



CITY COUNCIL Regular Meeting

April 7, 2025

6:00 PM, Council Chambers - 111 E. Maple Ave.

To view a Council meeting agenda, visit <https://independencemo.portal.civicclerk.com/> and select 'Most Recent Council Agenda'.

INVOCATION

1. Rob Douglas, Elder at the East Independence Church of Christ, will give the invocation

THE PLEDGE OF ALLEGIANCE

ROLL CALL

CITIZEN REQUESTS

PRESENTATION RESOLUTIONS

1. 25-732 A Resolution recognizing Charles R. Harvey, III, Administrative Support Supervisor in the Municipal Services Department, as the ISTAR recipient for April 2025.

PROCLAMATIONS

CONSENT AGENDA

Reports and Recommendations of the City Manager

1. Approval of minutes for the Regular Meetings on March 3rd and March 24th 2025
2. Council action is requested to authorize the City Manager to issue a purchase order to Insituform Technologies, Inc. in the amount of \$504,422.80 for the purchase and installation of Cured-In-Place Piping (CIPP) as part of the Stormwater and Sanitary Sewer Trenchless Technology projects (No. 130508 & No. 9757). Additionally, Council

is requested to authorize future minor change orders not to exceed \$50,442.28.

3. Council action is requested to authorize the City Manager to issue a purchase order to Wiedenmann Construction, Inc. for an amount not to exceed \$96,126 and to authorize future minor change orders and/or time extensions not to exceed \$9,612.60 for stormwater infrastructure repairs in the Saddlebrook Subdivision as part of the Emergency Stormwater Project (No. 131802).
4. Council action is requested to approve the Construction Manager at Risk (CMAR) agreement with McCownGordon Construction for the Independence Justice Center project, located at 17221 East 23rd St S, Independence, MO 64057.
5. Council action is requested to approve the AIA G802 Amendment to Professional Services Agreement with WSKF, Inc, for additional design services for the New and Replacement Fire Station Projects.
6. Council action is requested to approve Amendment #1 to Project Advocates, LLC for Consulting Services for the Fire Station Projects.
7. Council action is requested to approve the Construction Manager at Risk agreement with Turner Construction Company on the Independence Fire Station 5, 8 & 11 projects.

RESOLUTIONS

1. 25-733 A Resolution appointing Councilmember John Perkins to the Independence Convention and Visitors Bureau

REGULAR AGENDA

PUBLIC HEARING(S)

1. A public hearing for the application to rezone the property at 1009 N. Kiger Road from R-12, Two Family Residential, to R-6, Single Family Residential. ***New Information Only.***

25-019 **2R** An ordinance approving a rezoning from Districts R-12 (Two-Family Residential) to District R-6 (Single-Family Residential) for the property at 1009 North Kiger Road. **2R**

ORDINANCES

1. 25-016 **2R** An ordinance authorizing the borrowing of not to exceed \$50,000,000 from the Missouri Development Finance Board to finance certain project costs for the City; approving the form of and authorizing the execution of a Financing Agreement with the Missouri Development Finance Board; and prescribing other

matters relating thereto. **2R**

2. 25-017 **2R** An ordinance authorizing the acceptance of a monetary donation to the George Owens Nature Park (GONP) to establish a butterfly garden and adopting amendments to the Fiscal Year 2024-2025 budget, which was approved by Ordinance No. 19561. **2R**
3. 25-018 **2R** An ordinance authorizing the acceptance of funding from the US Department of Agriculture's Gus Schumacher Nutrition Incentive Program, through a recipient award from the Mid-America Regional Council (MARC) and sub-recipient Cultivate KC, which allocates \$11,992.50 to the City of Independence, Missouri, for nutrition incentives for the Double Up Food Bucks Program and adopting amendments to the Fiscal Year 2024-2025 budget, which was approved by ordinance NO. 19561. **2R**

FIRST READING(S)

1. 25-020 **1R** An ordinance amending articles of Chapter 11 of the Code of the City of Independence, Missouri, pertaining to food establishment and retail sanitation and adopting the sections of the Food and Drug Administration Model Food Code, 2022 Edition, as the food establishment and retail sanitation code.
2. 25-021 **1R** An ordinance approving a rezoning from District C-2 (General Commercial) to District I-1 (Industrial) for the property at 420 S M-291 Highway. **1R**
3. 25-022 **1R** An ordinance amending the Independence City Code Chapter 3 Animals and Fowl **1R**

INFORMATION ONLY

1. **Please Note:** *In accordance with RSMo. 610.021, the City Council may convene in an Executive Session during or after the meeting, in the Council Chambers and move to Conference Room D for the closed meeting, on matters of litigation, legal action, and/or attorney client communications, as permitted by Sec. 610.021(1), on matters of personnel, as permitted by Sec. 610.021(3) and personnel records, as permitted by 610.021(13), on matters of contracts, as permitted by 610.021(12), on matters of real estate, as permitted by 610.021(2) and/or matters of labor negotiations, as permitted by 610.021(9).*

COUNCILMEMBER COMMENTS

ADJOURNMENT

INDEPENDENCE
* MISSOURI *

A GREAT AMERICAN STORY

City Council Regular Meeting Minutes

March 3, 2025 6:00 PM

Council Chambers - 111 E. Maple Ave.

INVOCATION

1. The invocation will be given by Ken Truax, Elder with the East Independence Church of Christ

Ken Truax, Elder with the East Independence Church of Christ, gave the invocation.

THE PLEDGE OF ALLEGIANCE

ROLL CALL

Mayor Rory Rowland, Presiding Officer of the City Council, called the meeting to order. Upon roll call, the following members were present: Jared Fears, Brice Stewart, Bridget McCandless, Jennie Vaught, John Perkins, Heather Wiley, and Mayor Rory Rowland. Absent – none.

CITIZEN REQUESTS

Councilmember Perkins moved to allow non-residents to speak. Motion seconded by Councilmember Fears.

All yays; no nays, motion passes

Brian Etter spoke about the rezoning item 25.001.01 on the agenda tonight for Elsea Smith Road.

Adam Cone spoke about the public transit.

Brandon Davis spoke about the public transit.

Becky Hake spoke about the Noland Road CID.

Renay Roby spoke about the public transit.

Mary Tackett spoke about the public transit.

David Titus spoke about the internet and wanting more options for service. He also spoke about Spire messing up Truman Road.

Lisa Yewell spoke about the public transit.

Laura Dominik spoke about the ISD YouTube contract that is on the agenda tonight.

PRESENTATION RESOLUTIONS

Councilmember Fears moved to do the Presentation Proclamation out of order and before Citizen Requests. Motion seconded by Councilmember Perkins.

All yays, no nays - motion passes

Councilmember Fears moved to Approve resolution for the ISTAR Award. Motion seconded by Councilmember Perkins. Motion Passed.

All yays; no nays - motion passes

1. 25-725 A Resolution recognizing Brandie Gardner, Property Maintenance Officer, in the Community Development Department as the ISTAR recipient for March 2025.

Passes 7-0 Res. No. 7105

Councilmember Fears made a motion to do the Presentation Resolution out of order. This was seconded by Councilmember Perkins. All yays, no nays, motion passes.

Councilmember Fears moved to Approve the item as presented. Motion seconded by Councilmember Perkins.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

All says, no nays; motion passes

PROCLAMATIONS

CONSENT AGENDA

Reports and Recommendations of the City Manager

Councilmember Perkins moved to Approve the Consent Agenda. Motion seconded by Councilmember Fears.

Councilmember Perkins asked to pull item number 6 for special consideration.

Councilmember McCandless asked to pull item number 7 for special consideration.

Councilmember Stewart asked to pull item number 8 for special consideration.

Councilmember Vaught asked to pull resolution 25-715 for special consideration.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

All other items approved, 7-0

1. Approval of minutes for the Regular Meetings on February 4th and February 17th 2025 **Approved**
2. Council approval is requested to expend \$136,641.86 to the Mid-America Regional Council (MARC) for the City of Independence's participation in the Intergovernmental Agreement related to the disposal of Household Hazardous Waste (HHW) by the Municipal Services Department. **Approved**
3. Council approval is requested to expend \$246,670.52 with Graybar Electric for failing 15KV distribution switchgear cabinets, also called Desert Storm Cabinets, for the Power & Light Department. **Approved**
4. Council approval is requested for a change order to Purchase Order 25000778 to acquire an additional Freightliner single-axle dump truck chassis from PTG Premier Truck Group for \$109,483. This purchase is for the Street Maintenance Division of the Municipal Services Department. The total expenditure will increase to \$218,966. **Approved**
5. Council approval is requested to authorize an additional \$100,000 in expenditures with Ozark Kenworth for heavy equipment fleet repairs at the Central Garage of the Municipal Services Department. This adjustment will bring the total authorized expenditures to \$300,000. **Approved**
6. Council approval is requested to authorize the City Manager to approve Purchase Order Change Order #1 to the design contract (PO#25000852) with Alfred Benesch & Company, increasing the total contract amount to \$124,290. Additionally, authorization is requested for future change orders not to exceed \$12,429 for the E. Kentucky Road Bridge over Mill Creek portion of the Emergency Transportation Project (No. 112203-2). **Item Passes 7-0**

This item was pulled by Councilmember Perkins.

Councilmember Perkins made a motion to approve. Seconded by Councilmember Fears.

This bridge should be open by later this fall. There were additional deficiencies found with this bridge but we are working with the contractor to move it along as quickly as possible.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0

7. Council action is requested to authorize the City Manager to approve a construction contract with Linaweaver Construction, Inc. for an amount not to exceed \$3,447,758. This authorization includes future minor change orders not to exceed \$344,775.80 and any necessary time extensions as part of the Leslie to Crane at Hereford Stormwater Project (No. 132201). **Item Passes 7-0**

This item was pulled by Councilmember McCandless.

Councilmember McCandless moved to approve this item. It was seconded by Councilmember Fears.

Funding for this project is coming from the City's Storm Water Sales Tax Fund as well as funds from ARPA and the Department of Natural Resources.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item Passes 7-0

8. Council action is requested to approve a revised Video Broadcast Agreement with the Independence School District to allow for School Board meetings to be broadcast on City7 and the City's YouTube channel. **Item Fails 3-4**

This item was pulled by Councilmember Stewart. Seconded by Councilmember Perkins. This item is being brought to Council at the request of the Independence School District. The contract allows them to archive the school board meetings on the City's YouTube account. School staff would send the files to City staff who would upload them to the YouTube page. There would not be any financial reimbursement for City staff time to do this. There could be some confusion as to who is responsible for the videos on YouTube and the ownership and maintenance of the material.

AYES (3): Mayor Rowland, Councilmember Fears, Councilmember Perkins

NAYS (4): Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Wiley

ABSENT (0):

Item fails 3-4

RESOLUTIONS

1. 25-715 A Resolution accepting the City of Independence Bicycle and Pedestrian Plan. *Postponed from 2/3/25* **Item Passes 6-1 Res. No. 7106**

This item was pulled by Councilmember Vaught.

Councilmember Vaught moved to approve this item. Seconded by Councilmember Wiley.

Councilmember Vaught said she supports the overall plan, but has some concerns with narrowing some streets as it could cause more congestion and possibly some safety concerns.

This does not designate a specific street or specific plan. That will be finalized later. So there is

still an opportunity for citizens to have input on this project. This is to set how it will be approached.

AYES (6): Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (1): Mayor Rowland

ABSENT (0):

Item passes 6-1

2. 25-726 A Resolution appointing Hayley Woods and Deputy Chief Michelle Sumstad to the Truman Memorial Scholarship Fund Candidate Selection Committee **Approved Res. No. 7107**
3. 25-727 A Resolution appointing Laura Garcia-Siegfried to the Japanese Sister City Committee **Approved Res. No. 7108**
4. 25-728 A Resolution appointing Caleb Holder as an alternate to the Board of Adjustment **Approved Res. No. 7109**

REGULAR AGENDA

PUBLIC HEARING(S)

1. A public hearing for the application to rezone the property at 2000 N. Elsea Smith Road from R-A, Residential-Agricultural, to R-4, Single Family Residential Low Density. **New Information Only.**

Rick Arroyo, Assistant Community Development Director, presented this item. This Rezoning was considered by the Planning Commission on January 14th of this year. The Planning Commission did not vote in favor of this Rezoning. The applicant seeks to rezone this property along Elsea Smith Road to allow the creation of a second lot to sell for the construction of another single-family residence. No new information to provide.

There is no way a second house can be built without a rezoning. The difference between an R-A and an R-4 is the frontage requirement. The applicant states that the intent is to sell the property, not necessarily to a family member.

25-008 2R An ordinance approving a rezoning from District R-A (Residential-Agricultural) to District R-4 (Single-Family Residential Low Density) for the property at 2000 N. Elsea Smith Road. **2R Item Fails 0-7**

AYES (0): None

NAYS (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins,

Councilmember Wiley
ABSENT (0):

Item fails 0-7

2. A public hearing for the application to rezone the property at 9408 E. Winner Road from O-1, Office-Residential, to R-6, Single-Family Residential, and the properties located at 715 & 717 S. Brookside, 812, 818 & 820 S. Glenwood, 9306 & 9310 E. 9th Street S, and 9400, 9402, 9404 & 9406 E. Winner Road from R-30/PUD, High Density Residential/Planned Unit Development, to R-6, Single-Family Residential. ***New Information Only.***

Rick Arroyo, Assistant Community Development Director, presented this item.

This City Initiated Rezoning was considered by the Planning Commission on January 14th of this year.

The Planning Commissions voted in favor of this Rezoning.

This is a corrective rezoning that began with a request from a property owner along Winner Road that highlighted the number of properties in this area that are currently legally non-conforming. This case seeks to corrects the zoning for single family homes currently zoned O-1, and R30-PUD to R-6.

No new information to provide.

25-009 2R An ordinance approving a rezoning from District O-1 (Office-Residential) and District R-30/PUD (High Density Residential/Planned Unit Development) to District R-6 (Single-Family Residential) for the properties along Winner Road, Brookside Boulevard, Glenwood Avenue and 9th Street S in Independence, Missouri. **2R Item Passes 7-0 Ord. No. 19655**

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0

3. A public hearing for the application to rezone the properties located at 1420, 1422, 1424 & 1426 S. Liberty Street from R-30/PUD, High Density Residential/Planned Unit Development, to R-6, Single-Family Residential. ***New Information Only.***

Rick Arroyo, Assistant Community Development Director, presented this item.

This City Initiated Rezoning was considered by the Planning Commission on January 14th of this year.

The Planning Commissions voted in favor of this Rezoning.

This is a corrective rezoning that began with a building permit request to rehab a structure at 1424 S Liberty Street. The request highlighted the number of properties in this area that are currently legally non-conforming. This case seeks to corrects the zoning for single family

homes currently R30-PUD to R-6.
No new information to provide.

25-010 2R An ordinance approving a rezoning from District R-30/PUD (High Density Residential/Planned Unit Development) to District R-6 (Single-Family Residential) for the properties along Liberty Street South of 23rd Street in Independence, Missouri. **2R Item Passes 7-0 Ord. No. 19656**

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley
NAYS (0): None
ABSENT (0):

Item passes 7-0

4. A full public hearing for a Retail Selling of Intoxicating Liquor of all kinds in the original package for Galaxy Liquors that will be located at 2321 S. Lee's Summit Rd.
Full Public Hearing.

This is a full public hearing presented by Tom Scannell, the Community Development Director. Galaxy Liquor is asking to open a liquor store at the old QuikTrip on south Lee's Summit Road. QuikTrip sold liquor at this location. There are other establishments within close proximity that also have liquor licenses. This application is within 300 feet of a residential area. This facility would not be a convenience store. They will primarily sell beer and alcohol.

David Feingold of the Micha Feingold Real Estate Company represents the buyers of this property. The owners have other locations in the Kansas City area. They are a good corporate neighbor.

The public hearing was closed.

The item was presented, and discussion followed.

AYES (0): None
NAYS (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Wiley, Councilmember Perkins
ABSENT (0):

Item fails 0-7

Council action is requested on the application received from KC Galaxy, LLC for Retail Selling of Intoxicating Liquor of all kinds in the original package for Galaxy Liquors that will be located at 2321 S. Lee's Summit Rd. **Item Fails 0-7**

5. A full public hearing for a Retail Selling of Intoxicating Liquor of all kinds in the original package for Fast Zone 8 located at 2561 S. M 291 Hwy. **Full Public Hearing.**

This is a full public hearing presented by Tom Scannell, the Community Development Director.

Fast Zone is purchasing the convenience store located at 291 and Gudgell. There are two other establishments nearby with liquor licenses. The property is within 300 feet of a residential area.

No one else spoke on this item.

Council action is requested on the application received from KC Stores, LLC for Retail Selling of Intoxicating Liquor of all kinds in the original package for Fast Zone 8 located at 2561 S. M 291 Hwy. **Item Passes 7-0**

Councilmember Perkins clarified that this is a transfer of an existing liquor license.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0

ORDINANCES

1. 25-011 2R An ordinance vacating an existing electric easement, utility easement, sanitary sewer easement, and general utility easement, all of which are part of 18785 E. 39th Street South, lying in, on, and across Tracts 4 & 5 of Independence Center, a subdivision of Independence, Jackson County, Missouri. 2R **Item Passes 7-0 Ord. No. 19657**

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0

2. 25-012 2R An ordinance authorizing the award of funds to Burns & McDonnell, Inc. and AspenTech OSI totaling \$841,711 for a six-year project to fulfill the Federal Energy Regulatory Commission (FERC) Order No. 881; further authorizing Council action to issue purchase orders for fiscal year 2025 to Burns & McDonnell in the amount of \$309,225 and AspenTech in the amount of \$99,470 for a total of \$408,695 for the Power and Light Department; and authorizing future change

orders not to exceed 10% of the entire six-year project, \$84,171.10; and appropriating \$408,695 from the Power & Light reserve fund balance to fund the fiscal year 2025 portion of the project. **2R Item Passes 7-0 Ord. No. 19658**

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0

FIRST READING(S)

1. 25-013 **1R** An ordinance approving a Final Plat for Timber Creek Ranch - 5th Plat generally located north of Bundschu and Old Mill Road in Independence, Jackson County, Missouri. **1R Read**

This item was read.

2. 25-014 **1R** An ordinance approving a rezoning from Districts I-1 (Industrial), C-2 (General Commercial), and R-12 (Two-Family Residential) to District I-1 (Industrial) for the property at 10900 East Truman Road. **1R Read**

This item was read.

3. 25-015 **1R** An ordinance approving a rezoning from District I-1 (Industrial) to District R-6 (Single-Family Residential) for the property at 336 N. Hocker Avenue. **1R Read**

This item was read.

INFORMATION ONLY

1. Case 25-100-03, a request by Dustin Ferrell to rezone the property located at 10900 E. Truman Road from I-1 (Industrial), C-2 (General Commercial), and R-12 (Two-Family Residential) to I-1 (Industrial), was advertised for a new information only public hearing at the March 3, 2025, City Council meeting. As this case was continued by the Planning Commission, the new information only public hearing will be held at the March 17, 2025, City Council meeting.
2. ***Please Note: In accordance with RSMo. 610.021, the City Council may convene in an Executive Session during or after the meeting, in the Council Chambers and move to Conference Room D for the closed meeting, on matters of litigation, legal action, and/or attorney client communications, as permitted by Sec. 610.021(1), on matters of personnel, as permitted by Sec. 610.021(3) and personnel records, as permitted by 610.021(13), on matters of contracts, as permitted by 610.021(12), on matters of real estate, as permitted by 610.021(2) and/or matters of labor negotiations, as permitted***

by 610.021(9).

COUNCILMEMBER COMMENTS

Councilmember Fears stated he went to Washington DC last week to the American Public Power Association Legislative Rally. He learned that not only is IPL struggling to obtain materials but public power utilities across the nation are as well. He also learned that Independence is in the top 100 public power organizations in the United States.

Councilmember Wiley stated that last week she volunteered at the Good Shepherd drop-in Center and served soup and coffee to residents that needed to get out of the cold. She thanked CSL and the Good Shepherd congregation for donating the space to do this. She also thanked IPD for sponsoring Coffee with a Cop at the Main Street Coffee House a couple weeks ago. She also stated that the police department is offering tours of their building so citizens can see the condition of police headquarters.

Councilmember McCandless stated that Independence Together has engaged in a contract with MODOT to pick up trash along I-70. They have now exceeded one million pounds of trash in the last 23 months. This has helped their participants save money, helped them retire old debt, and 15 of them have been granted permanent housing. She also stated that Independence is a part of the Mid-America Regional Council (MARC) which allows the City to coordinate with other municipalities with regard to things that are not restricted by City borders, such as air pollution, storm water runoff, etc. We approved a household hazardous waste tonight, which is something that is done in coordination with MARC along with license plate readers, senior meals program and headstart funds. All are done through cooperative grant programs that helps the City fund these projects.

She asked the City Manager, Zach Walker to speak to a comment made by one of the citizen speakers tonight suggesting ARPA funds be used for the transit system. Zach stated the municipalities received ARPA Funds as a result of the pandemic. Jackson County received about \$70 million in ARPA funds. These funds do not belong to the City of Independence. The City has also developed a policy to not use one-time revenues for projects that would be an ongoing service, such as transit.

Councilmember McCandless also addressed another comment regarding road conditions in an area where utility work has been done. The weather is too cold to fully repair the street at this time.

She also asked if we could do a review of the short-term rental policy that was recently passed.

Councilmember Perkins thanked Charlie Dissell, Assistant City Manager for his work related to the Englewood Theatre. There will be a community meeting regarding the theater on Monday, March 10th at 6 p.m. at the Englewood Arts Center, 10901 E. Winner Road. He also addressed the transit system. He stated that on February 24th, Council went had a discussion regarding the transit system and the budget for it, during the study session. Terry O'Toole, a representative from IRIS was at this study session and citizens had an opportunity to come to that meeting to have their concerns addressed.

Mayor Rowland thanked the City Manager and Communications staff for assisting with

recording videos and helping a number of animals to be adopted.

Zach Walker, City Manager, stated his appreciation to the Councilmembers who addressed some citizen comments. KCATA is running the bus service from 24 Highway to Kansas City and the paratransit system. They do not run the fixed route system. The only way to get the bus service back next year is to come up with \$3 million and then \$7 million the following year. He welcomed citizens to call his office so staff can assist, if they can, with issues they are having. He also discussed the Noland Road CID and stated that businesses within that district voted to voluntarily join that entity. Noland Road CID pays a 3/4 cent sales tax. There is a right of way property near the Five Guys property that was voluntarily annexed to allow a monument signage. The Hiram Young park that sits along Noland Road and Truman, near City Hall was voluntarily annexed in as well as a portion of the Sermon Center to allow a monument sign to be constructed at some point.

ADJOURNMENT



Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:



City Clerk



INDEPENDENCE
★ MISSOURI ★
A GREAT AMERICAN STORY

City Council Regular Meeting Minutes

March 17, 2025 6:00 PM
Council Chambers - 111 E. Maple Ave.

INVOCATION

1. Stephen Ballentyne, Assistant Pastor of the Mount Zion Restoration Branch, will give the invocation.

Stephen Ballentyne gave the invocation.

THE PLEDGE OF ALLEGIANCE

ROLL CALL

Mayor Pro-tem John Perkins presided over this meeting as Mayor Rowland appeared via Teams. Upon roll call, the following members were present: Jared Fears, Brice Stewart, Bridget McCandless, Jennie Vaught, John Perkins and Heather Wiley. None were absent.

CITIZEN REQUESTS

Leigh Phillips spoke on the General Obligation Bond
Becky Hake spoke on fire station bonds
David Morgan spoke on the Green Light Dispensary

PROCLAMATIONS

There were no proclamations

CONSENT AGENDA

The item was presented, and discussion followed.

Councilmember Fears moved to Approve the Consent Agenda. Motion seconded by Councilmember McCandless.

Items pulled for special consideration were
Item #2 pulled by Mayor Rowland
Item #5 pulled by Councilmember McCandless
Item #6 pulled by Mayor Rowland
Item 25-731 pulled by Councilmember Wiley

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Consent Agenda minus the special consideration items passes 7-0

Reports and Recommendations of the City Manager

1. Council approval is requested to authorize the City Manager to execute a construction contract with Superior Bowen Asphalt Co., LLC, for an amount not to exceed \$2,180,880.67. This authorization includes the ability to approve future minor change orders not exceeding \$218,088 and/or time extensions, as needed, for asphalt overlay work under the Pavement Preventative Maintenance Project (Project No. 112201-11). **Approved**
2. Council approval is requested for the 2025-2026 Liability Insurance Program with Obsidian Specialty Insurance Company with an estimated annual cost of \$875,000.
Passes 7-0

This item was pulled by Mayor Rowland for special consideration. This is to approve a contract for services to a company to provide casualty and liability insurance for the City.

The Mayor asked if the City Council could review any settlements over \$1 million before the settlement is offered. City Attorney Jeremy Cover stated the City only has control of settlements up to the deductible. After that, it is up to the insurance company to make the decisions as it is their money. The Mayor stated he will prepare a resolution and putting it before the City Council to decide how they will handle their liability claims going forward. City Attorney Jeremy Cover stated that if the City was self-insured, it would have more control over settlements.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0

3. Council approval is requested to issue a purchase order in the amount of \$170,000.00

to MacQueen for turnout gear for the Fire Department. **Approved**

4. Council approval is requested to enter into contracts with Complete Lawn Care Professionals, LLC and Galvan's Lawn & Landscape, LLC for Fiscal Years 2024-25 and 2025-26 for mowing services for the Parks, Recreation and Tourism Department (PRT), Independence Power & Light Department (IPL) and Municipal Services Department. **Approved**
5. Council approval is requested to issue a purchase order for \$230,000 to PGAV Architects (PGAV) for a Feasibility Study for the National Frontier Trails Museum and Cultural Center for the Parks, Recreation and Tourism Department (PRT).
Postponed Indefinitely 7-0

This item was pulled by Councilmember McCandless for special consideration. Councilmember McCandless stated the City is currently committed to many different projects at this point, and taking on an additional one would be overreach for the city, along with additional financial questions for this for the budget. She motioned to postpone this item indefinitely. This was seconded by Councilmember Perkins.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Motion passes 7-0. The item was postponed indefinitely.

6. Council action is requested to approve the Construction Manager at Risk agreement with McCownGordon Construction on the Independence Municipal Commons (IMC) renovation project located at 20201 E. Jackson Drive, Independence, MO 64057.
Passes 7-0

This item was pulled by Mayor Rowland for special consideration.

This item is for the costs of renovating the new building on Jackson Drive that will house the City offices. This is an at-risk contract which means if the cost exceeds what the contractor has quoted, he will incur that expense and not the City.

Mayor Rowland moved to Approve the item as presented. Motion seconded by Councilmember McCandless. Motion Passed.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0.

RESOLUTIONS

1. 25-729 A Resolution amending the Personnel Policies and Procedures of the City of Independence, Missouri to update Article III (Recruitment, Selection, Probation, and Promotion) and Article V (Compensation and Benefits) **Approved Res. No. 7110**
2. 25-730 A Resolution appointing Ted Luce and Terri Hoefflicker to the Independence Animal Welfare Committee. **Approved Res. No. 7111**
3. 25-731 A Resolution supporting the establishment of an Animal Cruelty Task Force to enhance animal welfare, law enforcement coordination, and community education in the City of Independence, Missouri. (*Sponsored by Councilmember Wiley*) **Passes 7-0 Res. No. 7112**

This item was pulled by Councilmember Wiley for special consideration.

Councilmember Wiley moved to Approve the item as presented. Motion seconded by Councilmember McCandless.

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley

NAYS (0): None

ABSENT (0):

Item passes 7-0

REGULAR AGENDA

PUBLIC HEARING(S)

1. A public hearing for the application to rezone the property at 10900 E. Truman Road from I-1, Industrial, C-2, General Commercial, and R-12, Two Family Residential, to I-1, Industrial. ***New Information Only.***

Rick Arroyo, Assistant Director of the Community Development Unit spoke on this item.

This Rezoning was considered by the Planning Commission on January 28th of this year. The Planning Commission voted in favor of this Rezoning.

The applicant seeks to build a structure to secure vehicles at this refuse collection business. Recognizing this property is divided into 4 parcels, the applicant wishes to consolidate the property into one, however two areas contain inconsistent zonings (C-2 and R-12). The applicant wishes to rezone these two areas consistent with I-1 conforming with the majority of the site.

No new information to provide.

25-014 2R An ordinance approving a rezoning from Districts I-1 (Industrial), C-2 (General Commercial), and R-12 (Two-Family Residential) to District I-1

(Industrial) for the property at 10900 East Truman Road. **2R Passes 7-0**
Ord. No. 19659

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart,
Councilmember McCandless, Councilmember Vaught, Councilmember Perkins,
Councilmember Wiley
NAYS (0): None
ABSENT (0):

Item passes 7-0

2. A public hearing for the application to rezone the property at 336 N. Hocker Avenue from I-1, Industrial, to R-6, Single Family Residential. ***New Information Only.***

Rick Arroyo, Assistant Director of the Community Development Unit spoke on this item.

This Rezoning was considered by the Planning Commission on January 28th of this year. The Planning Commissions voted in favor of this Rezoning. The applicant is wishing to rehabilitate a legal non-conforming single-family structure at 336 N. Hocker. This rezoning is a corrective rezoning to change the current I-1 industrial zoning to R-6 Single family. Staff has recognized and is working on a City Initiated rezoning for many properties along this block in a similar situation, however this applicant is working on an accelerated schedule and wished to proceed sooner.
No new information to provide.

25-015 2R An ordinance approving a rezoning from District I-1 (Industrial) to District R-6 (Single-Family Residential) for the property at 336 N. Hocker Avenue. **2R Passes 7-0 Ord. No. 19660**

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart,
Councilmember McCandless, Councilmember Vaught, Councilmember Perkins,
Councilmember Wiley
NAYS (0): None
ABSENT (0):

Item passes 7-0

3. A full public hearing for a Retail Selling of Intoxicating Liquor by the Drink License for Harvey's Happy Hour that will be located at 10129 E. US 40 Hwy. ***Full Public Hearing.***

Tom Scannell, Director of the Community Development Dept. spoke on this item. This establishment is within 30 feet of a church, school and/or residential area which requires it have a public hearing.

Warren Goutreau, co-owner of Harveys' spoke in support of this license. No other speakers came forward.

Council action is requested on the application received from Harvey's Happy Hour, LLC for Retail Selling of Intoxicating Liquor by the Drink for Harvey's Happy Hour that will be located at 10129 E. US 40 Hwy. **Passes 7-0**

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley
NAYS (0): None
ABSENT (0):

Item passes 7-0

ORDINANCES

1. 25-013 **2R** An ordinance approving a Final Plat for Timber Creek Ranch - 5th Plat generally located north of Bundschu and Old Mill Road in Independence, Jackson County, Missouri. **2R Passes 7-0 Ord. No. 19661**

AYES (7): Mayor Rowland, Councilmember Fears, Councilmember Stewart, Councilmember McCandless, Councilmember Vaught, Councilmember Perkins, Councilmember Wiley
NAYS (0): None
ABSENT (0):

Item passes 7-0

FIRST READING(S)

1. 25-016 **1R** An ordinance authorizing the borrowing of not to exceed \$50,000,000 from the Missouri Development Finance Board to finance certain project costs for the City; approving the form of and authorizing the execution of a Financing Agreement with the Missouri Development Finance Board; and prescribing other matters relating thereto. **1R Read**
2. 25-017 **1R** An ordinance authorizing the acceptance of a monetary donation to the George Owens Nature Park (GONP) to establish a butterfly garden and adopting amendments to the Fiscal Year 2024-2025 budget, which was approved by Ordinance No. 19561. **1R Read**
3. 25-018 **1R** An ordinance authorizing the acceptance of funding from the US Department of Agriculture's Gus Schumacher Nutrition Incentive Program, through a recipient award from the Mid-America Regional Council (MARC) and sub-recipient Cultivate KC, which allocates \$11,992.50 to the City of Independence, Missouri, for nutrition incentives for the Double Up Food Bucks Program and adopting amendments to the Fiscal Year 2024-2025 budget, which was approved by ordinance NO. 19561. **1R Read**

4. 25-019 1R An ordinance approving a rezoning from Districts R-12 (Two-Family Residential) to District R-6 (Single-Family Residential) for the property at 1009 North Kiger Road. **1R Read**

INFORMATION ONLY

1. Independence Municipal Court Report for February 2025
2. ***Please Note: In accordance with RSMo. 610.021, the City Council may convene in an Executive Session during or after the meeting, in the Council Chambers and move to Conference Room D for the closed meeting, on matters of litigation, legal action, and/or attorney client communications, as permitted by Sec. 610.021(1), on matters of personnel, as permitted by Sec. 610.021(3) and personnel records, as permitted by 610.021(13), on matters of contracts, as permitted by 610.021(12), on matters of real estate, as permitted by 610.021(2) and/or matters of labor negotiations, as permitted by 610.021(9).***

COUNCILMEMBER COMMENTS

Councilmember Stewart asked City Manager Zach Walker to address a comment made by a citizen this evening where they stated money from the Marijuana Sales Tax was used for Square redevelopment. The marijuana sales tax is to be allocated to address the facility needs of the police department. A portion of the marijuana sales tax is allocated to be used to restructure the area where the police headquarters is located, should the General Obligation Bond pass. This falls within those requirements. Councilmember Stewart suggested a citizen oversight committee for the General Obligation Bond and asked Zach to have a resolution ready for the Council's review should the bond pass.

Councilmember Fears followed up on Councilmember Stewart's comment, stating that in the resolution regarding the General Obligation Bond, the City Council was to get a full report once a year from the Audit and Finance Committee and that the Audit and Finance Committee would get quarterly reports making sure the bond money was being used accordingly. Therefore, the spending will be well represented. He also stated that the City received its yearly audit from the State, and it stated that everything is being done the way it's supposed to be done.

Councilmember Vaught talked about the Clarion Point Hotel closure, saying she received an email from a resident stating that there has been a noticeable decrease in police activity in her neighborhood due to the closure. Councilmember Vaught thanked City staff for their dedicated efforts regarding the hotels throughout the city and recent closures of the Budget Inn and Executive Inn. These hotels did not maintain compliance with the city ordinances, which coupled with numerous police calls, ultimately led to their closure.

Councilmember Wiley stated she went to the Independence School District Achievement Awards at William Chrisman High School last week. She congratulated the 8th grade award winners and all of the McCoy winners. She also stated the Independence Arts council had their first meeting and are looking into participating in the 2026 Parade of Hearts.

Councilmember McCandless discussed the most recent house fire in Independence and reminded everyone of the importance of having an evacuation plan and working smoke detectors. We have also already seen a couple of big tornadoes in Missouri and encouraged citizens to think ahead of these kind of storms to be prepared. Our Emergency Preparedness Department is available to go to neighborhood meetings and assist neighborhoods with getting prepared if anyone is interested in that. She also addressed a citizen that discussed the Green Light Dispensary signs he talked about tonight. Those signs are controlled by MoDOT and she will help him get in touch with them. She also reminded the police department is still doing tours of the building to see the issues that the building has.

Mayor Rowland thanked the Communications Department and Christina Heinen for her work in helping with the animal videos. They have gotten six animals adopted. They highlight three dogs in every video and have averaged one dog being adopted per video.

Mayor ProTem Perkins addressed the Crysler Ave bridge that was discussed by a Citizen this evening. They are working on this as diligently as possible. The Kentucky Ave. bridge is controlled half by the City of Independence and half by the City of Kansas City. The City of Kansas City is refusing to help with getting this bridge repaired but the City of Independence is working on this as best we can. He also addressed the comment regarding an audit and stated that there was an audit done by the State a few years ago and encouraged citizens to contact the State for a copy of it.

City Manager Zach Walker invited citizens to attend neighborhood meetings regarding the General Obligation Bond. There will be another overview of the bond discussed in the Study Session next Monday. He also addressed a citizen's comment regarding the use of sales tax. Mr. Walker stated that the construction inflation rate is 3.9%. Our sales tax growth does not match that money to cover the inflation rate. There is more cost in doing projects now, with less money coming in, so we are not able to keep up with projects in this city. That is why we are trying to mimic our peer cities and the bonds they have passed to keep up with the infrastructure needs. It was also mentioned that tax increment finance projects are city-backed. That was the case with the Falls at Crackerneck Creek; However, that is not the case with other city-backed projects.

There is actually a 44% reduction in the number of tax increment financing projects, including eliminating eight of those projects within the last five years alone. We have eliminated all general fund subsidies for tax increment fund projects. The City Manager's Office has worked very hard to consolidate departments and reduce city staffing. In 2016, our general fund reserve fund was at 4.7% and is now at 17.4%. We have been tightening our belts for the last several years. Now we are trying to utilize a General Obligation bond to take care of our major capital projects like our peer cities.

ADJOURNMENT



Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

Summire Howard

City Clerk



City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to authorize the City Manager to issue a purchase order to Insituform Technologies, Inc. in the amount of \$504,422.80 for the purchase and installation of Cured-In-Place Piping (CIPP) as part of the Stormwater and Sanitary Sewer Trenchless Technology projects (No. 130508 & No. 9757). Additionally, Council is requested to authorize future minor change orders not to exceed \$50,442.28.

Recommendations:

Council approval is recommended.

Background:

Approval of this item will authorize the City Manager to issue a purchase order in the amount of \$504,422.80 to Insituform Technologies, Inc. for services and materials necessary to maintain the City's sanitary and stormwater infrastructure.

The pricing for this purchase is based on the Johnson County, Kansas cooperative contract (Invitation to Bid No. 2024-069, CMSD Contract No. 38). Purchases under cooperative agreements are authorized by Section 8.06.004, Paragraph 5 of the Independence City Code, which states that when cooperative bids or contracts are used, they will have been established pursuant to generally accepted governmental purchasing practices and the competitive bidding process.

The funding for this purchase order(s) will break down as follows:

- \$364,552.40 and a 10% contingency from the sanitary fund (no. 9757).
- \$139,870.40 and a 10% contingency from the stormwater fund (no. 130508).

This is a budgeted capital expense.

Emergency Justification:**Fiscal Impact:**

The fiscal impact to the City is \$554,865.08, including contingency. Funding for the stormwater portion of the Trenchless Technology Project (No. 13508) is included in the FY 25 budget, on page 203, under account number 0587058-5406. Funding for the sanitary sewer portion of the Trenchless Technology Project (No. 9757) is also included in the FY 25 budget, on page 204, under account number 0317031-5406.

