# REAL ESTATE EXCHANGE AGREEMENT

THIS AGREEMENT is entered into this _____ day of _____201__, by and between Eric. R. Greitens, Governor of the State of Missouri, pursuant to authority granted to him by section 5 of Senate Bill 210 of the First Regular Session of the 93rd General Assembly, acting by and through the Office of Administration, Division of Facilities Management, Design and Construction (hereinafter "FMDC" or "the State" ) and the City of Joplin, Missouri ("the City").

THE PARTIES HERETO STATE AS FOLLOWS:

The State owns property in the City of Joplin that is located at the corner of S. Wall Avenue and W. 8th Street and presently contains a parking lot for the Joplin Job Center ("the existing Job Center parking lot").

The City would like to acquire the existing Job Center parking lot for the purpose of building a performing arts center.

The City currently owns property in the 700 block of South Wall Ave adjacent to the Joplin Job Center ("the property adjacent to the Job Center").

The City is willing to construct a paved parking lot on the property adjacent to the Job Center and exchange it with State for the existing Job Center parking lot.

The State is willing to accept such an exchange.

NOW THEREFORE, in considerations of these premises and the mutual promises contained herein, the parties agree as follows:

1. Exchange

1.1 The State shall convey to the City by quit claim deed, in accordance with section 5 of Senate Bill 210 of the First Regular Session of the 93rd General Assembly, the existing Job Center parking lot, which is described more particularly on Exhibit B attached hereto and incorporated herein by reference.

1.2 The City shall convey to the State by general warranty deed, with full covenants, the property adjacent to the Job Center, which is more particularly described in Exhibit C attached hereto and incorporated herein by reference.

1.3 The exchange of property by the State and the City as described above is contingent upon the completion by the City of the requirements set forth in section 5.

1.4 The exchange of property is also contingent upon approval of this Agreement by the U.S. Department of Labor. Should the U.S. Department of Labor not approve of this Agreement, this Agreement shall be void and of no effect.

1.5 The exchange of properties will occur within 30 days of substantial completion of the parking lot, or as otherwise agreed by the parties, and shall occur no later than July 1, 2018, unless extended by written agreement of the parties.

2. Title

2.1 The State shall transfer title to the existing Job Center parking lot to the City, and the City shall transfer title to the property adjacent to the Job Center to State, subject to zoning regulations, rights of way and utility easements of record that do not materially impair the uses and improvements of the real properties to which each party intends to put them and that might reasonably be expected considering the general character of the area and neighborhood in which said properties are located. Title to both properties shall be marketable in fact and insurable.

2.2 Not later than ten (10) days after the date of this Agreement, each party shall order a commitment for title insurance on their respective real property from _____ ("the Title Company") for both an owner's policy of title insurance and for a lender's policy of title insurance (if required by a lender) in the latest ALTA form, including mechanics lien coverage. The parties authorize and direct the Title Company to furnish the respective commitments to the other party. Each party shall pay the costs of their respective commitment. Each party shall be free to insure its title to the real property it receives in the exchange at its own cost following closing. However, neither party shall be responsible for paying the title insurance premiums to insure the title of the real property being conveyed to the other party at closing or after.

2.3 If any defect(s) are discovered as a result of either of the title commitments, the party affected by such defect(s) shall, within twenty-five (25) days after receipt of the title commitment, state in writing any title defect(s) that are unacceptable to that party and adversely affect the intended use of the real property by that party. Failure of a party to raise such defect(s) within the above time period shall constitute a waiver of such objection to the exchange of the real properties. Upon timely objection, the responding party shall have ten (10) days from receipt of written objection to agree in writing to correct such defect(s) prior to closing at the responding party's expense. However, if the responding party does not agree to correct such defect(s) and the objecting party does not agree in writing, within ten (10) days of the responding party's failure, to accept the property with such defect(s) "as is", then this Agreement shall terminate.

2.4 The City shall provide such affidavits as are necessary for State to secure mechanic's lien coverage.

3. Environmental Hazards

Each party hereto covenants to the other that the current officers, directors or other officials of each has no actual knowledge of any environmental hazards or the existence of any hazardous waste on the property. "Hazardous Waste" as used herein shall mean substances deemed hazardous pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 USC Par. 9601 et seq. Neither party shall be forced to accept title to property containing hazardous waste.

4. Closing

The exchange of the real properties shall occur at a closing of this Agreement to be held at the offices of the Title Company within 30 days of substantial completion of the parking lot, or at such other time and place as the parties mutually agree. Closing costs shall be shared equally, except for title insurance premiums as set forth above.

5. Construction

5.1 The City will construct, at its expense, a parking lot on the property adjacent to the Job Center prior to conveying such property to the State. This shall include all necessary sidewalks adjacent to the parking lot.

5.3 The City will hire professional architects and/ or engineers registered by the State of Missouri to prepare and seal the construction drawings for the parking lot.

5.4 The City will provide the completed plans for the proposed parking lot construction to FMDC for review within 60 days of execution of this Agreement.

5.5 FMDC shall review the plans and provide any comments to the City within thirty (30) days of the receipt of the plans. Within 30 days of FMDC providing its comments to the City, the parties shall agree to the final plans and specifications to be sealed by the City's architect(s) and/or engineer(s). The approved final plans and specification shall become the basis for determining the City's compliance with its obligations under this Agreement.

