

**MEMORANDUM OF UNDERSTANDING**

This **Memorandum of Understanding** (“MOU”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Republic, Missouri, a municipal corporation and Charter City located in Greene County, Missouri, being duly organized and existing under the laws of the State of Missouri (“City”), Modern Tractor and Supply Company (“Modern Tractor”) and Lawrence Lipscomb (“Owner”). City, Modern Tractor and Owner are collectively referred to herein as “the Parties.”

**WITNESSETH:**

**WHEREAS**, Modern Tractor is currently the owner of two parcels of real property located on West Frisco Boulevard in Republic, Missouri, each consisting of approximately 3.41 acres, as shown on **Exhibit A** hereto (the “Parcels”); and

**WHEREAS**, Owner is the owner and principal member of Modern Tractor; and

**WHEREAS**, the City’s Parks and Recreation Department wishes to utilize the Parcels as practice fields for the youth soccer league teams and other athletic leagues of the City’s Parks and Recreation Department on an as-needed basis; and

**WHEREAS**, in exchange for good and valuable consideration, the sufficiency of which is acknowledged by the Parties, Owner and Modern Tractor have agreed to provide the City use of the Parcels for the public purposes desired by the City, pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises, conditions, and agreements set forth herein, Modern Tractor, Owner and City mutually agree as follows:

1. **Consideration.** In exchange for use of the Parcels as set forth herein, the City shall provide all maintenance, upkeep, mowing and other care for the Parcels are further detailed in paragraph 3 below, and shall comply with the other conditions set forth in paragraph 3 below.

2. **Term and Dates of Use.** The City shall have access to the Parcels for the public uses specified herein from February 1<sup>st</sup> through May 31<sup>st</sup> of each year, and from August 1<sup>st</sup> through November 30<sup>th</sup> of each year, on or about the days and times below:

- a. Weekday evenings from 05:30 pm to 08:00 pm, C.S.T.
- b. Saturdays from 09:00 am to 05:00 pm, C.S.T.
- c. Sundays from 12:30 pm to 06:00 pm, C.S.T.

The term shall commence as of the date on which all Parties have signed this MOU and shall continue until either of the Parties terminates this MOU through written notice provided to the non-terminating Party at least thirty (30) days in advance of such termination.

3. **Conditions of Use.**

- a. The City shall, at all times under this MOU and otherwise, utilize the Parcels solely for the public purposes specified herein.

- b. Prior to the City's use of the Parcels for the public purposes specified herein, the City shall be responsible for safety-related preparation of the Parcels, including but not limited to the removal of safety hazards such as unreasonably uneven terrain, and large rocks, lumber, or debris.
- c. The City shall regularly mow and maintain the Parcels to the standards commonly accepted and followed by the City's Parks and Recreation Departments for other recreational fields used for similar purposes.
- d. The City shall be responsible for the preparation of the Parcels to be used as soccer fields, to include, among other things, the placement of goals and patron seating upon the Parcels and the painting of field lines on the Parcels.
- e. The City shall be responsible for providing portable restrooms on the Parcels, which must remain thereon for the duration of the City's use of the Parcels as soccer fields; more specifically, for the duration of each soccer season as scheduled by the City.
- f. The City shall ensure the portable restrooms on the Parcels are regularly serviced and maintained by the portable restroom provider or other appropriate service provider.

4. **Liability and Indemnity.** The City shall defend, indemnify, and hold harmless Modern Tractor, along with its owners, members, employees, and authorized agents, and Owner, along with his heirs and assigns, from and against any and all liability, suits, damages, costs (including attorney's fees), losses, outlays and expenses, from claims arising out of or relating in any way to this MOU or to the City's use of the Parcels pursuant to this MOU, including, but not limited to, claims for personal injuries, death, property damage, notwithstanding any alleged negligence or neglectful wrongdoing on the part of Owner. This provision does not require City to defend, indemnify or hold harmless Modern Tractor or Owner for intentional misconduct or illegal activity on the part of Modern Tractor or Owner.

5. **Insurance.** For the duration of this MOU, the City shall maintain liability and other insurance necessary and/or designed to protect against claims which may arise out of or result from this MOU or the City's use and/or operation of the Parcels pursuant to this MOU. The amounts of such insurance shall have policy limits not in excess of the applicable statutory maximum amounts set forth in § 537.610 RSMo. If requested by the Owner, the City shall provide satisfactory proof of such insurance to Modern Tractor or Owner prior to use of the Parcels under this MOU. The provision of any insurance pursuant to this paragraph, whether such insurance does or does not afford coverage to City for any claim arising from or out of this MOU or performance thereunder, shall not in any way be deemed a waiver of the City's sovereign or governmental immunity under state and other applicable law.

6. **Public Entity Immunity.** The City preserves all immunities, sovereign, governmental and otherwise, recognized by law. Nothing in this MOU or any transactions under this MOU shall be construed or deemed in any way as a waiver by the City of sovereign immunity or governmental immunity recognized under common law, state law, ordinances, regulations, the Missouri Constitution, or the United States Constitution, including but not limited to § 537.600 RSMo., *et seq.*

7. **Law and Venue.** This MOU shall be governed by the laws of the State of Missouri. Any lawsuit, claim, or other action filed by or against one or both of the Parties to this MOU relating in any way to the interpretation of this MOU or to the exercise of rights and/or duties under this MOU, shall have proper venue solely in the Circuit Court of Greene County, Missouri.

8. **Assignment.** Neither party may assign their rights or obligations under this MOU without the prior written consent of the other party.

9. **Severability.** A determination by a court of competent jurisdiction or other authoritative decision-making body that any clause, sentence, paragraph, section, or part of this MOU is unconstitutional, invalid or otherwise unenforceable shall not affect in any way the validity or enforceability of the remaining clauses, sentences, paragraphs, sections or parts of this MOU.

10. **Entire Agreement.** This MOU constitutes the entire agreement between the Parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof, and may not be changed, modified or amended, in whole or in part, except in writing signed by the Parties.

11. **Headings.** The headings formatted in bold herein are merely for purposes of convenience and reference only, and do not constitute material terms of this MOU.

12. **Incorporation of Whereas Clauses.** The “WHEREAS” clauses in this MOU above are incorporated into this paragraph by reference as though fully set forth at length herein and form a material part of this MOU.

**CITY OF REPUBLIC, MISSOURI**

**MODERN TRACTOR & SUPPLY CO, INC.**

By: \_\_\_\_\_  
City Administrator

By: \_\_\_\_\_  
Lawrence “Larry” Lipscomb

**APPROVED AS TO FORM**

**LAWRENCE LIPSCOMB**

\_\_\_\_\_  
Megan McCullough, City Attorney

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