Council Action:

Department / Contact	Municipal Services /
---------------------------------	----------------------

REVIEWERS

Richard Kemple
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Insituform - Auth #79 quote
2. 2024-069 CIPP - MH Agreement fully executed

To: General Contractors

January 24, 2025

In Re: Owner: City of Independence MO
Project Name: Authorization 79

Insituform Technologies USA, LLC (Contractor; "ITI") will provide services to complete the following Insituform® work on the above referenced project:

Scope of Work:

Description	Quantity	Unit	Unit Price	Total
Sanitary CIPP 8" x 6mm	8206.00	LF	\$ 32.90	\$ 269,977.40
Sanitary CIPP 10" x 6mm	913.00	LF	\$ 36.30	\$ 33,141.90
Sanitary CIPP 15" x 7.5mm	281.00	LF	\$ 62.00	\$ 17,422.00
Sanitary CIPP 18" x 9mm	183.00	LF	\$ 79.50	\$ 14,548.50
Sanitary CIPP 8" mm Increase	1753.00	LF	\$ 2.70	\$ 4,733.10
Sanitary CIPP 10" mm Increase	573.00	LF	\$ 3.00	\$ 1,719.00
Sanitary CIPP 15" mm Increase	281.00	LF	\$ 23.40	\$ 6,575.40
Sanitary CIPP 18" mm Increase	183.00	LF	\$ 29.70	\$ 5,435.10
Sanitary Traffic Control	1.00	LS	\$ 6,000.00	\$ 6,000.00
Sanitary Protruding Taps	0.00	EA	\$ 300.00	\$ -
Sanitary Dye Testing	0.00	EA	\$ 200.00	\$ -
Sanitary Mobilization	1.00	LS	\$ 5,000.00	\$ 5,000.00
Total				\$ 364,552.40

CONTINUED ON NEXT PAGE

636.530.8000

580 Goddard Ave
Chesterfield, MO 63005

insituform.com

Description	Quantity	Unit	Unit Price	Total
Storm 701 N Ponca St 15"	711.00	LF	\$ 62.00	\$ 44,082.00
Storm 804 N Susquehanna Ridge 18"	449.00	LF	\$ 79.50	\$ 35,695.50
Storm 35th and Lees Summit Rd 18"	32.00	LF	\$ 79.50	\$ 2,544.00
Storm 35th and Lees Summit Rd 18"	53.00	LF	\$ 79.50	\$ 4,213.50
Storm 35th and Lees Summit Rd 24"	134.00	LF	\$ 145.40	\$ 19,483.60
Storm 35th and Lees Summit Rd 15"	56.00	LF	\$ 62.00	\$ 3,472.00
Storm CIPP 15" mm Increase	767.00	LF	\$ 7.80	\$ 5,982.60
Storm CIPP 18" mm Increase	534.00	LF	\$ 19.80	\$ 10,573.20
Storm CIPP 24" mm Increase	134.00	LF	\$ 36.00	\$ 4,824.00
Storm Traffic Control	1.00	LS	\$ 4,000.00	\$ 4,000.00
Storm Heavy Cleaning	0.00	HR	\$ 600.00	\$ -
Storm Mobilization	1.00	LS	\$ 5,000.00	\$ 5,000.00
Total \$				139,870.40

NOTE: Owner to remove tops of both upstream and downstream manholes on the 24" line
Owner to provide clearing for manhole access on the following line segments: 3, 4, 7, 8, 9, 14, 21, 25, and 26

INCLUDED:

- ✓ Installation of Insituform® complete per ASTM F1216.
- ✓ Pipeline cleaning. Loose debris (up to two inches) and "normal" deposits only. Extraordinary conditions will need to be treated as a point repair.
- ✓ Dry weather work only.
- ✓ Link with "mpeg file" of internal inspection pre- and post-Insituform®
- ✓ Certificate of insurance with a standard coverage.
- ✓ ITI to provide water required for the CIPP installation.

EXTRA:

- ◆ Performance/Payment Bond (at 2.5% of proposal price).
- ◆ Special Insurance such as Railroad, OCP, Builders Risk...
- ◆ Weekend/Holiday Work.

BY OTHERS:

- ◆ By-Pass and By-Pass Pumping for any work other than that performed by ITI.
- ◆ Excavation Point Repairs (for any reason, including but not limited to: at collapses and other obstructions unable to be removed with conventional sewer cleaning equipment and at access points), and related restoration

- ◆ **Repairs to the sewer due to collapsed pipe sections, protruding taps, lodged equipment, etc.**
- ◆ **Provide access to all manholes, opening and closing ingress/egress openings, vehicle and equipment roadway and staging.**
- ◆ **All permits.**
- ◆ **Tax Exempt Certificate.**
- ◆ **Provide dump site, haul permits, and associated items for sewer debris disposal. Any toxic waste handling is to be done by others. If alternative disposal is required, others shall be responsible for providing and managing all sampling, testing, collection, handling, storage, transportation, and disposal. Others to provide a convenient location near to the project area to enable ITI to offload and temporary storage pending re-handling by others**

If, during the performance of this contract, any cost price determining factor considered by Subcontractor in determining the contract price significantly increases, through no fault of Subcontractor, the price of this contract shall be equitably adjusted by an amount reasonably necessary to cover any such significant price increases. As used herein, a significant price increase shall mean any increase in price exceeding 5% experienced by Subcontractor from the date of the contract signing. Price increases resulting from increased costs of materials, labor, fuel, freight, and other cost inputs shall be verified, in writing, by Subcontractor's Vice President of Procurement. Due to the confidential nature of Subcontractor's pricing from Vendors, verification shall consist of a statement of percentage change in cost from the date of Subcontractor's estimate through the date of the change order request. Where the delivery of any material is delayed, through no fault of Subcontractor because of the shortage or unavailability of any raw materials, including resin, Subcontractor shall not be liable for any additional costs or damages associated with such delay(s). Nothing contained in this clause shall preclude Subcontractor from entitlement to more than one equitable adjustment if its costs continue to significantly (as defined above) rise during the duration of the project.

The existence of the void(s) in and/or around the bottom of the existing pipe may indicate an unforeseen condition for both ITUSA and the Owner. The Owner shall bear the responsibility for unforeseen conditions / subsurface conditions of the existing roadway, pipe bedding, adjacent soil compaction, etc. ITUSA shall not be contractually obligated to perform any investigation and / or repairs regarding the conditions beneath and / or around the existing pipe. ITUSA's proposal to rehabilitate the pipe does not entail taking on the liability or cost of any unforeseen conditions that are pre-existing but unknown to all parties. Due to the pre-existing condition of the host sewer pipe, some wrinkling of the CIPP may occur. Based on the information provided by the Owner, if wrinkling should occur, the wrinkles should not be considered to compromise the structural integrity of the CIPP liner. ITUSA's proposal to the Owner to rehabilitate the CIPP does not entail ITUSA taking on the liability or cost to repair the unforeseen condition of the void beneath/around the pipe.

General Conditions:

1. We reserve the right to negotiate our prices, should the CIPP quantities differ more than 10% from those stated in this proposal.
2. Laterals that can be positively identified (with the camera) as plugged, will not be reinstated. All other laterals will be opened unless otherwise directed in writing by the owner.
3. To the extent permitted by law and in accordance with the terms of this contract, Contractor shall indemnify and hold harmless the Owner, Architect/Engineer, and agents and employees of any of them from and against claims, damages, losses, and expenses including but not limited to attorneys' fees, arising out of or resulting from the work performed by Contractor, save and except any economic losses not related to bodily injury, sickness, disease or death, provided that such claim, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property excluding economic loss or use thereof (other than the work itself), but only to the extent caused in whole or in part by negligent acts or omissions of Contractor, anyone directly or indirectly employed by it or anyone for whose acts Contractor may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

In claims against any person or entity indemnified under this paragraph by an employee of Contractor, anyone directly or indirectly employed by it or anyone for whose acts Contractor may be liable, the indemnification obligation under this paragraph shall be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or its subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts.

The obligations of Contractor under this paragraph shall not extend to the liability of the Owner, Architect/Engineer, Architect/Engineer's consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Owner, Architect/Engineer, Architect/Engineer's consultants, and agents and employees of any of them.

4. **LIMITED WARRANTY.** IN LIEU OF ALL OTHER EXPRESSED, IMPLIED AND/OR STATUTORY WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, CONTRACTOR AGREES TO CORRECT ANY DEFECTS IN THE MATERIALS OR SERVICES PROVIDED BY CONTRACTOR WHICH ARE BROUGHT TO THE ATTENTION OF CONTRACTOR WITHIN ONE YEAR FOLLOWING COMPLETION OF CONTRACTOR'S WORK, PROVIDED OWNER AFFORDS CONTRACTOR SUITABLE ACCESS AND WORKING CONDITIONS TO ACCOMPLISH SUCH CORRECTION.
5. **MUTUAL RELEASE OF CONSEQUENTIAL DAMAGES.** Neither party shall be liable to the other for consequential damages relating to or arising out of the Contract.

6. Any restrictions in our normal weekday work hours required by local, state, and/or federal authorities (due to noise restrictions or other reasons not known at the time of this proposal) will be an extra charge.
7. All labor, equipment, material, supervision, and mobilization necessary to complete the Insituform® process per the above conditions, and Insituform® specifications, are included.
8. **PAYMENT TERMS:** Payment is due in full, without exception or retention, within 35 days of date of invoice.
9. This proposal supersedes and nullifies all previous estimates and proposals under the same number, and is good for 60 days.

Sincerely,
INSITUFORM TECHNOLOGIES USA, LLC.



Laurie Andreski, Bid Manager Cell – (314) 239-0932

Company: _____

Signed: _____

Printed Name/Title: _____

Date: _____

Is this Project Tax Exempt? _____ If Yes, please provide Tax Exemption Form and, where applicable, Project Exemption Form.

Does this Project require Certified Payroll? _____
Are there wage rates? _____ If yes, please provide a copy of the wage rates.

This accepted proposal constitutes a formal agreement. If you initiate a purchase order or other contract document it shall not be acknowledged without this accepted proposal as an attachment.

Accepted By: Insituform Technologies USA, LLC.

By: _____

Date: _____

AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of January, 2025, by and between the Board of County Commissioners of Johnson County, Kansas, hereinafter referred to as the "OWNER" and Insituform Technologies USA, LLC hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the OWNER has caused to be prepared, in accordance with law, specifications, plans and Bidding and Contract Documents for the proposed work or public improvement(s) herein described, and has caused to be published an advertisement inviting sealed bids for the furnishing of necessary materials, labor and equipment for, and in connection with, the public improvement(s) as herein designated and described; and

WHEREAS, the CONTRACTOR, in response to the advertisement, submitted to the OWNER, in the manner and time specified, a sealed bid for the proposed work or public improvement(s) as herein designated and described; and

WHEREAS, the OWNER, in the manner prescribed by law, publicly opened, examined and canvassed the bids submitted, and as a result of such canvass determined and declared the CONTRACTOR to be the lowest and best, responsive and responsible bidder for the proposed work or public improvement(s) as herein designated and described, and duly awarded to the CONTRACTOR an Agreement therefore, for the sum named in the CONTRACTOR's Bid.

NOW, THEREFORE, in consideration of the above and foregoing recitals, the mutual promises, covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties to these presents do hereby agree as follows:

ARTICLE 1 - WORK

1.1 The CONTRACTOR shall, in a good and workmanlike manner, and at his or her cost and expense, furnish all labor, tools, equipment, materials, and incidentals necessary to perform and complete the Work herein designated and described and required by the Contract Documents.

1.2 The Work is generally described as follows:

The entire construction of the sanitary sewer line rehabilitation as described in the Authorization encompassing all Cured In Place Pipe (CIPP) lining and additional collection system rehabilitation and repair services, including, but not limited to, manhole rehabilitation and replacement, point repairs, closed circuit televising of pipes (CCTV), and pipe cleaning issued by the Owner to the Contractor and required to be completed in accordance with the Contract Documents and includes all labor necessary to produce such construction, and all materials, supplies and equipment incorporated or to be incorporated in such construction.

1.3 The Project for which the Work under the Contract Documents may be the whole or only part is generally described as follows: IFB No. 2024-069 Sanitary Sewer Collection System Rehabilitation and Repair

1.3 In the event that an open cut repair is necessary prior to installation of the liner due to blockage, collapsed host pipe, or as required by the specifications, the Owner will direct the Contractor to repair per the unit rates listed in the bid form, Tables F and G.

1.4 The specific services to be provided by the CONTRACTOR under this Agreement shall be based upon written Authorization(s) signed by the Johnson County General Manager for each

individual Authorization. The Authorization shall describe the PROJECT, the services to be performed, the amount of compensation, as herein provided, and the established time of completion. The CONTRACTOR shall, upon receipt of an Authorization, furnish the required services in relation to the project described by the Authorization. An example of a typical Authorization form is provided in the Bid Form.

ARTICLE 2 - ENGINEER

Any and all references to Engineer as used in the Contract Documents shall be reasonably interpreted and construed to mean or refer to the Owner unless otherwise specified by Owner as different.

ARTICLE 3 - CONTRACT TIME

3.1 The CONTRACTOR agrees the initial term of this Agreement shall be for the period commencing with the effective date of this Agreement and ending after one calendar year; provided, however, this Agreement may be renewed for four (4) additional one-year periods, subject to, and in accordance with, the terms and conditions of this Agreement.

3.2 The CONTRACTOR agrees the Work will be substantially complete by the dates stated in the Authorization, and the Work completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within the time indicated in the Authorization after the date when the Contract Time commences to run as provided in the General Conditions of the Contract Documents.

3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that if the Work is not completed within the time specified in each authorization, plus any extensions thereof allowed in accordance with the Contract Documents, OWNER and CONTRACTOR agree that as liquidated damages for delay, but not as a penalty, CONTRACTOR shall pay OWNER One Thousand Dollars (\$1,000.00) for each and every calendar day that expires following the time indicated in each Authorization for completion of the Work. OWNER shall have the right to deduct the liquidated damages from any money in its hands, otherwise due, or to become due, to CONTRACTOR, or to sue for and recover compensation for damages for non-performance of this Contract within the time stipulated.

ARTICLE 4 - CONTRACT PRICE

OWNER shall pay CONTRACTOR for the completion of Work in accordance with the Contract Documents and CONTRACTOR shall accept in full compensation therefore, the sum set out in each Authorization, as referenced in paragraph 6.12 of this Agreement, at the unit costs set out in the CONTRACTOR's Bid. The contract maximum is five million dollars (\$5,000,000) for the initial one-year term and each mutually agreed upon renewal period for a total maximum contract price of twenty-five million dollars (\$25,000,000) over the five-year period, subject to annual funding and appropriation by the Owner.

ARTICLE 5 - PAYMENT PROCEDURES

OWNER shall pay the CONTRACTOR in the manner specified in the Contract Documents. Applications for Payment shall be submitted by the CONTRACTOR and processed in accordance with the Contract Documents.

5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment. Upon OWNER's approval of CONTRACTOR's Application for Payment, OWNER will pay or cause to be paid an amount equal to the estimated value of the Work performed less a retained amount in accordance with the following schedule and subject to the applicable provisions of the Contract Documents.

- 5.1.1 Prior to Final Completion, progress payments will be ninety-five percent (95%) with five percent (5%) retained until the Work is complete.
- 5.2 Final Payment. Upon final completion and acceptance of the Work, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER in accordance with the applicable provisions of the Contract Documents.

ARTICLE 6 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 6.1 This Agreement (pages AG-1 to AG-5, inclusive).
- 6.2 Exhibits to this Agreement (pages N/A to N/A inclusive).
- 6.3 Bid Request No. 2024-069, including detailed specification requirements and drawings.
- 6.4 Performance and other Bonds attached herewith and consisting of six (6) pages.
- 6.5 Notice of Award.
- 6.6 Notice to Proceed.
- 6.7 General Conditions (pages 00700-1 to 00700-43, inclusive).
- 6.8 Supplementary Conditions (pages SC-1 to SC-16, inclusive).
- 6.9 Additional Supplementary Conditions (pages ASC-1 to ASC-11, inclusive).
- 6.10 Addenda numbers (1 and 2 , inclusive).
- 6.11 CONTRACTOR's Bid (pages BF-1 to BF-21, inclusive), including IonWave Supplier Response.
- 6.12 Other documents, if any, listed below:
 - 6.12.1 The Authorization(s) issued by the Owner to the Contractor for each Sanitary Sewer Collection System Rehabilitation and Repair Project specified thereunder,
 - 6.12.2 The documents listed in paragraphs 6.2 et. seq. above, whether or not attached to this Agreement, are hereby incorporated by reference as if set forth fully herein and shall be made binding on OWNER and CONTRACTOR.
 - 6.12.3 The Questionnaire on Page Q-1 to Q-2,
 - 6.12.4 The Standard Detailed Technical Specifications of Johnson County Wastewater approved by KDHE on June 6, 2019,
 - 6.12.5 The Modifications to Detailed Specifications.
- 6.13 The documents listed above, whether or not attached to this Agreement, are hereby incorporated by reference as if set forth fully herein and shall be made binding on OWNER and CONTRACTOR.

ARTICLE 7 – MISCELLANEOUS

7.1 *Entire Agreement.* This Agreement represents the entire agreement between the County and Contractor with respect to services required hereunder and supersedes any and all previous understandings, whether oral or written, between the County and Contractor regarding the same. In the event of any inconsistencies between the terms of this Agreement and the contract conditions referenced and incorporated by reference above, this Agreement shall take precedence over and above any conflicting conditions.

7.2 *Optional or Additional Services.* Should Contractor be requested to provide optional or additional services for County relative to, and in connection with, this Agreement, Contractor shall be compensated for such services rendered and expenses reasonably incurred in the amount and rates as may set forth in the Contract Documents or as may be mutually agreed to by the parties hereto.

7.3 *No Waiver.* The waiver by any party hereto of a breach of any of the provisions of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. Further, no provision of this Agreement will be given effect that attempts to require the County to waive any statutory defense or rights regarding this Agreement, including, but not limited to, statute of limitation or the Kansas Tort Claims Act.

7.4 *Severability.* All agreements, covenants and clauses contained herein are severable, and in the event of them shall be deemed or held to be unconstitutional, invalid or unenforced-able, the remainder of this Agreement shall be interpreted as if such unconstitutional, invalid or unenforceable agreements, clauses and covenants were not contained herein.

7.5 *Open Records.* The terms, conditions, requirements and obligations set forth in this Agreement are public records and are to be subject to the Kansas Open Records Act, K.S.A 45-215 et seq., and amendments thereto, and any applicable federal or state laws, or court order.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, CONTRACTOR and OWNER have caused this Agreement to be executed by their duly authorized representatives in counterparts in the prescribed manner and form on the day and year first above written.

CONTRACTOR

INSITUFORM TECHNOLOGIES USA, LLC

By 

Patrizia H. Sordillo, Contracting & Attesting Officer

Printed Name and Title

[SEAL]

ATTEST:

By 

Diane Partridge, Contracting & Attesting Officer

Printed Name and Title

OWNER

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS


Chairman, Mike Kelly

2-20-2025

ATTEST


Deputy County Clerk

APPROVED AS TO FORM:


Ryan P. Haga, Attorney for the Owner

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to authorize the City Manager to issue a purchase order to Wiedenmann Construction, Inc. for an amount not to exceed \$96,126 and to authorize future minor change orders and/or time extensions not to exceed \$9,612.60 for stormwater infrastructure repairs in the Saddlebrook Subdivision as part of the Emergency Stormwater Project (No. 131802).

Recommendations:

Council approval is recommended.

Background:

Approval of this item will authorize the City Manager to issue a purchase order in the amount of \$96,126, including a 10% contingency, to Wiedenmann Construction for necessary stormwater system repairs in the Saddlebrook Subdivision. These repairs aim to mitigate erosion caused by a stormwater sewer outlet pipe, where water is dropping over 20 feet into an adjacent creek bed. This erosion, known as scouring, threatens the stability of the creek, public infrastructure, and nearby private property.

The pricing for these services is based on a cooperative contract with Johnson County, Kansas (Contract No. 2023-045).

Purchases under cooperative agreements are authorized by Section 8.06.004, Paragraph 5, of the Independence City Code, which permits the use of cooperative bids or contracts established through generally accepted governmental purchasing practices.

This is a budgeted capital expense.

Emergency Justification:**Fiscal Impact:**

The fiscal impact to the City is \$105,438.60 including contingency. Funding for the Emergency Stormwater Project (No. 131802) is included in the FY 2025 budget, on page 203, under account number 0587058-5406.

Council Action:

REVIEWERS

Richard Kemple
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Wiedenmann Saddlebrooke Cost Estimate - No. 131802
2. 2023-045 On-Call Infrastructure Repairs Contract Renewal No. 1 (Wiedenmann)



950 N. Scott / PO BOX 245 - Belton, MO 64012 - 816-322-1125 / Fax 816-322-1126 - general@wiedenmanninc.com

August 2, 2024

City of Independence
111 E Maple Ave
Independence, MO 64050

Attn: Ted Martin

RE: Pipe Outlet Scour Mitigation at Saddlebrook HOA

Dear Ted,

We hereby submit the following budget price for the storm sewer repairs at Saddlebrook HOA. Our proposal includes all labor, materials, and equipment. The total budget cost for this work is:

Labor	\$29,153.00
Materials	\$38,108.00
Equipment	\$25,990.00
Subs	\$2,875.00
Total	\$96,126.00

Included:

18" Flared End Section
40' of 18" HDPE

5'x5'-14' Junction Box
250TN of Rip Rap

Excluded:

Hydroseeding
Traffic Control

Clearing and Grubbing
Utility Relocations
Utility Conflicts

This is a budget price for the scope of work and the actual work will be completed on a time and material basis.

Upon receipt of a work order we will place this project into our production schedule.

We appreciate the opportunity to price and perform this work.

Please give us a call if you have any questions.

Sincerely,
Daniel Forbes
Wiedenmann, Inc.

MODIFICATION OF CONTRACT
JOHNSON COUNTY, KANSAS

1. Contract Renewal No. 1 Effective Date: 1/01/2025	2. Contract No.: 2023-045 Effective Date: 1/01/2024
3. Purchasing Administrator: Megan Wasek Telephone Number: 913.715.0591 E-Mail: Megan.Wasek@jocogov.org	5. Contractor-Name and address: Wiedenmann, Inc. 950 N. Scott Avenue Belton, MO 64012 jerry@wiedenmanninc.com
4. Issued By: Johnson County, Kansas Financial Management and Administration, Purchasing Division County Administration Building 111 South Cherry Street, Suite 2400 Olathe, KS 66061-3486 913-715-0525	
6. SPECIAL INSTRUCTIONS: Contractor is required to sign Block 8 showing acceptance of the written modification. A final copy will be available when all signatures are obtained and should be attached to the original contract.	
7. DESCRIPTION OF MODIFICATION: Pursuant to Paragraph 8.15 of the above-referenced Contract, the County hereby exercises its option to renew for a twelve (12) month period, with an effective date of 1/01/2025 and ending on 12/31/2025 (Renewal No. 1 of 4). The parties agree that all other terms and conditions of the Contract shall remain in full force and effect. Billing Rates & Percentage Markups for this renewal term is hereby amended as attached.	
8. Contractor's Signature <u>Susan Wiedenmann</u> Susan Wiedenmann (11/25/2024 10:38 CST) _____ Name President _____ Title 11/25/2024 _____ Date	9. Johnson County, Kansas By: <u></u> Robin Lyles (11/26/2024 13:20 CST) _____ Purchasing Manager
10. Distribution: Original - Bid File Copies - Departments as applicable	This day <u>11/26/2024</u>

RFP 2023-045 JCW ON-CALL WASTEWATER SEWER COLLECTION INFRASTRUCTURE REPAIRS						
WIEDENMANN, INC. SCHEDULE OF BILLING RATES & PERCENTAGE MARKUPS						
Form 6 Cost Proposal Labor & Markups	BILLING RATE (\$/Hr) ¹					
	Initial Contract Term (2024)			Renewal No. 1 Term (2025)		
Table 6-1 Labor Billing Rates	Regular	Overtime ²	Premium ³	Regular	Overtime ²	Premium ³
Management, Supervision, Engineering:						
Project Manager/Project Engineer	\$ 101.23	\$ 151.85	\$ 202.47	\$ 104.27	\$ 156.41	\$ 208.54
Project Supervisor/Superintendent	\$ 104.23	\$ 154.35	\$ 204.47	\$ 107.36	\$ 158.98	\$ 210.60
Foreman	\$ 103.23	\$ 152.85	\$ 202.47	\$ 106.33	\$ 157.44	\$ 208.54
Documents Coordinator	\$ 78.00			\$ 80.34	\$ -	\$ -
Restoration/Landscape Project Manager/Project Engineer	\$ 80.98	\$ 121.47	\$ 161.98	\$ 83.41	\$ 125.11	\$ 166.84
Restoration/Landscape Project Supervisor/Superintendent	\$ 80.18	\$ 120.28	\$ 160.38	\$ 82.59	\$ 123.89	\$ 165.19
Restoration/Landscape Foreman	\$ 79.38	\$ 119.08	\$ 158.78	\$ 81.76	\$ 122.65	\$ 163.54
Construction Trades:						
Equipment Operator	\$ 102.23	\$ 151.35	\$ 200.47	\$ 105.30	\$ 155.89	\$ 206.48
Apprentice	\$ 93.62	\$ 140.45	\$ 187.26	\$ 96.43	\$ 144.66	\$ 192.88
Laborer	\$ 93.62	\$ 140.45	\$ 187.26	\$ 96.43	\$ 144.66	\$ 192.88
Truck Driver/Hauler/Teamster	\$0.00	\$0.00	\$0.00	\$ -	\$ -	\$ -
Restoration/Landscape Laborer	\$ 74.90	\$ 112.36	\$ 149.81	\$ 77.15	\$ 115.73	\$ 154.30

¹Refer to RFP General Requirements, Measurement and Payment for what is included in the Billing Rates

²Defined as hours in excess of regular daily or weekly work hours - not reimbursable unless negotiated in advance with JCW

³Premium rates are defined as emergency or holiday hours, and must be pre-approved by JCW

RFP 2023-045 JCW ON-CALL WASTEWATER SEWER COLLECTION INFRASTRUCTURE REPAIRS		
WIEDENMANN, INC. SCHEDULE OF BILLING RATES & PERCENTAGE MARKUPS		
Contract Markups:	Initial Term	Renewal No. 1 Term
Table 6-2 - Overhead & Profit ¹	(2024)	(2025)
Subtotal 1: Less than \$100,000	15%	15%
Subtotal 1: \$100,001 - \$500,000	14%	14%
Subtotal 1: \$500,001+	13%	13%
Table 6-3 - General Contractor Markup on Subcontractor Work ²		
Line F:	5%	5%
Table 6-4 - Bonds & Insurance ³		
Subtotal 4: Less than \$100,000	1.5%	1.5%
Subtotal 4: \$100,001 - \$500,000	1.5%	1.5%
Subtotal 4: \$500,001+	1.5%	1.5%
Table 6-5 - Johnson County Purchasing Card Charges ⁴		
Decimal Percent Charge for Use of P-Card	5%	5%

¹Markup shall be multiplied by Subtotal 1. Subtotal 1 is defined as the cost of wastewater equipment, materials incorporated into the work, contractor's labor, and contractor's equipment costs to perform the work. This does not include markups on subcontractor or preferred subcontractor work.

²Markup shall be multiplied by the sum of the costs of all subcontractors on the project (both Preferred Subcontractors and other subcontractors).

³Markup shall be multiplied by Subtotal 4, which is defined as the sum of Subtotals 2 and 3.

⁴For small expenditures (generally under \$10,000), JCW may elect to pay by Purchasing Card (P-Card). If your firm charges a markup for P-Card use, it must be documented here. If your firm does not, mark 0%.

RFP 2023-045 JCW ON-CALL WASTEWATER SEWER COLLECTION INFRASTRUCTURE REPAIRS														
WIEDENMANN, INC. SCHEDULE OF BILLING RATES & PERCENTAGE MARKUPS														
Form 7 - Equipment	BILLING RATE¹													
	Initial Contract Term (2024)							Renewal No. 1 Term (2025)						
	Table 7-1 Contractor's Equipment Billing Rates													
EQUIPMENT TYPE AND SIZE	Mobilization Charge	Hourly Active	Daily Active	Weekly Active	Weekly Standby	Monthly Active	Monthly Standby	Mobilization Charge	Hourly Active	Daily Active	Weekly Active	Weekly Standby	Monthly Active	Monthly Standby
Large Excavator (greater than 45,000 lbs)	\$ 910.89	\$ 292.66	\$ 1,609.65	\$ 5,633.77	\$ 3,621.71	\$ 18,028.07	\$ 12,675.99	\$ 938.22	\$ 301.44	\$ 1,657.94	\$ 5,802.78	\$ 3,730.36	\$ 18,568.91	\$ 13,056.27
Medium-Sized Excavator (20,000 lbs to 45,000 lbs)	\$ 910.89	\$ 229.27	\$ 1,261.00	\$ 4,413.50	\$ 2,837.25	\$ 14,123.20	\$ 9,930.38	\$ 938.22	\$ 236.15	\$ 1,298.83	\$ 4,545.91	\$ 2,922.37	\$ 14,546.90	\$ 10,228.29
Small Excavator (20,000 lbs or less)	\$ 182.18	\$ 87.96	\$ 483.80	\$ 1,693.31	\$ 1,088.56	\$ 5,418.59	\$ 3,809.81	\$ 187.65	\$ 90.60	\$ 498.31	\$ 1,744.11	\$ 1,121.22	\$ 5,581.15	\$ 3,924.10
Lull/Telehandler/Shooting Boom Forklift (8,000 lbs to 9,000 lbs)								\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Skid Loader (bobcat)	\$ 182.18	\$ 94.15	\$ 517.85	\$ 1,812.48	\$ 1,165.16	\$ 5,799.93	\$ 4,078.07	\$ 187.65	\$ 96.97	\$ 533.39	\$ 1,866.85	\$ 1,200.11	\$ 5,973.93	\$ 4,200.41
Dump Truck (Tandem Axle)	\$ 169.95	\$ 169.95	\$ 1,359.60	\$ 6,798.00	\$ 8,118.20	\$ 27,192.00	\$ 24,472.80	\$ 175.05	\$ 175.05	\$ 1,400.39	\$ 7,001.94	\$ 8,361.75	\$ 28,007.76	\$ 25,206.98
Track Loader	\$ 910.89	\$ 227.72	\$ 1,252.44	\$ 4,383.54	\$ 2,817.99	\$ 14,027.32	\$ 9,862.96	\$ 938.22	\$ 234.55	\$ 1,290.01	\$ 4,515.05	\$ 2,902.53	\$ 14,448.14	\$ 10,158.85
Rubber Tire Backhoe	\$ 182.18	\$ 88.93	\$ 489.12	\$ 1,711.92	\$ 1,100.52	\$ 5,478.15	\$ 3,851.83	\$ 187.65	\$ 91.60	\$ 503.79	\$ 1,763.28	\$ 1,133.54	\$ 5,642.49	\$ 3,967.38
Wheel Loader	\$ 910.89	\$ 95.86	\$ 527.25	\$ 1,845.30	\$ 1,186.32	\$ 5,905.25	\$ 4,152.13	\$ 938.22	\$ 98.74	\$ 543.07	\$ 1,900.66	\$ 1,221.91	\$ 6,082.41	\$ 4,276.69
Pump with Generator	N/A	\$ 44.76	\$ 246.20	\$ 861.69	\$ 553.94	\$ 2,757.40	\$ 1,938.80	N/A	\$ 46.10	\$ 253.59	\$ 887.54	\$ 570.56	\$ 2,840.12	\$ 1,996.96
Pickup with Tools	N/A	\$ 30.11	\$ 165.62	\$ 579.67	\$ 372.64	\$ 1,854.94	\$ 1,304.25	N/A	\$ 31.01	\$ 170.59	\$ 597.06	\$ 383.82	\$ 1,910.59	\$ 1,343.38
Truck (2 ton or equal)	N/A	\$ 44.36	\$ 243.99	\$ 853.98	\$ 548.99	\$ 2,732.73	\$ 1,921.45	N/A	\$ 45.69	\$ 251.31	\$ 879.60	\$ 565.46	\$ 2,814.71	\$ 1,979.09
Trailer	N/A	\$ 14.32	\$ 78.74	\$ 275.59	\$ 177.17	\$ 881.90	\$ 620.09	N/A	\$ 14.75	\$ 81.10	\$ 283.86	\$ 182.49	\$ 908.36	\$ 638.69
Air Compressor and Jackhammer	N/A	\$ 23.81	\$ 130.93	\$ 458.25	\$ 294.59	\$ 1,466.41	\$ 1,031.07	N/A	\$ 24.52	\$ 134.86	\$ 472.00	\$ 303.43	\$ 1,510.40	\$ 1,062.00
Trench Shoring	N/A	\$ 42.47	\$ 233.59	\$ 817.58	\$ 525.58	\$ 2,616.24	\$ 1,839.54	N/A	\$ 43.74	\$ 240.60	\$ 842.11	\$ 541.35	\$ 2,694.73	\$ 1,894.73

¹Refer to RFP General Requirements, Section 4 - B.3 - Measurement and Payment, for a list of all that is included in Contractor Equipment Rates.

RFP 2023-045 JCW ON-CALL WASTEWATER SEWER COLLECTION INFRASTRUCTURE REPAIRS		
WIEDENMANN, INC. SCHEDULE OF BILLING RATES & PERCENTAGE MARKUPS		
Table 8-1 - Call Out Fee Cost Structure Rates Callout Timeframe	Call Out Fee	
	Initial Term (2024)	Renewal No. 1 Term (2025)
Called out during a normal work shift, immediate response ¹	\$ 1,740.70	\$ 1,792.92
Called out after normal work shift ²	\$ 7,081.25	\$ 7,293.69
Called out during the weekend ³	\$ 7,808.43	\$ 8,042.68
Call out during a Holiday ⁴	\$ 12,943.90	\$ 13,332.22

¹Contractor normal work shift is defined as Monday, Tuesday, Wednesday, Thursday, Friday from 8:00 am – 5:00 pm. This fee only applies if Contractor work crew is required to pull off an active job during a normal work shift to respond and mobilize to an unplanned or emergency project. A notification during Contractor's normal workday that can be scheduled to fit into the Contractor's work schedule will be billed under the standard Time & Material rates and no Call-Out fee will be applied.

²This fee applies when Contractor is required to respond and mobilize to a new unplanned project site after the workday is over, or immediately after the shift ends, or on a non-workday.

³This fee applies when Contractor is required to respond and mobilize outside of the normal work week (Friday after 5:00 pm through Monday at 8:00 am)

⁴This fee applies when Contractor is required to respond and mobilize

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to approve the Construction Manager at Risk (CMAR) agreement with McCownGordon Construction for the Independence Justice Center project, located at 17221 East 23rd St S, Independence, MO 64057.

Recommendations:

Council approval to execute a Construction Manager at Risk Agreement with McCownGordon Construction for the Independence Justice Center project.

Background:

Approval of this agenda item will authorize the execution of the AIA Document A133-2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor, along with the AIA A201-2017 General Conditions (Attachment 1). This will contractually award McCownGordon Construction, LLC as the Construction Manager at Risk for the Justice Center project in the City of Independence.

On January 13, 2025, the Procurement Division issued a Request for Qualifications/Proposals #25001 for Construction Manager Services (Attachment 2) to solicit qualified responses for a construction manager to assist in the development of the Independence Justice Center project. The RFQ/P was published through the Public Purchase e-procurement website, notifying 506 potential respondents, 67 of whom accessed the RFQ/P. A total of eight (8) firms responded, including JE Dunn Construction, McCownGordon Construction, Newkirk Novak, Paric Corporation, River City Construction, Russell Construction, StructSure, and Turner Construction. The RFQ/P required respondents to provide detailed qualifications and a breakdown of competitive indirect costs and fees.

The evaluation of responses was based on the following criteria:

- **Company/Firm Overview and Experience:** Detailed examples of similar projects, including project name, location, owner, architectural firm, final construction cost (or estimated if in progress), completion date, and client contact information.
- **Qualifications of Personnel:** Organizational structure and resumes of key staff members, outlining education, years of experience, and prior experience on similar projects.
- **Management Processes and Approach:** Explanation of the firm's approach to managing and delivering the project using the CMAR delivery method. This included the firm's management processes, tools, and strategies for pre-construction and construction phases, as well as the approach to developing a Guaranteed Maximum Price (GMP). Firms were also asked to explain their processes for maintaining consistent staffing, managing costs, changes, schedule, and trade partner selection.

- **Overall Quality and Completeness:** The overall quality and thoroughness of the response.

At the conclusion of the evaluation, a clear scoring separation emerged between the proposals from McCownGordon and Turner. Both firms were invited for further interviews (Attachment 3). The interviews provided an opportunity to discuss the project in greater detail, meet the specific project team, and ask further questions. Afterward, the evaluation committee confirmed McCownGordon as the preferred candidate for Construction Manager at Risk. McCownGordon was subsequently notified of the City's intention to award the project to them. In good faith, McCownGordon began working on the project, anticipating the negotiation and execution of the Construction Manager at Risk agreement.

The AIA Document A133 will officially authorize McCownGordon to provide pre-construction services, as outlined in the agreement. Once the Issued for Construction Documents are completed by Hoefer Welker Architecture, McCownGordon will solicit bids from subcontractors and provide a Guaranteed Maximum Price (GMP) for the construction. The GMP will be issued in two packages: the first for the renovation of the Independence Utility Center (IUC) building for the Police Department, and the second for the remaining Justice Center campus. The IUC renovation design is currently underway, and the team expects to present the first GMP amendment to the Council in early Summer 2025. The second GMP amendment is contingent on the April 8, 2025, public vote and subsequent design, which is estimated to take about 12 months.

This project is included in the Police Department's FY23-24 capital budget.

Approval of this item will also authorize change orders up to 10% of the original authorized amount, provided that appropriations are available.

Emergency Justification:

Fiscal Impact:

The fiscal impact to the City is \$150,000 plus a 10% contingency of \$15,000 for a total up-to cost of \$165,000. Funding is included in the fiscal year 2023/24 amended budget, Project string E (522401 -C - -) account number E (0527052-5401).

