

Introduced by _____ Council Bill No. R 125-12

A RESOLUTION

authorizing an agreement with Ben E. Colley to allow the salvage of boards from a deteriorated barn on City-owned property.

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

SECTION 1. The City Manager is hereby authorized to execute an agreement with Ben E. Colley to allow the salvage of boards from a deteriorated barn on City-owned property. The form and content of the agreement shall be substantially as set forth in "Exhibit A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

ADOPTED this _____ day of _____, 2012.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

AGREEMENT

THIS AGREEMENT hereinafter "agreement" entered into on this _____ day of _____, 2012, by and between the City of Columbia, Missouri, hereinafter called the "City," and Ben E. Colley hereinafter called "Colley," and jointly hereinafter called the "Parties."

WHEREAS, the City is the owner of barn on Parcel Number 16-700-31-00-001.02 also described in the General Warranty Deed recorded in Book 905, Page 499 of the Boone County Records,

hereinafter called the "Barn."

WHEREAS, the City is planning to demolish the Barn. After the Barn is demolished the remaining materials will be placed in the landfill at a cost to the City; and

WHEREAS, Colley owns property adjacent to the Barn and would like to secure access to the barn in order to salvage some of the old boards. The Barn has sentimental value to Colley; and

WHEREAS, Colley, at his own risk and expense, can recycle the sentimental Barn boards and this can save the City some cost and space in the landfill.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Agreement by this reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties enter into this Agreement as follows:

1. Obligations of the City Under this Agreement.

- a. This agreement shall not cause any expense to the City.
- b. The City shall grant a temporary license to access the City property via the existing gate on his property, or other such access as given in writing by the Sewer Utility Manager. The license may be canceled at any time with written notice to Colley or posting on the Barn.

2. Obligations of the Colley Under this Agreement.

- a. Colley shall obtain adequate insurance as described herein to cover Colley and all other persons acting on Colley's behalf. Colley shall estimate the time to start, give a completion date of the project before entering the property, and give at least 7 days notice to Sewer Utility Manager.
- b. Colley or anyone acting on Colley's behalf shall at all times act reasonably and safely in connection to this agreement and Colley assumes the risk of salvaging

- the old boards including the full range of injury from minor scratches to dismemberment or death as salvaging the old boards is a task with inherent risk.
- c. Colley shall not enter City property during wet, windy or other inclement weather conditions. Colley shall not cause damage to the property other than the barn and shall restore any other property so damaged.
 - d. Colley shall provide a certificate of insurance for liability at least \$1,000,000.00 and that the City be named as an additional insured as it relates the Barn project. The insurance shall cover Colley and all other persons acting on Colley's behalf that enter city property and/or work on the Barn project. The City will be provided with notice of insurance policy cancellation or nonrenewal a minimum of 15 days prior to policy termination. The certificate of insurance shall meet the requirements of the City of Columbia Risk Manager.
 - e. Colley shall maintain insurance for the entire time frame of the project.

3. Colley to Indemnify and Hold City Harmless; Covenant Not to Sue and Release City of Liability.

- a. Hold Harmless Agreement. To the fullest extent not prohibited by law, Colley shall indemnify and hold harmless the City, its directors, officers, agents and employees from and against all claims, damages, losses and expenses in connection with this agreement, including, but not limited, to any claims damages, losses and expenses in connection with this agreement by Colley, Colley's agents, personal representatives, firms, corporations, and persons acting on Colley's behalf in connection to this agreement. This provision does not, however, require Colley to indemnify, hold harmless or defend the City from its own negligence.
- b. Covenant Not To Sue. In consideration of the salvaging materials and other value given, the undersigned, Colley, does hereby covenant and undertake with his heirs, personal and legal representatives or successors, agents and assigns, to forever refrain and desist from instituting or asserting against City of Columbia, its employees, their agents, personal representatives, and all firms, corporations and persons acting on its behalf, any claim, demand, action or suit of whatever kind or nature either directly or indirectly, for injuries or damage, to person or property, resulting or to result, in connection with this agreement.

4. Miscellaneous.

- a. Sole benefit of parties. This agreement is for the sole benefit of City and Colley. Nothing in this agreement is intended to confer any rights or remedies on any third party.
- b. Assignment. Colley will not assign this agreement without the express written consent of City.
- c. Compliance with Local Laws. Colley shall comply with all applicable laws, ordinances and codes of the state and City.

