

CITY OF WARRENSBURG

SEWER EXTENSION REIMBURSEMENT AGREEMENT

Project: _____

This Agreement dated this _____ day of _____, 20____, undersigned by _____, hereinafter called "Applicant", and the City of Warrensburg, hereinafter called "City", witnesseth:

1. Main Extension. Applicant hereby agrees to construct a sewer main extension as depicted in the attached Exhibit A. All construction will be done in compliance with the then current design requirements of the City and Missouri Department of Natural Resources for sanitary sewer mains. In order to be eligible for reimbursement payments hereunder, all construction must be completed and ready for acceptance by the City within _____ days of execution of this Agreement.

The Applicant shall verify prior to acceptance by the City that the sewage collection mains and appurtenances were constructed as described herein and depicted on attached engineering plans, and to satisfaction of the City, and in conformance with the plans and City's standard specifications.

The Applicant states this the total cost to construct these sewage collection mains and appurtenances is \$ ^{ONE HUNDRED EIGHTY-ONE THOUSAND} ~~NINE HUNDRED EIGHTY SIX~~ DOLLARS (\$ 181,986) as documented by the attached cost statement. Total cost is inclusive of construction, engineering and surveying, and right-of-way costs. The City shall have the sole discretion to approve the final amount of eligible reimbursement, and may request copies of quotes or bids obtained by the Applicant prior to award of contract for the work to assure a fair and reasonable reimbursement amount.

It is further mutually understood that the sewage collection mains and appurtenances constructed within the limits of the streets, avenues, roadways, or easement areas, whether or not attached to or serving customers, but constructed as a part of this extension, shall be and remain the property of the City, its successors and assigns upon their acceptance by the City for public maintenance. The City shall have the right to extend, relocate, modify or adjust any or all parts of this sewage collection extension, acting in the best interests of the City, so long as sewer service is continued to the properties of Applicant for which this sewage collection main extension was intended to serve. Applicant shall not be entitled to any refund of cost or rebate as a result of extensions, adjustments, relocations or modifications to the sewer main extension unless otherwise addressed by separate agreement.

The City will inspect the improvements as they are completed and, if acceptable to the Director of Public Works the City will certify such improvements as being in compliance. Applicant will assure that all easements necessary for the future maintenance and operation of the main extension by the City are provided in the name of the City prior to construction

and acceptance of the main extension by the City. City may require title reports or commitments at Applicant's expense to verify title to any necessary easements.

The Applicant warrants that the materials and workmanship utilized in constructing this extension are in conformance with City's standard specifications, and Applicant further warrants that if the materials and workmanship utilized in constructing this extension are found by City to be defective within a period of one (1) year from their acceptance by the City into its sanitary sewer collection system. Applicant will promptly, and without cost to City repair, remedy, or otherwise make good the defect to the satisfaction of City.

2. Reimbursement Payments. During the term of this Agreement, City will provide Applicant with reimbursement payments not to exceed the total cost to construct set forth above, less a ten percent amount of each collected connection payment to be retained by the City for its administrative costs in performing under this Agreement, and less an amount calculated as set forth herein for Applicant's own fair share of the total construction cost for connections made to properties developed by Applicant. Such payments shall be collected under the provisions of Division 4 of Chapter 24 for connections made within the defined service area benefitted by the main extension.

City makes no guarantee of the collection of any reimbursement payment during the term of this Agreement, and is under no obligation to provide payment to Applicant other than if, as, and when such payments are actually received by the City for a connection made in the defined service area eligible for reimbursement payments during the term of this Agreement.

3. Default and Cure. Events of Default. Subject to any applicable cure periods, the following conditions, occurrences or actions will constitute a default by Applicant.

- a. Failure to complete construction within the time required; or
- b. A failure to pursue completion of the construction for a period in excess of 60 days; or
- c. Failure to construct the work in compliance with the plans and conditions of this Agreement; or
- d. Failure to cure any violation of the terms of this Agreement.

The City may not declare a default until written notice has been given to the parties and the parties have not cured such default or is not zealously pursuing such cure within thirty (30) days of the City giving such notice.

Upon a default the City shall have the right, but not the obligation, to remedy any

default of Applicant hereunder. Should City elect to take such action, no further payments shall be due to Applicant hereunder until such time as Applicant shall reimburse City in full for all costs of remedying Applicant's default. Should Applicant default and City not elect to cure such default itself, City shall owe no further obligation to collect or remit reimbursement payments to Applicant hereunder. No public funds of the City are committed hereunder, and the parties expressly agree that no public funds of the City shall be held liable hereunder.

4. Indemnification and Insurance. Applicant hereby expressly agrees to indemnify and hold the City harmless from and against all negligence of Applicant or its contractors or agents judicially determined for injury or damage received or sustained by any person or entity in connection with or on account of the performance of work pursuant to this Agreement. Applicant is not an agent or employee of the City. Applicant shall require all contractors engaged upon the work to provide proof satisfactory to the City of workers compensation insurance and general liability insurance in at least the amounts provided annually under section 537.610 RSMo.

5. Term. This Agreement shall be in effect for a period of 120 months from its execution, unless sooner terminated by default of Applicant.

6. Miscellaneous.

a) No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both City and each party; nor will the waiver of any defect under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement, will not constitute the approval of any wrongful act by another party.

b) Amendment or Modification. The parties to this Agreement may amend or modify this Agreement only by written instrument duly executed by the parties hereto.

c) Third Party Rights. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

d) Scope. This Agreement constitutes the entire Agreement between the parties, and no statements, promises, or inducements that are not contained in this Agreement will be binding on the parties.

e) Severability. If any part, term, or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity

of any other part, term, or provision, and the rights of the parties will be construed as if the part, term, or provision was never part of this Agreement.

f) Notice. Any notices required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

Applicant: MATT MITCHELL
906 PROPERTY, LLC
2751 NE DOUGLAS ST, STE R
LEE'S SUMMIT, MO 64064

City: City Manager
City Hall
102 South Holden Street
Warrensburg, Missouri 64093

g) Immunity. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under any applicable state law.

h) Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by any party to this Agreement shall be deemed to be proper only if such action is commenced in the Circuit Court of Johnson County, Missouri. The parties expressly waives their rights to bring such action in or to remove such action to any other court whether state or federal.

i) Missouri Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Missouri.

WITNESS the hands of the parties or their duly authorized agents this ___ day of _____, 20____.

City of Warrensburg

City Manager

Attest:

City Clerk

Applicant:

906 Property, LLC
2751 NE Douglas St., Suite R
Lee's Summit, MO 64064

Attn: Mr. Matt Mitchell
Re: Off-Site Sewer Costs

June 22, 2020

Dear Mr. Mitchell,

Below please find a breakdown of the off-site sewer constructions costs, completed during the construction of the Culver's Restaurant in Warrensburg, MO. If you have any questions, feel free to contact me.

Culver's of Warrensburg, MO	
<u>Off-Site Sewer Construction Costs</u>	
<u>Breakdown</u>	<u>Costs</u>
Survey, Design & As-Built	\$ 1,470.00
Demolition	\$ 4,725.00
Sewer	\$129,465.00
Asphalt & Culvert	\$ 46,326.00
Total	\$181,986.00

Best Regards,



Christopher J. McGuire, President
McCON Building Corporation