Council Action:

Department / Contact	Municipal Services /
---------------------------------	----------------------

REVIEWERS

Richard Kemple
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Attachment 1 A133-2019 - City of Independence - Justice Center - Final - MGC Signed
2. Attachment 2 Independence Justice Center CMAR RFQP 1.13.25pdf
3. Attachment 3 IJC - RFQ Evaluation Summary_2.7.25



AIA® Document A133® – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 7th day of April in the year Two Thousand Twenty-Five
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

The City of Independence
Procurement Division
111 E. Maple, PO Box 1019
Independence, MO 64051-0519

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223

and the Construction Manager:
(Name, legal status, address, and other information)

McCownGordon Construction, LLC
850 Main St.
Kansas City, MO 642105

for the following Project:
(Name, location, and detailed description)

Independence Justice Center
17221 East 23rd St S,
Independence, MO 64057

The Architect:
(Name, legal status, address, and other information)

Hoefer Welker, LLC
4622 Pennsylvania Ave, Suite 1400
Kansas City, MO 64112

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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User Notes:

(1295475319)

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4	OWNER'S RESPONSIBILITIES
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6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
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EXHIBIT B	INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Renovation of the existing Independence Utilities Center building; new police, detention and courts expansion; specialty operations buildings, vehicle buildings, and canine operations; and site infrastructure and development

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Renovation of existing 3 story building, multiple new buildings, and sitework

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

TBD

§ 1.1.4 The Owner’s anticipated design and construction milestone dates:

- .1 Design phase milestone dates, if any:
Phase 1 IUC Renovations – March 2025
Phase 2 Justice Complex – April 2026
- .2 Construction commencement date:
To be established in AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment
- .3 Substantial Completion date or dates:
To be established in AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment
- .4 Other milestone dates:
Phase 1 IUC Renovations – GMP Summer 2025
Phase 2 Justice Complex – GMP Summer 2026

§ 1.1.5 The Owner’s requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

TBD.

§ 1.1.6 The Owner’s anticipated Sustainable Objective for the Project:
(Identify and describe the Owner’s Sustainable Objective for the Project, if any.)

None.

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

None.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

The Owner’s Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223

ATT: Jennifer Gerlach
(913)-201-8592
Jennifer@project-advocates.com

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

Hoefel Welker, LLC
4622 Pennsylvania Ave, Suite 1400
Kansas City, MO 64112
and their sub-consultants

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

Alpha Omega Geotech, Inc.
1701 State Ave
Kansas City, KS 66102

.2 Civil Engineer:

Brungardt Honomichl & Company, P.A.
Kevin Honomichl, P.E.
7101 College Boulevard, Suite 400, Overland Park, KS 66210
Telephone Number: 913.663.1900

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Landscape Architect:
Landworks Studio
Carisa McMullen
102 S. Cherry Street, 2nd Floor, Olathe, KS 66061
Telephone Number: 913.302.0465

Structural Engineer:
Bob D. Campbell
Jeff Wright, P.E.
4338 Belleview Ave, Kansas City, MO 64112
Telephone Number: 816.513.4144

M/E/P/FP Engineer:
Hoefel Welker, LLC
Jon Lee, P.E.
4622 Pennsylvania Ave, Suite 1400, Kansas City, MO 64112
Telephone Number: 913.307.3700

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

Hoefel Welker, LLC
ATTN: Ken R. Henton, AIA, LEED AP
4622 Pennsylvania Ave, Suite 1400, Kansas City, MO 64112
Telephone Number: 913.307.3859
Mobile Number: 816.536.2731
Email Address: ken.henton@hoefelwelker.com

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§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Luke Deets
McCown Gordon Construction, LLC
850 Main Street
Kansas City, MO 64105
Telephone: (816) 877-0611
Email: LDeets@McCownGordon.com

(Paragraphs deleted)

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the

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Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 Deleted.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager, and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development, and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

(Paragraph deleted)

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities including, but not necessarily limited to, the City of Independence Procurement Policy.

(Paragraphs deleted)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use, and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase date of commencement shall commence upon the later of: (a) the Owner's execution of the Guaranteed Maximum Price Amendment; or the date established in the Owner's Notice to Proceed; or (c) the

Construction Manager's receipt of all applicable permits and completed working drawings and specifications.. The Contract Time shall be measured from the Construction Phase date of commencement.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provides reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

(Paragraph deleted)

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance, and accounting services, including auditing services, which may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Phase 1 IUC Renovation: A lump sum amount of Seven Thousand Five Hundred Dollars (\$7,500.00)____
Phase 2 Justice Complex: A lump sum amount of One Hundred Forty-Two Thousand Five Hundred Dollars (\$142,500.00)

(Paragraphs deleted)

§ 5.1.2 Compensation for Preconstruction Phase services shall be equitably adjusted if such services extend beyond May 1, 2026, or if the originally contemplated scope of services is significantly modified, or if the Owner's budget is significantly increased. The unit price for Preconstruction Phase services beyond the aforementioned date shall be billed as actual cost to Construction Manager. Costs for Preconstruction Phase services are based on the Construction Manager providing Construction Phase services. If the Construction Manager is terminated for convenience prior to the approval of the Guaranteed Maximum Price proposal, or the start of the Work, the Construction Manager shall be entitled to reimbursement for its actual costs incurred in providing Preconstruction Phase services.

(Paragraphs deleted)
(Table deleted)

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable no later than thirty (30) days upon presentation of the Construction Manager’s invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Paragraphs deleted)

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum for the Construction Manager’s performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager’s Fee.

§ 6.1.2 The Construction Manager’s Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

Two and Fifteen One Hundredths Percent (2.15%) of the estimated Guaranteed Maximum Price.

§ 6.1.3 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

For changes in the Work, the Construction Manager’s Fee shall remain equal to Two and Fifteen One Hundredths Percent (2.15%) of the Cost of Work. There shall be no reduction in the Construction Manager’s Fee for deductive changes.

§ 6.1.4 Limitations, if any, on a Subcontractor’s overhead and profit for increases in the cost of its portion of the Work:

None

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall be in accordance with the rates as set forth in Exhibit C.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

If the Construction Manager shall fail to substantially complete the Work by the Substantial Completion date as set forth in the Guaranteed Maximum Price Amendment, or within any extended time allowed by Change Order, the Construction Manager shall pay, or allow the Owner to withhold, the sum of Five Hundred Dollars (\$500) per day as liquidated damages for every calendar day beyond said agreed Substantial Completion date. The parties stipulate and agree that the above amount is a reasonable forecast of the Owner’s anticipated actual damages which are presently impossible to ascertain, and that the same shall be payable as liquidated damages and not as a penalty

(Paragraphs deleted)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by an Owner approved Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

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§ 6.3.2 Owner approved adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

(Paragraph deleted)

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops pursuant to the Construction Manager's Hourly Rates as set forth in Exhibit C.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, or at the Construction Manager's principal office, pursuant to the Construction Manager's Hourly Rates as set forth in Exhibit C.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the

(Paragraphs deleted)
site.

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops, or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

(Paragraph deleted)

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, which are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance, deductibles, and bonds and deductibles incurred required by the Contract Documents that can be directly attributed to this Contract. Amounts for: (1) the Construction Manager's General Liability Insurance shall be billed at the rate of one percent (1.00%) of the Contract Sum; (2) premiums for Builder's Risk Insurance, if required of the Construction Manager per the written approval of the Owner, shall be billed at the rate of one quarter percent (0.25%) of the Contract Sum; (3) premiums for Payment and Performance Bonds, if required of the Construction Manager, shall be billed at the rate of fifty one hundredths percent (0.50%) of the Contract Sum; and (4) the Contractor's subcontractor default insurance program shall be billed at a rate of one and one quarter percent (1.25%) of Subcontract Values to provide for reimbursement of any and all defaults of any and all enrolled Subcontractors or Suppliers.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, which are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

(Paragraph deleted)

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§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.10 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

(Paragraph deleted)

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;

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- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, which would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall be accrued to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions, insurance requirements, and bond requirements of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The

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Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Construction Manager no later than the 30th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and receive written approval from the Owner.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

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- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified; and
- .4 The Construction Manager’s Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

None.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)

N/A

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated,

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taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate prevailing from time to time at the place where the Project is located.

(Paragraphs deleted)

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Owner’s Representative will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

The Owner’s Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223

ATT: Jennifer Gerlach
(913)-201-8592
Jennifer@project-advocates.com

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ []

☒ [X] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation exclusively in the Circuit Court of Jackson County, Missouri, at Independence or the Federal District Court for the Western District of Missouri, as appropriate. The Parties submit to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in

accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceeds the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceeds the compensation set forth in Section 5.1. The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited lost profits, future earnings, or other operational costs.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited lost profits, future earnings, or other operational costs.

(Paragraphs deleted)

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited lost profits, future earnings, or other operational costs.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the

Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

(Paragraphs deleted)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased, with approval of the Owner, as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars (\$1,000,000.00) for each occurrence and Two Million (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand (\$500,000.00) each accident, Five Hundred Thousand (\$500,000.00) each employee, and Five Hundred Thousand (\$500,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars (\$1,000,000.00) per claim and Two Million Dollars (\$2,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

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Umbrella liability insurance to follow form over the Construction Manager's primary general liability, automobile liability and employer's liability insurance policies with limits of not less than Ten Million Dollars (\$10,000,000) inclusive per occurrence per project.

(Table deleted)

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents.

(Paragraphs deleted)

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 Exhibit C – Construction Manager's Hourly Staff Rates and Equipment Rental Rates

ARTICLE 16 INDEMNITIES AND LIMITATIONS

§ 16.1 In no event shall the Owner be liable to Construction Manager for special, indirect, or consequential damages, except those caused by the Owner's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the Owner shall be limited to the amount of money to be paid by the Owner under this contract.

§ 16.1 Construction Manager shall defend, indemnify, and hold the Owner harmless from and against all claims, losses, actions, causes of action, demands, and liabilities arising out of personal injuries, including death, and damage or impairment to property or any rights which are caused by the Construction Manager arising out of or in any way connected with this contract. Construction Manager further agrees to defend, indemnify, and hold the Owner harmless from and against any claims, losses, and liabilities arising out of the award of this contract to Construction Manager.

§ 16.1 Construction Manager shall indemnify and hold the Owner harmless from all wages or overtime compensation due its employees and from any and all claims by Subcontractors in rendering work pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law, or any other federal or state law.

§ 16.1 All the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

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ARTICLE 17 CONSTRUCTION WORK COMPLETED BY THE CONSTRUCTION MANAGER

§ 17.1 If The Construction Manager completes any construction Work, the Construction Manager shall complete the following:

§ 17.1.1 **Performance and Labor and Material Payment Bond.** If the Construction Manager performs the construction of the Work that is estimated to exceed \$50,000.00, the Construction Manager shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the Owner and on the forms approved by the Owner. Each bond shall be in the total amount of the Work conditioned upon the full and faithful performance of all major terms and conditions of this Work and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Contract and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the Owner shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Construction Manager shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the Owner. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.

§ 17.1.2 **Prevailing Wage.** If construction Work completed by the Construction Manager is estimated to exceed \$75,000, not less than the prevailing hourly rate of wages for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri, shall be paid to all workers performing work under this contract. The penalties forfeited to the City for violations of the Prevailing Wage Act for each workman employed, for each calendar day, or portion thereof, such workman is paid less than their said stipulated rates for any work done under said Contract shall be one hundred dollars (\$100) per worker, per day.

§ 17.1.3 **OSHA Requirements** pursuant to Section 292.675 RSMo.

§ 17.1.3.1 Any contractor for any public body for purposes of construction of public works and any subcontractor (any person entering into a subcontract with a contractor for construction of public works which employs "on-site employees" for purposes of completion of the contract) to such contractor shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees who have not previously completed the program are required to complete the program within sixty days of beginning work on such construction project.

§ 17.1.3.2 Any employee found on a work site subject to this section without documentation of the successful completion of the required course shall be afforded twenty days to produce such documentation before being subject to removal from the project.

§ 17.1.3.3 If the Construction Manager complied construction Work and any subcontractor under The Construction Manager shall require all on-site employees to complete the above referenced ten-hour training program or such employees must hold documentation of prior completion of the program. Said Construction Manager and subcontractor(s) shall comply with Section 292.675, RSMo., in all respects as required in relation to work done pursuant to this contract.

§ 17.1.3.4 The Construction Manager shall forfeit as a penalty to the public body on whose behalf the contract is made or awarded, two thousand five hundred dollars (\$2,500.00) plus one hundred dollars (\$100.00) for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period referenced in subparagraphs (a) and (b) above have elapsed.

§ 17.1.3.5 The public body awarding the Contract shall withhold and retain therefrom all sums and amounts due and owing as a result of any violations of this section when making payments to the contractor under the contract. The Construction Manager may withhold from any subcontractor sufficient sums to cover any penalties the public body has

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withheld from the Construction Manager resulting from the subcontractor’s failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the Construction Manager may recover the amount of the penalty resulting from the fault of the subcontractor in an action maintained in the circuit court in the county in which the public works project is located from the subcontractor.

§ 17.1.3.6 "On-site employees" are defined as laborers, workmen, drivers, equipment operators, and craftsmen employed by contractors and subcontractors to be directly engaged in construction at the site of the public works. "Directly engaged in construction" shall mean work performed in the actual erection of the structure or completion of the improvement constituting the public works. In addition, employees working at a nearby or adjacent facility used by the contractor or subcontractor for construction of the public works shall be deemed "on-site employees." Persons engaged solely in the transportation of materials, fuel, or equipment to the site of the public works shall not be deemed to be "directly engaged in construction."

ARTICLE 18 MISSOURI IMMIGRATION LAW AFFIDAVIT

§ 18.1 After January 1, 2009, Company takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. Company will provide a statement that the Company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

(Table deleted)

ARTICLE 19 GOVERNING LAW

§ 19.1 This Contract shall be governed by the laws of the State of Missouri. The Owner and Construction Manager agree that the performance of this Contract will be deemed to have occurred in the State of Missouri and that Construction Manager’s performance under this Contract will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under this Contract shall be exclusively in the Circuit Court of Jackson County, Missouri, at Independence or the Federal District Court for the Western District of Missouri, as appropriate. The Parties submit to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

ARTICLE 20 ANTI-DISCRIMINATION AGAINST ISRAEL ACT

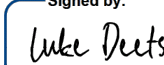
§ 20.1 If this contract has a total potential value of \$100,000 or more and Construction Manager has 10 or more employees, the following applies: Pursuant to Section 34.600, RSMo, Construction Manager agrees to comply with Missouri law regarding the Anti-Discrimination Against Israel Act, and execution of this Contract constitutes Construction Manager’s certification of compliance with the Anti-Discrimination Against Israel Act, including that it is not currently engaged in, and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in, or with, Israel companies authorized by, licensed by, or organized under, the laws of the State of Israel; or persons or entities doing business in the State of Israel.

This Agreement is entered into as of the day and year first written above.

The City of Independence

By: _____
OWNER (Signature)
By: _____
(Printed name and title)

McCown Gordon Construction, LLC

Signed by:
By:  _____
CONSTRUCTION MANAGER (Signature)
By: Luke Deets Vice President, Business Un
(Printed name and title)

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Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)

Independence Justice Center
17221 East 23rd St S,
Independence, MO 64057

THE OWNER:
(Name, legal status and address)

The City of Independence
Procurement Division
111 E. Maple, PO Box 1019
Independence, MO 64051-0519
hereinafter referred to as "Owner"

The Owner’s Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223
Hereinafter referred to as "OR"

THE ARCHITECT:
(Name, legal status and address)

Hoefer Welker, LLC
4622 Pennsylvania Ave, Suite 1400
Kansas City, MO 64112

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS**§ 1.1 Basic Definitions****§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification with both Parties signing said Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.5.3 Except as otherwise provided herein, Instruments of Service, including documents, Drawings, and Specifications prepared by Architect as part of the services shall become the property of Owner, provided the Architect has the unrestricted right to their use. Notwithstanding the foregoing, the Owner accepts that any re-use of the documents or intellectual property shall be at the Owner's sole risk and liability.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

(Paragraphs deleted)

ARTICLE 2 OWNER**§ 2.1 General**

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 **Termination for Breach.** If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4.2 **Termination for Convenience.** The Owner shall have the right at any time by written notice to Contractor to terminate and cancel the Contract, without cause, for the convenience of the Owner, and Contractor shall immediately stop work. In such event Owner shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of this Contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Further, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under the Contract shall, at the option of the Owner, become its property. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Initial Decision Maker and the Initial Decision Maker may, pursuant to Section 9.5.1 and to the extent permitted by 34.057, RSMo., withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies or performing such work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Initial Decision Maker, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor and all persons used by the Contractor to provide services under the Contract Documents shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, to the extent permitted by law, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Nothing in these General Conditions shall be construed to relieve a Subcontractor or supplier of its responsibility for, and control over, the safety over its employees and sub-subcontractors.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor is responsible for the management of the Project to avoid strikes, work stoppages, labor disputes or any disturbances by workers employed by the Contractor or its Subcontractors on or in connection with the Work or the Project or the location thereof that will delay completion of the Project.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, renovation/remodel use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those

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indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Coordination of Utilities. The Contractor shall be responsible for the coordination of public and private utilities for the Project, including electricity, water, sewer, storm water, natural gas, telephone, internet, and cable television. The Contractor will initiate contact with the representatives of the utilities when the Work has begun and will maintain liaison with them to ensure that all preparatory on-site and off-site work required by the Contractor and/or the utilities and the associated inspections and permitting are coordinated so as to avoid negatively impacting the Construction Schedule. The Owner shall be responsible for payment of all utility installation fees. The Owner will advise the Contractor of the low voltage providers, and the Contractor will provide the necessary coordination to ensure the orderly preparations for and installation of the low-voltage services. All public and private utility fees required for the installation of utilities shall be paid for by the Owner.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order and approved by the Owner. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent Superintendent and Project Manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, within fourteen (14) days after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed Superintendent and Project Manager. Within seven (7) days of receipt of the information, the Architect or Owner may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed Superintendent or (2) requires additional time for review. Failure of the Architect or Owner to provide notice within the 7-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not assign to the Project a proposed Superintendent or Project Manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the Superintendent or Project Manager without the Owner's written consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, prior to first pay application submission, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the

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Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at monthly intervals, or more frequently as required by the conditions of the Work and Project. The Contractor acknowledges that the Project Schedule accounts for normal weather delays as defined by the National Oceanic and Atmospheric Administration (NOAA) for the local Project area in the last ten (10) years in order to achieve the scheduled date of Substantial Completion.

§ 3.10.1.1 The Project Schedule shall be a valid CPM schedule generated by a commercially available CPM scheduling software application for the duration of the Project. The Project Schedule shall begin with the Notice to Proceed, and end with the Final Completion Date. The Project Schedule shall include and display, as a minimum, dates for submissions and processing of submittals, procurement, all work activities, commissioning, Owner activities and closeout activities. It shall be organized by Phase, Area, or other logical sequence. Activities shall be logically connected, and the Project Schedule shall include the total float for each activity and a clearly identifiable chain of critical-path (zero-float) activities. The Project Schedule shall account for holidays and other non-workdays and shall conform to industry standards for CPM scheduling. Artificial constraints and fixed milestone dates shall not be used, except for dates which are stipulated in the Agreement.

§ 3.10.1.2 The initial (Baseline) Project Schedule shall be submitted for approval within fifteen (15) days of receipt of Notice to Proceed and shall include all early and late completion dates by activities, and activity durations. Valid monthly updates utilizing industry-standard updating procedures shall be submitted a minimum of two (2) working days before each Application for Payment. Updates shall accurately reflect the progress of the Work, any Change Order Work for which additional contract days were allowed, and any suspensions of Work directed by the Owner. Updates shall show early and late start and completion dates, actual start and completion dates of all completed activities, percentage of completion, and remaining working days for each activity in progress. The Contractor shall provide Project Schedule updates to the Owner in the original software format and PDF format.

§ 3.10.1.3 The Contractor shall promptly make any corrections to the Project Schedule reported by the Owner and shall resubmit a corrected Project Schedule within five (5) days, if so directed by the Owner. Weather days beyond those anticipated shall be tracked separately, and not identified as activities in the Project Schedule. Time extensions resulting from unresolved claims or voluntary suspensions by the Contractor shall not be included in the Project Schedule. Project Schedules shall not contain negative float.

§ 3.10.1.4 The Contractor shall provide an as-built Project Schedule at Final Completion of the Work.

§ 3.10.1.5 The Contractor shall prepare recovery schedules as requested by Architect or Owner.

§ 3.10.2 The Contractor, prior to first pay application submission, shall submit a submittal schedule for the Architect's or Owner's approval. The Architect's or Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

(Paragraph deleted)

§ 3.10.3 The Contractor shall perform the Work and in all other respects, conform with the most recent Project Schedule submitted to the Owner and Architect. Contractor and Owner agree that resubmitted schedules are submitted to Owner for information purposes, and not approved unless such resubmitted schedule shall change the Contract time. Notwithstanding the foregoing, approval by either or both of the Architect and Owner is not intended nor shall same be construed, inferred, or result in either or both of the Owner or Architect being responsible or liable for means, methods, techniques, or any other respect of the obligations, responsibilities, or liabilities of the Contractor hereunder.

§ 3.10.4 Each update to the Project Schedule shall (i) provide a graphic representation of all activities and events that will occur during performance of the Work (ii) identity each major task of construction and the anticipated start and

anticipated completion date, and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work. If requested by the Owner or Architect, the Contractor will update the Project Schedule.

§ 3.10.5 The Contractor shall provide a short interval schedule that includes, at a minimum, two (2) weeks in the past and three (3) weeks ahead of the current date. Short Interval schedule to be provided prior to all Owner, Architect and Contractor meetings.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, electronically and at the Project site, the Contract Documents, including approved Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) an approved Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect and Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Owner's Representative, and their agents and employees of any of them from and against claims, third-party claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent or wrongful acts or omissions or a breach of this Contract by the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In no event shall the Owner be liable to the Contractor for special, indirect, or consequential damages. The maximum liability of the Owner shall be limited to the amount of money to be paid or received by the Owner under this Contract.

§ 3.18.3 The Contractor shall defend, indemnify, and hold the Owner and its elected or appointed officials, officers, employees, and agents harmless from and against all actual claims and alleged claims and all damages, including but not limited to losses, liabilities, costs, expenses and reasonable attorney fees arising out of personal injuries, including illness or death, and damage to, or destruction of, property, which are caused by the Contractor or the Contractor's agents, employees, sub-contractors or by others for whom Contractor is liable arising out of or in any way connected with or resulting from, performance of, or failure to perform, this contract, regardless of whether or not caused in part by any act or omission of Owner, its elected or appointed officials, officers, employees or agents. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in the Contract in its contract price.

§ 3.18.4 The Contractor shall indemnify and hold the Owner harmless from all wages or overtime compensation due its employees in rendering services pursuant to this contract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law, or any other federal or state law.

§ 3.18.5 The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation, or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against Owner, its elected or appointed officials, officers, agents and employees, for which indemnification is sought.

§ 3.18.6 The indemnification obligations herein shall not negate, abridge, or reduce in any way any additional indemnification rights of the Owner, its elected or appointed officials, officers, agents and employees, which are otherwise available under statute, or in law or equity.

§ 3.18.7 All the provisions in the Contract Documents are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes. Further, the Contract is not intended to act as a waiver or limitation of Owner, or any of its officer's, agent's or employee's rights and/or defenses regarding sovereign or any other immunity or defense under Federal Law, Missouri Law or Municipal Regulation.

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§ 3.18.8 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.9 Provided that required progress payments are made in a timely manner, the Contractor agrees to keep the Owner's property free and clear of liens, lien claims or stop-work notices relating to the Work under this Agreement. The Contractor agrees to indemnify, defend, and hold the Owner harmless from all liens, lien claims, and stop-work notices recorded, asserted or filed on the Work or on any property on which the Work is performed, on account of any labor performed or materials furnished by the Contractor or its Subcontractors or suppliers in connection with the Work. The Contractor's obligation hereunder includes paying for any attorney's fees and court and other costs incurred by the Owner in connection with such liens and lien claims.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect shall administer the performance of the Work. The Architect will advise the Owner and Contractor with regard to matters set forth in the Drawings and Specifications. In addition to any specific responsibilities assigned elsewhere in the Contract Documents, the Architect shall decide any and all questions which may arise as to the rate of progress of the Work. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Section 4.1.2.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due to the Contractor and will issue Certificates for Payment in such amounts. All payments to the Contractor shall be subject to approval by the Owner.

§ 4.2.6 The Architect or Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect or Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect or Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect or Initial Decision Maker will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect Initial Decision Maker will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's recommendations on matters relating to aesthetic effect as approved by the Owner will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS**§ 5.1 Definitions**

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued and approved by the Owner before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts in writing by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect or Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, workers' compensation insurance, and other employee costs approved by the Architect;

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- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) force majeure; or (6) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect or Owner may determine. Time extensions shall only be granted for delays to the extent that they impact Critical Path activities, as demonstrated on the most recent approved Construction Schedule.

§ 8.3.1.1 Elements constituting force majeure are: civil disorder, inability to procure materials for reasons beyond the control of the Contractor and other than by reason of failure to make payment, failure of one or more utilities, restrictive governmental law or regulations by imposition of enforcement, government action, riot, insurrection, war, fuel shortage, act of God, undue or unusual delay in acting or failure to act any agency or any employee thereof, or any other governmental entity whose action may be required for any purpose, or similar events or conditions beyond the reasonable control of the Owner.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Contract Documents and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

The Contractor shall submit to the Architect and the Owner for their approval, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.1 The Schedule of Values shall be the budgets for the direct cost of each work item. The Original Schedule of Values shall remain unchanged during the Project. The original Schedule of Values shall be a breakdown of all direct costs of construction, net of contractor general conditions, overhead, and profit. The SOV shall include a single line each for General Conditions, Allowances, Contractor Contingency, Overhead, and Profit.

§ 9.2.3 Adjustments to the Schedule of Values may be made only for Change Orders and adjustments to budgeted items requested by the Contractor and Approved by the Owner. Contractor shall maintain a ledger listing each change to each line item and present a current SOV with each pay request. The sum total of the Original SOV column shall be

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equal to the original contract sum, and the sum total of the Adjusted SOV column shall be equal to the original contract sum plus all fully-executed change orders.

§ 9.2.4 If the contract includes a Contractor Contingency, it may be available to the Contractor to cover any buyout shortages in Cost of Work items. It may not be used to supplement General Conditions, Allowances, or Contractor fees, unless mutually agreed by Contractor and Owner. Unused portions of Cost of Work items shall revert to the Contractor Contingency and may, with the Owner's approval, be used to cover over-runs in other line items.

§ 9.2.5 Owner shall have the right to decline approval for change to the SOV for work items for which costs were included due to Contractor or Subcontractor error or gross negligence.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner, Architect, and Escrow Agent and otherwise in accordance with state law:

1. A current Contractor's lien waiver in the specified form.
2. If requested, A Contractor's Sworn Statement conforming to applicable statutes, duly executed, and acknowledged, showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontractor agreements or purchase orders, the amount of each such subcontract or purchase order, the amount requested for any Subcontractor or material supplier in the requested progress payment and the amount to become due from such progress payment, together with similar sworn statements from all such Subcontractor and supplier, and AIA G703 breakdowns for all Subcontractors and material suppliers.
3. Duly executed waivers of mechanics and materialmen's liens from all Subcontractors of any tier and from suppliers and materialmen.
4. Stored materials documentation for all items showing balances in the Stored Materials column of the Pay Application, including the physical address of the storage facility, a current manifest, current photographs, insurance coverage in acceptable form, and a signed affidavit from the custodian of the materials.
5. All documents required to comply with the requirements of the Contract Documents and/or reasonably requested by the Escrow Agent, Owner, or Architect.
6. A current Schedule of Values and Project Schedule.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be

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free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner, other indemnities, the Project, and property from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a

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comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor

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knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4

(Paragraphs deleted)

Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

(Paragraph deleted)

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law and not waiving sovereign immunity, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents.

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§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, and Owner's Representative shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) to the extent allowed by law, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and

replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, to the extent permitted by law, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Owner's acceptance of nonconforming Work shall be accepted in writing.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

Jurisdiction. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Circuit Court of Jackson County, Missouri at Independence or the Federal District Court for the Western District of Missouri, as appropriate. The Contractor submits to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may, as mutually agreed with the Owner, suspend the Work or terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

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- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may, as mutually agreed with the Owner, suspend the Work or terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, as mutually agreed with the Owner, suspend the Work or terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead, and costs incurred by reason of such termination. The Contractor shall not be entitled to any consequential, indirect, or incidental damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding anything to the contrary in this Contract or in this Section 14.1, the Contractor may not terminate the Contract or suspend Work because of the Owner's failure to make payment, if a reasonable dispute exists regarding the payment amount due and owing to the Contractor and the Owner has paid all undisputed amounts to the Contractor.

§ 14.1.6 In the event of termination by the Contractor, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event of termination by the Owner for cause, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In the event of termination by the Owner for convenience, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Owner's Representative will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both.

(Paragraphs deleted)

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, and 15.1.7, shall be subject to mediation. **§ 15.3.2** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 7th day of April in the year 2025
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Independence Justice Center
17221 East 23rd St S,
Independence, MO 64057

THE OWNER:
(Name, legal status, and address)

The City of Independence
Procurement Division
111 E. Maple, PO Box 1019
Independence, MO 64051-0519

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

McCownGordon Construction, LLC
850 Main Street
Kansas City, MO 64105

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

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ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

(Paragraphs deleted)

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses.

(Paragraphs deleted)

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- [] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- [] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- [] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- [] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- [] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- [] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- [] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

[] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[] **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self- insured retentions applicable to any insurance required to be provided by the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General
(Paragraphs deleted)
Conditions.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$ 2,000,000) general aggregate, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;

- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than Five Hundred Thousand (\$ 500,000) each accident, Five Hundred Thousand (\$ 500,000) each employee, and Five Hundred Thousand (\$ 500,000) policy limit.

§ B.3.2.7 Umbrella Liability insurance for the Project written on an occurrence form with policy limits of not less than Ten Million Dollars (\$ 10,000,000) each occurrence per project.

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and Two Million Dollars (\$ 2,000,000) in the aggregate.

(Paragraphs deleted)

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§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions.
(Paragraphs deleted)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.
(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [X]

§ B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)
- []

§ B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.
- []

§ B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- []

§ B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- []

§ B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.
- []

§ B.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
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§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, in the full amount of the Contract Sum.
(Specify type and penal sum of bonds.)

(Table deleted)

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:





Exhibit C

McCownGordon Construction Lump Sum Hourly Rate Schedule

Independence Justice Center

**Lump Sum Hourly Rates for Construction, Administration, & Supervision
February 1, 2025**

<u>PROJECT STAFF</u>	<u>RATE</u>
Project Executive/Market Leader	\$ 171.00
Senior Project Manager	\$ 148.00
Project Manager	\$ 123.00
Senior Project Engineer	\$ 107.00
Project Engineer/Field Engineer - (regular)	\$ 92.00
Project Engineer/Field Engineer - (OT rate)	\$ 112.00
Project Coordinator - (regular)	\$ 79.00
Project Coordinator - (OT rate)	\$ 99.00
General Superintendent	\$ 175.00
Senior Superintendent	\$ 154.00
Superintendent	\$ 135.00
Field Superintendents - (regular time)	\$ 118.00
Field Superintendents - (OT rate)	\$ 138.00
Director Estimating/Precon	\$ 188.00
Est Executive/Sr Estimator/Precon Mgr	\$ 143.00
Project Estimator - (regular)	\$ 103.00
Project Estimator - (OT rate)	\$ 123.00
Scheduling Services	\$ 122.00
Structural & Soils	\$ 150.00
MEP	\$ 150.00
VD&C	\$ 112.00
QA/QC	\$ 123.00
Project Accountant	\$ 75.00
Safety Director/Manager	\$ 140.00
Safety Engineer - (regular)	\$ 105.00
Safety Engineer - (OT Rate)	\$ 125.00
Field Craft Manager	\$ 125.00
General Field Foreman	\$ 105.00
Logistics Center Technician (Drayage)	\$ 88.00
Carpenter Foreman - (regular time)	\$ 105.00
Carpenter Foreman - (OT rate)	\$ 138.00
Carpenter Foreman - (DT rate)	\$ 170.00
Carpenter - (regular time)	\$ 100.00
Carpenter - (OT rate)	\$ 130.00
Carpenter - (DT rate)	\$ 158.00
Operating Engineer (regular time) - PW Only	\$ 83.00
Operating Engineer (OT rate) - PW Only	\$ 103.00
Labor Foreman - (regular time)	\$ 77.00
Labor Foreman - (OT rate)	\$ 95.00
Labor Foreman - (DT rate)	\$ 113.00
Laborer - (regular time)	\$ 74.00
Laborer - (OT rate)	\$ 90.00
Laborer - (DT rate)	\$ 106.00

These rates are subject to change but by not more than 5% in a given six month period.



2025 Rental Rates for Contractors Equipment

DESCRIPTION	RENTAL RATE (28 Day Billing Cycle):
ALIMAK 7100-12 DUAL CAR MAN MATERIAL HOIST	Current Market Value
AIR COMPRESSOR	\$50
AIR CONDITIONING UNIT, PORTABLE 5 TON	\$1,200
AIR CONDITIONING UNIT, 1 TON 110V	\$100
ALL TERRAIN VEHICLE, 4 SEAT WITH CAB / HEAT	\$1400
ALL TERRAIN VEHICLE, 4 SEAT	\$700
ALL TERRAIN VEHICLE, 2 SEAT	\$550
AUGER TWO PERSON GAS POWERED	\$100
BLOWER HANDHELD	\$50
BLOWER BACKPACK	\$100
FAN BARREL 36"	\$100
FAN FLOOR	\$50
FUEL TANK BULK 60 GAL	\$100
CART FLAT WOOD ROLLING	\$125
CART METAL STUD	\$200
CART SHEETROCK DOLLY	\$125
CART ROOF (BALLOON TIRES)	\$200
CART, PANEL WITH CARPET	\$100
CHIPPING HAMMER, ELECTRIC	\$100
CONCRETE MIXER ELECTRIC	\$150
COUNTERTOP SEAMER (AUTOMATIC)	\$150
CRANE MATERIAL BASKET	\$400
CRANE 'SKIP' TRASH BOX	\$500
DOOR JACK / DOLLY	\$200
DUST WALL, (EDGE GUARD) PER FT	\$40
DEHUMIDIFIER 105 PINTS PER DAY	\$500
DRILL CONCRETE CORE ½"-2"	\$200
DRILL CONCRETE CORE 2"-16"	\$500
EQUIPMENT MOVING DOLLY (Pair)	\$400
EYE LEVEL	\$200
FLOOR POLISHER 17"	\$250
FLOOR SCRAPPER (SELF PROPELLED)	\$2,200
FLOOR SCRUBBER, FACTORY CAT MAG HD 33"	\$1,200
FLOOR SCRUBBER, FACTORY CAT MINI MAG 27"	\$950
FORKLIFT 5K	\$1,400
GANG BOX SMALL CARPTNERS CART WITH ARMOR	\$75
GANG BOX, STANDARD	\$125
GANG BOX, LARGE PIANO OR CLAMSHELL	\$200
GANG BOX, DATA VAULT	\$300
GENERATOR, HONDA 2000W SUITCASE	\$250
GENERATOR, HONDA 3000W -7000W	\$400

GENERATOR, HONDA 10000W	\$600
GROUND THAW	\$8,000
GRINDER CONCRETE SURFACE 5"	\$50
GRINDER CONCRETE SURFACE 7"	\$75
GRINDER CONCRETE TUCKPOINT	\$50
HEATER, PROPANE POT HEATER	\$50
HEATER, ELECTRIC 60 AMP	\$200
HEATER, SALAMANDER 400k BTU PROPANE	\$200
HEATER, SALAMANDER DUAL FUEL	\$400
HEATER ELECTRIC 480V	\$450
HEATER, TRAILER MOUNTED DIESEL 1 MILLION BTU	\$5,000
HEADGE TRIMER GAS	\$100
HEPA CART	\$1,150
HEPA SILICA VACUUM	\$200
HEPA ANTIROOM	\$750
IMPACT DRIVER ½" CORDLESS	\$50
JACK HAMMER, ELECTRIC (BOSCH BRUTE W/ CART)	\$200
JOB TRUCK	\$700
JOINTER TABLE TOP 8"	\$100
LAWN MOWER, PUSH STYLE	\$100
LAWN MOWER, ZERO TURN	\$875
LIGHT PLANT GENERATOR	\$1,000
LIGHT CORDLESS TOWER (M18)	\$30
LAYOUT LASER, 3 PLANE GREEN	\$100
LAYOUT LASER, ROTATING	\$200
LAYOUT GPS UNIT	\$2500
NAILER CORDLESS FINISH, BRAD, AND FRAMING	\$150
NAILER CORDLESS TRACK GUN POWDER ACTUATED	\$150
NEGATIVE AIR MACHINE (24"x24")	\$250
PAINT SPRAYER (GRACO AIRLESS)	\$250
PALLET JACK	\$125
PLASMA CUTTER	\$500
PLANER 12"	\$150
PLATE TAMP, COMPACTOR	\$150
PRESSURE WASHER, GAS POWERED	\$200
PRESSURE WASHER, HOTSY HIGH PRESSURE	\$750
PRESSURE WASHER, TIRE WASH STAND ALONE UNIT	\$1,700
PUMP, HONDA GAS POWERED 1"	\$100
PUMP, MULTIQUIP GAS POWERED (2")	\$300
PUMP, MULTIQUIP GAS POWERED (3")	\$400
PUMP, ELECTRIC POWERED (2")	\$75
ROTATING HAMMER DRILL SDS MAX 1 9/16	\$100
SAW CIRCULAR METAL 8"	\$75
SAW DRY MASONRY 5"	\$100
SAW CHAINSAW, GAS 16"	\$100
SAW CUTOFF ELECTRIC 14"	\$150
SAW CUTOFF CORDLESS 8"	\$200
SAW GAS POWERED HOT 14"	\$250
SAW MITER METAL COLD	\$400
SAW MITER WITH STAND	\$200
SAW TRACK SAW KIT	\$200

SAW BEAM SAW WORM DRIVE	\$150
SCAFFOLD BAKER KIT	\$100
SILICA COMPLIANT VACUUM 10 GALLON	\$200
SNOW BLOWER, GAS POWERED	\$400
STAIRS TEMPORARY	\$450
STREET PLATES-LARGE	\$250
STREET PLATES-SMALL	\$100
STORAGE CONTAINER-CONEX 20'	\$300
STORAGE CONTAINER-CONEX 40'	\$400
SUPERINTENDENT TOOLBOX	\$1680
TABLE SAW, SAWSTOP	\$200
TELEHANDLER (5000lbs capacity)	\$5000
TOWER CRANE - LIEBHERR 316ECH, 184FT. UNDERHOOK	Current Market Value
TRACK OFF MATS (12'X50') TIRE CLEANING MATS	\$1,000
TWO WAY JOB SITE RADIO	\$35
TRASH CART 1/2 YARD	\$150
TRAFFIC JERSEY BARRIER / WATER-WALL BARRICADE (Only)	\$45
TRAFFIC JERSEY BARRIER / WATER-WALL BARRICADE FENCE PANEL	\$45
UNILoader ATTACHMENT AUGER	\$675
UNILoader ATTACHMENT BRUSH HOG	\$850
UNILoader ATTACHMENT SNOWPLOW	\$400
UNILoader AUGER BITS 12" THRU 36" per bit	\$150
UNILoader DUMPING HOPPER	\$400
UNILoader KIT SMOOTH, TOOTH BUCKET, FORKS, AND SWEEPER	\$4,000
UNILoader MINI (DINGO) W/ BUCKET AND FORKS	\$2,000
VACUUM, FINISH BACK PACK OR UPRIGHT	\$50
WATER TANK TRAILER	\$800
WEEDEATER GAS OR CORDLESS	\$75
WIRE WELDER	\$500

All Cordless tools come with one battery per tool, Extra Battery charges are on our one-time charge sheet

These rates are subject to change by no more than 5% in a given six month period.



