Limited Liability Company, having a business office at 2745 County Road 1430, Cairo, Missouri, 65239 (the "Developer").

RECITALS

A. The Developer wishes to acquire and redevelop Property which is currently vacant and underutilized and which activities by the Developer the City recognizes will facilitate the City's economic development goals and improve property values in the area where the Property is located.

B. The City is willing to convey the Property to the Developer pursuant to the terms of this Agreement in exchange for the Developer's promise to expend the Developer's funds to construct a residence on the Property, all in accordance with the terms of this Agreement and building plans submitted to the City.

AGREEMENT

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

ARTICLE I.

THE PROPERTY AND CONSTRUCTION

Section 1.1. Conveyance of the Property. Subject to the terms and conditions of this Agreement, the City agrees to convey vacant infill property zoned for residential use in exchange for Developer's agreement to construct a residence in conformance with building plans submitted and approved by the City.

Section 1.2. The Property. The Property shall mean the generally vacant and unimproved lots legally described as Lots Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen (18), Block Two (2), in Tannehills Third (3rd) Addition of Moberly, Randolph County, Missouri or more commonly known as 1032 Franklin Street.

Section 1.3. Construction. The Developer shall deposit \$1,000.00 (the "deposit") within thirty (30) days of the Effective Date. The Developer shall pay for all permitting fees and other standard construction costs. Developer shall submit building plans and make application for a building permit within six (6) months of the Effective Date. Developer agrees to initiate construction within thirty (30) days of receipt of the building permit. Developer agrees to complete construction of the residence within eighteen (18) months of the Effective Date. Developer agrees to abide by all construction standards required under city Building Regulations and Inspections.

**ARTICLE II.
CONVEYANCE AGREEMENT**

Section 2.1. Transfer of the Property. Subject to the terms and conditions of this Agreement and within thirty (30) days of the acceptance by the City of the site and building plan(s) and issuance of the building permit, the City agrees to convey the Property at closing. The purchase price for the Property shall be One Dollar (\$1.00) and other good and valuable consideration as stated herein.

Section 2.2. Deed. The conveyance of title shall be by Quit-Claim deed in which the City shall convey to Developer all the right, title and interest held by the City in the Property and not by Warranty Deed. City makes no warranties as to the merchantability of title. Developer agrees to record the Quit-Claim deed contemporaneously with delivery of the deed.

Section 2.3. Events of Closing.

(a) Each Party shall execute, acknowledge, and deliver, after the closing, such further assurances, instruments and documents as the other may reasonably request in order to fulfill the intent of the Purchase Agreement and the transactions contemplated hereby.

(b) If Developer desires a Title Commitment be issued prior to closing, Developer shall pay the costs of any title commitment and for premiums on any owner's policy of title insurance, and any title endorsements to any such policy, issued by the Title Company that the Developer elects to obtain on the Property. All outstanding real estate taxes, and all other public or governmental charges and public or private assessments against the Property which are or may be payable on an annual basis (including liens or encumbrances for sewer, water, drainage or other public improvements whether completed or commences on or prior to the Effective Date or subsequent thereto), shall be paid by Developer. All other costs of closing shall be borne by the Developer including, without limitation, any applicable state, county and municipal transfer taxes, closing costs and recording fees charged by the Title Company.

(c) **BY CLOSING ON THE PROPERTY, THE DEVELOPER ACKNOWLEDGES THAT THE DEVELOPER HAS HAD ADEQUATE OPPORTUNITY TO INSPECT, REVIEW AND CONSIDER ALL MATTERS AFFECTING THE USE, OWNERSHIP AND DEVELOPMENT OF THE PROPERTY AND THAT THE CONVEYANCE OF SAME BY THE CITY IS TO BE MADE ON AN "AS IS/WHERE IS" BASIS AND WITHOUT RECOURSE TO THE CITY. THE CONVEYANCE OF THE PROPERTY SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY IMPLIED WARRANTY OR MERCHANTABILITY, FITNESS OR HABITABILITY, GOOD OR FAIR CONDITION OR REPAIR OR GOOD AND WORKMANLIKE CONSTRUCTION AND (ii) ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO SITE CONDITIONS AS OF THE EFFECTIVE DATE AND OF THE CLOSING AND CONVEYANCE OF THE PROPERTY OR POTENTIAL LIABILITIES UNDER OR WITH RESPECT TO ANY FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAW OR REGULATION, ALL OF WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED BY THE CITY AND EACH OF WHICH DISCLAIMERS IS HEREBY AGREED TO AND ACCEPTED BY THE DEVELOPER.**