- d. Law; Submission to Jurisdiction Governing. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Missouri or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be Boone County, Missouri or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum non conveniens.
- e. No Attorneys' Fees. It is agreed that in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorney's fees and costs.
- f. Entire Agreement. This Agreement represents the entire and integrated Agreement between the Colley and City. All previous or contemporaneous agreements, representations, promises and conditions relating to this Agreement herein are superseded.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

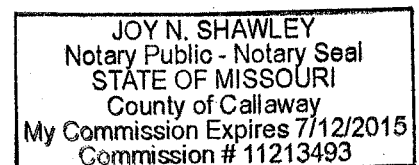
Fred Boeckmann, City Counselor

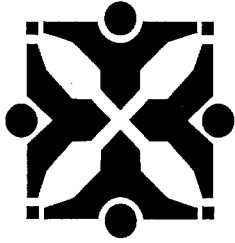
By: Ben E. Colley
Ben E. Colley

ATTEST: State of Missouri)
County of Boone) ss.

On this 11 day of July in the year 2012, before me Ben E. Colley, a Notary Public in and for said state, personally appeared Ben E. Colley, known to me to be the person who executed the within Agreement and acknowledged to me that Ben E. Colley executed the same for the purposes therein stated. In Testimony Whereof, I have set my hand and affixed my official seal.

Joy N. Shawley
Notary Public





Source: Public Works

John

Agenda Item No:

To: City Council

From: City Manager and Staff

MM

Council Meeting Date: Aug 6, 2012

Re: Agreement with Ben E. Colley to Salvage Boards from a Deteriorated Barn on City Owned Property

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration a resolution authorizing the City Manager to execute an agreement with Ben E. Colley to salvage boards from a deteriorated barn on City owned property.

DISCUSSION:

In 1992, the City's Sewer Utility purchased property consisting of approximately 269 acres southwest of the Columbia Regional Waste Water Treatment Plant (CRWWTP) to use for disposal of sludge generated at the CRWWTP. The property included an old barn that has never been used by the Sewer Utility and has deteriorated over time. The barn is beginning to collapse and needs to be demolished and the materials removed from the property (see attached pictures). Demolition of the barn is anticipated to be completed by Sewer Utility personnel in FY2013 during the time of year when sludge cannot be disposed by land application.

Earlier this year, Mr. Colley approached the City to request access to the City owned property to salvage some of the board siding on the barn (see attached letter). Mr. Colley's grandfather used to farm the property and the barn has sentimental value. The only access to the City owned property is via the MKT Trail, however, Mr. Colley can access the property from the adjacent tract owned by him and his family, for the purpose of salvaging materials. Any material Mr. Colley salvages is material the City will not have to bear the cost to remove, transport and dispose at the landfill. This agreement would allow Mr. Colley access to the City owned property to salvage some of the board siding for reuse, at his expense.

FISCAL IMPACT:

This agreement will slightly reduce the City's total cost to demolish and dispose of this structure.

VISION IMPACT:

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

None

SUGGESTED COUNCIL ACTIONS:

Approval of the resolution authorizing the City Manager to execute the agreement with Ben E. Colley.

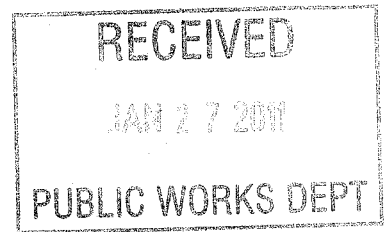
FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	No
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	





January 26, 2012

John D. Glascock, P.E.
Director of Public Works
701 E. Broadway
P.O. Box 6015
Columbia, MO 65205-6015



Subject: Access to barn on Parcel Number 16-700-31-00-001.02

Dear Mr. Glascock;

Recently I spoke with your staff regarding access to the old barn on city property adjacent to our farm on Brushwood Lake Road. This barn is beginning to collapse from age and disuse, and I was inquiring as to how I might secure access to the barn in order to salvage some of the old boards. She suggested I direct my query to you.

I grew up helping my grandfather farm these bottoms and stacked hay in this barn for many years in my youth. I do not believe my grandfather built the barn originally, but I helped him maintain and repair it regularly. So, the structure has sentimental value and I would like to have some of the materials before they are gone. To my knowledge, the city has never utilized the structure since the property was purchased back in the early 1980's.

For your information, the barn is on the property with Parcel Number 16-700-31-00-001.02 in the Assessor's system; my sisters and I own the 131 acre adjoining property (Parcel Numbers 16-700-32-00-006.00 and 16-700-31-00-001.00) to the east on Brushwood Lake Road. We inherited the property from our grandmother via our mother in 2006. This property has been in the family since 1953 if my memory serves.

By way of this letter, I respectfully request permission to salvage materials from this old barn before it collapses completely. I would gain access to the property via the existing gate on our property as noted on the attached screen captures showing the properties and the barn.

Respectfully,

A handwritten signature in black ink that reads "Ben E. Colley". The signature is stylized with a large, looping "C" at the end.

Ben E. Colley

6406 E Ash Grove Lane
Hallsville, MO 65255

Home: 573-696-3677

Cell: 573-819-8250

Email: bencolley@centurytel.net