Unit Price Schedule for Safety Equipment

<u>DESCRIPTION</u>	<u>PRICE PER ITEM</u>
EXOfit Harness	\$400.00
EXOfit Harness - Construction Belt	\$460.00
Single Cable Nano-Lok Edge	\$360.00
Twin Leg Cable Nano-Lok Edge	\$600.00
6' Force II Lanyard	\$120.00
50' SRL	\$625.00
65' SRL	\$725.00
Glyder 2 Sliding Beam Anchor	\$210.00
1.5 ft D-Ring Extender	\$50.00
6' Twin Leg Lanyard	\$280.00
Roof Anchor Swivel	\$220.00
6' Pass Thru Anchor Sling	\$50.00
Removable Concrete Anchor	\$120.00
Concrete D-Ring Anchor	\$100.00
Stinger / Raptor	\$3,500.00
Sayflite Horizontal Lifeline Kit	\$800.00
Hinged Roof Anchor/ Butterfly Anchor	\$50.00
Rope Grab	\$250.00
Air Monitor	\$1,300.00
18 Inch Roof Anchor	\$350.00
25 Foot Leading Edge Retractable	\$450.00
30 Foot Leading Edge Retractable	\$500.00
33 Foot Leading Edge Retractable	\$525.00
Parapet Clamp Anchor	\$400.00
Weighted Roof Anchor SA-122/SA-123	\$3,500.00
Standing Seam Roof Clamp	\$275.00
4 way anchor plate	\$300.00
Nano Lok - Webbing – Older version	\$175.00

These rates are subject to change by no more than 5% in a given six month period.



2023 Unit Price Schedule for IT Equipment

Contracts that require McCownGordon to release all IT equipment to the owner upon project completion will be charged the flat rate if equipment is in stock. Alternatively, equipment will be charged at cost if not pre-purchased.

Price Type	Item	Rate
Non-Recurring Charge	Cable - DP 6'	\$10
Non-Recurring Charge	Cable - Ethernet up to 15'	\$10
Non-Recurring Charge	Cable - Ethernet up to 50'	\$25
Non-Recurring Charge	Cable - HDMI 25'	\$30
Non-Recurring Charge	Cable - HDMI 6'	\$8
Non-Recurring Charge	Cable - Monitor power	\$10
Non-Recurring Charge	Cable - TV power	\$10
Non-Recurring Charge	Cable -Ethernet up to 25'	\$15
Non-Recurring Charge	Logitech Unifying Receiver	\$15
Non-Recurring Charge	Mouse	\$30
Non-Recurring Charge	PoE Adapter	\$25
Non-Recurring Charge	Power Adapter	\$50
Non-Recurring Charge	Power Strip	\$10
Non-Recurring Charge	Printer Ink - C, M, or Y	\$60
Non-Recurring Charge	Printer Ink - CMYK	\$100
Non-Recurring Charge	Printer Ink - K	\$80
Rental	Airtame	\$65
Rental	Large Conference System	\$350
Rental	Cellular Signal Booster	\$50
Rental	Small Conference System	\$250
Rental	Dedicated Conference TV	\$160
Rental	Legacy Conference System	\$150
Rental	iPad Punchlist/Sub Package	\$125
Rental	MGC Provided Cellular Internet	\$250
Rental	Router	\$225
Rental	Plan Table	\$250
Rental	Badge Printer	\$160
Rental	MGC Provided Starlink Internet	\$300
Rental	Monitor - 24"-27"	\$35

Rental	Monitor - 40"	\$80
Rental	Network Switch - Other	\$10
Rental	Network Switch - Large PoE	\$100
Rental	Wireless AP	\$80
Rental	Copier	\$450
Rental	Desktop Printer	\$125
Rental	TV - 55"	\$60
Rental	TV - 65"	\$80
Rental	TV - 75"	\$120
Rental	TV - 82"	\$150
Rental	Conference Phone	\$100
Rental	Kiosk PC	\$70
Rental	Workstation	\$150
Rental	Zoom	\$35
Rental	HDMI Adapter Ring w/ 25' HDMI Cable	\$25
Rental	TV Rolling Cart	\$10
Rental	TV Wall Mount	\$10
Rental	iPad Case	\$15
Rental	iPad HDMI Adapter	\$5
Rental	iPad Kiosk Mount	\$15
Rental	Keyboard/mouse	\$10
Rental	Laptop Dock	\$40
Rental	Monitor Mounts	\$5
Rental	TV Mount	\$10
Rental	iPad	\$75
Rental	Webcam	\$25
Rental	Windows PC	\$75

These rates are subject to change by no more than 5% in a given six month period.

REQUEST FOR QUALIFICATIONS/PROPOSAL

FOR

CONSTRUCTION MANAGER AT RISK SERVICES

FOR THE PROPOSED

INDEPENDENCE JUSTICE CENTER

#25001

City of Independence, MO
Procurement Division
111 E Maple, PO Box 1019
Independence, MO 64051-0519

Issued: January 13, 2025



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City of Independence, MO – Justice Center Request for Qualifications/Proposal for Construction Manager at Risk Services

Project Introduction

Project Advocates (Owner's Representative) on behalf of the City of Independence, MO is requesting qualifications and proposals from highly qualified construction management firms interested in providing comprehensive Construction Manager at Risk (CMAR) preconstruction and construction services for the following project:

Name: Independence Justice Center
Owner: City of Independence, MO
17221 East 23rd St S
Independence, MO 64057

The City seeks construction management firms with highly qualified personnel with extensive experience and expertise having previously provided full-service CMAR preconstruction and construction management services for complex and challenging projects. The City invites interested and qualified construction management firms desiring to be considered as the Construction Manager for this project to submit a statement of qualifications identifying their qualification for providing the construction management services required of this project. Firms considering this request for qualifications are encouraged to thoroughly review this document to familiarize themselves with the instructions, information, procedures, and requirements contained herein. Statements of Qualifications must be prepared and submitted in accordance with the criteria and procedures established in this request for qualifications.

Project Background

The City of Independence is seeking to partner with a firm to provide Construction Manager at Risk services on their proposed Justice Center campus at 17221 East 23rd St S, Independence, MO 64057. The City owns approximately 14 acres of land on the south side of East 23rd Street at R.D. Mize Road that currently houses 2 government facilities—the Independence Utility Center and the Independence Communications Center. This property has been identified as the future location of the Independence Police Department, consolidating multiple policing facilities into one campus to better serve the citizens of Independence, MO.

This project includes renovation of the existing Independence Utilities Center building, as well as new police, detention and courts expansion; several new individual buildings to house specialty operations, vehicles, and canine operations; and site infrastructure and development.

The project design team is comprised of: Hoefer Welker as Architect of record, BHC as Civil engineer, Landworks Studio as Landscape designer, Bob D Campbell as structural engineer and Hoefer Welker as MEP engineer.

Project Budget

If approved by the citizens of Independence, MO in an April 2025 general election, this project will be funded through City issued General Obligation Bonds. General Obligation Bond funds allocated for the new Justice Center total \$123,000,000 for all hard and soft costs. Construction costs are estimated to be \$90,000,000 and soft costs \$33,000,000.

Project Representative

The City has contracted Project Advocates, LLC as Owner's Representative for the project. Project Advocates shall be the primary point of contact for this project. The Representatives are:

Jennifer Gerlach
Partner
jennifer@project-advocates.com
913-201-8592

Radd Way
Principal
radd@project-advocates.com
913-522-0080

Danny Jonas
Project Advocate
danny@project-advocates.com
816-536-8868

Timelines

Tentative Project Timeline

A tentative project schedule is attached as Exhibit 1. High level dates are as follows:

1. Project Advocates as Owner's Representative and Hoefer Welker + Design team approved by Council – April 2024
2. Space needs assessment and Project programming – May thru December 2024
3. Independence Utility Center (IUC) renovation design documents – December 2024-March 2025
4. Procure CMAR for IUC renovations + Justice Center – January thru March 2025
5. General Obligation public vote – April 2025
6. IUC renovation construction – Begin May 2025
7. Justice Center campus design and CMAR preconstruction – May 2025 thru June 2026
8. Justice Center campus construction – July 2026 thru TBD

RFQ/P Timeline

- | | |
|--|----------------------|
| 1. Issue Request for Qualifications/Proposals | January 13, 2025 |
| 2. Deadline for Submittal of Questions to the RFQ/P | January 22, 2025 |
| 3. City's Written Response to RFQ/P Questions (if necessary) | January 27, 2025 |
| 4. Request for Qualifications Due | January 31, 2025 |
| 5. Notification of Short-Listed firms for Interviews | February 7, 2025 |
| 6. Interviews | February 12-14, 2025 |
| 7. Selection of Preferred Firm | February 17, 2025 |
| 8. Contract Negotiations | February 17-28, 2025 |
| 9. City Council Award of Construction Manager | March 2025 |

Scope of Services

The project scope includes two (2) phases. All services below will be required for both project Phases but may be adjusted accordingly for Phase 1 due to the date in which Construction Manager's contract is awarded.

- Phase 1 includes renovation of the existing IUC building.
- Phase 2 includes all additional buildings, expansion of the IUC and sitework for the full justice campus.

The City has selected the Construction Manager at Risk delivery method for the construction of this project. It is the City's intention to select a construction management firm which demonstrates a thorough understanding of this delivery method, including the inherent relationships between the owner, Owner's Representative, designer, and construction management firm; which demonstrates the ability and experience to effectively work in an environment that embraces collaboration, communication and teamwork between all parties to achieve the City's goals for this project; which proposes highly qualified and experienced personnel to be assigned to the project, including a commitment to maintaining the identified personnel throughout the duration of the project; and which demonstrates experience having successfully provided construction management services for similar type projects as this proposed project. This contract method has been selected in order to achieve the following objectives:

1. To integrate the experience and expertise of the Construction Manager into a Project Team environment with City staff and the Architects and Engineers, to cooperatively work in a team-oriented environment to successfully achieve the City's goals for the project.
2. To utilize the expertise and resources of the Construction Manager during the preconstruction phase to advise on various design decisions being considered and how those decisions may impact cost, quality, and schedule.
3. To utilize the expertise and resources of the Construction Manager during the preconstruction phase to advise on constructability issues and alternate construction methods/materials that may benefit the owner in areas such as cost, construction efficiencies, operational efficiencies, product durability, etc.
4. To utilize the expertise and resources of the Construction Manager during the preconstruction phase to provide periodic reviews of the project scope and budget, and to develop periodic cost estimates in order to verify the project scope and budget are in balance.
5. To utilize the expertise and resources of the Construction Manager during the construction phase for management of all construction related activities, to provide the City with a single point of responsibility for all activities including bidding and budget control, subcontractor scheduling and coordination, follow-up warranty work, and all other construction related activities.
6. To provide opportunities for concurrent design and construction activities, to the extent such concurrent activities are deemed appropriate and beneficial to the Owner and the project.

It is anticipated the Construction Manager selected for the project will begin working with the Owner and design team immediately following approval of the agreement between the Owner and Construction Manager. The following should be considered representative of the type of services anticipated to be provided by the Construction Manager, but should not be considered a complete and exhaustive list of all services.

Preconstruction Phase Services:

- Actively engage with the Owner, Architect, and other design professionals in a manner encouraging and supporting collaboration, cooperation, open communication, and trust.
- Actively participate in design team meetings as required to facilitate and advance the design process. The Construction Manager should anticipate biweekly meetings throughout the design process. Meeting schedule may adjust as design progresses.
- Evaluation of the project schedule and construction budget established by the Owner for the project. Assessment of the reasonableness of the schedule and budget.
- Identify and evaluate alternative materials, systems, methods, schedule, etc. as may be requested or required by the Owner and/or Architect to increase cost-effectiveness of the design, reduce the construction schedule, and increase the project value to the Owner.
- Collaborate with the Owner and Architect on the development of a schedule for the construction of the project, providing information regarding the availability of materials and labor, providing information on procurement of materials and equipment having long-lead times, and other factors impacting the time of construction.
- Collaborate with the Owner and Architect to identify and evaluate opportunities to accelerate the construction schedule by means of early bid packages, and determine benefits and risks of such.
- Prepare as requested by the Owner detailed costs estimates (anticipate 3) for the construction of the project. Conduct reviews of such estimates with the Owner and Architect to determine reasonableness of the project design and budget. Consult with the Owner and Architect on circumstances which may indicate construction costs in excess of the available budget, and provide recommendations for alternatives to be considered to reduce costs and bring construction costs in line with the available construction budget. Provide additional cost information on an as-needed basis as may be required by the Owner and/or Architect to evaluate alternate design, materials, systems, equipment, etc.
- As requested and required by the Owner and/or Architect, thoroughly evaluate the design plans and project specifications for completeness, constructability, maintainability, potential conflicts and problems, errors, etc. Provide written comments and discuss outcome of such reviews with Owner and Architect.
- Collaborate with the Owner and Architect on developing bid packages, subcontractor lists, and subcontractor prequalification criteria for all scopes of work. Actively engage the subcontractor market to heighten interest in the project.
- At an agreed upon time during design provide the Owner with a GMP for the complete construction of the project, including itemizations as necessary of each division of work so the Owner and Architect can thoroughly understand all costs of the work.
- Assist the Owner in planning for the construction, turnover, move-in, owner training, and opening of the project.

Construction Phase Services:

- As required by the contract, provide all services as required of the Construction Manager for the complete management and performance of the construction of the project.
- Coordinate, conduct, and document regularly scheduled construction meetings with the Owner, Architect, and Construction Manager.
- Develop and maintain a detailed construction schedule identifying sequencing of construction activities and milestones necessary for the completion of the project by the contract completion date. Coordinate with the Owner and Architect on the development

of the overall project schedule, as well as the development of shorter duration “look-ahead” schedules.

- Maintain quality control and ensure construction is in conformance with the contract documents, coordinate all inspections and testing as required by the project and authorities having jurisdiction.
- Perform all duties related to equipment and system start-up, testing, and training.
- Assist the Owner in the turnover, move-in, and opening of the project.

Proposal Requirements

RFQ/P response should be submitted in electronic (PDF) format only. Please limit response to maximum 25 single-sided 8.5” x 11” pages for items 1 thru 6 below.

Submittals must contain the following information:

1. **Transmittal Letter** – identify the Proposer responsible for submitting the Statement of Qualifications and introduce the Construction Management firm. Clearly identify the name, telephone number, and email address of the person designated to be point of contact for the Firm during the evaluation process.
2. **Table of Contents**
3. **Company/Firm Overview and Project Experience** – include detailed examples of similar project experience and expertise, including project name, location, Owner, Architectural firm responsible for the design, final construction cost and completion date (estimated if in progress), and Client contact information.
4. **Qualifications of Personnel** – provide an organizational structure for Key Staff identified as having a major role in the project, individual resumes for key personnel who are expected to have major project responsibilities, any additional information which will demonstrate the qualifications and capabilities of your Firm’s proposed personnel. Resumes shall include name of individual, specific role within the Project, education if appropriate to demonstrate qualifications, years of experience (identify with Firm and with Other), and identification of experience with similar projects based on size, construction type, construction complexity, delivery method, etc.
5. **Management Processes and Approach** – demonstrate your Firm’s approach to managing and delivering this project with the CMAR delivery method. Include the Team’s management processes, approach and Firm philosophies. Provide examples of management practices your Firm would anticipate implementing during preconstruction and construction phase services, as well as your Firm’s approach to understanding the current construction climate. Clearly explain any tools such as reports, programs, etc. your Firm will utilize during the project, and your Firm’s process for developing a Guaranteed Maximum Price for the construction project. Describe your Firm’s approach and processes for maintaining competent and consistent Staff throughout the project, as well as ways your Firm will monitor and manage costs, changes, schedule, and trade partner selection and communication. If your firm provides Self-Perform services, explain and identify any scopes your Firm would anticipate performing or bidding.
6. **Client References** – Includes names and phone numbers for at least three (3) references for projects listed above. The City may selectively contact the references provided.
7. **Attention Proposer Document** – Exhibit 2 sign and return with response
8. **Affidavit of Non-Collusion** – Exhibit 3 sign and return with response
9. **Immigration Affidavit** – Exhibit 4 sign and return with response
10. **Affidavit Acceptance of Anti-Discrimination Against Israel Act** – Exhibit 5 sign and return with response

- 11. Sample Contract Acknowledgement** – All applicants must review the attached sample contract, Exhibit 6. Provide acknowledgement of acceptance of the contract and/or any requested modifications to the contract.
- 12. Insurance** – Candidate must provide and maintain the minimum insurances coverage as specified in this RFQ/P. See the Insurance Requirements provided in Exhibit 9. Provide a letter from an insurer indicating the Proposer currently has or is capable of obtaining the required insurance.
- 13. Bonding** – The Candidate selected for the Construction Manager at Risk for this project must have the ability to secure the necessary performance and statutory bonding for a project cost of up to ninety million dollars (\$90,000,000) with a qualified surety company, see Exhibit 10. Provide a letter from the surety indicating bonding capacity. Bond form not required to be completed until award of contract to selected Candidate.
- 14. Addenda** – if any addenda are issued to this RFQ/P, all addenda must be acknowledged in proposal response.
- 15. Cost Proposal** – with the following breakdown:
 - General Requirements Estimate (Exhibit 7)
 - Reimbursable Staff Estimate (Exhibit 8)
 - Sub-contracting bond or sub guard program approach and subsequent cost or % that will be included in the future GMP
 - CM's overhead and profit fee % based on the hard construction costs of the work
 - General liability insurance rate as a % of hard construction cost
 - Payment & Performance bond rate as a % of the hard construction cost
 - Proposed Contractor Contingency % to be included in the future GMP
 - If the Contractor contemplates any self-performed work, provide Labor/Insurance/Taxes as a % of the estimated self-performed labor cost
 - Proposed Change Order fee for Construction Manager, Subcontractors, or self-performed work

Submittal Instructions

Interested firms must submit their responses to the RFQ/P to the Public Purchase website online via www.publicpurchase.com by the date and time indicated. Paper, fax, or email responses will NOT be accepted and will not be returned to sender.

Proposals must be received by 2:00pm January 31, 2025.

Selection Criteria and Process:

The City team will use a multi step process to evaluate each proposal taking into consideration the criteria and weighting below. The process will include a review of the qualifications, interviews with short-listed Candidates, and a review of the cost proposals.

Step 1 – Review of Qualifications

After each member of the Evaluation committee has independently scored each statement of qualifications and proposals, an initial composite ranking will be developed which indicates the collective ranking of all candidates submitting. Based upon this initial composite ranking a short-list of the top ranked candidates will be made and those candidates will be invited to the

interview/cost proposal evaluation phase for further consideration. It is anticipated the short-list will comprise of the top three ranked candidates, however, the City reserves the right to increase or decrease the number of candidates selected to the short-list. If in the opinion of the Evaluation Committee there is a clear and obvious choice as to the most qualified candidate based upon the information submitted in the Statement of Qualifications, the Evaluation Committee may select and make a recommendation for the Firm for the project based upon the Evaluation Committee's collective ranking of the candidates after this initial step in the evaluation process and without conducting interviews.

a. Company/Firm Overview and Project Experience	25 points
b. Qualifications of Personnel	30 points
c. Management Processes and Approach	35 points
d. Overall Quality, Content and Completeness of Response	10 points
e. Cost Proposal	20 points
Total – 120 points	

Step 2 – Interviews

If in the opinion of the Evaluation Committee interviews are necessary, Candidates selected to the short-list will be required to interview with the Evaluation Committee. Interviews will be conducted on the dates specified in the RFQ/P (see Timelines). Exact dates and times will be coordinated with the short-listed Candidates. All candidates must be prepared to be available locally on the specified date(s) for an interview. Candidates may be requested to provide additional information to the Evaluation Committee to further clarify or supplement information in their Statement of Qualifications.

a. Company/Firm Overview and Project Experience	10 points
b. Qualifications of Personnel	20 points
c. Management Processes and Approach	20 points
d. Overall Quality, Content and Preparedness, Other Factors	10 points
Total – 60 points	

The final interview phase will be scored by the Evaluation Committee and will be tabulated as above and then converted to a ranking order. All Evaluation Committee members' individual rank order scores will be tabulated and a final composite ranking of the Candidates developed which indicates the evaluation committee's collective final ranking of the Candidates. However, the Committee may conduct deliberations as necessary to obtain consensus on the preferred candidate to be selected for this project, and therefore the scoring and ranking will not necessarily be the sole deciding factor in determining the preferred candidate. The Candidate determined by the Committee as being the most qualified candidate and providing the best value to the City will be identified as the preferred Construction Manager for the project and contract negotiations will begin with this Candidate. City staff will then begin to negotiate the final contract with the selected Firm. In the event a mutually agreed upon contract cannot be negotiated, staff will then enter into contract negotiations with the next highest ranked Firm, and so on until a mutually agreeable contract can be negotiated. Final contract approval will be made by the City Council.

Supplemental Information

- Exhibit 1 – Project Schedule
- Exhibit 2 – Attention Proposer Document
- Exhibit 3 – Affidavit of Non-Collusion
- Exhibit 4 – Immigration Affidavit
- Exhibit 5 – Affidavit Acceptance of Anti-Discrimination Against Israel Act
- Exhibit 6 – Sample Contract AIA A133 & A201
- Exhibit 7 – General Requirements Expense Schedule template
- Exhibit 8 – Reimbursable Staff Estimate template
- Exhibit 9 – Insurance Requirements
- Exhibit 10 – Bond Requirements

Questions

Thank you for your interest in providing these services. Any questions regarding this RFQ/P should be directed to Jennifer Gerlach at jennifer@project-advocates.com.

Jennifer Gerlach, P.E. – Partner



PROJECT ADVOCATES
Your Project. Our Passion.

5821 W. 137th Street, Overland Park, KS 66223

Jennifer@Project-Advocates.com

Cell: 913-201-8592

OMAHA | KANSAS CITY | DALLAS

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Contractor	Rank	Total Points	Company/Firm Overview and Project Experience						Qualifications of Personnel						Management processes and approach					
			Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total	Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total	Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total
McCownGordon	1	558.1	25.0	25.0	25.0	25.0	23.5	123.5	30.0	28.0	30.0	28.0	26.5	142.5	30.0	33.0	35.0	34.0	30.0	162.0
Turner Construction	2	552.0	25.0	25.0	25.0	24.0	23.5	122.5	30.0	28.0	30.0	30.0	25.5	143.5	30.0	33.0	35.0	35.0	31.0	164.0
JE Dunn	3	512.7	25.0	25.0	25.0	21.0	25.0	121.0	30.0	18.0	30.0	24.0	25.5	127.5	30.0	30.0	35.0	32.0	29.0	156.0
Newkirk Novak	4	463.8	20.0	18.0	17.0	15.0	19.5	89.5	26.0	25.0	20.0	20.0	23.5	114.5	25.0	30.0	25.0	30.0	26.5	136.5
Russell Construction	5	450.0	20.0	15.0	15.0	18.0	17.5	85.5	22.0	20.0	20.0	20.0	20.0	102.0	25.0	30.0	15.0	32.0	28.0	130.0
StructSure	6	445.6	16.0	20.0	15.0	21.0	22.5	94.5	18.0	20.0	15.0	20.0	25.0	98.0	28.0	23.0	20.0	34.0	29.5	134.5
River City Construction	7	414.5	17.0	20.0	15.0	22.0	19.0	93.0	20.0	18.0	15.0	22.0	23.0	98.0	25.0	29.0	15.0	30.0	28.5	127.5
Paric Corporation	8	405.6	20.0	23.0	10.0	15.0	17.5	85.5	25.0	26.0	10.0	20.0	20.5	101.5	28.0	30.0	10.0	25.0	27.5	120.5

Overall quality, content, and completeness of response						Cost Proposal					
Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total	Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total
10.0	10.0	10.0	10.0	10.0	50.0	16.0	16.0	16.0	16.0	16.0	80.1
10.0	10.0	10.0	10.0	9.5	49.5	14.5	14.5	14.5	14.5	14.5	72.5
10.0	7.0	10.0	8.0	8.5	43.5	12.9	12.9	12.9	12.9	12.9	64.7
7.0	9.0	5.0	6.0	9.5	36.5	17.4	17.4	17.4	17.4	17.4	86.8
6.0	6.0	5.0	7.0	8.5	32.5	20.0	20.0	20.0	20.0	20.0	100.0
7.0	6.0	7.0	10.0	9.0	39.0	15.9	15.9	15.9	15.9	15.9	79.6
8.0	7.0	7.0	8.0	8.5	38.5	11.5	11.5	11.5	11.5	11.5	57.5
8.0	7.0	0.0	6.0	9.0	30.0	13.6	13.6	13.6	13.6	13.6	68.1

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to approve the AIA G802 Amendment to Professional Services Agreement with WSKF, Inc, for additional design services for the New and Replacement Fire Station Projects.

Recommendations:

Council approval is recommended.

Background:

This item is to amend the WSKF, Inc AIA B133-2019 agreement for the New and Replacement Fire Stations Projects. Council approved the original agreement for design services on April 15, 2024. During the initial phases of Due Diligence and Concept Planning for all three Fire Stations, it was determined the Fire Department Training facility would be combined with the storage building to create a new building on the Fire Station #8 property near the existing training tower. Additionally, the original proposed budgets of the three fire stations did not adequately reflect true market and construction pricing for the three stations. Through WSKF's initial contract, including programming and conceptual design, the exact scope of each station and updated budgets were determined. Once the programming was complete, a more accurate overall project schedule was determined for the three stations. To complete the projects in a manner in which to best serve the public and the Fire department, there is a need to expedite the project design schedules, requiring design overlap not previously planned.

WSKF's amended fee in the AIA G802 reflects all changes as noted to complete the three fire stations and training/storage building, including: the initial conceptual design and planning for all three fire stations; any City entitlements and planning requirements for all locations; complete design services for all three fire station buildings, site and parking; applicable sub-consultants for mechanical, electrical plumbing, fire protection, structural, civil, low voltage, and others for a complete set of permittable construction documents; and other scopes as listed in the attachment A. Approval of this AIA G802 amendment authorizes WSKF to continue performing all design and construction administration services for the three fire stations 5, 8, & 11 as well as the new training/storage building.

Total Revised Services and Fee:

Initial AIA B133-2019 Agreement \$2,066,375 + Amendment 1 \$1,401,439 = \$3,467,814 revised contract.

The cost is within the amount budgeted for this project.

This project is a budgeted item in the Department's FY21-22 capital budget.

Approval of this item shall authorize change orders up to a total of ten (10) percent of the

original authorized amount, provided appropriations are available.

Emergency Justification:

Fiscal Impact:

The fiscal impact to the City is \$1,401,439. Funding is included in the fiscal year 2024/25 adopted budget, Project string E (172402 -C - -) account number E (0537053-5401).

Council Action:

Department / Contact	Municipal Services /
---------------------------------	----------------------

REVIEWERS

Lisa Reynolds
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Attachment 1 G802-2017 WSKF Amendment 1



AIA® Document G802® – 2017

Amendment to the Professional Services Agreement

PROJECT: *(name and address)*

Independence Fire Stations 5, 8 & 11,
project number 24004

AGREEMENT INFORMATION:

Date:
04-15-2024

AMENDMENT INFORMATION:

Amendment Number:
001
Date:
03-25-2025

OWNER: *(name and address)*

City of Independence, Missouri
Independence City Hall
111 E Maple
Independence, MO 64050

ARCHITECT: *(name and address)*

WSKF, Inc.
110 Armour Road
North Kansas City, MO 64116

The Owner and Architect amend the Agreement as follows:

The design fees for Phases B - D have been updated to reflect the conceptual designs finalized in Phase A (Conceptual Design Phase) as stated in attached **Exhibit A**. Phases B - D have been updated with the current design and construction schedule in mind as well as the addition of the Training/Storage building and road improvements to S. Powell Road.

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment:

Phase B – Additional Design Fees: \$617,175 for a revised total of \$1,501,300

Phase C – Additional Design Fees: \$370,591 for a revised total of \$880,216

Phase D – Additional Design Fees: \$413,673 for a revised total of \$923,298

Additional Design Fees: \$1,401,439 for a revised total of \$3,467,814

Schedule Adjustment:

None.

ARCHITECT *(Signature)*

BY: Dalyn Novak, President

(Printed name, title, and license number if required)

03/25/2025

Date

OWNER *(Signature)*

BY: Zachary Walker, City Manager

(Printed name and title)

Date

Independence Fire - Stations 8, 5, and 11
Independence, MO

PHASE A - Conceptual Design/ProgrammingCOMPLETED

The scope of services for Phase A includes all tasks noted under Phase A (with the exception of renderings/perspectives) on Exhibit B based on the following project details:

Station 8 & Indoor Training Facility - 20,000 SF (divided generally equally - 10,000 SF / 10,000 SF between the two functions)

Two sites to be reviewed including the fire training tower site and an additional site near 39th & Centerpoint Medical Center.

Station 11 - 10,000 SF

Two sites to be reviewed, both owned by the City of Independence.

Station 5 - 10,000 SF

Two sites to be reviewed, neither of the sites are currently owned by the City of Independence.

Fee Proposal									
Architect/ Interior Design**	Structural Engineer	MEP Engineer	Civil Engineer	Landscape Architect	LEED Consultant	LEED Cert.	FF&E Design	Total *	
\$ 90,000	\$ 4,000	\$ 12,500	\$ 45,000	\$ 3,500	\$ 8,000	N/A	N/A	\$	163,000
Other Costs									

* Excludes expenses; expenses are estimated at \$5,000.
Four renderings are included in the fees above. If additional renderings are needed the cost is \$3,000.00/rendering.

PHASE B - Full Design Services for Fire Station #8 & Indoor Training Facility - REVISED

The scope of services for Phase B includes all tasks noted under Phase B on Exhibit B. While the original scope of work included training, training was intended to be part of the fire station building. During Phase A, a separate facility with additional apparatus bay storage was requested. The storage portion of the building was not originally included in the scope of work. The new training/storage building will be located south of the fire department's fire training tower. Refer to final preliminary drawings for agreed upon design/scope.

It is our intent and understanding that the City and Project Advocates would like to proceed directly into Phase B at the completion of Phase A. The start date of Phase B will be January 1, 2025. The project budget has changed from \$13,000,000 to \$20,824,000 (a 60% increase in cost and scope). Design fees/rates will escalate annually as the cost of living increases.

Cost Estimate Assumption - Fire Station #8 & Indoor Training Facility			
Hard Costs (Bldg. + Site Development)		\$	17,894,786
Soft Costs		\$	2,929,214 to include design fees, FF&E, & other soft costs
		\$	20,824,000 (original budget number was \$13M)

Fee Proposal							
	Architect/ Interior Design	Structural Engineer	MEP Engineer**	Civil Engineer	Landscape Architect	FF&E Design	Total*
	\$ 920,500	\$ 134,000	\$ 205,000	\$ 133,300	\$ 5,500	\$ 45,000	\$ 1,443,300

Other Costs	
* Excludes expenses; expenses are estimated at \$10,000. LEED coordination and certification fees are no longer included in design fees. \$11,500 for final platting is included above in the Civil Engineer's fee for this phase. Survey work is not included. Per City request McClure will provide a Letter of Map Revision (LOMR) to FEMA as part of the project. This scope of work is included in the civil engineer design fees above.	
** PKMR can provide energy modeling for an additional \$15,000 if requested (not included above).	

PHASE B - Road Improvements

The City of Independence requested that the design team create a design for improving South Powell Road. Two options have been provided for this scope of work.

- Option 1 - design roadway to public standards, including MoDOT permitting, to the apron (requested)
Option 2 - design roadway to public standards, including MoDOT permitting, from the 1st entrance to the 2nd entrance

Excluded from both options: turn lanes on Hwy 78, traffic signal, street lighting, survey, utility relocation plans, landscape, irrigation.

Option 2 was provided so that if the City decides they want to take the design work back to the second (south) training entrance drive we have the full cost up front. It is our opinion that both entrances will be used and that the second (south) entrance may be used more than the first (north) entrance due to the location of the new training/storage facility.

Fee Proposal			
	Option 1	Civil Engineer	Total*
		\$ 52,000	\$ 52,000
	Option 2 **	Civil Engineer	Total*
		\$ 6,000	\$ 6,000

Other Costs	
* Excludes expenses; expenses are estimated at \$2,000	
** The cost for Option 2 has not been added into the total project design fees.	

Independence Fire - Stations 8, 5, and 11
Independence, MO

PHASE C - Full Design Services for Fire Station #5 - REVISED

The scope of services for Phase C includes all tasks noted under Phase C on Exhibit B. WSKF and our consultants will update our full service design fees at the start of Phase C. Refer to final preliminary drawings for agreed upon design/scope.

It is our intent and understanding that the City and Project Advocates would like to proceed into Phase C around the 90-95% construction document mark on Phase B/Station 8 & Training/Storage. The project budget has changed from \$7,000,000 to \$12,474,000 (a 47% increase in cost and scope). WSKF and our consultants have updated our design fees based on the preliminary design scope and documents as well as the budget estimated by Project Advocates. Design fees/rates will escalate annually as the cost of living increases.

Cost Estimate Assumption - Fire Station #5

Hard Costs (Bldg. + Site Development)	\$	10,859,351	
Land Acquisition	\$		<i>Fire Station 5 Site to be used</i>
Soft Costs	\$	1,785,649	<i>to include design fees, FF&E, & other soft costs</i>
	\$	12,645,000	<i>(original budget number was \$7M)</i>

Fee Proposal

Architect/ Interior Design	Structural Engineer	MEP Engineer**	Civil Engineer	Landscape Architect	FF&E Design	Total*
\$ 542,968	\$ 90,500	\$ 120,000	\$ 95,300	\$ 4,300	\$ 27,148	\$ 880,216

Other Costs

- * Excludes expenses; expenses are estimated at \$10,000.
LEED coordination and certification fees are no longer included in design fees.
\$11,500 for final platting is included above in the Civil Engineer's fee for this phase.
Survey work is not included.
- ** PKMR can provide energy modeling for an additional \$10,000 if requested (not included above).

PHASE D - Full Design Services for Fire Station #11 - REVISED

The scope of services for Phase D includes all tasks noted under Phase D on Exhibit B. WSKF and our consultants will update our full service design fees at the start of Phase D. Refer to final preliminary drawings for agreed upon design/scope.

It is our intent and understanding that the City and Project Advocates would like to proceed into Phase D around the 90-95% construction document mark on Phase C/Station 5. The project budget has changed from \$6,500,000 to \$14,453,000 (a 63% increase). WSKF and our consultants have updated our design fees based on the preliminary design scope and documents as well as the budget estimated by Project Advocates. Design fees/rates will escalate annually as the cost of living increases.

This facility is fairly similar to Station 8 with the exception of the sitework and apparatus support side of the facility. WSKF and our design team have reduced our fees on this Station due to the similarities with Station 8. If for some reason the scope of Station 11 changes, additional design fees will be required.

Cost Estimate Assumption - Fire Station #11

Hard Costs (Bldg. + Site Development)	\$	12,775,059	
Soft Costs	\$	1,868,941	<i>to include design fees, FF&E, & other soft costs</i>
	\$	14,644,000	<i>(original budget number was \$6.5M)</i>

Fee Proposal

Architect/ Interior Design	Structural Engineer	MEP Engineer**	Civil Engineer	Landscape Architect	FF&E Design	Total*
\$ 613,203	\$ 78,500	\$ 100,000	\$ 104,300	\$ 4,300	\$ 22,995	\$ 923,298

Other Costs

- * Excludes expenses; expenses are estimated at \$10,000.
LEED coordination and certification fees are no longer included in design fees.
\$11,500 for final platting is included above in the Civil Engineer's fee for this phase.
Survey work is not included.
- ** PKMR can provide energy modeling for an additional \$10,000 if requested (not included above).

Independence Fire - Stations 8, 5, and 11
Independence, MO

PRELIMINARY SCHEDULE

It is understood that Project Advocates and the City of Independence would like to start with Phase A immediately followed by Phase B. Project Advocates has requested that the design phases of the projects overlap more than what was originally requested. Each subsequent phase will start once the previous phase is approximately 90-95% into construction documents.

Phase A Schedule - Phase A took approximately six and a half months to complete (05/10/24 - 12/1/24).

WSKF typically estimates 9-11 months design time (SD/DD/CD) for each fire station and 12-14 months of construction time for each phase.

FEE SUMMARY		Revised Fees		Previous Fees
	Phase A	\$	163,000 Completed	\$ 163,000
	Phase B	\$	1,443,300	\$ 884,125
		\$	58,000 Phase B - road improvements	not included
	Phase C	\$	880,216	\$ 509,625
	Phase D	\$	923,298	\$ 509,625
Grand Total - All Phases		\$	3,467,814	\$ 2,066,375

DESIGN TEAM

Architect/Interior Design	WSKF	WSKF, Inc.
Structural Engineer	LEOK	Leigh & O'Kane LLC
MEP Engineer	PKMR	PKMR Engineers
Civil Engineering	McC	McClure
Landscape Architecture	McC	McClure
Furniture, Fixtures, & Equipment	WSKF	WSKF, Inc.



City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to approve Amendment #1 to Project Advocates, LLC for Consulting Services for the Fire Station Projects.

