

BILL NO. 2023-18

RESOLUTION 2023-18

A RESOLUTION OF THE CITY OF WEST PLAINS, MISSOURI, TO APPROVE A CENTER FOR EXCELLENCE MEMORANDUM OF UNDERSTANDING AMONG THE CITY OF WEST PLAINS, MISSOURI STATE UNIVERSITY-WEST PLAINS, AND THE WEST PLAINS CHAMBER OF COMMERCE TO ESTABLISH A NEW USE OF THE PROPERTY AT THE CORNER OF HOWELL AVENUE AND JACKIE D. GARRETT DRIVE (FORMERLY THE GREATER OZARKS CENTER OF ADVANCED TECHNOLOGY.)

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WEST PLAINS, MISSOURI AS FOLLOWS:

Section 1: The City approves a memorandum of understanding among the City of West Plains, Missouri State University-West Plains, and the West Plains Chamber of Commerce to establish a new use of the specified property formerly GOCAT.

Section 2: This Resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED AND APPROVED THIS 21st DAY OF AUGUST 2023.

CITY OF WEST PLAINS, MISSOURI

BY: Michael Topliff  
MAYOR MICHAEL TOPLIFF

ATTEST:

Allison Skinner  
CITY CLERK ALLISON SKINNER



August 1, 2023

To: Sam Anselm, City Administrator  
Allison Skinner, City Clerk

From: Emily Gibson, Planning Director

Re: Resolution Memorandum of Understanding for Center for Excellence

### **Executive Summary**

The purpose of this resolution is to approve a Memorandum of Understanding among the City of West Plains, Missouri State University-West Plains, and the West Plains Chamber of Commerce to establish a new use of the property at the corner of Howell Avenue and Jackie D. Garrett Drive (formerly the Greater Ozarks Center for Advanced Technology).

### **Discussion**

Missouri State University-West Plains has relocated courses previously taught at the GOCAT facility to the new Pace Industrial Center on its main campus. MSU-WP has requested to transition its use of the facility in a new agreement to include its physical plant, purchasing department, and Small Business Development Center office. Discussions among the university, the city, and the chamber of commerce led to a concept of utilizing the remaining space for the relocation of chamber offices. The West Plains Chamber of Commerce has been considering options to purchase or lease a different building as their current location needs significant improvements to remain operational.

The agreement to utilize the city-owned property would allow the chamber to focus its resources on renovation of their share of the facility and to increase opportunities for collaboration with other entities in the economic development and nonprofit sectors. Together, the city, university, and chamber would establish through this agreement a Center for Excellence, placing efforts that impact local and regional economic development under one roof with a shared mission to support the vitality and growth of the community.

This MOU has been approved by both the university and the chamber and is now ready for council consideration.

### **Fiscal Impact**

Currently the city maintains the structure and grounds of the facility and would continue to do so. The contents and interior renovations required by each party would be at their expense, as would any change in exterior signage. The university currently pays the utilities for the facility, which would under this MOU be shared based on square footage utilized by each party. There are no initial major expenditures planned for the facility at this time that would be at the expense of the city.

## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING, referred to as "MOU", made and entered into this 21st day of August 2023, between THE CITY OF WEST PLAINS, MISSOURI referred to as "City," and THE BOARD OF GOVERNORS OF MISSOURI STATE UNIVERSITY, ON BEHALF OF MISSOURI STATE UNIVERSITY-WEST PLAINS, referred to as "University" and THE WEST PLAINS CHAMBER OF COMMERCE BOARD OF DIRECTORS, referred to as "Chamber."

### WITNESSETH:

- 1) Now, therefore, City does agree to let unto University and Chamber, at no cost, the following described real estate located at, 395 Jackie D Garrett Drive and 397 Jackie D Garrett Drive (formerly 125 North Howell Avenue), West Plains in Howell County, Missouri, referred to as the "Premises":

Beginning in the center of an access road at the south line of Cleveland Street and the north line of Broadway Avenue, thence in a northeasterly direction perpendicular to Broadway Avenue to the south line of Burlington Northern Railroad, thence in a southeasterly direction along the south line of said railroad to the west line of Howell Avenue, thence in a southerly direction along the west line of said Howell Avenue to the north line of said Broadway Avenue, thence in a northwesterly direction along Broadway Avenue to the point of beginning, same being part of Lots, 1, 2, 3, 4 and 5 in R. G. Smith Subdivision of part of SW 1/4 of SE 1/4 of Section 21, Township 24, Range 8; and a part of Lots 1, 2 and 3 in Block 1 and Lots 1, 2, 3, 4, 5, 6 and 7 in Block 2 of Williams Addition to the City of West Plains, Missouri; a part of Lots 2 and 3 of Plez James' Subdivision of SW 1/4 of SE 1/4 of Section 21, Township 24, Range 8; and a part of the SW 1/4 of the SE 1/4 of Section 21, Township 24, Range 8, EXCEPT a part of the SW 1/4 of the SE 1/4 of Section 21, Township 24 North, Range 8 West, described as follows: Commencing at the southwest corner of said SW 1/4 of SE 1/4, thence North 23°40'37" East, 1,059.06 feet to the POINT OF BEGINNING: thence North 55°57'41" West, 228.06 feet; thence North 28°54'15" East, 105.61 feet; thence South 67°12'45" East, 247.82 feet; thence South 36°06'24" West, 153.64 feet to the point of beginning containing 0.70 acres more or less.