Section 2.4. Real Estate Brokers. The City and Developer hereby state and warrant to each other that neither has dealt with any real estate broker, agent or salespersons in connection with this transaction and the sale of the Property. To the full extent permitted by law, the City and Developer each agree to indemnify and hold the other harmless against any claims for real estate commissions or consultant fees claiming representation of such party in this transaction. Such obligations to indemnify and hold harmless shall include, without limitation, all costs and attorneys' fees relating to litigation and other proceedings.

ARTICLE III BREACH

Section 3.1. Breach and Compliance; Right to Cure; Remedies Not Exclusive. In the event of substantial non-compliance with any of the terms of this Agreement, written notice of same may be delivered to the Developer by the City, and, if the Developer shall not have corrected such substantial non-compliance within Forty-five (45) days after receipt of such notice the City may institute such proceedings as may be necessary or desirable in the City's sole opinion to cure and remedy such default including, without limitation, the remedy of specific performance. If Developer fails to correct any such substantial non-compliance as herein provided it shall forfeit the deposit. None of the foregoing remedies shall be exclusive or any other remedy otherwise available to the City at law or in equity and any and all such remedies may be exercised by the City individually, sequentially, collectively, or in the alternative, all at the City's sole discretion.

Section 3.2. To cure any default on the part of the developer in failing to complete the construction of the structure as provided herein or any other provision of Section 1.3 above, the developer has executed a quit claim deed in favor of the city which shall be recorded in the land records of Randolph County restoring title to the City of Moberly in the property previously deeded to developer pursuant to this Agreement. Prior to the city recording this quit claim it shall provide the developer with a 45 day Notice of its substantial non-compliance with this agreement. If developer cures its non-compliance within the 45 day Notice period then the deed shall not be recorded.

The executed quit claim deed will be held by the City until such time as an Occupancy Permit has been issued by the city for the structure. Thereafter the quit claim deed shall be destroyed.

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. Term of Agreement. This Agreement shall continue in force until the date of the issuance of the last Certificate of Occupancy for any Building(s) on the Property. The rights and privileges granted to and the duties and obligations imposed on the Developer by this Agreement shall apply only to the Property.

Section 4.3. 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: Tom Sanders Moberly, Missouri 65270

Developer: R & D Properties
2745 County Road 1430 Cairo, Missouri 65239

Section 4.4. 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 4.5. 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 4.6. No Waiver of Sovereign Immunity; Public Liability Strictly Limited. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's 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 4.7. Deposit Refund. Upon issuance of an Occupancy Permit for the completed residence the City agrees to account for and refund the deposit.

Section 4.8. 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: 

Randall D. Thompson, City Manager

ATTEST:



Shannon Hance, City Clerk

DEVELOPER

By: _____
R&D Properties

ACKNOWLEDGEMENTS

STATE OF MISSOURI)
)SS
COUNTY OF RANDOLPH)

On this 17th day of October, 2023, before me appeared Randall Thompson, to me personally known, who being by me first duly sworn, did say that he is the City Manager of the City of Moberly, Missouri, and that said instrument was signed on behalf of said City by authority of its City Council and said City Manager acknowledged said instrument to be the free act and deed of said City.