Recommendations:

Council approval for Amendment #1 to Project Advocates, LLC Professional Services agreement dated April 15, 2024.

Background:

This item is to amend the Project Advocates, LLC Professional Services agreement for Owner's Representative services for the Fire Station projects. Council approved the original Professional Services agreement on April 15, 2024. During the initial phases of Due Diligence and Concept Planning for all three Fire Stations, it was determined the Fire Department Training facility would be combined with the Storage building to create a new building on the Fire Station #8 property. Approval of this amendment authorizes Project Advocates to perform Due Diligence/Initiation, Design Management and Procurement, Construction Oversight, Activation, Occupancy, and Closeout services on this new Training/Storage building.

Through the initial contract, Project Advocates' involvement included Request for Qualifications (RFQ) management, due diligence, design oversight, conceptual and schematic budgeting, and initial Furniture, Fixtures, and Equipment (FFE) design oversight for the new and replacement fire station projects, which has further refined the scope of all three stations.

This amendment #1 includes full Owner's Representative services on the Training/Storage building as noted above for \$145,000.

Total Revised Services and Fee:

Professional Services Agreement \$847,534 + Amendment 1 \$145,000 = \$992,534 revised contract.

The cost is within the amount budgeted for this project.

This project is a budgeted item in the Department's FY21-22 capital budget.

Approval of this item shall authorize change orders up to a total of ten (10) percent of the original authorized amount, provided appropriations are available.

Emergency Justification:

Fiscal Impact:

The fiscal impact to the City is \$145,000. Funding is included in the fiscal year 2025/26 adopted budget, Project string E (172402 -C - -) account number E (0537053-5401).

Council Action:

Department / Contact	Municipal Services /
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REVIEWERS

Lisa Reynolds
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Attachment 1 Contract Amendment No. 1 4.7.25



This Amendment No. 1 dated April 7, 2025, defines the revisions to the base contract dated April 15, 2024, by and between the Owner **City of Independence, Missouri (City)**, and **Project Advocates, LLC (consultant)**. The projects include Fire Station #8 & Training Facility, Fire Station #5, and Fire Station #11 in various locations around Independence, MO.

Revisions to Services Performed include the following services:

Fire Station #8 New Training and Storage Building – \$145,000

New building adjacent to Fire Station #8 for Storage and Training

Due Diligence/Initiation, Design Management and Procurement, Construction Oversight, Activation, Occupancy, & Closeout

Services provided January 2025 – February 2027

All previously approved services in Professional Services agreement dated April 15, 2024 including services and fees are still applicable.

Total Revised Services: Professional Services Agreement \$847,534 + Amendment 1 \$145,000 = \$992,534 revised contract.

Should service durations be revised, the monthly cost will be added on or subtracted from the lump sum amount at a similar monthly rate, including the hourly rates for the service year used. Hourly rates for 2025 are as follows:

Principal = \$257

Partner = \$243

Project Advocate = \$215

Support = \$194

The Lump Sum amounts include local reimbursables. Any anticipated significant reimbursable expenses, only with the City's prior approval, will be at cost + 15%.

The undersigned agrees to the terms of this Amendment.

Owner,
City of Independence, Missouri

Advisor,
Project Advocates, LLC

By: _____
Its Designated Representative

By: Radd C. Way
Its Designated Representative

Date: _____

Date: April 7, 2025



City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to approve the Construction Manager at Risk agreement with Turner Construction Company on the Independence Fire Station 5, 8 & 11 projects.

Recommendations:

Council approval is recommended.

Background:

Approval of this agenda item will authorize the execution of the AIA Document A133-2019 Standard Form of Agreement Between Owner and Construction Manager as Constructor and AIA A201-2017 General Conditions (Attachment 1) hereby contractually awarding Turner Construction Company as Construction Manager at Risk for the Fire Station 5, 8 & 11 projects for the City of Independence.

The Procurement Division issued a Request for Qualifications/Proposals #25005 for Construction Manager Services on February 3, 2025 (Attachment 2), to receive qualified responses for a construction manager to assist the City in the development of the Independence Fire Station projects. The RFQ/P was published through the Public Purchase e-procurement website, which notified 550 potential respondents; 44 accessed the RFQ/P. Responses were provided by ten (10) firms including: Centric, Crossland Construction Company, Fogel Anderson Construction Company, Haren Companies, Hausmann Construction, McCownGordon Construction, Nabholz Construction, Newkirk Novak, StructSure, and Turner Construction. The RFQ/P requested respondents to address qualifications as well as provide a specific breakdown of competitive indirect costs and fees.

Each response was evaluated based on the following criteria:

- Company/Firm overview and experience, including detailed examples of similar project experience and expertise, including project name, location, owner, architectural firm responsible for the design, final construction cost and completion date (estimated if in progress), and client contact information
- Qualifications of Personnel providing an organizational structure for Key Staff identified as having a major role in the project, individual resumes for key personnel who are expected to have major project responsibilities, any additional information which will demonstrate the qualifications and capabilities of your Firm's proposed personnel. Resumes shall include name of individual, specific role within the Project, education if appropriate to demonstrate qualifications, years of experience (identify with Firm and with Other), and identification of experience with similar projects based on size, construction type, construction complexity, delivery method, etc.
- Management processes and approach demonstrating the firm's approach to managing and delivering this project with the CMAR delivery method. Include the team's management processes, approach and firm philosophies. Provide examples of management practices your

firm would anticipate implementing during pre-construction and construction phase services, as well as your firm's approach to understanding the current construction climate. Clearly explain any tools such as reports, programs, etc. your firm will utilize during the project, and your firm's process for developing a Guaranteed Maximum Price for the construction project. Describe your firm's approach and processes for maintaining competent and consistent staff throughout the project, as well as ways your firm will monitor and manage costs, changes, schedule, and trade partner selection and communication. If your firm provides Self-Perform services, explain and identify any scopes your firm would anticipate performing or bidding.

- Overall quality, content, and completeness of response

At the conclusion of the RFQ/P evaluation process, it was determined that there was clear scoring separation between the top five proposals (Attachment 3) and the other proposers. After discussion with City Management regarding the potential risks of hiring the same Construction Manager for the Fire Station projects as was previously awarded for another large City project, McCownGordon was notified they would not be selected for the Fire Station projects. The remaining top four ranked firms were interviewed. Interviews served as an opportunity for further dialogue about the projects, discussing in greater detail the Construction Manager's ability to perform, the pros and cons of awarding all three stations to one firm vs multiple firms, formally meeting the teams who the City would be specifically partnering with, and asking further questions about the proposals. After the interviews, the evaluation committee confirmed that Turner Construction Company was the preferred candidate for the position of Construction Manager at Risk on all three Fire Station projects due to their extensive experience with similar projects, and ability to perform multiple projects concurrently. Additionally, by hiring one Construction Manager, the City will be able to save time and costs by procuring long lead time items early, such as electrical and mechanical equipment, further reducing the potential escalation and risks to the project and budget. Turner Construction Company was notified thereafter of the City of Independence's intention to formally award Turner Construction Company the projects. Shortly thereafter, Turner Construction Company, in good faith, commenced working on the project in anticipation of negotiating and executing a Construction Manager at Risk agreement.

The AIA Document A133 shall authorize Turner Construction Company for Construction Manager at Risk and will formally release Turner Construction Company to complete pre-construction services as outlined in the agreement. Once the Issued for Construction Documents are completed by WSKF Architecture, Turner Construction Company will formally bid each project to subcontractors and provide individual Guaranteed Maximum Prices (GMP) for construction of the proposed projects. There are three estimated GMP bid packages: Fire Station #8 + Training/Storage; Fire Station #5, Fire Station #11. Design of Fire Station #8 and Training/Storage is underway, and it is anticipated the team will present a GMP Amendment to Council at the end of 2025 or early 2026.

This project is a budgeted item in the Fire Department's FY24-25 capital budget.

Approval of this item shall authorize change orders up to a total of ten (10) percent of the original authorized amount, provided appropriations are available.

Emergency Justification:**Fiscal Impact:**

The fiscal impact to the City is \$65,000 plus a 10% contingency of \$6,500 for a total up-to amount of \$71,500. Funding is included in the fiscal year 2024/25 adopted budget, Project string E (172402 -C - -) account number E (0537053-5401).

Council Action:

Department / Contact	Municipal Services /
---------------------------------	----------------------

REVIEWERS

Lisa Reynolds
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Attachment 1 Independence Fire Stations CMAR RFQ 2.3.25
2. Turner Hourly Rates_01.28.25_Independence
3. A133-2019 - Construction Manager Agreement - Firestation- TCCO edits 3.27.25 (002)-ct Final
4. A201-2017 - General Conditions Firestation - TCCO edits 3.27.25 (002)-ct Final
5. Attachment 2 IFS - RFQ Evaluation Summary_2.21.2025

REQUEST FOR QUALIFICATIONS/PROPOSAL

FOR

CONSTRUCTION MANAGER AT RISK SERVICES

FOR THE PROPOSED

INDEPENDENCE FIRE STATIONS

#25005

City of Independence, MO
Procurement Division
111 E Maple, PO Box 1019
Independence, MO 64051-0519

Issued: February 3, 2025



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City of Independence, MO – Fire Stations Request for Qualifications/Proposal for Construction Manager at Risk Services

Project Introduction

Project Advocates (Owner's Representative) on behalf of the City of Independence, MO is requesting qualifications and proposals from highly qualified construction management firms interested in providing comprehensive Construction Manager at Risk (CMAR) preconstruction and construction services for the following project:

Name: Independence Fire Stations
Owner: City of Independence, MO
111 E Maple Ave
Independence, MO 64050

The City seeks construction management firms with highly qualified personnel with extensive experience and expertise having previously provided full-service CMAR preconstruction and construction management services for complex and challenging projects. The City invites interested and qualified construction management firms desiring to be considered as the Construction Manager for this project to submit a statement of qualifications identifying their qualification for providing the construction management services required of this project. Firms considering this request for qualifications are encouraged to thoroughly review this document to familiarize themselves with the instructions, information, procedures, and requirements contained herein. Statements of Qualifications must be prepared and submitted in accordance with the criteria and procedures established in this request for qualifications.

Project Background

The City of Independence is seeking to partner with a firm(s) to provide Construction Manager at Risk services on their proposed three (3) new Fire Stations including Fire Station 8 and Training/Storage building, Fire Station 5 and Fire Station 11. The City owns all land associated with the three fire stations. Fire Station 8 and a new Training/Storage facility will be built adjacent to the existing Training tower and facility at 21011 E. M-78 Hwy Independence, MO 64057. Fire Station 5 will be rebuilt in its existing location at 11301 E. 35th St. S., Independence, MO 64052 and will require demolition of the existing station. Fire Station 11 will be located east of Centerpoint Medical Center on East 39th St S and Center Point Loop Road. These properties have been identified as the best locations to continue serving the citizens of Independence, MO. While the projects are similar in size and nature, each facility will be modified to accommodate specific site requirements. Fire Station 8 is approximately 13,100 SF with the Training/Storage building at 14,000 SF, Station 5 is approximately 12,200 SF, and Station 11 is approximately 13,100 SF.

The project design team is comprised of: WSKF, Inc as Architect of record, McClure as Civil engineer and Landscape designer, Leigh & O'Kane as structural engineer and PKMR Engineering as MEP engineer.

Project Budget

The City of Independence has funding for all three (3) Fire Stations and Training/Storage building total \$50,000,000 for all hard and soft costs. Construction costs are estimated to be \$37,000,000 and soft costs \$13,000,000.

Project Representative

The City has contracted Project Advocates, LLC as Owner’s Representative for the project. Project Advocates shall be the primary point of contact for this project. The Representatives are:

Jennifer Gerlach
Partner
jennifer@project-advocates.com
913-201-8592

Radd Way
Principal
radd@project-advocates.com
913-522-0080

Danny Jonas
Project Advocate
danny@project-advocates.com
816-536-8868

Timelines

Tentative Project Timeline

A tentative project schedule is attached as Exhibit 1. High level dates are as follows:

1. Project Advocates as Owner’s Representative and WSKF + Design team approved by Council – April 2024
2. Project Programming and Conceptual Design for all stations – May thru December 2024
3. Fire Station 8 Design – January thru October 2025
4. Procure CMAR – February thru April 2025
5. Fire Station CMAR preconstruction – May 2025 and beyond
6. Fire Station 8 construction – January 2026 thru TBD
7. Fire Station 5 and 11 design and preconstruction to follow Station 8 (see project schedule)

RFQ/P Timeline

- | | |
|--|-------------------|
| 1. Issue Request for Qualifications/Proposals | February 3, 2025 |
| 2. Deadline for Submittal of Questions to the RFQ/P | February 12, 2025 |
| 3. City’s Written Response to RFQ/P Questions (if necessary) | February 17, 2025 |
| 4. Request for Qualifications Due | February 21, 2025 |
| 5. Notification of Short-Listed firms for Interviews | February 28, 2025 |
| 6. Interviews | March 5-7, 2025 |
| 7. Selection of Preferred Firm | March 10, 2025 |
| 8. Contract Negotiations | March 10-31, 2025 |
| 9. City Council Award of Construction Manager | April 2025 |

Scope of Services

The project scope includes three (3) Fire Stations and a Training/Storage Building. All services below will be required for all Projects but may be adjusted accordingly for Station 8 and Training/Storage due to the date in which Construction Manager's contract is awarded.

- Project 1 includes new Fire Station 8 and Training/Storage Building.
- Project 2 includes new rebuilt Fire Station 5.
- Project 3 includes new Fire Station 11.

The City has selected the Construction Manager at Risk delivery method for the construction of these projects. It is the City's intention to select one or multiple construction management firm(s) which demonstrates a thorough understanding of this delivery method, including the inherent relationships between the owner, Owner's Representative, designer, and construction management firm; which demonstrates the ability and experience to effectively work in an environment that embraces collaboration, communication and teamwork between all parties to achieve the City's goals for this project; which proposes highly qualified and experienced personnel to be assigned to the project, including a commitment to maintaining the identified personnel throughout the duration of the project; and which demonstrates experience having successfully provided construction management services for similar type projects as this proposed project. This contract method has been selected in order to achieve the following objectives:

1. To integrate the experience and expertise of the Construction Manager into a Project Team environment with City staff and the Architects and Engineers, to cooperatively work in a team-oriented environment to successfully achieve the City's goals for the project.
2. To utilize the expertise and resources of the Construction Manager during the preconstruction phase to advise on various design decisions being considered and how those decisions may impact cost, quality, and schedule.
3. To utilize the expertise and resources of the Construction Manager during the preconstruction phase to advise on constructability issues and alternate construction methods/materials that may benefit the owner in areas such as cost, construction efficiencies, operational efficiencies, product durability, etc.
4. To utilize the expertise and resources of the Construction Manager during the preconstruction phase to provide periodic reviews of the project scope and budget, and to develop periodic cost estimates in order to verify the project scope and budget are in balance.
5. To utilize the expertise and resources of the Construction Manager during the construction phase for management of all construction related activities, to provide the City with a single point of responsibility for all activities including bidding and budget control, subcontractor scheduling and coordination, follow-up warranty work, and all other construction related activities.
6. To provide opportunities for concurrent design and construction activities, to the extent such concurrent activities are deemed appropriate and beneficial to the Owner and the project.

It is anticipated the Construction Manager(s) selected for the project will begin working with the Owner and design team immediately following approval of the agreement between the Owner and Construction Manager. The following should be considered representative of the type of services anticipated to be provided by the Construction Manager, but should not be considered a complete and exhaustive list of all services.

Preconstruction Phase Services:

- Actively engage with the Owner, Architect, and other design professionals in a manner encouraging and supporting collaboration, cooperation, open communication, and trust.
- Actively participate in design team meetings as required to facilitate and advance the design process. The Construction Manager should anticipate biweekly meetings throughout the design process. Meeting schedule may adjust as design progresses.
- Evaluation of the project schedule and construction budget established by the Owner for the project. Assessment of the reasonableness of the schedule and budget.
- Identify and evaluate alternative materials, systems, methods, schedule, etc. as may be requested or required by the Owner and/or Architect to increase cost-effectiveness of the design, reduce the construction schedule, and increase the project value to the Owner.
- Collaborate with the Owner and Architect on the development of a schedule for the construction of the project, providing information regarding the availability of materials and labor, providing information on procurement of materials and equipment having long-lead times, and other factors impacting the time of construction.
- Collaborate with the Owner and Architect to identify and evaluate opportunities to accelerate the construction schedule by means of early bid packages, and determine benefits and risks of such.
- Prepare as requested by the Owner detailed costs estimates (anticipate 3 per Fire Station) for the construction of the project. Conduct reviews of such estimates with the Owner and Architect to determine reasonableness of the project design and budget. Consult with the Owner and Architect on circumstances which may indicate construction costs in excess of the available budget, and provide recommendations for alternatives to be considered to reduce costs and bring construction costs in line with the available construction budget. Provide additional cost information on an as-needed basis as may be required by the Owner and/or Architect to evaluate alternate design, materials, systems, equipment, etc.
- As requested and required by the Owner and/or Architect, thoroughly evaluate the design plans and project specifications for completeness, constructability, maintainability, potential conflicts and problems, errors, etc. Provide written comments and discuss outcome of such reviews with Owner and Architect.
- Collaborate with the Owner and Architect on developing bid packages, subcontractor lists, and subcontractor prequalification criteria for all scopes of work. Actively engage the subcontractor market to heighten interest in the project.
- At an agreed upon time during design provide the Owner with a GMP for the complete construction of the project, including itemizations as necessary of each division of work so the Owner and Architect can thoroughly understand all costs of the work.
- Assist the Owner in planning for the construction, turnover, move-in, owner training, and opening of the project.

Construction Phase Services:

- As required by the contract, provide all services as required of the Construction Manager for the complete management and performance of the construction of the project.
- Coordinate, conduct, and document regularly scheduled construction meetings with the Owner, Architect, and Construction Manager.
- Develop and maintain a detailed construction schedule identifying sequencing of construction activities and milestones necessary for the completion of the project by the

contract completion date. Coordinate with the Owner and Architect on the development of the overall project schedule, as well as the development of shorter duration “look-ahead” schedules.

- Maintain quality control and ensure construction is in conformance with the contract documents, coordinate all inspections and testing as required by the project and authorities having jurisdiction.
- Perform all duties related to equipment and system start-up, testing, and training.
- Assist the Owner in the turnover, move-in, and opening of the project.

Proposal Requirements

RFQ/P response should be submitted in electronic (PDF) format only. Please limit response to maximum 25 single-sided 8.5” x 11” pages for items 1 thru 6 below.

Submittals must contain the following information:

1. **Transmittal Letter** – identify the Proposer responsible for submitting the Statement of Qualifications and introduce the Construction Management firm. Clearly identify the name, telephone number, and email address of the person designated to be point of contact for the Firm during the evaluation process.
2. **Table of Contents**
3. **Company/Firm Overview and Project Experience** – include detailed examples of similar project experience and expertise, including project name, location, Owner, Architectural firm responsible for the design, final construction cost and completion date (estimated if in progress), and Client contact information.
4. **Qualifications of Personnel** – provide an organizational structure for Key Staff identified as having a major role in the project(s), individual resumes for key personnel who are expected to have major project responsibilities, any additional information which will demonstrate the qualifications and capabilities of your Firm’s proposed personnel. Resumes shall include name of individual, specific role within the Project, education if appropriate to demonstrate qualifications, years of experience (identify with Firm and with Other), and identification of experience with similar projects based on size, construction type, construction complexity, delivery method, etc.
5. **Management Processes and Approach** – demonstrate your Firm’s approach to managing and delivering this project with the CMAR delivery method. Include the Team’s management processes, approach and Firm philosophies. Provide examples of management practices your Firm would anticipate implementing during preconstruction and construction phase services, as well as your Firm’s approach to understanding the current construction climate. Clearly explain any tools such as reports, programs, etc. your Firm will utilize during the project, and your Firm’s process for developing a Guaranteed Maximum Price(s) for the construction project. Describe your Firm’s approach and processes for maintaining competent and consistent Staff throughout the project, as well as ways your Firm will monitor and manage costs, changes, schedule, and trade partner selection and communication. If your firm provides Self-Perform services, explain and identify any scopes your Firm would anticipate performing or bidding.
 - a. The City is considering awarding the multiple Fire Stations to one (1) or more Construction Management firms. If your Firm is proposing on only one or two stations, identify which stations and why. If your Firm is proposing on all three stations, identify how your firm will manage the above requirements with overlapping design, preconstruction and construction schedules. Explain in detail how your Firm

will maintain consistency with project approach and staffing, and integrate lessons learned throughout the project.

6. **Client References** – Includes names and phone numbers for at least three (3) references for projects listed above. The City may selectively contact the references provided.
7. **Attention Proposer Document** – Exhibit 2 sign and return with response
8. **Affidavit of Non-Collusion** – Exhibit 3 sign and return with response
9. **Immigration Affidavit** – Exhibit 4 sign and return with response
10. **Affidavit Acceptance of Anti-Discrimination Against Israel Act** – Exhibit 5 sign and return with response
11. **Sample Contract Acknowledgement** – All applicants must review the attached sample contract, Exhibit 6. Provide acknowledgement of acceptance of the contract and/or any requested modifications to the contract.
12. **Insurance** – Candidate must provide and maintain the minimum insurances coverage as specified in this RFQ/P. See the Insurance Requirements provided in Exhibit 9. Provide a letter from an insurer indicating the Proposer currently has or is capable of obtaining the required insurance.
13. **Bonding** – The Candidate selected for the Construction Manager at Risk for this project must have the ability to secure the necessary performance and statutory bonding for a project cost of up to forty million dollars (\$40,000,000) (if proposing on all three Stations) with a qualified surety company, see Exhibit 10. Provide a letter from the surety indicating bonding capacity. Bond form not required to be completed until award of contract to selected Candidate.
14. **Addenda** – if any addenda are issued to this RFQ/P, all addenda must be acknowledged in proposal response.
15. **Cost Proposal** – with the following breakdown:
 - General Requirements Estimate (Exhibit 7)
 - Reimbursable Staff Estimate (Exhibit 8)
 - Sub-contracting bond or sub guard program approach and subsequent cost or % that will be included in the future GMP
 - CM's overhead and profit fee % based on the hard construction costs of the work
 - General liability insurance rate as a % of hard construction cost
 - Payment & Performance bond rate as a % of the hard construction cost
 - Proposed Contractor Contingency % to be included in the future GMP
 - If the Contractor contemplates any self-performed work, provide Labor/Insurance/Taxes as a % of the estimated self-performed labor cost
 - Proposed Change Order fee for Construction Manager, Subcontractors, or self-performed work
 - Preconstruction Services Estimate – Provide your total cost for providing full Preconstruction Services as outlined in the Preconstruction Phase Services section for each Fire Station individually. Services include three (3) detailed cost estimates for each Station. Services are expected to commence following award following the project schedule in Exhibit 1. Provide person-hours included and staff hourly rates.

Submittal Instructions

Interested firms must submit their responses to the RFQ/P to the Public Purchase website online via www.publicpurchase.com by the date and time indicated. Paper, fax, or email responses will NOT be accepted and will not be returned to sender.

Proposals must be received by 2:00pm February 21, 2025.

Selection Criteria and Process:

The City team will use a multi step process to evaluate each proposal taking into consideration the criteria and weighting below. The process will include a review of the qualifications, interviews with short-listed Candidates, and a review of the cost proposals.

Step 1 – Review of Qualifications

After each member of the Evaluation committee has independently scored each statement of qualifications and proposals, an initial composite ranking will be developed which indicates the collective ranking of all candidates submitting. Based upon this initial composite ranking a short-list of the top ranked candidates will be made and those candidates will be invited to the interview/cost proposal evaluation phase for further consideration. It is anticipated the short-list will comprise of the top three ranked candidates, however, the City reserves the right to increase or decrease the number of candidates selected to the short-list. If in the opinion of the Evaluation Committee there is a clear and obvious choice as to the most qualified candidate based upon the information submitted in the Statement of Qualifications, the Evaluation Committee may select and make a recommendation for the Firm for the project based upon the Evaluation Committee's collective ranking of the candidates after this initial step in the evaluation process and without conducting interviews.

a. Company/Firm Overview and Project Experience	25 points
b. Qualifications of Personnel	30 points
c. Management Processes and Approach	35 points
d. Overall Quality, Content and Completeness of Response	10 points
e. Cost Proposal	20 points
Total – 120 points	

Step 2 – Interviews

If in the opinion of the Evaluation Committee interviews are necessary, Candidates selected to the short-list will be required to interview with the Evaluation Committee. Interviews will be conducted on the dates specified in the RFQ/P (see Timelines). Exact dates and times will be coordinated with the short-listed Candidates. All candidates must be prepared to be available locally on the specified date(s) for an interview. Candidates may be requested to provide additional information to the Evaluation Committee to further clarify or supplement information in their Statement of Qualifications.

a. Company/Firm Overview and Project Experience	10 points
b. Qualifications of Personnel	20 points

- | | |
|---|-----------|
| c. Management Processes and Approach | 20 points |
| d. Overall Quality, Content and Preparedness, Other Factors | 10 points |
| Total – 60 points | |

The final interview phase will be scored by the Evaluation Committee and will be tabulated as above and then converted to a ranking order. All Evaluation Committee members' individual rank order scores will be tabulated and a final composite ranking of the Candidates developed which indicates the evaluation committee's collective final ranking of the Candidates. However, the Committee may conduct deliberations as necessary to obtain consensus on the preferred candidate to be selected for this project, and therefore the scoring and ranking will not necessarily be the sole deciding factor in determining the preferred candidate. The Candidate determined by the Committee as being the most qualified candidate and providing the best value to the City will be identified as the preferred Construction Manager for the project and contract negotiations will begin with this Candidate. City staff will then begin to negotiate the final contract with the selected Firm. In the event a mutually agreed upon contract cannot be negotiated, staff will then enter into contract negotiations with the next highest ranked Firm, and so on until a mutually agreeable contract can be negotiated. Final contract approval will be made by the City Council.

Supplemental Information

- Exhibit 1 – Project Schedule
- Exhibit 2 – Attention Proposer Document
- Exhibit 3 – Affidavit of Non-Collusion
- Exhibit 4 – Immigration Affidavit
- Exhibit 5 – Affidavit Acceptance of Anti-Discrimination Against Israel Act
- Exhibit 6 – Sample Contract AIA A133 & A201
- Exhibit 7 – General Requirements Expense Schedule template
- Exhibit 8 – Reimbursable Staff Estimate template
- Exhibit 9 – Insurance Requirements
- Exhibit 10 – Bond Requirements

Questions

Thank you for your interest in providing these services. Any questions regarding this RFQ/P should be directed to Jennifer Gerlach at jennifer@project-advocates.com.

Jennifer Gerlach, P.E. – Partner



PROJECT ADVOCATES
Your Project. Our Passion.

5821 W. 137th Street, Overland Park, KS 66223

Jennifer@Project-Advocates.com

Cell: 913-201-8592

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HOURLY RATE SCHEDULE

Independence Fire Stations

Independence, Missouri

<u>Title</u>	<u>¹Hourly Rate</u>	<u>Overtime</u>	<u>Doubletime</u>
² Project Executive	\$ 160.00		
² Project Manager	\$ 120.00		
² Superintendent (Station #8, #11)	\$ 120.00		
² Engineer (Station #8, #11)	\$ 90.00		
² Superintendent (Station #5)	\$ 120.00		
² Engineer (Station #5)	\$ 90.00		
² Assistant Superintendent/Engineer	\$ 100.00		
² Quality Control Manager	\$ 130.00		
² Safety Manager	\$ 130.00		
² Lean Manager	\$ 120.00		
² VDC Manager	\$ 120.00		
² BIM / VDC Engineer	\$ 95.00		
³ Intern	\$ 50.00		
² Accountant	\$ 90.00		
² Cost Engineer	\$ 100.00		
² Preconstruction Manager	\$ 160.00		
² Estimator	\$ 90.00		
² Purchasing Manager	\$ 130.00		
² Purchasing Agent	\$ 90.00		
² IT Engineer	\$ 63.00		
² Turner Support Services (TSS)	\$ 50.00		
² Clerical Staff	\$ 35.00		
³ Carpenter Superintendent	\$ 104.55	\$ 156.83	\$ 209.10
³ Carpenter Foreman	\$ 99.45	\$ 149.18	\$ 198.90
³ Carpenter	\$ 94.35	\$ 141.53	\$ 188.70
³ Laborer General Foreman	\$ 81.54	\$ 122.31	\$ 163.08
³ Laborer Foreman	\$ 76.44	\$ 114.66	\$ 152.88
³ Laborer	\$ 71.34	\$ 107.01	\$ 142.68

1. Hourly rates are fixed, non-audible rates which include salaries, benefits, all payroll taxes, and all payroll insurances.
2. These are salary employees and rates are valid through 12/31/2025.
3. These are hourly employees, overtime and double time rates will apply. Rates are valid until 12/31/2025.

AIA[®] Document A133[®] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the 7th day of April in the year 2025
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

The City of Independence
Procurement Division
111 E. Maple, PO Box 1019
Independence, MO 64051-0519

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223

and the Construction Manager:
(Name, legal status, address, and other information)

Turner Construction Company
1220 Washington Street, STE 100
Kansas City, MO 64105

for the following Project:
(Name, location, and detailed description)

Independence Fire Stations
111 E Maple Ave
Independence, MO 64050

The Architect:
(Name, legal status, address, and other information)

WSKF, Inc
110 Armour Road
North Kansas City, MO 64116

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

The Owner and Construction Manager agree as follows.

Init.

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User Notes:

(1649693238)

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

New construction of Fire Station 8 along with a Training/Storage facility; reconstruction of Fire Station 5; new construction of Fire Station 11; and site infrastructure and development for all projects.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

New construction of Fire Stations 8 plus Training/Storage, and Stations 5 and 11, and sitework

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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(Provide total and, if known, a line item breakdown.)

TBD

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

(Identify any requirements for fast-track scheduling or phased construction.)

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223

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User Notes:

(1649693238)

ATT: Jennifer Gerlach
(913) 201-8592
jennifer@project-advocates.com

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

WSKF, Inc
110 Armour Road
North Kansas City, MO 64116
and their sub-consultants

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

McClure
11031 Strang Line Road
Lenexa, KS 66215

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Landscape Architect:
McClure
11031 Strang Line Road
Lenexa, KS 66215

Structural Engineer:
Leigh & O'Kane LLC
209 Douglas
Lee's Summit, MO 64063

M/E/P/FP Engineer:
PKMR Engineering
13300 W 98th St

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(1649693238)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

WSKF, Inc
ATTN: Dalyn Novak
110 Armour Road
North Kansas City, MO 64116
Email Address: DNovak@wskfarch.com

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

§ 1.1.15 Other Initial Information on which this Agreement is based:

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and

Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager, and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the

further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development, and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use, and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to

the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provides reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with

reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance, and accounting services, including auditing services, which may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Compensation for Preconstruction Services shall be in the lump sum amounts of:

Station 8 & Training Center: \$30,000,

Station 11: \$20,000,

Station 5: \$15,000

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Rates shall be as set forth in Exhibit D

Individual or Position	Rate
------------------------	------

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

Init.

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User Notes:

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§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twenty four (24) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable no later than thirty (30) days upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

2.45%

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

2.35%

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

N/A

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed One Hundred Percent (100%) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

In the event the Construction Manager does not achieve Substantial Completion within the Contract Time the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, the liquidated damages amount set forth in , Exhibit A, Guaranteed Maximum Price Amendment with the understanding the payment of such liquidated damages shall constitute the Owner's sole remedy for Construction Manager's lateness of any kind and any inability to use the Project and that such liquidated damage provision shall survive the termination, abandonment or expiration of this Agreement.

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by an Owner approved Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Owner approved adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be approved by the owner in writing and equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops pursuant to Construction Manager's Hourly Rates as set forth in Exhibit D.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval pursuant to Construction Manager's Hourly Rates as set forth in Exhibit D.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, pursuant to Construction Manager's Hourly Rates as set forth in Exhibit D. (Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops, or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

(Paragraph deleted)

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, which are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery,

equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, which are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

(Paragraph deleted)

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

(Paragraph deleted)

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;

- .8 Costs, other than costs included in Change Orders approved by the Owner, which would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 All cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall be accrued to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then shall have the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions, insurance requirements, and bond requirements of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The Owner and the Construction Manager acknowledge that they have or will negotiate and

establish certain rates, multipliers and/or unit prices as the approved Costs for the certain elements of the Work, in lieu of actual costs. Any such rates, multipliers and/or unit prices will be set forth in the Contract Documents (or otherwise memorialized by the parties), and audits will be limited to confirming that such rates, multipliers and/or unit prices have been correctly applied. The terms of this paragraph shall govern over any inconsistent provision of the Contract Documents.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the amount certified to the Construction Manager no later than the thirtieth (30th) day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall send notification and supporting documentation to the Architect and the Owner.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage

obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1** the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3** a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Owner's Representative will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase

services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Article 15 of AIA Document A201–2017
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation exclusively in the Circuit Court of Jackson County, Missouri, at Independence or the Federal District Court for the Western District of Missouri, as appropriate. The Parties submit to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceeds the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceeds the compensation set forth in Section 5.1. The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited lost profits, future earnings, or other operational costs.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited to lost profits, future earnings, or other operational costs.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders, and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders, or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order, or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order, or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2

Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited to lost profits, future earnings, or other operational costs.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

(Paragraphs deleted)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased, with approval of the Owner, as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00) for each occurrence and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars and Zero Cents(\$1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) each accident, Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) each employee, and Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00 per claim and Two Million Dollars and Zero Cents(\$2,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Umbrella liability insurance to follow form over the Construction Manager's primary general liability, automobile liability and employer's liability insurance policies with limits of not less than Ten Million Dollars (\$10,000,000) inclusive per occurrence per project.

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

- .6 Other Exhibits:
(Check all boxes that apply.)

☐ AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

Exhibit D, Construction Manager's Hourly Rates

☐ Supplementary and other Conditions of the Contract:

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda

relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INDEMNITIES AND LIMITATIONS

§ 16.1 In no event shall the Owner be liable to Construction Manager for special, indirect, or consequential damages, except those caused by the Owner's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the Owner shall be limited to the amount of money to be paid by the Owner under this contract.

§ 16.4 All the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

ARTICLE 17 CONSTRUCTION WORK COMPLETED BY THE CONSTRUCTION MANAGER

§ 17.1 If The Construction Manager completes any construction Work, the Construction Manager shall complete the following:

§ 17.1.1 Performance and Labor and Material Payment Bond. If the Construction Manager performs the construction of the Work that is estimated to exceed \$50,000.00, the Construction Manager shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the Owner and on the forms approved by the Owner. Each bond shall be in the total amount of the Work conditioned upon the full and faithful performance of all major terms and conditions of this Work and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Contract and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the Owner shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Construction Manager shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the Owner. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.

§ 17.1.2 Prevailing Wage. If construction Work completed by the Construction Manager is estimated to exceed \$75,000, not less than the prevailing hourly rate of wages for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri, shall be paid to all workers performing work under this contract. The penalties forfeited to the City for violations of the Prevailing Wage Act for each workman employed, for each calendar day, or portion thereof, such workman is paid less than their said stipulated rates for any work done under said Contract shall be one hundred dollars (\$100) per worker, per day.

§ 17.1.3 OSHA Requirements pursuant to Section 292.675 RSMo.

§ 17.1.3.1 Any contractor for any public body for purposes of construction of public works and any subcontractor (any person entering into a subcontract with a contractor for construction of public works which employs "on-site employees" for purposes of completion of the contract) to such contractor shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program

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User Notes:

(1649693238)

approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees who have not previously completed the program are required to complete the program within sixty days of beginning work on such construction project.

§ 17.1.3.2 Any employee found on a work site subject to this section without documentation of the successful completion of the required course shall be afforded twenty days to produce such documentation before being subject to removal from the project.

§ 17.1.3.3 If the Construction Manager complied construction Work and any subcontractor under The Construction Manager shall require all on-site employees to complete the above referenced ten-hour training program or such employees must hold documentation of prior completion of the program. Said Construction Manager and subcontractor(s) shall comply with Section 292.675, RSMo., in all respects as required in relation to work done pursuant to this contract.

§ 17.1.3.4 The Construction Manager shall forfeit as a penalty to the public body on whose behalf the contract is made or awarded, two thousand five hundred dollars (\$2,500.00) plus one hundred dollars (\$100.00) for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period referenced in subparagraphs (a) and (b) above have elapsed.

§ 17.1.3.5 The public body awarding the Contract shall withhold and retain therefrom all sums and amounts due and owing as a result of any violations of this section when making payments to the contractor under the contract. The Construction Manager may withhold from any subcontractor sufficient sums to cover any penalties the public body has withheld from the Construction Manager resulting from the subcontractor's failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the Construction Manager may recover the amount of the penalty resulting from the fault of the subcontractor in an action maintained in the circuit court in the county in which the public works project is located from the subcontractor.

§ 17.1.3.6 "On-site employees" are defined as laborers, workmen, drivers, equipment operators, and craftsmen employed by contractors and subcontractors to be directly engaged in construction at the site of the public works. "Directly engaged in construction" shall mean work performed in the actual erection of the structure or completion of the improvement constituting the public works. In addition, employees working at a nearby or adjacent facility used by the contractor or subcontractor for construction of the public works shall be deemed "on-site employees." Persons engaged solely in the transportation of materials, fuel, or equipment to the site of the public works shall not be deemed to be "directly engaged in construction."

ARTICLE 18 MISSOURI IMMIGRATION LAW AFFIDAVIT

§ 18.1 After January 1, 2009, Company takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. Company will provide a statement that the Company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

ARTICLE 19 GOVERNING LAW

§ 19.1 This Contract shall be governed by the laws of the State of Missouri. The Owner and Construction Manager agree that the performance of this Contract will be deemed to have occurred in the State of Missouri and that Construction Manager's performance under this Contract will be deemed the transaction of business in

Missouri. Jurisdiction and venue for any claim or cause of action arising under this Contract shall be exclusively in the Circuit Court of Jackson County, Missouri, at Independence or the Federal District Court for the Western District of Missouri, as appropriate. The Parties submit to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

ARTICLE 20 ANTI-DISCRIMINATION AGAINST ISRAEL ACT

§ 20.1 If this contract has a total potential value of \$100,000 or more and Construction Manager has 10 or more employees, the following applies: Pursuant to Section 34.600, RSMo, Construction Manager agrees to comply with Missouri law regarding the Anti-Discrimination Against Israel Act, and execution of this Contract constitutes Construction Manager's certification of compliance with the Anti-Discrimination Against Israel Act, including that it is not currently engaged in, and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in, or with, Israel companies authorized by, licensed by, or organized under, the laws of the State of Israel; or persons or entities doing business in the State of Israel.