5.6 The City shall contract for the construction of the parking lot in accordance with the approved final plans and specifications.

5.7 During construction, FMDC shall inspect the construction at least one time per calendar month and shall promptly notify the City in writing of any departure from the plans and specifications or any defects in construction, including either materials or workmanship, which FMDC finds unacceptable. The City will notify FMDC in writing when the departure or defect has been corrected. FMDC will inspect the correction within a time frame so as not to interfere with the construction schedule.

5.8 Upon notice from the City that construction of the parking lot is complete, FMDC will perform a final inspection and create a "punch list" of items requiring correction or completion. The City will correct or complete all the items noted on the punch list, to the extent that such items are part of the specifications and plans approved by the parties or amended by written change order. Notwithstanding the foregoing, upon completion of the parking lot in accordance with the final written specifications and plans or written amendments thereto, the City shall have completed such improvements as required by this Agreement and shall be entitled to the exchange of the real property as set forth in this Agreement.

5.9 The City's contract for construction shall provide a general guarantee of the construction for one year following the date of substantial completion, and shall provide that this guarantee as well as the City's right to recover against the construction contractor for breach of contract shall be assigned to State at closing.

5.10 All work on the property to be conveyed to the State by the City shall be done in accordance with the requirements set forth in Chapter 290, RSMo.

5.11 The parking lot and sidewalks constructed by the City shall be accessible as defined by the Americans with Disabilities Act, 42 U.S.C. Sections 12101, et. seq.

6. Risk of Loss

The City shall bear the risk of damage or loss to the new construction on the property adjacent to the Job Center up until the date of closing.

7. Restriction on Encumbrances

Neither party shall encumber either parcel or any interest therein pending closing. If such encumbrance occurs, the owner of the parcel shall fully discharge the same prior to closing and clear the record title to the property from such encumbrance.

8. The City's Right to Inspect

The City shall have the right at all reasonable times after the execution of this agreement to enter onto the existing Job Center parking lot in order to conduct

inspections of the property, including but not limited to soil borings. The City agrees to schedule times to enter into the property with FMDC so as to minimize disruption to staff at the Joplin Job Center.

9. Successors

Because the agreements contained herein are unique to the parties involved, the parties agree not to assign any rights, interests or obligations created by this Agreement to any other person or entity without the written consent of the other party, which shall not be unreasonably withheld.

10. Entire Agreement

This instrument contains the entire agreement between the parties and may not be changed or terminated orally. All amendments to this agreement must be in writing and must be signed by both parties.

11. Missouri Law Governs

This Agreement shall be interpreted and governed in accordance with the laws of the State of Missouri.

12. Notices

Any notice or demand that must be given under the terms of this Agreement or under any statute shall be in writing and shall be given in person or by mailing the same by certified mail, return receipt requested, to the other party at the addresses set forth below:

City of Joplin:

Sam Anselm, City Manager
602 S Main St
Joplin, MO 64801

Division of Facilities Management Design and Construction:

Cathy Brown, Director
Harry S Truman State Office Building
301 West High Street, Room 730
P.O. Box 809
Jefferson City, MO 65102

Either party may designate in writing a new or other address to which notices or demands shall be given. Any notice or demand given by mail shall be deemed delivered when deposited in a United States Post Office, enclosed in a certified, prepaid envelope, addressed as provided above.

13. Venue

This Agreement is entered into by and between the parties in Jasper County, Missouri, and involves the exchange and development of real property in Jasper County, Missouri. Therefore, any dispute related to this Agreement, either directly or indirectly, that may arise between the parties shall be resolved in a court of competent jurisdiction in Jasper County, Missouri.

14. Further Assurances

The parties to this Agreement shall promptly execute and deliver, or cause to be executed and delivered, any documents or instruments requested by the other party that the other party deems necessary to carry out the terms of this Agreement. Such documents shall be in a form and substance reasonably satisfactory to the requesting party. Such obligations shall be subject to the limitation that the parties shall only be required to do such things as they have the power and authority to do.

15. Time is of the Essence

Time is of the essence in the performance of the obligations of the parties under this Agreement.

16. Non-Discrimination Clause

The quit claim deed from the State to the City for Lots No. 97 and 98 of the exisiting Job Center parking lot shall contain the following condition:

The Grantee agrees for itself and any successor in interest not discriminate upon the basis of race, color, creed, or national origin in the sale, lease or rental or in the use or occupancy of the property hereby conveyed or any part thereof or an Improvements erected or to be erected thereon or any part thereof.

IN WITNESS WHEREOF, the parties have hereto have executed this Agreement on the day and year first above written.

CITY OF JOPLIN

DIVISION OF FACILITIES MANAGEMENT, DESIGN AND CONSTRUCTION

| | |
|---|---|
| _____ | _____ |
| Sam Anselm, City Manager | Cathy Brown, Director |
| Date: _____ | Date: _____ |

Exhibit B

All of Lots 97 to 100, inclusive, in Byer's and Murphy's Addition to Murphysburg, now in the City of Joplin, Jasper County, Missouri

Exhibit C

All of Lots 133 to 136, inclusive, in Byer's and Murphy's Addition to Murphysburg, now in the City of Joplin, Jasper County, Missouri.