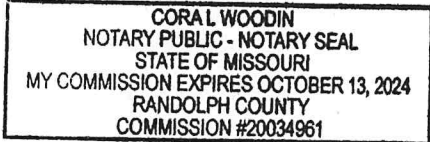
IN TESTIMONY THEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Notary Public

My commission expires: 10.13.2024

Seal:



STATE OF MISSOURI)
)SS
COUNTY OF RANDOLPH)

On this ____ day of _____, 2023, before me appeared R&D Properties, to me personally known, who being by me first sworn, did say that s/he is the Manager/Member of R&D Properties, and that said instrument was signed on behalf of said LLC by authority of the LLC and s/he acknowledged said instrument to be the free act and deed of said LLC.

IN TESTIMONY THEREOF, 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:

Seal:

QUIT-CLAIM DEED

THIS INDENTURE, made on the 16th day of October, 2023 by and between

R&D PROPERTIES, GRANTORS

2745 County Road 1430, Cairo, MO 65239

County of Randolph, State of Missouri, parties of the first part and

CITY OF MOBERLY, MISSOURI, A Municipal Corporation, GRANTEE

101 West Reed Street, Moberly, Missouri 65270

County of Randolph, State of Missouri, party of the second part

WITNESSETH, that the said party or parties of the first part, for and in consideration of the sum of **ONE DOLLAR AND OTHER GOOD AND VALUABLE CONSIDERATIONS**, paid by the said party or parties of the second part, the receipt of which is hereby acknowledged, do or does by these presents, **GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM** unto the said party or parties of the second part, the following described Real Estate situated in the County of Randolph, and State of Missouri:

Lots Fifteen (15), Sixteen (16), Seventeen (17), and Eighteen (18) in Block Two (2) of Tannehills Third (3rd) Addition to Moberly, Randolph County, Missouri, more commonly known as 1032 Franklin Street.

TO HAVE AND TO HOLD THE SAME, with all the rights, immunities, privileges and appurtenances thereto belonging, unto the said party of the second part unto its heirs and assigns forever, so that neither the said parties of the first part nor their heirs nor any other person or persons, for them or in their names or behalf, shall or will hereinafter claim or demand any right or title to the title aforesaid

premises or any part thereof, but they and each of them shall, by these presents, be excluded and forever barred.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seal the day and year above written.

R&D Properties

STATE OF MISSOURI)
) **SS.**
COUNTY OF RANDOLPH)

On this _____ day of _____, 2023, before me, the undersigned, a notary in the said County, personally appeared _____ of **R&D PROPERTIES** to me known to be the persons described herein and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

WITNESS my hand and Notarial Seal subscribed and affixed in said COUNTY AND STATE above written.

Notary Public

My Commission Expires: _____

City of Moberly City Council Agenda Summary

Agenda Number: #11
 Department: Community Development
 Date: October 16, 2023

Agenda Item: An Ordinance Authorizing A Cooperative Agreement For Infill Development With R & D Properties, A Missouri Limited Liability Company.

Summary: Attached is the proposal that was received on September 25, 2023, for the in-fill housing at 1032 Franklin St. from R&D Properties.

Recommended

Action: Accept this Ordinance.

Fund Name: N/A

Account Number: N/A

Available Budget \$: N/A

ATTACHMENTS:		Roll Call	Aye	Nay
<input type="checkbox"/> Memo	<input type="checkbox"/> Council Minutes	Mayor		
<input type="checkbox"/> Staff Report	<input checked="" type="checkbox"/> Proposed Ordinance	M__ S__ Brubaker	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Correspondence	<input type="checkbox"/> Proposed Resolution	Council Member		
<input type="checkbox"/> Bid Tabulation	<input type="checkbox"/> Attorney's Report	M__ S__ Lucas	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> P/C Recommendation	<input type="checkbox"/> Petition	M__ S__ Kimmons	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> P/C Minutes	<input type="checkbox"/> Contract	M__ S__ Jeffrey	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Application	<input type="checkbox"/> Budget Amendment	M__ S__ Kyser	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Citizen	<input type="checkbox"/> Legal Notice		<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consultant Report	<input type="checkbox"/> Other _____		Passed	Failed