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

Additions and Deletions Report for

AIA® Document A133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:53:57 ET on 03/27/2025.

PAGE 1

AGREEMENT made as of the 7th day of April in the year 2025

...

(Name, legal status, address, and other information)

The City of Independence
Procurement Division
111 E. Maple, PO Box 1019
Independence, MO 64051-0519

...

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223

...

Turner Construction Company
1220 Washington Street, STE 100
Kansas City, MO 64105

...

Independence Fire Stations
111 E Maple Ave
Independence, MO 64050

...

(Name, legal status, address, and other information)

WSKF, Inc
110 Armour Road
North Kansas City, MO 64116

PAGE 2

New construction of Fire Station 8 along with a Training/Storage facility; reconstruction of Fire Station 5;
new construction of Fire Station 11; and site infrastructure and development for all projects.

...

New construction of Fire Stations 8 plus Training/Storage, and Stations 5 and 11, and sitework
PAGE 3

TBD

...

TBD

...

TBD

...

TBD

...

TBD

...

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223
PAGE 4

ATT: Jennifer Gerlach
(913) 201-8592
jennifer@project-advocates.com

...

WSKF, Inc
110 Armour Road
North Kansas City, MO 64116
and their sub-consultants

...

McClure
11031 Strang Line Road
Lenexa, KS 66215

...

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Landscape Architect:
McClure
11031 Strang Line Road

Lenexa, KS 66215

Structural Engineer:
Leigh & O’Kane LLC
209 Douglas
Lee’s Summit, MO 64063

M/E/P/FP Engineer:
PKMR Engineering
13300 W 98th St
Lenexa, KS 66215

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WSKF, Inc
ATTN: Dalyn Novak
110 Armour Road
North Kansas City, MO 64116
Email Address: DNovak@wskfarch.com

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§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing ~~written building~~ information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, ~~reliance, and exchange of digital data, including building information models for the Project and~~ exchange of digital data.

...

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, ~~Construction Manager~~ Manager, and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect’s review and the Owner’s approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design ~~Development~~ Development, and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect’s review and the Owner’s approval.

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§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect ~~discover~~ discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

PAGE 10

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use, and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

PAGE 11

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner ~~provide~~provides reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

...

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal ~~limitations~~limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, ~~pavements~~pavements, and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, ~~boundaries~~boundaries, and contours of the site; locations, ~~dimensions~~dimensions, and other necessary data with respect to existing buildings, other ~~improvements~~improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

PAGE 12

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, ~~insurance~~insurance, and accounting services, including auditing services, ~~that~~which may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

...

Compensation for Preconstruction Services shall be in the lump sum amounts of:

Station 8 & Training Center: \$30,000,

Station 11: \$20,000,

Station 5: \$15,000

...

Rates shall be as set forth in Exhibit D

...

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, ~~assessments~~assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twenty four (24) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

PAGE 13

§ 5.2.2 Payments are due and payable no later than thirty (30) days upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered

below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

2.45%

...

2.35%

...

N/A

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed percent (—%) One Hundred Percent (100%) of the standard rental rate paid at the place of the Project.

...

In the event the Construction Manager does not achieve Substantial Completion within the Contract Time the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, the liquidated damages amount set forth in , Exhibit A, Guaranteed Maximum Price Amendment with the understanding the payment of such liquidated damages shall constitute the Owner's sole remedy for Construction Manager's lateness of any kind and any inability to use the Project and that such liquidated damage provision shall survive the termination, abandonment or expiration of this Agreement.

PAGE 14

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by an Owner approved Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

...

§ 6.3.2 ~~Adjustments~~ Owner approved adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

...

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be approved by the owner in writing and equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

PAGE 15

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site ~~workshops~~ workshops pursuant to Construction Manager's Hourly Rates as set forth in Exhibit D.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior ~~approval~~approval pursuant to Construction Manager's Hourly Rates as set forth in Exhibit D.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, ~~and limited to the personnel and activities listed below:~~
pursuant to Construction Manager's Hourly Rates as set forth in Exhibit D. (Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

...

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, ~~workshops~~workshops, or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 ~~Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.~~

...

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, ~~equipment~~equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, ~~that~~which are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

PAGE 16

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, ~~that~~which are related to the Work and for which the Construction Manager is liable.

...

§ 7.6.5.1 ~~The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.~~

...

~~§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.~~

PAGE 18

- .8 Costs, other than costs included in Change Orders approved by the Owner, ~~that~~ which would cause the Guaranteed Maximum Price to be exceeded; and

...

~~§ 8.1 Cash~~ All cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall ~~accrue~~ be accrued to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

...

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from ~~which~~, which the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then ~~has~~ shall have the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

...

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment ~~provisions~~ provisions, insurance requirements, and bond requirements of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

...

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports,

correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. The Owner and the Construction Manager acknowledge that they have or will negotiate and establish certain rates, multipliers and/or unit prices as the approved Costs for the certain elements of the Work, in lieu of actual costs. Any such rates, multipliers and/or unit prices will be set forth in the Contract Documents (or otherwise memorialized by the parties), and audits will be limited to confirming that such rates, multipliers and/or unit prices have been correctly applied. The terms of this paragraph shall govern over any inconsistent provision of the Contract Documents.

PAGE 19

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the amount certified to the Construction Manager ~~not no~~ later than the thirtieth (30th) day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

...

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall ~~submit~~ send notification and supporting documentation to the Architect, Architect and the Owner.

PAGE 22

§ 12.1.2 The ~~Architect~~ Owner's Representative will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

PAGE 23

[X] Litigation in a court of competent jurisdiction

...

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation ~~in a court of competent jurisdiction, exclusively in the Circuit Court of Jackson County, Missouri, at Independence or the Federal District Court for the Western District of Missouri, as appropriate.~~ The Parties submit to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

...

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section ~~exceed~~ exceeds the compensation set forth in Section 5.1.

...

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section ~~exceed~~ exceeds the compensation set forth in Section 5.1. The Owner shall not be liable for special,

indirect, or consequential damages, including, but not limited lost profits, future earnings, or other operational costs.

PAGE 24

The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited lost profits, future earnings, or other operational costs.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase ~~orders~~orders, and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase ~~orders~~orders, or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase ~~order~~order, or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase ~~order~~order, or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

PAGE 25

The Owner shall not be liable for special, indirect, or consequential damages, including, but not limited lost profits, future earnings, or other operational costs.

...

~~§ 13.2.3 Termination by the Owner for Convenience~~

~~If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:~~

~~(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)~~

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be ~~increased~~increased, with approval of the Owner, as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

...

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, ~~assigns~~assigns, and legal representatives to covenants, agreements, and obligations contained in the

Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

PAGE 26

§ 14.3.1.1 Commercial General Liability with policy limits of not less than (~~\$ —~~) ~~for each occurrence and~~ (~~\$ —~~) One Million Dollars and Zero Cents (\$1,000,000.00) for each occurrence and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than (~~\$ —~~) One Million Dollars and Zero Cents (\$1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (~~\$ —~~) ~~each accident,~~ (~~\$ —~~) ~~each employee, and~~ (~~\$ —~~) Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) each accident, Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) each employee, and Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (~~\$ —~~) ~~per claim and~~ (~~\$ —~~) One Million Dollars and Zero Cents (\$1,000,000.00) per claim and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate.

...

Umbrella liability insurance to follow form over the Construction Manager's primary general liability, automobile liability and employer's liability insurance policies with limits of not less than Ten Million Dollars (\$10,000,000) inclusive per occurrence per project.

...

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella ~~policies~~ policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

PAGE 27

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with ~~a building information modeling exhibit, AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit,~~ if completed, or as otherwise set forth below:

(If other than in accordance with ~~a building information modeling exhibit, AIA Document E203–2013,~~ insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

...

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, ~~representations~~ representations, or agreements,

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User Notes:

(1649693238)

either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

...

- .5 ~~Building Information Modeling Exhibit, if completed:~~ AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

...

Exhibit D, Construction Manager's Hourly Rates

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ARTICLE 16 INDEMNITIES AND LIMITATIONS

§ 16.1 In no event shall the Owner be liable to Construction Manager for special, indirect, or consequential damages, except those caused by the Owner's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the Owner shall be limited to the amount of money to be paid by the Owner under this contract.

§ 16.4 All the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.

ARTICLE 17 CONSTRUCTION WORK COMPLETED BY THE CONSTRUCTION MANAGER

§ 17.1 If The Construction Manager completes any construction Work, the Construction Manager shall complete the following:

§ 17.1.1 Performance and Labor and Material Payment Bond. If the Construction Manager performs the construction of the Work that is estimated to exceed \$50,000.00, the Construction Manager shall furnish a Performance Bond and a Labor and Materials Payment Bond with surety approved by the Owner and on the forms approved by the Owner. Each bond shall be in the total amount of the Work conditioned upon the full and faithful performance of all major terms and conditions of this Work and payment of all labor and material suppliers. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Contract and the surety bond(s) hereto attached for its faithful performance and payment of labor and material suppliers, the Owner shall deem the surety or sureties upon such bond(s) to be unsatisfactory, or if, for any reason, such bond(s) ceases to be adequate to cover the performance of the work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the Owner to do so, furnish an additional bond or bonds, in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event no further payment to the Construction Manager shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work and the payment of labor and material suppliers shall be furnished in a manner and form satisfactory to the Owner. The corporate surety on any performance or payment bond must be licensed by the State of Missouri and if the required bond exceeds \$25,000.00 must be listed in United States Treasury Circular 570.

§ 17.1.2 Prevailing Wage. If construction Work completed by the Construction Manager is estimated to exceed \$75,000, not less than the prevailing hourly rate of wages for work of a similar character in this locality, as established and amended at any time by the Department of Labor and Industrial Relations of the State of Missouri, shall be paid to all workers performing work under this contract. The penalties forfeited to the City for violations of the Prevailing Wage Act for each workman employed, for each calendar day, or portion thereof, such workman is paid less than their said stipulated rates for any work done under said Contract shall be one hundred dollars (\$100) per worker, per day.

§ 17.1.3 OSHA Requirements pursuant to Section 292.675 RSMo.

§ 17.1.3.1 Any contractor for any public body for purposes of construction of public works and any subcontractor (any person entering into a subcontract with a contractor for construction of public works which employs "on-site employees" for purposes of completion of the contract) to such contractor shall provide a ten-hour Occupational Safety and Health Administration (OSHA) construction safety program for their on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the department which is at least as stringent as an approved OSHA program, unless such employees have previously completed the required program. All employees who have not previously completed the program are required to complete the program within sixty days of beginning work on such construction project.

§ 17.1.3.2 Any employee found on a work site subject to this section without documentation of the successful completion of the required course shall be afforded twenty days to produce such documentation before being subject to removal from the project.

§ 17.1.3.3 If the Construction Manager complied construction Work and any subcontractor under The Construction Manager shall require all on-site employees to complete the above referenced ten-hour training program or such employees must hold documentation of prior completion of the program. Said Construction Manager and subcontractor(s) shall comply with Section 292.675, RSMo., in all respects as required in relation to work done pursuant to this contract.

§ 17.1.3.4 The Construction Manager shall forfeit as a penalty to the public body on whose behalf the contract is made or awarded, two thousand five hundred dollars (\$2,500.00) plus one hundred dollars (\$100.00) for each employee employed by the contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. The penalty shall not begin to accrue until the time period referenced in subparagraphs (a) and (b) above have elapsed.

§ 17.1.3.5 The public body awarding the Contract shall withhold and retain therefrom all sums and amounts due and owing as a result of any violations of this section when making payments to the contractor under the contract. The Construction Manager may withhold from any subcontractor sufficient sums to cover any penalties the public body has withheld from the Construction Manager resulting from the subcontractor's failure to comply with the terms of this section. If the payment has been made to the subcontractor without withholding, the Construction Manager may recover the amount of the penalty resulting from the fault of the subcontractor in an action maintained in the circuit court in the county in which the public works project is located from the subcontractor.

§ 17.1.3.6 "On-site employees" are defined as laborers, workmen, drivers, equipment operators, and craftsmen employed by contractors and subcontractors to be directly engaged in construction at the site of the public works. "Directly engaged in construction" shall mean work performed in the actual erection of the structure or completion of the improvement constituting the public works. In addition, employees working at a nearby or adjacent facility used by the contractor or subcontractor for construction of the public works shall be deemed "on-site employees." Persons engaged solely in the transportation of materials, fuel, or equipment to the site of the public works shall not be deemed to be "directly engaged in construction."

ARTICLE 18 MISSOURI IMMIGRATION LAW AFFIDAVIT

§ 18.1 After January 1, 2009, Company takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will

provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. Company will provide a statement that the Company has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.

ARTICLE 19 GOVERNING LAW

§ 19.1 This Contract shall be governed by the laws of the State of Missouri. The Owner and Construction Manager agree that the performance of this Contract will be deemed to have occurred in the State of Missouri and that Construction Manager's performance under this Contract will be deemed the transaction of business in Missouri. Jurisdiction and venue for any claim or cause of action arising under this Contract shall be exclusively in the Circuit Court of Jackson County, Missouri, at Independence or the Federal District Court for the Western District of Missouri, as appropriate. The Parties submit to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

ARTICLE 20 ANTI-DISCRIMINATION AGAINST ISRAEL ACT

§ 20.1 If this contract has a total potential value of \$100,000 or more and Construction Manager has 10 or more employees, the following applies: Pursuant to Section 34.600, RSMo, Construction Manager agrees to comply with Missouri law regarding the Anti-Discrimination Against Israel Act, and execution of this Contract constitutes Construction Manager's certification of compliance with the Anti-Discrimination Against Israel Act, including that it is not currently engaged in, and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in, or with, Israel companies authorized by, licensed by, or organized under, the laws of the State of Israel; or persons or entities doing business in the State of Israel.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Matthew Makes, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:53:57 ET on 03/27/2025 under Order No. 4104247589 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Independence Fire Stations
111 E Maple Ave
Independence, MO 64050

THE OWNER:

(Name, legal status and address)

The City of Independence
Procurement Division
111 E. Maple, PO Box 1019
Independence, MO 64051-0519
hereinafter referred to as "Owner"

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223
Hereinafter referred to as "OR"

THE ARCHITECT:

(Name, legal status and address)

WSKF, Inc
110 Armour Road
North Kansas City, MO 64116

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	OWNER
3	CONTRACTOR
4	ARCHITECT
5	SUBCONTRACTORS
6	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
7	CHANGES IN THE WORK
8	TIME

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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User Notes:

9	PAYMENTS AND COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification with both Parties signing said Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for and reasonably inferable in the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications,. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.5.3 Except as otherwise provided herein, Instruments of Service, including documents, drawings, and

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specifications prepared by Architect as part of the services shall become the property of City, provided Architect has the unrestricted right to their use. Notwithstanding the foregoing, City accepts that any re-use of the documents or intellectual property shall be at the City's sole risk and liability.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's

request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

§ 2.4.1 Termination for Breach. If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the

Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4.2 Termination for Convenience. The Owner shall have the right at any time by written notice to Contractor to terminate and cancel the Contract, without cause, for the convenience of the Owner, and Contractor shall immediately stop work. In such event Owner shall not be liable to Contractor except for payment for demonstrable costs incurred by the Contractor due to the termination, including demobilization and termination costs, and actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of this Contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Further, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under the Contract shall, at the option of the Owner, become its property. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Initial Decision Maker and the Initial Decision Maker may, pursuant to Section 9.5.1 and to the extent permitted by 34.057, RSMo., withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies or performing such work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Initial Decision Maker, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor and all persons used by the Contractor to provide services under the Contract Documents shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Architect in the administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, to the extent permitted by law, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Nothing in these General Conditions shall be construed to relieve a Subcontractor or supplier of its responsibility for, and control over, the safety over its employees and sub-subcontractors.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor is responsible for the management of the Project to avoid strikes, work stoppages, labor disputes or any disturbances by workers employed by the Contractor or its subcontractors on or in connection with the Work or the Project or the location thereof that will delay completion of the Project.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, renovation/remodel use, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Coordination of Utilities.

Contractor shall be responsible for the coordination of public and private utilities for the project, including electricity, water, sewer, storm water, natural gas, telephone, internet, and cable television. The Contractor will initiate contact with the representatives of the utilities when the Work has begun and will maintain liaison with them to ensure that all preparatory on-site and off-site work required by Contractor and/or the utilities and the associated inspections and permitting are coordinated so as to avoid negatively impacting the Construction Schedule. The Owner shall be responsible for payment of all utility installation fees. The Owner will advise the Contractor of the low voltage providers, and the Contractor will provide the necessary coordination to ensure the orderly preparations for and installation of the low-voltage services. All public and private utility fees required for the installation of utilities shall be paid for by the Owner.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order and approved by the Owner. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent Superintendent and Project Manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, within 14 days after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed Superintendent and Project Manager. Within 7 days of receipt of the information, the Architect or Owner may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed Superintendent or (2) requires additional time for review. Failure of the Architect or Owner to provide notice within the 7-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not assign to the project a proposed Superintendent or Project Manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the Superintendent or Project Manager without the Owner's written consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, prior to first pay application submission, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at monthly intervals, or more frequently as required by the conditions of the Work and Project. The Contractor acknowledges that the Project Schedule accounts for normal weather delays as defined by the National Oceanic and Atmospheric Administration (NOAA) for the local Project area in the last 10 years in order to achieve the scheduled date of Substantial Completion.

§ 3.10.1.1 The Project Schedule shall be a valid CPM schedule generated by a commercially available CPM scheduling software application for the duration of the Project. The Project Schedule shall begin with the Notice to Proceed, and end with the Final Completion Date. The Project Schedule shall include and display, as a minimum, dates for submissions and processing of submittals, procurement, all work activities, commissioning, Owner activities and closeout activities. It shall be organized by Phase, Area, or other logical sequence. Activities shall be logically connected, and the Project Schedule shall include the total float for each activity and a clearly identifiable chain of critical-path (zero-float) activities. The Project Schedule shall account for holidays and other non-workdays and shall conform to industry standards for CPM scheduling. Artificial constraints and fixed milestone dates shall not be used, except for dates which are stipulated in the Agreement.

§ 3.10.1.2 The initial (Baseline) Project Schedule shall be submitted for approval within fifteen (15) days of receipt of Notice to Proceed and shall include all early and late completion dates by activities, and activity durations. Valid monthly updates utilizing industry-standard updating procedures shall be submitted a minimum of two (2) working days before each Application for Payment. Updates shall accurately reflect the progress of the Work, any Change Order Work for which additional contract days were allowed, and any suspensions of Work directed by the Owner. Updates shall show early and late start and completion dates, actual start and completion dates of all completed activities, percentage of completion, and remaining working days for each activity in progress. The Contractor shall provide Project Schedule updates to the Owner in the original software format and PDF format.

§ 3.10.1.3 The Contractor shall promptly make any corrections to the Project Schedule reported by the Owner and shall resubmit a corrected Project Schedule within 5 days, if so directed by the Owner. Weather days beyond those anticipated shall be tracked separately, and not identified as activities in the Project Schedule. Time extensions resulting from unresolved claims or voluntary suspensions by the Contractor shall not be included in the Project Schedule. Project Schedules shall not contain negative float.

§ 3.10.1.4 The Contractor shall provide an as-built Project Schedule at Final Completion of the Work.

§ 3.10.1.5 The Contractor shall prepare recovery schedules as requested by Architect or Owner.

§ 3.10.2 The Contractor, prior to first pay application submission, shall submit a submittal schedule for the Architect's or Owner's approval. The Architect's or Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

(Paragraph deleted)

§ 3.10.3 The Contractor shall perform the Work and in all other respects, conform with the most recent Project Schedule submitted to the Owner and Architect. Contractor and Owner agree that resubmitted schedules are submitted to Owner for information purposes, and not approved unless such resubmitted schedule shall change the Contract time. Notwithstanding the foregoing, approval by either or both of the Architect and Owner is not intended nor shall same be construed, inferred, or result in either or both of the Owner or Architect being responsible or liable for means, methods, techniques, or any other respect of the obligations, responsibilities, or liabilities of the Contractor hereunder.

§ 3.10.4 Each update to the Project Schedule shall (i) provide a graphic representation of all activities and events that will occur during performance of the Work (ii) identify each major task of construction and the anticipated start and anticipated completion date, and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the work. If requested by the Owner or Architect, the Contractor will update the Project Schedule.

§ 3.10.5 Contractor shall provide a short interval schedule that includes, at a minimum, two (2) weeks in the past and three (3) weeks ahead of the current date. Short Interval schedule to be provided prior to all Owner, Architect and Contractor meetings.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, electronically and at the Project site, the Contract Documents, including approved Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in

electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) an approved Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect and Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, and its employees elected or appointed officials and officers from and against claims, third party claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent or wrongful acts or omissions or a breach of this Contract by the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In no event shall the Owner be liable to the Contractor for special, indirect, or consequential damages. The maximum liability of the Owner shall be limited to the amount of money to be paid or received by the Owner under this Contract.

§ 3.18.4 The Contractor shall indemnify and hold the Owner harmless from all wages or overtime compensation due its employees in rendering services pursuant to this contract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law, or any other federal or state law.

§ 3.18.5 The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation, or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against Owner, its elected or appointed officials, officers, agents and employees, for which indemnification is sought.

§ 3.18.6 The indemnification obligations herein shall not negate, abridge, or reduce in any way any additional indemnification rights of the Owner, its elected or appointed officials, officers, agents and employees, which are otherwise available under statute, or in law or equity.

§ 3.18.7 All the provisions in the Contract Documents are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes. Further, the Contract is not intended to act as a waiver or limitation of Owner, or any of its officer's, agent's or

employee's rights and/or defenses regarding sovereign or any other immunity or defense under Federal Law, Missouri Law or Municipal Regulation.

§ 3.18.8 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.9 Provided that required progress payments are made in a timely manner, the Contractor agrees to keep the Owner's property free and clear of liens, lien claims or stop-work notices relating to the Work under this Agreement. The Contractor agrees to indemnify, defend, and hold the Owner harmless from all liens, lien claims, and stop-work notices recorded, asserted or filed on the Work or on any property on which the Work is performed, on account of any labor performed or materials furnished by the Contractor or its Subcontractors or suppliers in connection with the Work. The Contractor's obligation hereunder includes paying for any attorney's fees and court and other costs incurred by the Owner in connection with such liens and lien claims.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect shall administer the performance of the Work. The Architect will advise the Owner and Contractor with regard to matters set forth in the Drawings and Specifications. In addition to any specific responsibilities assigned elsewhere in the Contract Documents, the Architect shall decide any and all questions which may arise as to the rate of progress of the Work. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Section 4.1.2.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for

acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due to the Contractor and will issue Certificates for Payment in such amounts. All payments to the Contractor shall be subject to approval by the Owner.

§ 4.2.6 The Architect or Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect or Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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§ 4.2.11 The Architect or Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect or Initial Decision Maker will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect Initial Decision Maker will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's recommendations on matters relating to aesthetic effect as approved by the Owner will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued and approved by the Owner before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be

allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner pursuant to Sections 14.2 and 14.3 and only for those subcontract agreements that the Owner accepts in writing by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect or Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) force majeure; or (6) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended to the extent the Contract Time is effected by the delay.

§ 8.3.1.1 Elements constituting force majeure are: civil disorder, inability to procure materials for reasons beyond the control of the Contractor and other than by reason of failure to make payment, failure of one or more utilities, restrictive governmental law or regulations by imposition of enforcement, government action, riot, insurrection, war, fuel shortage, act of God, undue or unusual delay in acting or failure to act any agency or any employee thereof, or any other governmental entity whose action may be required for any purpose, or similar events or conditions beyond the reasonable control of the Owner.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 In addition to an extension of time, Contractor shall be entitled to an adjustment to the Contract Sum for delays set in 8.3.1(1). For all other delays set forth in 8.3.1 the Contractor will be entitled to receive an adjustment to the Contract Sum subject to Owner approval, which shall not be unreasonably withheld.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Contract Documents and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

The Contractor shall submit to the Architect and the Owner for their approval, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.2.1 The Schedule of Values shall be the budgets for the direct cost of each work item. The Original Schedule of Values shall remain unchanged during the project. The Original Schedule of Values shall be a breakdown of all direct costs of construction, net of contractor general conditions, overhead, and profit. The SOV shall include a single line each for General Conditions, Allowances, Contractor Contingency, Overhead, and Profit.

9.2.3 Adjustments to the Schedule of Values may be made only for Change Orders and adjustments to budgeted items requested by the Contractor and Approved by the Owner. Contractor shall maintain a ledger listing each change to each line item and present a current SOV with each pay request. The sum total of the Original SOV column shall be equal to the original contract sum, and the sum total of the Adjusted SOV column shall be equal to the original contract sum plus all fully-executed change orders.

9.2.4 If the contract includes a Contractor Contingency, it may, with the approval of the Owner, be available to the Contractor to cover any buyout shortages in Cost of Work items. It may not be used to supplement General Conditions, Allowances, or Contractor fees, unless mutually agreed by Contractor and Owner. Unused portions of Cost of Work items shall revert to the Contractor Contingency and may, with the Owner's approval, be used to cover over-runs in other line items.

9.2.5 Owner shall have the right to decline approval for change to the SOV for work items for which costs were included due to Contractor or Subcontractor error or gross negligence.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner, Architect, and Escrow Agent and otherwise in accordance with state law:

1. A current Contractor's lien waiver in the specified form

2. If requested, A Contractor's Sworn Statement conforming to applicable statutes, duly executed, and acknowledged, showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontractor agreements or purchase orders, the amount of each such subcontract or purchase order, the amount requested for any Subcontractor or material supplier in the requested progress payment and the amount to become due from such progress payment, together with similar sworn statements from all such Subcontractor and supplier, and AIA G703 breakdowns for all Subcontractors and material suppliers.
3. Duly executed waivers of mechanics and materialmen's liens from all Subcontractors of any tier and from suppliers and materialmen.
4. Stored materials documentation for all items showing balances in the Stored Materials column of the Pay Application, including the physical address of the storage facility, a current manifest, current photographs, insurance coverage in acceptable form, and a signed affidavit from the custodian of the materials.
5. All documents required to comply with the requirements of the Contract Documents and/or reasonably requested by the Escrow Agent, Owner, or Architect
6. A current Schedule of Values and Project Schedule.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods,

techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner, other indemnities, the Project, and property from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item

on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and

inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

(Paragraphs deleted)

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the

material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law and not waiving sovereign immunity, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from Owner's gross negligence or wrongful conduct with hazardous materials which presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Owner's Representative, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) to the extent allowed by law, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

(Paragraphs deleted)

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss.

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1 any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, to the extent permitted by law, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Warranties provided by Subcontractors or Suppliers that extend beyond one year shall run directly to the Owner, and the Contractor shall assign such warranties to the Owner to allow the Owner to enforce them.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Owner's acceptance of Nonconforming Work shall be accepted in writing.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

Jurisdiction. This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Circuit Court of Jackson County, Missouri at Independence or the Federal District Court for the Western District of Missouri, as appropriate. Contractor submits to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may, as mutually agreed with the Owner, suspend the Work or terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2** An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3** Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because

the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may, as mutually agreed with the Owner, suspend the Work or terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, as mutually agreed with the Owner, suspend the Work or terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead, and costs incurred by reason of such termination. The Contractor shall not be entitled to any consequential, indirect, or incidental damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding anything to the contrary in this Contract or in this Section 14.1, the Contractor may not terminate the Contract or suspend Work because of the Owner's failure to make payment, if a reasonable dispute exists regarding the payment amount due and owing to the Contractor and the Owner has paid all undisputed amounts to the Contractor.

§ 14.1.6 In the event of termination by the Contractor, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or

remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event of termination by the Owner for cause, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In the event of termination by the Owner for Convenience, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim.

Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Owner's Representative will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both.

(Paragraphs deleted)

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7.

§ 15.3.2 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Independence Fire Stations
111 E Maple Ave
Independence, MO 64050

...

(Name, legal status and address)

The City of Independence
Procurement Division
111 E. Maple, PO Box 1019
Independence, MO 64051-0519
hereinafter referred to as "Owner"

The Owner's Representative is:
Project Advocates, LLC
5821 W. 137th St.
Overland Park, KS 66223
Hereinafter referred to as "OR"

(Name, legal status and address)

WSKF, Inc
110 Armour Road
North Kansas City, MO 64116

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not~~ The Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification with both Parties signing said Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for and reasonably inferable in the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors ~~and owners~~ of their respective Instruments of Service, including the Drawings and ~~Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights.~~ Specifications. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

...

§ 1.5.3 Except as otherwise provided herein, Instruments of Service, including documents, drawings, and specifications prepared by Architect as part of the services shall become the property of City, provided Architect has the unrestricted right to their use. Notwithstanding the foregoing, City accepts that any re-use of the documents or intellectual property shall be at the City's sole risk and liability.

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The parties shall agree upon ~~written protocols governing the transmission and use of, and reliance on, of~~ Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to ~~written~~ protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

...

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

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§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, ~~assessments~~ assessments, and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

...

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal ~~limitations~~ limitations, and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. **§ 2.4.1 Termination for Breach.** If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4.2 Termination for Convenience. The Owner shall have the right at any time by written notice to Contractor to terminate and cancel the Contract, without cause, for the convenience of the Owner, and Contractor shall immediately stop work. In such event Owner shall not be liable to Contractor except for payment for demonstrable costs incurred by the Contractor due to the termination, including demobilization and termination costs, and actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of this Contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Further, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under the Contract shall, at the option of the Owner, become its property. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the

Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, Initial Decision Maker and the Initial Decision Maker may, pursuant to Section 9.5.1 and to the extent permitted by 34.057, RSMo., withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, such deficiencies or performing such work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, Initial Decision Maker, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor and all persons used by the Contractor to provide services under the Contract Documents shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

...

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, to the extent permitted by law, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies inconsistencies, or omissions in the Contract Documents, for differences between field measurements or

conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

...

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, ~~Subcontractors~~ Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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§ 3.3.4 Nothing in these General Conditions shall be construed to relieve a Subcontractor or supplier of its responsibility for, and control over, the safety over its employees and sub-subcontractors.

...

§ 3.4.4 The Contractor is responsible for the management of the Project to avoid strikes, work stoppages, labor disputes or any disturbances by workers employed by the Contractor or its subcontractors on or in connection with the Work or the Project or the location thereof that will delay completion of the Project.

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the ~~Architect~~ Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...

The Contractor shall pay sales, consumer, ~~use-renovation/remodel use~~, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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§ 3.7.6 Coordination of Utilities.

Contractor shall be responsible for the coordination of public and private utilities for the project, including electricity, water, sewer, storm water, natural gas, telephone, internet, and cable television. The Contractor will initiate contact with the representatives of the utilities when the Work has begun and will maintain liaison with them to ensure that all preparatory on-site and off-site work required by Contractor and/or the utilities and the associated inspections and permitting are coordinated so as to avoid negatively impacting the Construction Schedule. The Owner shall be responsible for payment of all utility installation fees. The Owner will advise the Contractor of the low voltage providers, and the Contractor will provide the necessary coordination to ensure the orderly preparations for and installation of the low-voltage services. All public and private utility fees required for the installation of utilities shall be paid for by the Owner.

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- .2 Contractor's costs for ~~unloading and handling at the site, labor, installation costs, overhead, profit,~~ and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. Order and approved by the Owner. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent ~~superintendent~~ Superintendent and Project Manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. The ~~superintendent~~ Superintendent shall represent the Contractor, and communications given to the ~~superintendent~~ Superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, ~~as soon as practicable within 14 days~~ after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed ~~superintendent~~ Superintendent and Project Manager. ~~Within 7 days~~ of receipt of the information, the Architect ~~or Owner~~ may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed ~~superintendent~~ Superintendent or (2) requires additional time for review. Failure of the Architect ~~or Owner~~ to provide notice within the ~~14-day~~ 7-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not ~~employ a proposed superintendent~~ assign to the project a proposed Superintendent or Project Manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the ~~superintendent~~ Superintendent or Project Manager without the Owner's written consent, which shall not unreasonably be withheld or delayed.

...

§ 3.10.1 The Contractor, ~~promptly after being awarded the Contract~~, prior to first pay application submission, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at ~~appropriate intervals~~ monthly intervals, or more frequently as required by the conditions of the Work and Project. The Contractor acknowledges that the Project Schedule accounts for normal weather delays as defined by the National Oceanic and Atmospheric Administration (NOAA) for the local Project area in the last 10 years in order to achieve the scheduled date of Substantial Completion.

§ 3.10.1.1 The Project Schedule shall be a valid CPM schedule generated by a commercially available CPM scheduling software application for the duration of the Project. The Project Schedule shall begin with the Notice to Proceed, and end with the Final Completion Date. The Project Schedule shall include and display, as a minimum, dates for submissions and processing of submittals, procurement, all work activities, commissioning, Owner activities and closeout activities. It shall be organized by Phase, Area, or other logical sequence. Activities shall be logically connected, and the Project Schedule shall include the total float for each activity and a clearly identifiable chain of critical-path (zero-float) activities. The Project Schedule shall account for holidays and other non-workdays and shall conform to industry standards for CPM scheduling. Artificial constraints and fixed milestone dates shall not be used, except for dates which are stipulated in the Agreement.

§ 3.10.1.2 The initial (Baseline) Project Schedule shall be submitted for approval within fifteen (15) days of receipt of Notice to Proceed and shall include all early and late completion dates by activities, and activity durations. Valid monthly updates utilizing industry-standard updating procedures shall be submitted a

minimum of two (2) working days before each Application for Payment. Updates shall accurately reflect the progress of the Work, any Change Order Work for which additional contract days were allowed, and any suspensions of Work directed by the Owner. Updates shall show early and late start and completion dates, actual start and completion dates of all completed activities, percentage of completion, and remaining working days for each activity in progress. The Contractor shall provide Project Schedule updates to the Owner in the original software format and PDF format.

§ 3.10.1.3 The Contractor shall promptly make any corrections to the Project Schedule reported by the Owner and shall resubmit a corrected Project Schedule within 5 days, if so directed by the Owner. Weather days beyond those anticipated shall be tracked separately, and not identified as activities in the Project Schedule. Time extensions resulting from unresolved claims or voluntary suspensions by the Contractor shall not be included in the Project Schedule. Project Schedules shall not contain negative float.

§ 3.10.1.4 The Contractor shall provide an as-built Project Schedule at Final Completion of the Work.

§ 3.10.1.5 The Contractor shall prepare recovery schedules as requested by Architect or Owner.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, prior to first pay application submission, shall submit a submittal schedule for the Architect's or Owner's approval. The Architect's or Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.3 The Contractor shall perform the Work and in all other respects, conform with the most recent Project Schedule submitted to the Owner and Architect. Contractor and Owner agree that resubmitted schedules are submitted to Owner for information purposes, and not approved unless such resubmitted schedule shall change the Contract time. Notwithstanding the foregoing, approval by either or both of the Architect and Owner is not intended nor shall same be construed, inferred, or result in either or both of the Owner or Architect being responsible or liable for means, methods, techniques, or any other respect of the obligations, responsibilities, or liabilities of the Contractor hereunder.

§ 3.10.4 Each update to the Project Schedule shall (i) provide a graphic representation of all activities and events that will occur during performance of the Work (ii) identify each major task of construction and the anticipated start and anticipated completion date, and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the work. If requested by the Owner or Architect, the Contractor will update the Project Schedule.

§ 3.10.5 Contractor shall provide a short interval schedule that includes, at a minimum, two (2) weeks in the past and three (3) weeks ahead of the current date. Short Interval schedule to be provided prior to all Owner, Architect and Contractor meetings.

The Contractor shall make available, electronically and at the Project site, the Contract Documents, including approved Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in

electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a-an approved Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect.~~Architect and Owner.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, ~~Architect, Architect's consultants, and agents and employees of any of them from and against claims, and its employees elected or appointed officials and officers from and against claims, third party claims,~~ damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent ~~acts or omissions of or~~ wrongful acts or omissions or a breach of this Contract by the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. no event shall the Owner be liable to the Contractor for special, indirect, or consequential damages. The maximum liability of the Owner shall be limited to the amount of money to be paid or received by the Owner under this Contract.

§ 3.18.4 The Contractor shall indemnify and hold the Owner harmless from all wages or overtime compensation due its employees in rendering services pursuant to this contract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law, or any other federal or state law.

§ 3.18.5 The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation, or benefits payable by or for the Contractor, under any federal or state law, to any person asserting the claim against Owner, its elected or appointed officials, officers, agents and employees, for which indemnification is sought.

§ 3.18.6 The indemnification obligations herein shall not negate, abridge, or reduce in any way any additional indemnification rights of the Owner, its elected or appointed officials, officers, agents and employees, which are otherwise available under statute, or in law or equity.

§ 3.18.7 All the provisions in the Contract Documents are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes. Further, the Contract is not intended to act as a waiver or limitation of Owner, or any of its officer's, agent's or employee's rights and/or defenses regarding sovereign or any other immunity or defense under Federal Law, Missouri Law or Municipal Regulation.

§ 3.18.8 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.9 Provided that required progress payments are made in a timely manner, the Contractor agrees to keep the Owner's property free and clear of liens, lien claims or stop-work notices relating to the Work under this Agreement. The Contractor agrees to indemnify, defend, and hold the Owner harmless from all liens, lien claims, and stop-work notices recorded, asserted or filed on the Work or on any property on which the Work is performed, on account of any labor performed or materials furnished by the Contractor or its Subcontractors or suppliers in connection with the Work. The Contractor's obligation hereunder includes paying for any attorney's fees and court and other costs incurred by the Owner in connection with such liens and lien claims.

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§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. shall administer the performance of the Work. The Architect will advise the Owner and Contractor with regard to matters set forth in the Drawings and Specifications. In addition to any specific responsibilities assigned elsewhere in the Contract Documents, the Architect shall decide any and all questions which may arise as to the rate of progress of the Work. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents, unless otherwise modified by written instrument in accordance with Section 4.1.2.

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§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due to the Contractor and will issue Certificates for Payment in such amounts. All payments to the Contractor shall be subject to approval by the Owner.