- 2) The term of this MOU shall be for a period of ten (10) years, commencing on September 1, 2023, and expiring at midnight on August 31, 2033, provided, however, the parties may agree to additional one (1) year extensions as might be negotiated by the City, University, and Chamber.
- 3) The City shall provide access to the Premises to the University and Chamber for purposes of establishing and maintaining a joint venture to utilize the Premises for internal University and Chamber business purposes, and to advance University, Chamber, and community business attraction, retention, and growth efforts, as well as conducting activities associated with the educational and training courses and programs to be delivered at the Premises (to be known upon the approval of this MOU as the Center for Excellence) for the purpose of workforce and economic development.
- 4) At any time during the term of this MOU, any party may terminate this MOU, for any or no reason, by providing each of the other parties at least one hundred eighty (180) days prior written notice of its intent to terminate, and this MOU shall terminate upon the expiration of the one hundred eighty (180) day period, as specified by notice, with no further obligations due from any party. Should a Party other than City seek termination, then the other non-terminating party may, if agreed to by the City, continue this MOU without the other party. Notwithstanding the foregoing, however, every effort will be made to minimize the interference or cancellation of any established instructional classes or programs hosted by the University or Chamber. The Parties agree to reasonably work together to facilitate a reasonable completion of all classes or programs that might be affected by termination of this MOU.

- 5) Should the City terminate the MOU before the initial 10-year agreement, the University or Chamber will be pro-rated ten (10) percent per year remaining in the MOU agreement of each entity's respective renovation investment.
- 6) In the event City desires to sell the Premises during the term of this MOU, City agrees to give University and Chamber a notice in writing of at least one hundred eighty (180) days before placing the Premises on the market. University and Chamber shall have a right to purchase the Premises at fair market value and shall have the right of first refusal before the City enters into an agreement for the sale of the Premises.
- 7) City covenants and agrees as follows:
  - a) City is the owner of the Premises and has good right to lease the same and will warrant and defend the leasehold interest created in favor of University and Chamber.
  - b) City shall deliver the Premises to University and Chamber in a safe, clean, dry and habitable condition and in good order and repair, including electrical, plumbing, and all other facilities serving the Premises.
  - c) University and Chamber may peacefully and quietly hold and enjoy the Premises during the term without any interruption from City or any other persons claiming under City, subject, however, to the right of City to inspect the Premises at reasonable times and intervals, upon reasonable notice to University and Chamber.
  - d) City shall maintain the HVAC, electrical, plumbing, roof, and outdoor areas of the Premises, including but not limited to the parking lot. City agrees to maintain the Premises so that the building is dry and habitable at all times. The University and Chamber are responsible to notify the City of any maintenance concerns or issues as they arise in a timely manner.
  - e) City shall, at its expense, before commencement of the term of this MOU, have the air conditioning, heating, electrical, and plumbing equipment ("equipment") serving the Premises inspected and placed in good operating condition. The equipment will be maintained by City at its expense. Should replacement of equipment become necessary through ordinary wear and tear or otherwise, City, at its expense, agrees to replace same with another or others of at least equal efficiency and capacity to present equipment.
  - f) City shall maintain during the term of this MOU standard property and casualty insurance, insuring the Premises against fire and other casualty for the full value of the building and improvements. In the event of a casualty loss that cannot be repaired within sixty (60) days, this MOU will terminate and any insurance proceeds shall be retained by City. The City shall carry liability insurance with regard to the Premises. University and Chamber shall maintain during the term of this MOU standard insurance for the full value of University-owned and Chamber-owned contents of the facility, respectively. University, as a state institution of higher education, does not maintain general liability insurance; instead, University relies on the State Legal Expense Fund, as set forth in Mo. Rev. Stat. § 105.711, as administered by the Office of the Missouri Attorney General.
  - g) Property taxes, if any, shall be paid by City.
  - h) City covenants and agrees that at its own expense, and without any right of reimbursement from University or Chamber, it shall effect such improvements, alterations, repairs, additions or replacements to the exterior areas of the Premises to fully and timely comply with the requirements of all governmental authorities applicable to the exterior areas, including, without limitation, planning and zoning rules and regulations, building, health and fire codes, the "American with Disabilities Act" of 1990 as amended, and the Federal regulations promulgated thereunder (the "Disabilities Act").
  - i) With respect to the Disabilities Act, the parties agree as follows:
    - i) Each party shall have responsibility under the Disabilities Act for its own standards, criteria, policies, practices, and procedures as it relates to the activities, classes, or programs hosted by University or Chamber on the Premises.
    - ii) City shall have responsibility for the removal of barriers where such removal is required by the Disabilities Act.