§ 4.2.6 The Architect has or Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect or Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect or Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or Owner to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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§ 4.2.11 The Architect or Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect or Initial Decision Maker will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect Initial Decision Maker will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's ~~decisions-recommendations~~ on matters relating to aesthetic effect as approved by the Owner will be final if consistent with the intent expressed in the Contract Documents.

...

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued and approved by the Owner before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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- .1 assignment is effective only after termination of the Contract by the Owner ~~for cause~~ pursuant to ~~Section 14.2~~ Sections 14.2 and 14.3 and only for those subcontract agreements that the Owner accepts in writing by notifying the Subcontractor and Contractor; and

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect and Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

...

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect or Owner will allocate the cost among those responsible.

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- .1 Costs of labor, including applicable payroll taxes, ~~fringe benefits required by agreement or custom,~~ workers' compensation insurance, and other employee costs approved by the Architect;

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The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by ~~labor disputes~~, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) force majeure; or (6) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended ~~for such reasonable time as the Architect may determine~~ to the extent the Contract Time is effected by the delay.

§ 8.3.1.1 Elements constituting force majeure are: civil disorder, inability to procure materials for reasons beyond the control of the Contractor and other than by reason of failure to make payment, failure of one or more utilities, restrictive governmental law or regulations by imposition of enforcement, government action, riot, insurrection, war, fuel shortage, act of God, undue or unusual delay in acting or failure to act any agency or any employee thereof, or any other governmental entity whose action may be required for any purpose, or similar events or conditions beyond the reasonable control of the Owner.

...

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~ In addition to an extension of time, Contractor shall be entitled to an adjustment to the Contract Sum for delays set in 8.3.1(1). For all other delays set forth in 8.3.1 the Contractor will be entitled to receive an adjustment to the Contract Sum subject to Owner approval, which shall not be unreasonably withheld.

...

§ 9.1.1 The Contract Sum is stated in the ~~Agreement~~ Contract Documents and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment. The Contractor shall submit to the Architect and the Owner for their approval, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. Work and prepared~~
in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect, the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.
Applications for Payment.

9.2.1 The Schedule of Values shall be the budgets for the direct cost of each work item. The Original Schedule of Values shall remain unchanged during the project. The Original Schedule of Values shall be a breakdown of all direct costs of construction, net of contractor general conditions, overhead, and profit. The SOV shall include a single line each for General Conditions, Allowances, Contractor Contingency, Overhead, and Profit.

9.2.3 Adjustments to the Schedule of Values may be made only for Change Orders and adjustments to budgeted items requested by the Contractor and Approved by the Owner. Contractor shall maintain a ledger listing each change to each line item and present a current SOV with each pay request. The sum total of the Original SOV column shall be equal to the original contract sum, and the sum total of the Adjusted SOV column shall be equal to the original contract sum plus all fully-executed change orders.

9.2.4 If the contract includes a Contractor Contingency, it may, with the approval of the Owner, be available to the Contractor to cover any buyout shortages in Cost of Work items. It may not be used to supplement General Conditions, Allowances, or Contractor fees, unless mutually agreed by Contractor and Owner. Unused portions of Cost of Work items shall revert to the Contractor Contingency and may, with the Owner's approval, be used to cover over-runs in other line items.

9.2.5 Owner shall have the right to decline approval for change to the SOV for work items for which costs were included due to Contractor or Subcontractor error or gross negligence.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner, Architect, and Escrow Agent and otherwise in accordance with state law:

1. A current Contractor's lien waiver in the specified form
2. If requested, A Contractor's Sworn Statement conforming to applicable statutes, duly executed, and acknowledged, showing all Subcontractors and material suppliers with whom the Contractor has entered into subcontractor agreements or purchase orders, the amount of each such subcontract or purchase order, the amount requested for any Subcontractor or material supplier in the requested progress payment and the amount to become due from such progress payment, together with similar sworn statements from all such Subcontractor and supplier, and AIA G703 breakdowns for all Subcontractors and material suppliers.
3. Duly executed waivers of mechanics and materialmen's liens from all Subcontractors of any tier and from suppliers and materialmen.
4. Stored materials documentation for all items showing balances in the Stored Materials column of the Pay Application, including the physical address of the storage facility, a current manifest, current photographs, insurance coverage in acceptable form, and a signed affidavit from the custodian of the materials.
5. All documents required to comply with the requirements of the Contract Documents and/or reasonably requested by the Escrow Agent, Owner, or Architect
6. A current Schedule of Values and Project Schedule.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner ~~shall, to the best of the Contractor's knowledge, information, and belief, shall~~ be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

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§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the ~~Owner~~ Owner, other indemnities, the Project, and property from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

...

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- ~~1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
- ~~2 — failure of the Work to comply with the requirements of the Contract Documents;~~
- ~~3 — terms of special warranties required by the Contract Documents; or~~
- ~~4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

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§ 10.3.3 To the fullest extent permitted by law, ~~the Owner shall~~ law and not waiving sovereign immunity, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from ~~performance of the Work in the affected area if in fact the material or substance~~ Owner's gross negligence or wrongful conduct with hazardous materials which presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site ~~unless such materials or substances are required by the Contract Documents.~~ The

Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Owner's Representative, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) to the extent allowed by law, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. ~~The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, ~~Architect or Owner,~~ be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, ~~Section 9.9.1~~ any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, to the extent permitted by law, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. Warranties provided by Subcontractors or Suppliers that extend beyond one year shall run directly to the Owner, and the Contractor shall assign such warranties to the Owner to allow the Owner to enforce them.

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If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Owner's acceptance of Nonconforming Work shall be accepted in writing.

...

~~The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ **Jurisdiction.** This Contract and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this Contract be litigated, venue shall be proper only in the Circuit Court of Jackson County, Missouri at Independence or the Federal District Court for the Western District of Missouri, as appropriate. Contractor submits to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.

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§ 14.1.1 The Contractor ~~may~~ may, as mutually agreed with the Owner, suspend the Work or terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

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§ 14.1.2 The Contractor ~~may~~ may, as mutually agreed with the Owner, suspend the Work or terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, as mutually agreed with the Owner, suspend the Work or terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and overhead, and costs incurred by reason of such termination. The Contractor shall not be entitled to any consequential, indirect, or incidental damages.

...

§ 14.1.5 Notwithstanding anything to the contrary in this Contract or in this Section 14.1, the Contractor may not terminate the Contract or suspend Work because of the Owner's failure to make payment, if a reasonable dispute exists regarding the payment amount due and owing to the Contractor and the Owner has paid all undisputed amounts to the Contractor.

§ 14.1.6 In the event of termination by the Contractor, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

...

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

...

- .3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

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§ 14.2.5 In the event of termination by the Owner for cause, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, ~~delay~~ delay, or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall not include profit. No adjustment shall be made to the extent

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.the event of termination by the Owner for Convenience, all finished or unfinished deconstruction, reconstruction, new construction, repairs, materials, drawings, plans, specifications, and other documents as required of the Contractor under this Contract shall at the option of the Owner become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such project; provided, that the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any such breach of this Contract by the Contractor. If this Contract is terminated, Contractor shall assist Owner in the orderly termination of services, including timely transfer of services to another designated contractor. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

...

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. ~~The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

PAGE 46

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. ~~The Architect-Owner's Representative~~ will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker

and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

PAGE 47

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

...

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

15.1.7.

§ 15.3.2 The parties shall ~~endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~ share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing,

delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Matthew Makes, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:49:53 ET on 03/27/2025 under Order No. 4104247589 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Contractor	Rank	Total Points	Company/Firm Overview and Project Experience						Qualifications of Personnel					
			Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total	Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total
Turner Construction	1	553.7	25.0	24.0	24.0	23.0	23.0	119.0	30.0	29.0	28.0	28.0	26.5	141.5
McGownGordon	2	547.5	25.0	25.0	25.0	25.0	22.5	122.5	30.0	30.0	29.0	28.0	26.0	143.0
Hausmann Construction	3	517.7	20.0	21.0	18.0	25.0	20.0	104.0	28.0	26.0	22.0	28.0	22.0	126.0
Haren Companies	4	505.4	20.0	22.0	22.0	25.0	22.0	111.0	26.0	27.0	25.0	29.0	24.5	131.5
Newkirk Novak	5	505.0	20.0	20.0	22.0	18.0	21.5	101.5	27.0	25.0	25.0	20.0	23.5	120.5
Crossland	6	489.4	24.0	23.0	23.0	23.0	23.5	116.5	28.0	28.0	25.0	28.0	22.0	131.0
Nabholz	7	480.6	24.0	16.0	22.0	10.0	17.0	89.0	30.0	21.0	27.0	20.0	19.5	117.5
Fogel-Anderson	8	478.9	21.0	17.0	22.0	20.0	19.0	99.0	27.0	22.0	25.0	22.0	21.5	117.5
Structsure Projects	9	449.7	20.0	18.0	18.0	18.0	20.0	94.0	25.0	23.0	15.0	20.0	22.0	105.0
Centric	10	449.6	22.0	19.0	18.0	20.0	17.0	96.0	28.0	24.0	20.0	20.0	17.0	109.0

Overall quality, content, and completeness of response						Cost Proposal					
Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total	Evaluator A	Evaluator B	Evaluator C	Evaluator D	Evaluator E	Total
10.0	9.0	10.0	10.0	9.5	48.5	15.5	15.5	15.5	15.5	15.5	77.7
10.0	10.0	10.0	10.0	9.5	49.5	13.2	13.2	13.2	13.2	13.2	66.0
9.0	6.0	8.0	10.0	9.0	42.0	18.3	18.3	18.3	18.3	18.3	91.7
8.0	7.0	7.0	7.0	8.5	37.5	14.8	14.8	14.8	14.8	14.8	73.9
8.0	5.0	8.0	6.0	9.5	36.5	20.0	20.0	20.0	20.0	20.0	100.0
9.0	8.0	5.0	8.0	8.5	38.5	12.3	12.3	12.3	12.3	12.3	61.4
10.0	1.0	9.0	7.0	9.5	36.5	17.1	17.1	17.1	17.1	17.1	85.6
9.0	2.0	8.0	9.0	8.5	36.5	15.1	15.1	15.1	15.1	15.1	75.4
8.0	3.0	6.0	7.0	7.5	31.5	16.2	16.2	16.2	16.2	16.2	81.2
9.0	4.0	8.0	8.0	7.5	36.5	13.0	13.0	13.0	13.0	13.0	65.1

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-733 A Resolution appointing Councilmember John Perkins to the Independence Convention and Visitors Bureau

Recommendations:

Staff recommends that Councilmember John Perkins be appointed to the Independence Convention and Visitors Bureau's Board of Directors for a three (3) year term.

Background:

On December 2, 2024, the Independence City Council adopted Resolution 24-796 in support of the establishment of the Independence Convention & Visitors Bureau as a 501(C)(6) Organization to promote tourism in the City of Independence and on December 20, 2024, the City submitted all forms to officially create the Independence Convention & Visitors Bureau. City Manager Zach Walker, Assistant City Manager Charlie Dissell, Finance Director Melissa Cabrea and Parks and Recreation Director Morris Heide have served as the initial Directors to adopt the organization's by-laws, which were adopted on March 6, 2025.

The by-laws require a Board of thirteen (13) Directors who are appointed to three (3) year terms, except that the term of office of the initial Board of Directors shall be staggered by one (1), two (2) and three (3) year terms, so subsequent director terms do not all expire at once. Each Director shall be at least twenty-one (21) years of age and a resident, or a representative of a business owner, within the City of Independence. At least one (1) Director shall be a representative of an Independence attraction; at least one (1) Director shall be a representative or owner of a business; at least one (1) Director shall be a community leader; at least one (1) Director shall be a representative of a hotel or lodging establishment; and at least one (1) Director shall be from the tourism industry. In addition, the Board shall consist of the following appointed or elected City officials; at least one (1) City Councilmember; the City Manager or designee, the Director of Finance, and the Director of Parks & Recreation.

Emergency Justification:**Fiscal Impact:**

There is no fiscal impact on this appointment.

Council Action:

**Department /
Contact**

Council and Board /

REVIEWERS

Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. CVB Council Appointment Draft

BILL NO. _____

RESOLUTION NO. _____

A RESOLUTION APPOINTING COUNCILMEMBER JOHN PERKINS TO THE
INDEPENDENCE CONVENTION AND VISITORS BUREAU BOARD OF DIRECTORS.

WHEREAS, on December 2, 2024, the Independence City Council adopted Resolution 24-796 in support of the establishment of the Independence Convention & Visitors Bureau as a 501(C)(6) Organization to promote tourism in the City of Independence; and

WHEREAS, on December 20, 2024, the City submitted all forms to officially create the Independence Convention & Visitors Bureau; and

WHEREAS, City Manager Zach Walker, Assistant City Manager Charlie Dissell, Finance Director Melissa Cabrea and Parks and Recreation Director Morris Heide have served as the initial Directors to adopt the organizations by-laws; and,

WHEREAS, on March 6, 2025, the by-laws of the Independence Convention & Visitors Bureau were adopted; and,

WHEREAS, the by-laws require a Board of thirteen (13) Directors who are appointed to three (3) year terms, where at least one (1) of those Directors shall be a City Councilmember; and,

WHEREAS, the Mayor and City Council desire to make an appointment to the Board of Directors as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. The following appointment to the Independence Convention and Visitors Bureau Board of Directors is hereby made by the City Council:

Councilmember John Perkins is appointed to fill a term ending December 31, 2027.

PASSED THIS ____ DAY OF APRIL 2025 BY THE CITY COUNCIL OF THE CITY
OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

A public hearing for the application to rezone the property at 1009 N. Kiger Road from R-12, Two Family Residential, to R-6, Single Family Residential. ***New Information Only.***

Recommendations:**Background:****Emergency Justification:****Fiscal Impact:****Council Action:**

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

Tom Scannell
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. 2-11-25 Public Notice Proof

OFFICIAL AD PROOF

This is the proof of your ad scheduled to run in **Examiner** on the dates indicated below. If changes are needed, please contact us prior to deadline at **(816) 254-8600**.

Notice ID: tUi17rKuqQ4w3Ef42GNg | **Proof Updated: Jan. 24, 2025 at 02:20pm CST**
Notice Name: PC 02.11.2025 | Publisher ID: 3098700

See Proof on Next Page

This is not an invoice. Below is an estimated price, and it is subject to change. You will receive an invoice with the final price upon invoice creation by the publisher.

FILER

Je'nai Moulon
jmoulon@indepmo.org
(816) 325-7109

FILING FOR

Examiner

Columns Wide:	1	Ad Class: Legals
Total Column Inches:	6.64	
Number of Lines:	53	

01/25/2025: Other Notice	89.60
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Subtotal	\$89.60
Tax	\$0.00
Processing Fee	\$0.00
Total	\$89.60

Notice of Public Hearing

Notice is hereby given that a public hearing will be held by the Independence City **Planning Commission** at 6 p.m., Tuesday, February 11, 2025, and by the Independence **City Council** at 6 p.m., Monday, April 7, 2025, in the Independence City Hall City Council Chambers (lower level, north entrance) 111 E. Maple Avenue, in Independence, Missouri on the following matter(s):

Case 25-100-08 – Rezoning – 1009 N Kiger Rd – A request by Tobin Kennedy to rezone the property from R-12 (Two Family Residential) to R-6 (Single Family Residential).

The Planning Commission will conduct full public hearing on this application. The City Council will only hear new information that was not presented at the Planning Commission's public hearing if such facts were not reasonably available at the time of the Planning Commission hearing. Any new information proposed to be presented to the City Council must be submitted in writing to the Community Development Department and Law Department at least seven (7) days prior to the City Council meeting.

Witness my hand this 21st day of January, 2025.

Tom Scannell,
Community
Development Director
The City of Independence, Missouri is an Equal Opportunity Employer/Contractor/MFD

Published in the Examiner, Jan 25, 2025

3098700

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-019 **2R** An ordinance approving a rezoning from Districts R-12 (Two-Family Residential) to District R-6 (Single-Family Residential) for the property at 1009 North Kiger Road. **2R**

Recommendations:

Commissioner Nesbitt made a motion to recommend approval of the rezoning for 1009 N Kiger Rd. A second was made by Commissioner O'Neill. The Independence Planning Commission voted as follows:

Commissioner Nesbitt – Yes

Commissioner Ferguson – Yes

Commissioner Ashbaugh – Yes

Commissioner O'Neill – Yes

Commissioner Torres – Absent

Commissioner Young – Yes

Commissioner Wiley – Yes

The motion passed, and such application is forwarded to the City Council for its consideration. Staff recommends approval of this application.

Background:

A request to rezone the property from R-12 (Two Family Residential) to R-6 (Single-Family Residential).

PROPERTY'S HISTORY:

The subject site comprises a portion of a previously platted lot, more specifically described as, "The North 65 feet of the South 165 feet of Lot 50 of the Broadacres Annex subdivision." The Broadacres Annex subdivision was recorded in 1921. At the time the subdivision was recorded, it was located outside of Independence City limits. The area was annexed in 1948 as part of Ordinance No. 12643.

Upon the adoption of the Zoning Ordinance in 1965, this property fell within an R-1 (Single-Family) zoning district. Independence updated the Zoning Ordinance in 1980, and the zoning classification changed to R-1b (Single-Family).

In 1987, an application was made by the property owner at the time to rezone the subject property. Independence City Council voted to rezone the property from R-1b to R-2 (Two-Family) (Ordinance No. 9750).

Following the adoption of the Unified Development Ordinance, in 2009, the zoning classification of the subject site was converted to R-12 (Two-Family Residential).

PROPOSAL:

The applicant intends to submit an application for a minor subdivision combining several lots

that comprise a tax parcel under their ownership. The intent of the minor subdivision is to record one single developable lot. However, due to the misalignment of zoning classifications, the property is required to be rezoned under one single zoning classification.

PHYSICAL CHARACTERISTICS OF THE PROPERTY:

The subject site is ±8,255 square feet in size. It is a vacant lot with a gravel driveway running along the Northern property boundary extending to the rear of the property.

CHARACTERISTICS OF THE AREA:

The subject site is located within an existing subdivision—Broadacres Annex—and is surrounded by primarily single-family residences.

Consistency with *Independence for All*, Strategic Plan:

This proposal conforms with Independence for All, Strategic Plan’s objective to, “Stabilize and revitalize neighborhoods.” Approval of this rezoning supports the applicant and their intention for a single-family home on acreage.

Comprehensive Plan Guiding Land Use Principles for the Current Designation:

Imagine Independence Comprehensive Plan 2040 envisions this property and the surrounding area to be designated for residential use.

The land use building blocks of Imagine Independence direct the city to, “Foster redevelopment opportunities within the City in an effort to revitalize unused or underused property.” Imagine Independence provides a tool/policy to, “Identify areas within established neighborhoods where infill development would be appropriate.”

Sub-Area Plans:

The subject site is not located within any sub area plans or overlay districts.

Zoning:

The current zoning classification is R-12 (Two-Family Residential). The proposed rezoning aligns with the surrounding land use and zoning classifications.

Historic and Archeological Sites:

There are no apparent historic or archeological issues with this property.

Public Utilities:

All utilities are present and available to the applicant.

CIP Investments:

The city does not have any capital improvements projects planned near this area.

Recommendations and decisions on rezoning applications must be based on consideration of all the following criteria:

1. **Conformance of the requested zoning with the Comprehensive Plan.**

This application conforms to the land use building blocks, and tools and policies outlined in the Neighborhoods & Housing topic. The applicant seeks to utilize unused property for infill development in an existing neighborhood.

2. Conformance of the requested zoning with any adopted neighborhood or sub-area plans in which the property is located or abuts.

The subject site is not located within any sub-area plans.

3. The compatibility of the proposed zoning with the zoning and use of nearby property, including any overlay zoning.

The surrounding properties are predominantly single-family residential in use. This rezoning conforms to the surrounding land use and zoning classifications.

4. The compatibility of the proposed zoning and allowed uses with the character of the neighborhood.

The subject site is located within an existing developed subdivision. This proposal is consistent with the character of the neighborhood.

5. The suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations.

The proposed rezoning will allow for future development of the site, aiding in a well-planned community.

6. The length of time the subject property has remained vacant as zoned.

Available City/public records do not indicate this property having ever been developed.

7. The extent to which approving the rezoning will detrimentally affect nearby properties.

The rezoning should have no detrimental effect on area properties. This proposal will not alter the character of the neighborhood.

8. The gain, if any, to the public health, safety, and welfare due to denial of the application, as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.

If rezoning is denied, the property cannot be replatted according to the applicant's desired plan.

Draft Planning Commission minutes are attached.

Emergency Justification:

Fiscal Impact:

Council Action:

Department / Contact	Community Development /
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REVIEWERS

Tom Scannell
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Draft Ordinance 25-100-08
2. Staff Report 25-100-08
3. Narrative
4. Applicaiton
5. Notification Letter
6. Address List
7. Notification Area Map
8. Affidavit
9. Com Plan Map
10. Zoning Map
11. Planning Commission Meeting Minutes 02-11-25

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A REZONING FROM DISTRICTS R-12 (TWO-FAMILY RESIDENTIAL) TO DISTRICT R-6 (SINGLE-FAMILY RESIDENTIAL) FOR THE PROPERTY AT 1009 NORTH KIGER ROAD.

WHEREAS, a request by the property owner to rezone the property located at 1009 North Kiger Road from District R-12 (Two-Family Residential) to District R-6 (Single-Family Residential) was referred to the Planning Commission as required by the Unified Development Ordinance; and,

WHEREAS, the Unified Development Ordinance provides for the approval of a rezoning following public hearings by the Planning Commission and City Council; and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held a public hearing for the consideration of the request on February 11, 2025, and rendered a report to the City Council; and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing and rendered a decision recommending that the rezoning be approved by a vote of 6-0; and,

WHEREAS, in accordance with the Unified Development Ordinance, it was determined that the rezoning was consistent with the review criteria in Section 14-701-02; and,

WHEREAS, no legal protests were signed, acknowledged, and presented for the application.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. That the following legally described property is hereby rezoned from District R-12 (Two-Family Residential) to District R-6 (Single-Family Residential) and shall be subject to the regulations of said district:

BROADACRES ANNEX---N 65'S 165' OF LOT 50 (NOWN AS TR 3 ON CERT SURV T-3 PG-32)

SECTION 2. Nonseverability. All provisions of this ordinance are so essentially, and inseparable connected with, and so dependent upon, each other that no such provision would be enacted without all others. If a court of competent jurisdiction enters a final judgement on the merits that is not subject to appeal and that declares any provision or part of this ordinance void,

unconstitutional, or unenforceable, then this ordinance, in its collective entirety, is invalid and shall have no legal effect as of the date of such judgement.

SECTION 3. Scrivener’s Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this ordinance, as determined by the City Clerk and City Counselor, may be corrected with the endorsement of the City Manager without the need to come before City Council.

SECTION 4. That failure to comply with all the provisions contained in this ordinance shall constitute violations of both this ordinance and Chapter 14, the Unified Development Ordinance, of the Code of the City of Independence, Missouri.

PASSED THIS _____ DAY OF _____, 2025, BY THE CITY COUNCIL
OF THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager

MEETING DATE: February 11, 2025

STAFF: Gabe Glaser, Planner

PROJECT NAME: Kiger Home

CASE NUMBER/REQUEST: 25-100-08 – Rezoning – 1009 N Kiger Rd – A request to rezone the property from R-12 (Two Family Residential) to R-6 (Single-Family Residential).

APPLICANT: Tobin Kennedy

PROPERTY LOCATION: 1009 N Kiger Rd

SURROUNDING ZONING/LAND USE:

North: R-12 (Two-Family Residential) / Duplex
East: R-6 (Single-Family Residential) / Vacant Land
South: R-6 (Single-Family Residential) / Single-Family Residence
West: R-6 (Single-Family Residential) / Single-Family Residence

PUBLIC NOTICE:

- Letters to property owners – January 2, 2025
- Public Notice published in the Independence Examiner – January 25, 2025
- Signs posted on property – January 24, 2025

FURTHER ACTION:

Following action by the Planning Commission, this rezoning request is scheduled for first reading by the City Council on March 17, 2025, and the public hearing/second reading on April 7, 2025.

RECOMMENDATION

Staff recommends **APPROVAL** of this rezoning request.

PROJECT DESCRIPTION & BACKGROUND INFORMATION

PROJECT DESCRIPTION: A rezoning from R-12 to R-6

Current Zoning:	R-12 (Two-Family Residential)	Proposed Zoning:	R-6 (Single-Family Residential)
Current Use:	Vacant Land	Proposed Use:	Single-Family Residence

Zoning History:

The subject site comprises a portion of a previously platted lot, more specifically described as, “The North 65 feet of the South 165 feet of Lot 50 of the Broadacres Annex subdivision.” The Broadacres Annex subdivision was recorded in 1921. At the time the subdivision was recorded, it was located outside of Independence City limits. The area was annexed in 1948 as part of Ordinance No. 12643.

Upon the adoption of the Zoning Ordinance in 1965, this property fell within an R-1 (Single-Family) zoning district. Independence updated the Zoning Ordinance in 1980, and the zoning classification changed to R-1b (Single-Family).

In 1987, an application was made by the property owner at the time to rezone the subject property. Independence City Council voted to rezone the property from R-1b to R-2 (Two-Family) (Ordinance No. 9750).

Following the adoption of the Unified Development Ordinance, in 2009, the zoning classification of the subject site was converted to R-12 (Two-Family Residential).

Proposal:

The applicant intends to submit an application for a minor subdivision combining several lots that comprise a tax parcel under their ownership. The intent of the minor subdivision is to record one single developable lot. However, due to the misalignment of zoning classifications, the property is required to be rezoned under one single zoning classification.

Physical Characteristics of Property:

The subject site is ±8,255 square feet in size. It is a vacant lot with a gravel driveway running along the Northern property boundary extending to the rear of the property.

Characteristics of the Area:

The subject site is located within an existing subdivision—Broadacres Annex—and is surrounded by primarily single-family residences.

ANALYSIS

Consistency with *Independence for All*, Strategic Plan:

This proposal conforms with Independence for All, Strategic Plan's objective to, "Stabilize and revitalize neighborhoods." Approval of this rezoning supports the applicant and their intention for a single family home on acreage.

Comprehensive Plan Tools and Policies for the Current Designation:

Imagine Independence Comprehensive Plan 2040 envisions this property and the surrounding area to be designated for residential use.

The land use building blocks of Imagine Independence direct the city to, "Foster redevelopment opportunities within the City in an effort to revitalize unused or underused property." Imagine Independence provides a tool/policy to, "Identify areas within established neighborhoods where infill development would be appropriate."

Sub-Area Plans:

The subject site is not located within any sub area plans or overlay districts.

Zoning:

The current zoning classification is R-12 (Two-Family Residential). The proposed rezoning aligns with the surrounding land use and zoning classifications.

Historic and Archeological Sites:

There are no apparent historic or archeological issues with this property.

Public Utilities:

All utilities are present and available to the applicant.

CIP Investments:

The city does not have any capital improvements projects planned near this area.

REVIEW CRITERIA

Recommendations and decisions on rezoning applications must be based on consideration of all the following criteria:

- 1. Conformance of the requested zoning with the Comprehensive Plan.**
This application conforms to the land use building blocks, and tools and policies outlined in the Neighborhoods & Housing topic. The applicant seeks to utilize unused property for infill development in an existing neighborhood.
- 2. Conformance of the requested zoning with any adopted neighborhood or sub-area plans in which the property is located or abuts.**
The subject site is not located within any sub-area plans.
- 3. The compatibility of the proposed zoning with the zoning and use of nearby property, including any overlay zoning.**
The surrounding properties are predominantly single-family residential in use. This rezoning conforms to the surrounding land use and zoning classifications.
- 4. The compatibility of the proposed zoning and allowed uses with the character of the neighborhood.**
The subject site is located within an existing developed subdivision. This proposal is consistent with the character of the neighborhood.
- 5. The suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations.**
The proposed rezoning will allow for future development of the site, aiding in a well-planned community.
- 6. The length of time the subject property has remained vacant as zoned.**
Available City/public records do not indicate this property having ever been developed.
- 7. The extent to which approving the rezoning will detrimentally affect nearby properties.**
The rezoning should have no detrimental effect on area properties. This proposal will not alter the character of the neighborhood.
- 8. The gain, if any, to the public health, safety, and welfare due to denial of the application, as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.**
If rezoning is denied, the property cannot be replatted according to the applicant's desired plan.

EXHIBITS

1. Narrative
2. Application
3. Notification letter
4. Address List
5. Notification Area Map
6. Affidavit
7. Comprehensive Plan map
8. Zoning map

Tobin Kennedy
Tobinkennedy24@gmail.com

January 02, 2025

Dear City Plan Commission :

Re: 1009 N. Kiger and 4+- acreage east.

With respect to the above referenced address, enclosed is the following:

1. Completed Planning and Zoning Application;
2. Property Owner Notification Letter;
3. Property Owner Notification Affidavit;
4. Community Development Front Counter Map with a rough placement for a single family home.
5. Map sent with with property notification letter.
6. Legal descriptions of the properties.

We are seeking to rezone the Lot located at 1009 N. Kiger to R6 from R12 so a buyer could build their single family house on acreage. The driveway would run through 1009 N. Kiger to the home detailed on the Community Development Front Counter Map (attached).

We look forward to working with City Plan Commission and Community Development. If you need any additional documents, or have any questions that arise after review, please do not hesitate to contact me.

Thank you,



Tobin L. Kennedy

Application Type (check all that apply)

Land Use	Land Subdivision	Site Development	Use Permit	Other
☒ Rezoning ☐ PUD Rezoning	☐ Preliminary Plat ☐ Final Plat ☐ Minor Subdivision	☐ Final Site Plan ☐ Preliminary Dev Plan ☐ Final Dev Plan (PUD)	☐ Special Use ☐ Homebased Business	☐ Admin. Adjustment ☐ Variance ☐ Street Name Change ☐ Special Sign Permit

Project Information and Location

Kiger Home on Acreage

Project Name

1009 N Kiger and Acreage East of.

Project Address/Location

	4+-	1	
Sq. Ft. of Building	Acreage	Number of Lots/Tracts	Steam Buffer (Yes or No)
R6 and R12	R6	Residential	Residential
Existing Zoning	Proposed Zoning	Existing Land Use	Proposed Land Use

Basic Application Requirements (See the Planning & Zoning Application Guide for additional requirements)

☒ Completed & Signed Application Form ☒ Application Fee ☒ Cover Letter Describing Details of Project	☐ One 24" x 36" set of plans for Land Sub. & Site Dev. ☐ One PDF copy of a plat map or site plan ☒ Legal Description of the property in question
--	--

Contact Information

Applicant

Tobin Kennedy	Whiteridge LLC
Name	Company
Po Box 46870 Gladstone Mo 64188	
Address	
816.888.0666	Tobinkennedy24@gmail.com
Phone	Email

Architect/Engineer/Surveyor/Other: Surveyor

Jake Young	J&J Survey
Name	Company
8680 N. Green Hills Rd Kansas City MO 64154	
Address	
816.741.1017	Jake@jandjsurvey.com
Phone	Email

Owner

Whiteridge LLC and	Properties of TLK LLC
Name	Company
Po Box 46870 Gladstone Mo 64188	
Address	
816.888.0666	Tobinkennedy24@gmail.com
Phone	Email

Architect/Engineer/Surveyor/Other:

Name	Company
Address	
Phone	Email

The applicant hereby agrees that the information provided above is accurate.


 01.02.25
 Applicant's Signature Date


 01.02.25
 Owner's Signature Date

Property Owner Notification Letter

City of Independence, Missouri

Date: 01.02.25

Case No. 25-100-08

Dear Property Owner:

This letter is to notify you that an application has been submitted for consideration by the Planning Commission and City Council. A full public hearing will be held by the Planning Commission and the City Council will consider new information on the dates and times below.

Proposed Case Type (Check One):

- ☒ Rezoning ☐ Rezoning/PUD ☐ Special Use Permit
☐ Preliminary Development Plan

Proposed project description: Combine the vacant lot at 1009 N. Kiger and the 4+-
acres behind to create one single family lot.

Applicant: Tobin Kennedy

Location of Property: 1009 N Kiger Rd. Independence MO 64050

Planning Commission Meeting Date: February 11th, 2025, at 6:00 p.m.

City Council Meeting Date: April 7th, 2025, at 6:00 p.m.

Location of public hearings: City Council Chambers, City Hall
111 E Maple Ave, Independence, Missouri, 64050

All interested persons are invited to attend and will have an opportunity to be heard at the full public hearing (Planning Commission).

REZONINGS ONLY: You may file a protest petition with the Community Development Department. For more information or to get copies of a petition, please contact Planning staff at 816-325-7421.

Tobin Kennedy
Applicant (or Owner/Agent)

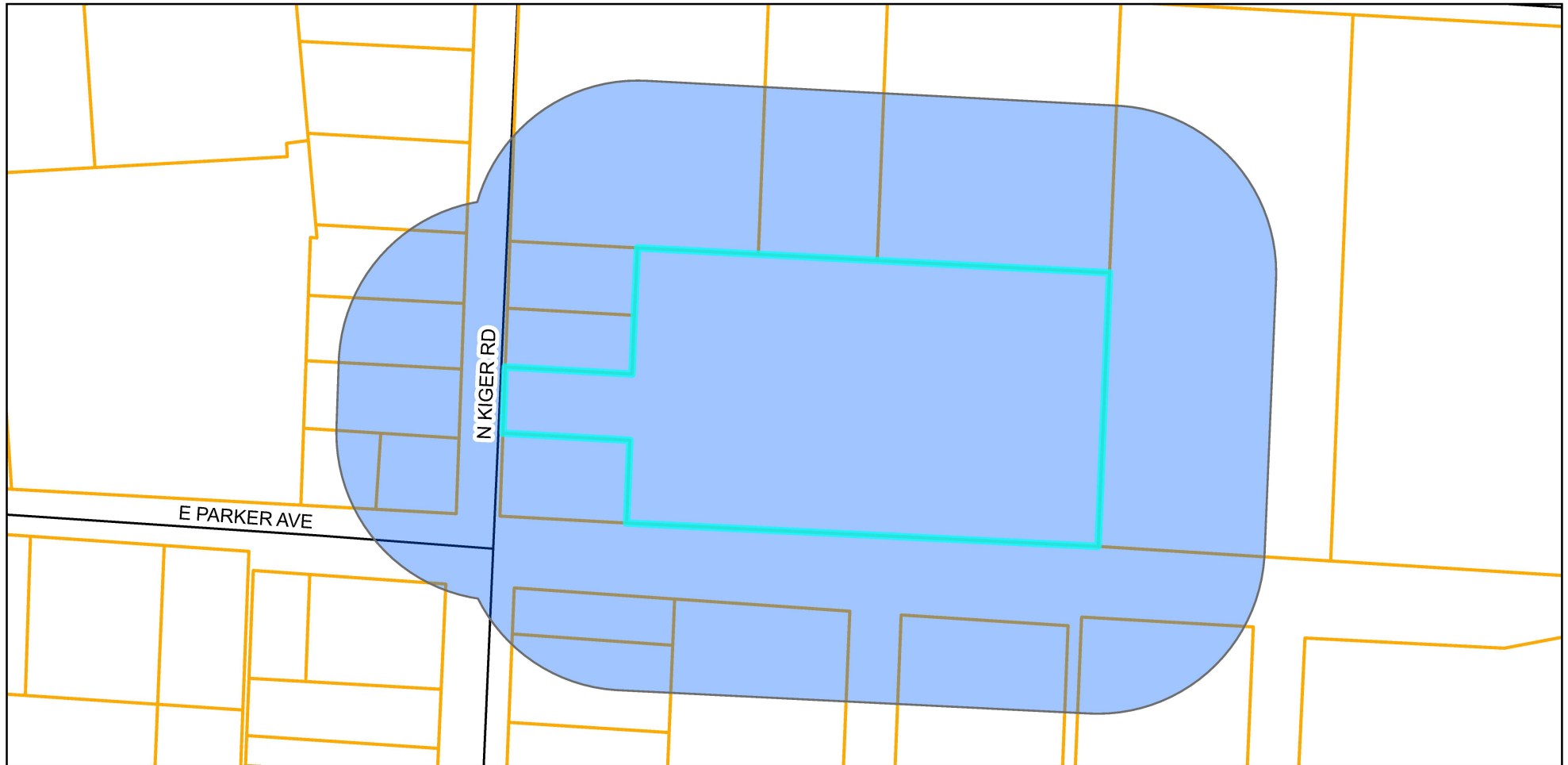
For more information, contact the Community Development Department at 816-325-7421.

Property Address	Property Owner	Owner Address	City	State	ZIP Code
1016 N KIGER RD	COOPER WILLIAM L & IRENE	1016 N KIGER RD	INDEPENDENCE	MO	64050
1018 N KIGER RD	BALL TANNER W	1018 N KIGER RD	INDEPENDENCE	MO	64050
1012 N KIGER RD	CASE RIVERA DELISS MARI	1012 N KIGER RD	INDEPENDENCE	MO	64050
1001 N KIGER RD	WALKER KELLY ELIZABETH & BAKER JESSE W	1001 N KIGER RD	INDEPENDENCE	MO	64050
1309 E MECHANIC AVE	KLAUSEN RICHARD STEVEN	1309 E MECHANIC AVE	INDEPENDENCE	MO	64050
1301 E MECHANIC AVE	RAFFETY JENNIFER	1301 E MECHANIC AVE	INDEPENDENCE	MO	64050
933 N KIGER RD	MCGINNIS RAYMOND L	933 N KIGER RD	INDEPENDENCE	MO	64050
1406 E PARKER AVE	WOLF ANGELA	1406 E PARKER AVE	INDEPENDENCE	MO	64056
1100 N KIGER RD	CHESTNUT DAVID F	1713 N PONCA DR	INDEPENDENCE	MO	64058
NO ADDRESS ASSIGNED BY CITY	GRANDSTAFF PHILLIP M & REYNOLDS JESSICA L	1712 E TC LEA RD	INDEPENDENCE	MO	64050
1401 E MECHANIC AVE	CRIDER KATIE & HARPER WESLEY	1401 E MECHANIC AVE	INDEPENDENCE	MO	64050
1014 N KIGER RD	WOLFE REGINALD G & BEVERLY A	1014 KIGER RD	INDEPENDENCE	MO	64050
916 N KIGER RD	LOVELL THERESA	916 N KIGER RD	INDEPENDENCE	MO	64050
15400 E T C LEA RD	TERRELL KENNETH B	15400 E T C RD	INDEPENDENCE	MO	64050
1023 N KIGER RD	MACKESTY PAULA E	1023 N KIGER RD	INDEPENDENCE	MO	64050
NO ADDRESS ASSIGNED BY CITY	WHITERIDGE LLC	PO BOX 46870	GLADSTONE	MO	64188
1019 N KIGER RD	KENNEDY TOBIN	1804 NW 79TH TER	KANSAS CITY	MO	64151
1313 E MECHANIC AVE	MORGAN PAULA M	1313 E MECHANIC AVE	INDEPENDENCE	MO	64050
1700 E T C LEA RD	CRANE JOHN A & JULIE A	1700 E TC LEA RD	INDEPENDENCE	MO	64050
937 N KIGER RD	BSFR II OWNER I LLC	997 MORRISON DR STE 402	CHARLESTON	SC	29403

Notification Area

1009 N Kiger Rd

#25-100-08



Legend

Parcels

 Parcels

Streets

 Local

City Limits

 City Limits

0 0.03 0.06 0.11 Miles


Prepared by: Gabe Glaser
Community Development Department
Date Saved:1/10/2025 11:28 AM

Appendix C - Property Owner Notification Affidavit

STATE OF MISSOURI

COUNTY OF Platte
~~JACKSON~~

Case No. 25-100-08

I, Tobin Kennedy, of lawful age being first duly sworn upon oath, state:

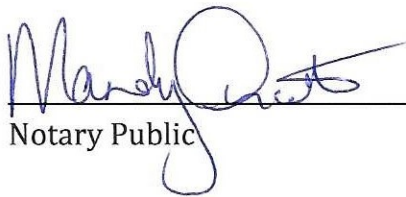
That I am the (agent, owner, attorney) for the property for which the application was filed and did, not later than fifteen (15) days prior to the date of the public hearing scheduled before the Planning Commission, mail notices to all persons owning property within 185 feet of the subject property. **The list of property owners to whom notice has been mailed is attached.**

These notices were mailed on the 13th day of January, 2025.