- iii) Where barrier removal is not required by the Disabilities Act, but the use of alternative methods of providing access is required, City, University, or Chamber will agree to the use of such methods except to the extent that the Disabilities Act required alternative methods that involve services by University's/Chamber's employees for the retrieval or delivery of University's/Chamber's inventory, at the University's/Chamber's expense.
- 8) University and Chamber covenant and agree as follows:
- a) University and Chamber agree to pay for all utility services for the Premises during the term of this MOU. City Utility costs, including water, sewer, sanitation, and electric, shall be divided by percentage of square footage utilized by each party as shown in Exhibit A. Should either University or Chamber terminate the MOU, the remaining party shall only be responsible for its portion of the utility services agreed upon under this MOU with the City agreeing to be responsible for the remaining portion.
  - b) The University and Chamber shall provide for all telecommunications, including but not limited to internet and phone services. Installation, maintenance, and operation of such services shall be at the expense of the University and Chamber.
  - c) The University and Chamber, during the term of this MOU, may renovate, remodel, recondition, rehabilitate, convert, change, and alter the interior of the Premises, attach fixtures, and make any improvements at the expense of the University or Chamber, and University or Chamber shall have full power and right, at any time during the term of this MOU, provided University or Chamber is not then in default in the performance of any of its obligations, to tear down, remove any fixture on the Premises, or to alter or change the same in material respects, at the University's or Chamber's expense; *provided, however*, that these rights may be exercised only in accordance with plans and specifications submitted to and approved in writing by City. All such renovating, remodeling, reconditioning, rehabilitating, converting, changing, and altering of the Premises, and all additions, structures, and fixtures added to the Premises by the University or Chamber which are remaining at the termination of this MOU, shall then become the property of City.
  - d) University or Chamber may erect such signs on or about the Premises as shall conform with applicable ordinances/resolutions. Such signage shall be at the expense of the University and/or Chamber.
  - e) University and Chamber agree to provide custodial services for the interior of the Premises during the term of this MOU in their respective areas.
- 9) Each party shall be responsible for its own acts and omissions and shall be liable for payment of that portion of any and all claims, liabilities, injuries, suits, and demands and expenses of all kinds that may result or arise out of any alleged malfeasance or neglect caused or alleged to have been caused by said party, its employees, agents, or subcontractors, in the performance or omission of any act or responsibility of said party under this Agreement. In the event that a claim is made against both parties, it is the intent of both parties to cooperate in the defense of said claim and to cause their insurers to do likewise. Both parties shall, however, retain the right to take any and all actions they believe necessary to protect their own interests.
- 10) No Party to this MOU will discriminate on the basis of race, color, national origin (including ancestry, or any other subcategory of national origin recognized by applicable law), religion, sex (including marital status, family status, pregnancy, sexual orientation, gender identity, gender expression, or any other subcategory of sex recognized by applicable law), age, disability, veteran status, genetic information, or any other basis protected by applicable law in employment or in any program or activity offered or sponsored by or through this MOU.
- 11) In the event that it shall become necessary for City, University, or Chamber to institute legal action as a result of the default by a party under any terms of this MOU, the prevailing party shall be entitled to court and legal fees, including a reasonable attorney's fee.

12) Any notices authorized or required to be given may be personally delivered to the addresses below or by depositing the same in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, and if intended for City, addressed as follows: City of West Plains, Attention: Sam Anselm, 1910 Holiday Lane, P.O. Box 710, West Plains, MO 65775; if addressed to University, addressed as follows: Missouri State University-West Plains; Attention, Crockett Oaks, 395 Jackie D Garrett Drive, West Plains, MO 65775; and if addressed to Chamber, addressed as follows: West Plains Chamber of Commerce; Attention, Jessica Collins, 397 Jackie D Garrett Drive, West Plains, MO 65775. Properly addressed and mailed, delivery shall be deemed upon mailing.

13) This MOU may be modified or extended only as provided in the MOU.

14) This MOU shall be binding upon the parties, their successors, and assigns.

15) This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri and may be enforced in any state or federal court of competent jurisdiction located in Missouri.

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

THE CITY OF WEST PLAINS, MISSOURI,

By: *Samuel H. Lee, City Administrator* Date *8/21/2023*

BOARD OF GOVERNORS OF MISSOURI STATE UNIVERSITY, ON BEHALF OF MISSOURI STATE UNIVERSITY-WEST PLAINS,

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

BOARD OF DIRECTORS OF WEST PLAINS CHAMBER OF COMMERCE,

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

# EXHIBIT A