Signature of Agent, Owner or Attorney

Subscribed and sworn to before me this 13th day of January, 2025

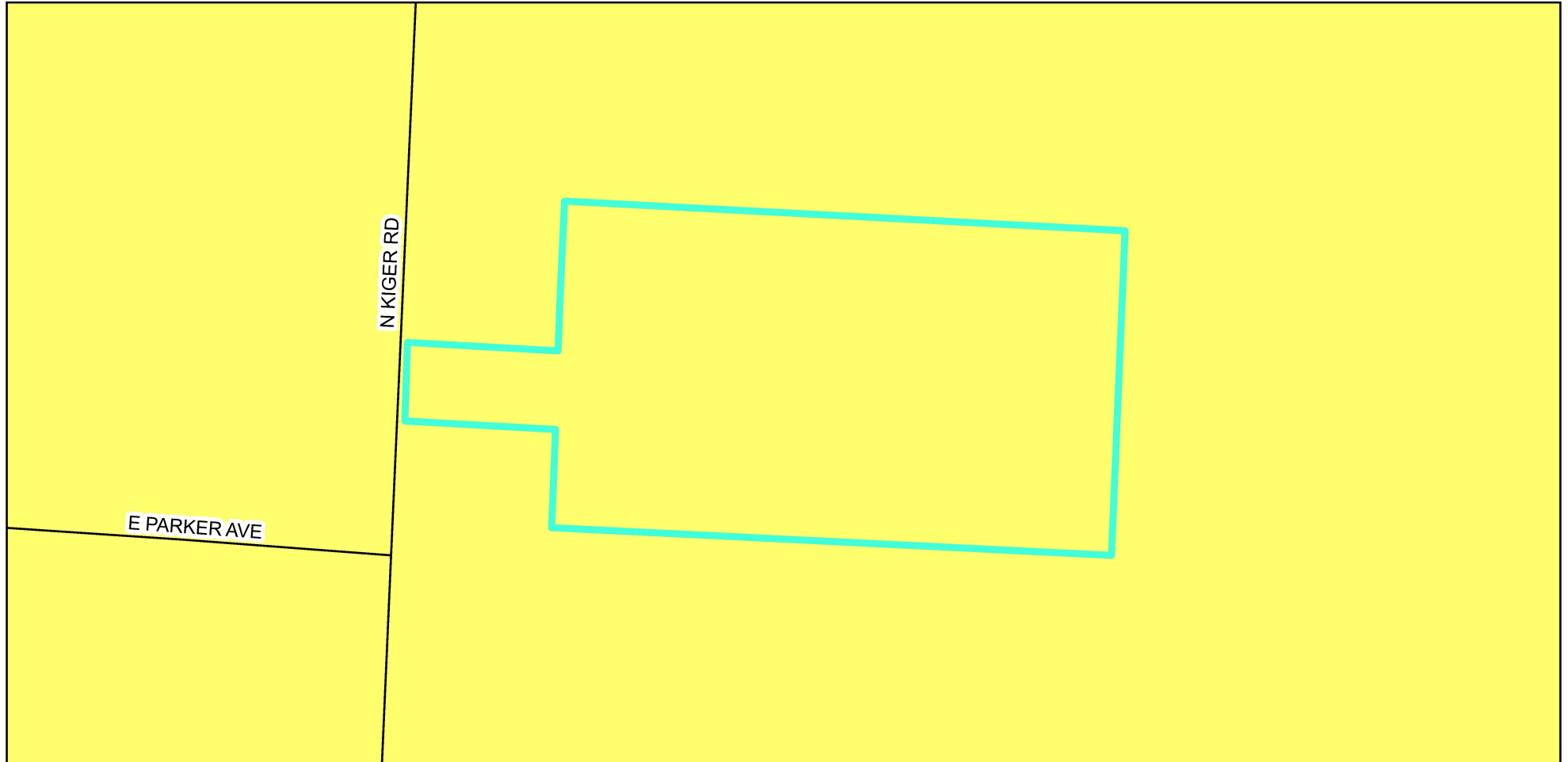

Notary Public

3/1/2026
Commission Expiration Date

MANDY ORCUTT NOTARY PUBLIC - NOTARY SEAL STATE OF MISSOURI MY COMMISSION EXPIRES MARCH 1, 2026 PLATTE COUNTY COMMISSION #13656130
--

Comprehensive Plan

1009 N Kiger Rd, Independence, Mo 64050



Legend

Streets

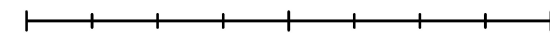
— Local

Proposed Land Use (Comp Plan)

 Residential Neighborhoods



0 125 250 500 Feet



Prepared For: Case #25-100-08
Community Development Department
Meeting Date: February 11, 2025



Planning Commission Minutes

February 11, 2025 6:00 PM

City Hall, 111 E. Maple Avenue (Ground Floor), Council Chambers

CALL TO ORDER

A meeting of the Planning Commission was held at 6:00 PM on 2/11/2025, in the 111 E Maple Avenue, Independence, MO 64050. The meeting was called to order.

ROLL CALL

Upon roll call, the following members were present - Laurie Dean Wiley, Eric Ashbaugh, Edward Nesbitt, Dan O'Neill, Virginia Ferguson, Michael Young. Absent - Jose Torres.

CONSENT AGENDA

The Consent Agenda consists of routine items of business to be acted upon by the Planning Commission with little or no public discussion. The staff or committee recommendation for each item is included in the Planning Commission packet. Any item may be removed by a commissioner or staff member to become part of the regular agenda.

1. Planning Commission Minutes – January 28, 2025

Motion

Commissioner Edward Nesbitt made a motion to approve the Consent Agenda. Commissioner Virginia Ferguson seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

PUBLIC HEARINGS

1. **Case 25-100-08 – Rezoning – 1009 N Kiger Rd** – A request to rezone the property from R-12 (Two-Family Residential) to R-6 (Single-Family Residential).

Staff Presentation

Gabe Glaser presented the case. Mr. Glaser presented the Commission with a vicinity map, noting the area and surrounding zoning. He presented the Commission with an aerial map indicating the project area and explained the surrounding land uses.

Applicant Comments

Tobin Kennedy, Gladstone, stated he would like to rezone the lot from R-12 to R-6 so a potential buyer can build a single-family house. Mr. Kennedy explained that if the rezoning is approved, he must do a minor subdivision and obtain a variance to the setback requirements. He also mentioned that if the variance isn't approved, seek to rezone the property back to R-12.

Public Comments

Reggie Wolf, 1015 N Kiger, commented as long as it's one house he's in agreement with the rezoning.

Jessie Baker, 1011 N Kiger, mentioned that he doesn't have any opposition to the single-family house.

Commissioner Comments

In response to Chairwoman Wiley's question, Rick Arroyo stated this is a step process in which for the minor subdivision to be approved for one lot, the rezoning needs approval. Once the single lot is obtained, a variance can be applied for.

Motion

Commissioner Edward Nesbitt made a motion to approve the case. Commissioner Dan O'Neill seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

ROUNDTABLE - NEXT MEETING FEBRUARY 25, 2025

Chairwoman Wiley noted that there will **not be a second meeting in February**.

ADJOURNMENT

The meeting was adjourned at 6:18 p.m.

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-016 **2R** An ordinance authorizing the borrowing of not to exceed \$50,000,000 from the Missouri Development Finance Board to finance certain project costs for the City; approving the form of and authorizing the execution of a Financing Agreement with the Missouri Development Finance Board; and prescribing other matters relating thereto. **2R**

Recommendations:

Staff recommends approval of this item.

Background:

On January 6, 2025, the City Council approved a resolution declaring the City's official intent to issue tax-exempt obligations to finance the construction of three new fire stations and to renovate, improve and equip the Independence Utilities Center for law enforcement uses as part of the new proposed Justice Center. Funding for the project is derived from a combination of existing revenue sources, including the Fire Protection Sales Tax and the Marijuana Sales Tax. The final maturity date of the bonds shall not exceed 30 years with an early payment option that allows the city to pay off the bonds early without penalties.

Staff worked closely with the City's Financial Advisor, Columbia Capital Management, LLC, and Bond Counsel, Gilmore and Bell, P.C., to secure tax-exempt financing for the projects through the Missouri Development Finance Board.

Emergency Justification:**Fiscal Impact:**

The principal amount of the loans shall not exceed \$50,000,000 and annual appropriations will be included in the annual budget for Council approval.

Council Action:

Department / Contact	Finance and Administration /
---------------------------------	------------------------------

REVIEWERS

Melissa Cabrera

Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. City Ordinance UPDATE 3.17.25
2. MDFB Supporting Documents

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ~~APPROPRIATION OF NO MORE THAN~~ **BORROWING OF NOT TO EXCEED** \$50,000,000 FROM THE MISSOURI DEVELOPMENT FINANCE BOARD TO FINANCE CERTAIN PROJECT COSTS FOR THE CITY; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A FINANCING AGREEMENT WITH THE MISSOURI DEVELOPMENT FINANCE BOARD; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Independence, Missouri (the “City”), is a constitutional charter city and political subdivision of the State of Missouri duly created, organized and existing under the constitution and laws of the State of Missouri; and

WHEREAS, the City has determined that it is necessary and desirable, to adopt this Ordinance in order to provide financing for the costs to construct, improve and equip three new fire stations and related improvements within the City (the “Fire Stations Project”) and to renovate, improve and equip the existing Independence Utilities Center for law enforcement uses, including space for police headquarters (the “Police Project,” together with the Fire Stations Project, the “Projects”) by obtaining a loan from the Missouri Development Finance Board (the “Board”), in the principal amount not to exceed \$50,000,000 (the “Loan”) pursuant to the terms of the Financing Agreement (the “Financing Agreement”) between the City and the Board;

WHEREAS, the City will apply the proceeds of the Loan to (1) pay or reimburse the City for the costs of the Projects, (2) fund a debt service reserve fund (if necessary and desirable in connection with the marketing of the below-described Bonds), and (3) pay the costs of incurring the Loan and issuing the bonds which will be issued by the Board to fund such Loan (the “Bonds,” as further described herein); and

WHEREAS, it is hereby found and determined that it is necessary and advisable and in the best interest of the City and of its inhabitants that the City obtain the Loan from the Board in the form and manner as hereinafter provided to provide funds for the above-described purpose and to provide for the repayment of said Loan all as more fully described herein;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

ARTICLE I - DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined elsewhere in this Ordinance, the Indenture and the Financing Agreement, the following capitalized words and terms as used in this Ordinance shall have the following meanings:

“Additional Payments” shall have the meaning set forth in the Financing Agreement.

“Board” means the Missouri Development Finance Board, a body corporate and politic of the State of Missouri.

“Bonds” means the not to exceed \$50,000,000 Infrastructure Facilities Revenue Bonds (City of Independence, Missouri - Public Safety Projects), Series 2025A, issued by the Board.

“Business Day” means a day other than a Saturday, Sunday or holiday on which the Trustee is scheduled in the normal course of its operations to be open to the public for conduct of its banking operations.

“City” means the City of Independence, Missouri, and any successors or assigns.

“Financing Agreement” means the Financing Agreement by and between the Board and the City pursuant to which the Board will loan the proceeds of the Bonds to the City.

“Loan” means the loan from the Board to the City made pursuant to the Financing Agreement.

“Loan Payments” shall have the meaning set forth in the Financing Agreement.

“Ordinance” means this Ordinance as from time to time amended in accordance with the terms hereof.

“Project Costs” means all costs of completing the Projects and the costs of incurring the Loan and issuing the Bonds.

“State” means the State of Missouri.

ARTICLE II - AUTHORIZATION FOR LOAN

Section 201. Authorization for Loan. The City is hereby authorized to borrow from the Board a sum not to exceed \$50,000,000 in order to permit the City to finance the purposes stated in the recitals hereto. The repayment terms of the Loan will be as set forth in the Financing Agreement, and will correspond to the repayment of the Bonds issued by the Board as described therein. The authorization for the Loan is conditional on the terms of the Bonds being reflected in the Bond Trust Indenture related to the Bonds and the below-described Bond Purchase Agreement consistent with the following:

- (a) The maximum principal amount of the Bonds shall not exceed \$50,000,000.
- (b) The True Interest Cost of the Bonds shall not exceed 6.50%.
- (c) The weighted average maturity of the Bonds shall not exceed 22 years.
- (d) The final maturity date of the Bonds shall be not later than the year 2054.
- (e) The underwriter’s discount (including expenses) shall not exceed 0.600% of the principal amount of the Bonds.
- (f) The Bonds shall be subject to optional redemption prior to maturity no later than 2035.

Section 202. Authorization of Documents. In connection with the Loan the City is hereby authorized to execute and deliver the following documents:

- (a) Financing Agreement.

- (b) Tax Compliance Agreement (the “Tax Compliance Agreement”) among the Board, the City, and UMB Bank, N.A., as trustee (the “Trustee”).
- (c) Continuing Disclosure Undertaking (the “Continuing Disclosure Undertaking”) executed by the City.
- (d) Bond Purchase Agreement among the City, the Board and the underwriter to be named therein, related to the purchase of the Bonds.

(the “City Documents”) in substantially the form presented to and reviewed by the City Council (copies of which documents shall be filed in the records of the City), with such changes therein as shall be approved by the officers executing such documents, such officers’ signatures thereon being conclusive evidence of their approval thereof.

Section 203. Limited Obligations. The City obligation to make Loan Payments and Additional Payments under the Financing Agreement shall be subject to annual appropriation and shall not constitute a debt, liability or indebtedness within the meaning of any constitutional, statutory or charter debt limitation or restriction, all as more fully provided in the Financing Agreement.

Section 204. Execution of Documents. The City Manager, Finance Director and the City Clerk are hereby authorized and directed to execute and deliver the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

ARTICLE III - SECURITY FOR THE LOAN

Section 301. Security for the Loan. The City’s obligation to make Loan Payments and Additional Payments pursuant to the Financing Agreement shall be subject to annual appropriation as provided in **Section 3.5** of the Financing Agreement. The taxing power of the City is not pledged to the payment of the Loan either as to principal or interest. The Loan shall not constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

The City currently intends to appropriate in each year funds sufficient for the payment of the Loan Payments and Additional Payments. In preparing the City’s annual budget the City Manager shall include or cause to be included in each budget submitted to the City Council such appropriation. Notwithstanding the foregoing, the decision of whether or not to appropriate is solely within the discretion of the City Council. In the event the City Council votes to not appropriate such moneys, the City shall immediately notify in writing the following persons of such Event of Nonappropriation: (i) the Board, (ii) the Trustee, (iii) the Municipal Securities Rulemaking Board, and (iv) each nationally recognized rating agency which currently maintains a rating on any of the City’s bonds or the Board’s bonds issued for the benefit of the City.

The City’s obligations to pay Loan Payments and Additional Payments under the Financing Agreement shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing Fiscal Year beyond the then current Fiscal Year. Neither the Financing Agreement nor the issuance of the Bonds shall directly or indirectly obligate the City to levy or pledge any form of taxation or make any appropriation or make any payments beyond those appropriated for the City’s then current Fiscal Year, but in each Fiscal Year Loan Payments and Additional Payments shall be payable solely from the amounts budgeted or appropriated therefor.

Section 302. Appropriation. The City hereby appropriates sufficient funds for the fiscal year ending June 30, 2025 for application to the payment of all Loan Payments and Additional Payments that become due during the fiscal year ending June 30, 2025.

ARTICLE IV - MISCELLANEOUS PROVISIONS

Section 401. Reimbursement. The City intends to reimburse itself from the proceeds of the Loan for Project Costs incurred by the City prior to the issuance of the Bonds, which reimbursement amount will not exceed the principal amount of the Bonds.

Section 402. Further Authority. The officers of the City, including the City Manager, Finance Director and the City Clerk, are hereby authorized and directed to execute all documents, and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make any changes or additions in this Ordinance and the foregoing agreements, statements, instruments and other documents herein approved, authorized and confirmed which they determine to be in the City's best interest, and the execution or taking of such action shall be conclusive evidence of such determination. This authority shall include the execution and delivery of any documents required by a bond insurer.

Section 403. Severability. If any section or other part of this Ordinance, whether large or small, is for any reason held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 404. Governing Law. This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State.

Section 405. Effective Date. This Ordinance shall take effect and be in full force in accordance with the City Charter.

[remainder of page intentionally left blank]

PASSED THIS _____ DAY OF _____, 2025, BY THE CITY COUNCIL OF
THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager

**MISSOURI DEVELOPMENT FINANCE BOARD
as Board**

AND

**CITY OF INDEPENDENCE, MISSOURI,
as City**

FINANCING AGREEMENT

Dated as of May 1, 2025

Relating to

**\$[_____]
Missouri Development Finance Board
Infrastructure Facilities Revenue Bonds
(City of Independence, Missouri - Public Safety Projects)
Series 2025A**

Certain rights, title and interest of the Missouri Development Finance Board in this Financing Agreement have been pledged and assigned to UMB Bank, N.A., Kansas City, Missouri, as Trustee under a Bond Trust Indenture dated as of May 1, 2025, between the Board and the Trustee.

FINANCING AGREEMENT

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FINANCING AGREEMENT

THIS FINANCING AGREEMENT, dated as of May 1, 2025 (this “Financing Agreement”), between the **MISSOURI DEVELOPMENT FINANCE BOARD**, a body corporate and politic organized and existing under the laws of the State of Missouri (the “Board”), and the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “City”);

WITNESSETH:

WHEREAS, the Board is authorized and empowered under the Missouri Development Finance Board Act, Sections 100.250 to 100.297, inclusive, of the Revised Statutes of Missouri, as amended (“Act”), to issue revenue bonds for the purpose of providing funds to finance and refinance the costs of certain “projects” as defined in the Act (which includes “infrastructure facilities,” as defined in the Act to include public facilities and any other improvements provided by any form of government) and to pay certain costs related to the issuance of such revenue bonds; and

WHEREAS, the City has requested that the Board assist in the financing of the Projects described herein through the issuance of the Board’s Infrastructure Facilities Revenue Bonds, being described as the Infrastructure Facilities Revenue Bonds (City of Independence, Missouri - Public Safety Projects), Series 2025A, in the original principal amount of \$ _____ (the “Series 2025A Bonds”); and

WHEREAS, the governing body of the Board passed and approved a resolution on March 18, 2025, authorizing the Board to issue the Series 2025A Bonds pursuant to the Bond Trust Indenture dated of even date herewith (the “Indenture”) between the Board and UMB Bank, N.A., as Trustee; and

WHEREAS, pursuant to such resolution, the Board is authorized (a) to execute and deliver the Indenture for the purpose of issuing and securing the Series 2025A Bonds, and (b) to enter into this Financing Agreement, under which the Board will loan the proceeds of the Series 2025A Bonds to the City in accordance with the provisions of this Financing Agreement to finance the Projects, in consideration of payments to be made by the City to the Trustee which are to be sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2025A Bonds as the same become due; and

WHEREAS, the City, by Ordinance No. _____ passed by the City Council on April ___, 2025, approved the issuance of the Series 2025A Bonds and the execution and delivery of certain documents, including this Financing Agreement, and directed the City Manager to include in each future budget submitted to the City Council an appropriation for all payments required under this Financing Agreement, as provided herein and therein; and

WHEREAS, pursuant to the foregoing, the Board desires to loan the proceeds of the Series 2025A Bonds to the City, and the City desires to borrow the proceeds of the Series 2025A Bonds from the Board, to be repaid by the City upon the terms and conditions hereinafter set forth, all for the purpose of providing funds to (a) finance the Projects, [**(b) provide for an initial deposit to the Debt Service Reserve Fund,**] and (c) pay certain costs related to the issuance of the Series 2025A Bonds; and

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the Board and the City, do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. Capitalized terms not defined in this Financing Agreement shall have the meanings set forth in the Indenture.

Section 1.2. Rules of Interpretation.

For all purposes of this Financing Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Words importing the singular number shall include the plural and vice versa and words importing person shall include firms, associations and corporations, including public bodies, as well as natural persons.

(c) The table of contents hereto and the headings and captions herein are not a part of this document.

(d) Terms used in an accounting context and not otherwise defined shall have the meaning ascribed to them by accounting principles generally accepted in the United States of America.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the Board. The Board represents and warrants to the City and the Trustee as follows:

(a) *Organization and Authority.* The Board (1) is a public body corporate and politic duly organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to enter into, execute and deliver this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder, and (3) by all necessary action has been duly authorized to execute and deliver this Financing Agreement and all Transaction Documents required to be executed and delivered by it in connection with the issuance of the Series 2025A Bonds (collectively, the “Board Documents”), acting by and through its duly authorized officers.

(b) *No Defaults or Violations of Law.* The execution and delivery of this Financing Agreement and the other Board Documents by the Board will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Board is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory laws, rules or regulations applicable to the Board or its property.

Section 2.2. Representations by the City. The City represents and warrants to the Board and the Trustee as follows:

(a) *Organization and Authority.* The City (1) is a constitutional charter city and political subdivision duly organized and validly existing under the laws of the State of Missouri, and (2) has lawful power and authority to enter into, execute and deliver this Financing Agreement and all other Transaction Documents required to be executed and delivered by it in connection with the issuance of the Series 2025A Bonds (collectively, the “City Documents”) and to carry out its obligations hereunder and thereunder, and (3) by all necessary action has been duly authorized to execute and deliver this Financing Agreement and the other City Documents, acting by and through its duly authorized officers.

(b) *No Defaults or Violations of Law.* The execution and delivery of this Financing Agreement and the other City Documents by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the City is a party or by which it or any of its property is bound or its charter, or any of the laws, rules or regulations applicable to the City or its property.

(c) *Public Purpose.* The City believes that the appropriation of revenues to pay its obligations under this Financing Agreement is an essential public purpose.

(d) *No Litigation.* To the knowledge of the City, there is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Financing Agreement or the other City Documents or the ability of the City to make the Loan Payments or to otherwise comply with the obligations under this Financing Agreement or the other City Documents. Neither the execution and delivery of this Financing Agreement by the City, nor compliance by the City with its obligations under this Financing Agreement require the approval of any regulatory body, or any other entity, which approval has not been obtained.

Section 2.3. Survival of Representations. All representations of the Board and the City contained in this Financing Agreement or in any certificate or other instrument delivered by any such entity pursuant to this Financing Agreement or any other Transaction Document, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Series 2025A Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations.

ARTICLE III

THE LOAN; PAYMENT OF THE SERIES 2025A BONDS; ISSUANCE OF THE SERIES 2025A BONDS

Section 3.1. Amount and Source of the Loan; Issuance of Bonds. The Board agrees to lend to the City, upon the terms and conditions herein and in the Indenture specified, the net proceeds received by the Board from the sale of the Series 2025A Bonds (the “Loan”). In order to provide funds to make the Loan and finance the Costs of the Projects, the Board agrees that it will issue, sell and deliver the Series 2025A Bonds to the Original Purchaser. The proceeds of the sale of the Series 2025A Bonds shall be paid over to the Trustee for the account of the Board and shall be administered, disbursed and applied for the payment of the Costs of the Projects and other purposes upon the terms and in the manner as provided in the Indenture and in this Financing Agreement.

Section 3.2. Loan Payments. Subject to the limitations of **Sections 3.5, 3.7 and 4.1** hereof, the City shall pay the following amounts to the Trustee, all as “Loan Payments” under this Financing Agreement:

(a) *Debt Service Fund -- Interest:* On or before 10:00 a.m. on or before the Business Day preceding each June 1 and December 1, commencing on the Business Day preceding December 1, 2025, an amount which is not less than the interest to become due on the next interest payment date on the Series 2025A Bonds; provided, however that the City may be entitled to certain credits on such payments as permitted under **Section 3.3** of this Financing Agreement.

(b) *Debt Service Fund -- Principal:* On or before 10:00 a.m. on or before the Business Day preceding each December 1, commencing on the Business Day preceding December 1, 2025, an amount which is not less than the installment of principal due on the Series 2025A Bonds on the next principal payment date; provided, however, that the City may be entitled to certain credits on such payments as permitted under **Section 3.3** of this Financing Agreement.

(c) *Debt Service Fund - Redemption:* On or before 10:00 a.m. on or before the Business Day preceding the date required by this Financing Agreement or the Indenture, the amount of any moneys received which is intended or required to redeem Series 2025A Bonds then Outstanding if the City exercises its right to redeem Series 2025A Bonds under any provision of the Indenture.

Notwithstanding any schedule of payments upon the Loan set forth in this Financing Agreement or the Indenture, the City shall make payments upon the Loan and shall be liable therefor at the times and in the amounts (including interest, principal, and redemption premium, if any) equal to the amounts to be paid as interest, principal and redemption premium, if any, whether at maturity or by optional or mandatory redemption upon all Bonds from time to time Outstanding under the Indenture.

Any Supplemental Financing Agreement shall provide for similar deposits into the Debt Service Fund of amounts sufficient to insure the prompt payment of the principal of, premium, if any, and interest on any Additional Bonds as the same become due.

Unpaid Loan Payments shall bear interest at the Prime Rate. Any interest charged and collected on an unpaid Loan Payment shall be deposited to the credit of the Debt Service Fund and applied to pay interest on overdue amounts in accordance with the Indenture.

The City and the Board each acknowledge that they have no interest in the Debt Service Fund[**, the Debt Service Reserve Fund**] or the Rebate Fund, and any moneys deposited therein shall be in the custody of and held by the Trustee in trust for the benefit of the Bondowners and the United States of America as provided in the Indenture.

Section 3.3. Credits on Loan Payments. Notwithstanding any provision contained in this Financing Agreement or in the Indenture to the contrary, in addition to any credits on the Loan resulting from the payment or prepayment of Loan Payments from other sources:

(a) any moneys deposited (including earnings thereon) by the Trustee in the Debt Service Fund as interest (including moneys received as accrued interest from the sale of the Bonds and any initial deposit of capitalized interest made from the proceeds of the sale of any

series of the Bonds) shall be credited against the obligation of the City to pay interest on the Loan as the same becomes due;

(b) any moneys deposited (including earnings thereon) by the Trustee in the Debt Service Fund as principal shall be credited against the obligation of the City to pay the principal of the Loan as the same becomes due in the order of maturity thereof; and

(c) the amount of any moneys transferred by the Trustee from any other fund held under the Indenture and deposited in the Debt Service Fund as interest or principal shall be credited against the obligation of the City to pay interest or principal, as the case may be, as the same become due.

Section 3.4. Additional Payments. Subject to the limitations of **Sections 3.5, 3.7 and 4.1** hereof, the City shall pay the following amounts to the following persons, all as “Additional Payments” under this Financing Agreement:

(a) to the Trustee, when due, all reasonable fees and charges for its services rendered under the Indenture, this Financing Agreement and any other Transaction Documents, and all reasonable expenses (including without limitation reasonable fees and charges of any Paying Agent, bond registrar, counsel, accountant, engineer or other person) incurred in the performance of the duties of the Trustee under the Indenture or this Financing Agreement for which the Trustee and other persons are entitled to repayment or reimbursement;

(b) to the Trustee, upon demand, an amount necessary to pay rebatable arbitrage in accordance with the Tax Compliance Agreement and the Indenture;

[** (c) to the Trustee, upon written notice from the Trustee of the amount required by **Section 410(a)** or **(b)** of the Indenture necessary to restore the Debt Service Reserve Fund to an amount equal to the Debt Service Reserve Fund Requirement; **]

(d) to the Board, on the Bond Issuance Date, its regular administrative and issuance fees and charges, if any, and all expenses (including without limitation attorney’s fees) incurred by the Board in relation to the transactions contemplated by this Financing Agreement and the Indenture, which are not otherwise to be paid by the City under this Financing Agreement or the Indenture;

(e) to the appropriate person, such payments as are required (i) as payment for or reimbursement of any and all reasonable costs, expenses and liabilities incurred by the Board or the Trustee or any of them in satisfaction of any obligations of the City hereunder that the City does not perform, or incurred in the defense of any action or proceeding with respect to the Projects, this Financing Agreement or the Indenture, or (ii) as reimbursement for expenses paid, or as prepayment of expenses to be paid, by the Board or the Trustee and that are incurred as a result of a request by the City, or a requirement of this Financing Agreement and that the City is not otherwise required to pay under this Financing Agreement;

(f) to the appropriate person, any other amounts required to be paid by the City under this Financing Agreement, the Tax Compliance Agreement or the Indenture; and

(g) any past due Additional Payments shall continue as an obligation of the City until they are paid and shall bear interest at the Prime Rate plus 2% during the period such Additional Payments remain unpaid.

Section 3.5. Annual Appropriations. The City intends, on or before the last day of each Fiscal Year, to budget and appropriate, specifically with respect to this Financing Agreement, moneys sufficient to pay all the Loan Payments and reasonably estimated Additional Payments for the next succeeding Fiscal Year. The City shall deliver written notice to the Trustee no later than 15 days after the commencement of its Fiscal Year stating whether or not the City Council has appropriated funds sufficient for the purpose of paying the Loan Payments and Additional Payments reasonably estimated to become due during such Fiscal Year. If the City Council shall have made the appropriation necessary to pay the Loan Payments and reasonably estimated Additional Payments to become due during such Fiscal Year, the failure of the City to deliver the foregoing notice on or before the 15th day after the commencement of its Fiscal Year shall not constitute an Event of Nonappropriation and, on failure to receive such notice 15 days after the commencement of the City's Fiscal Year, the Trustee shall request that the City confirm whether or not such appropriation has been made. If the City Council shall not have made the appropriation necessary to pay the Loan Payments and Additional Payments reasonably estimated to become due during such succeeding Fiscal Year, the failure of the City to deliver the foregoing notice on or before the 15th day after the commencement of its Fiscal Year shall constitute an Event of Nonappropriation.

Section 3.6. Annual Budget Request. The City Manager or other officer of the City at any time charged with the responsibility of formulating budget proposals shall include in the budget proposals submitted to the City Council, in each Fiscal Year in which this Financing Agreement shall be in effect, an appropriation for all payments required for the ensuing Fiscal Year; it being the intention of the City that the decision to appropriate or not to appropriate under this Financing Agreement shall be made solely by the City Council and not by any other official of the City. The City intends, subject to the provisions above respecting the failure of the City to budget or appropriate funds to make Loan Payments and Additional Payments, to pay the Loan Payments and Additional Payments hereunder. The City reasonably believes that legally available funds in an amount sufficient to make all Loan Payments and Additional Payments during each Fiscal Year can be obtained. The City further intends to do all things lawfully within its power to obtain and maintain funds from which the Loan Payments and Additional Payments may be made, including making provision for such Loan Payments and Additional Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of the City and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. The City's Director of Finance is directed to do all things lawfully within such person's power to obtain and maintain funds from which the Loan Payments and Additional Payments may be paid, including making provision for such Loan Payments and Additional Payments to the extent necessary in each proposed annual budget submitted for approval or by supplemental appropriation in accordance with applicable procedures of the City and to exhaust all available reviews and appeals in the event such portion of the budget or supplemental appropriation is not approved. Notwithstanding the foregoing, the decision to budget and appropriate funds is to be made in accordance with the City's normal procedures for such decisions.

Section 3.7. Loan Payments to Constitute Current Expenses of the City. The Board and the City acknowledge and agree that the Loan Payments and Additional Payments hereunder shall constitute currently budgeted expenditures of the City, and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City. The City's obligations to pay Loan Payments and Additional Payments hereunder shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing Fiscal Year beyond the then current Fiscal Year. Neither this Financing Agreement nor the issuance of the Series 2025A Bonds shall directly or indirectly obligate the City to levy or pledge

any form of taxation or make any appropriation or make any payments beyond those appropriated for the City's then current Fiscal Year, but in each Fiscal Year Loan Payments and Additional Payments shall be payable solely from the amounts budgeted or appropriated therefor out of the income and revenue provided for such year, plus any unencumbered balances from previous years; provided, however, that nothing herein shall be construed to limit the rights of the owners of the Series 2025A Bonds or the Trustee to receive any amounts which may be realized from the Trust Estate pursuant to the Indenture. Failure of the City to budget and appropriate said moneys on or before the last day of any Fiscal Year shall be deemed an Event of Nonappropriation.

ARTICLE IV

SECURITY FOR THE LOAN

Section 4.1. Security for the Loan. The City's obligations to pay the Loan Payments and Additional Payments described herein and any amounts required to be paid under **Section 6.2** or **Section 9.4** hereof, as applicable, shall be limited, special obligations of the City payable solely from, and secured as to the payment of principal and interest by, a pledge of, subject to annual appropriation by the City as provided in **Section 3.5** hereof, all legally available revenues of the City. The taxing power of the City is not pledged to the payment of the Loan either as to principal or interest. The City's obligation to pay the Loan Payments and Additional Payments shall not constitute general obligations of the City, nor shall they constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction.

ARTICLE V

TERM

Section 5.1. Term of Financing Agreement. This Financing Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until the Bonds are deemed to be paid within the meaning of **Article X** of the Indenture and provision has been made for paying all other sums payable by the City to the Board, the Trustee and the Paying Agent for the Bonds under this Financing Agreement and the Indenture. All agreements, covenants, representations and certifications by the City as to all matters affecting the status of the interest on the Series 2025A Bonds shall survive the termination of this Financing Agreement and the defeasance of the Series 2025A Bonds.

ARTICLE VI

GENERAL COVENANTS AND PROVISIONS

Section 6.1. Information Provided to the Board and the Trustee. The City shall furnish to the Board and the Trustee written notice of any Event of Nonappropriation as soon as practicable, but in no event more than **5** days after such Event of Nonappropriation.

The City will at any and all times, upon the written request of the Trustee or the Board and at the expense of the City, permit the Trustee and the Board by their representatives to inspect the properties, books of account, records, reports and other papers of the City, and to take copies and extracts therefrom, and will promptly afford and procure a reasonable opportunity to make any such inspection, and the City will furnish to the Board and the Trustee any and all information as the Board or the Trustee may

reasonably request with respect to the performance by the City of its covenants in this Financing Agreement.

Section 6.2. Indemnification.

(a) The City releases the Board and the Trustee from, agrees that the Board and the Trustee shall not be liable for, and to the extent allowed by law and without waiver of sovereign immunity or any other immunity, indemnifies the Board and the Trustee against, all liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Board or the Trustee, on account of: (i) any breach or default on the part of the City in the performance of any covenant or agreement of the City under this Financing Agreement or any related document, or arising from any act or failure to act by the City, or any of its officials, agents, contractors, servants, employees or licensees (including, without limitation, any failure to comply or any violation, actual or alleged, in connection with Environmental Regulations); (ii) matters regarding the authorization, issuance and sale of the Series 2025A Bonds attributable to the City, and the provision of any information furnished by the City in connection therewith concerning the Projects or the City or arising from (1) any errors or omissions by the City such that the Series 2025A Bonds, when delivered to the Bondowners, are not validly issued and binding obligations of the Board, or (2) any fraud or misrepresentations or omissions contained in the proceedings of the Board furnished by or attributable to the City relating to the issuance of the Series 2025A Bonds or pertaining to the financial condition of the City which, if known to the original purchaser of the Series 2025A Bonds, might be considered a material factor in its decision to purchase the Series 2025A Bonds.

(b) The City agrees, to the extent allowed by law and without waiver of sovereign immunity or any other immunity, to indemnify the Trustee for and to hold it harmless against all liabilities, claims, costs and expenses incurred without negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Financing Agreement, the Series 2025A Bonds, the Indenture or any other Transaction Document or any action taken at the request of or with the consent of the City, including the costs and expenses (including, without limitation, reasonable compensation, expenses and disbursements of its agents and counsel) of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Financing Agreement, the Series 2025A Bonds or the Indenture.

(c) In case any action or proceeding is brought against the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the City, and the City upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the City from any of their obligations under this Section unless that failure prejudices the defense of the action or proceeding by the City. At its own expense, an indemnified party may employ separate legal counsel and participate in the defense; provided, however, in the event the City shall fail to employ counsel or such counsel shall fail to actively defend such actions or protect the Board or the Trustee, or both, the Board or the Trustee may employ counsel at the expense of the City to defend such action. The City shall not be liable for any settlement without its written consent.

(d) The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, attorneys, accountants, financial advisors, staff and employees of the Board and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Board and the Trustee, respectively, to the full extent permitted by law and without waiver of the City's sovereign immunity or any other immunity.

Section 6.3. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Undertaking. Notwithstanding any other provision of this Financing Agreement, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an event of default under this Financing Agreement; however, the Trustee may (and, at the request of the Underwriter or the owners of at least 25% aggregate principal amount in Outstanding Bonds, shall) or any bondowner or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section. For purposes of this Section, **“Beneficial Owner”** means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

ARTICLE VII

ADDITIONAL BONDS

Section 7.1. Additional Bonds. The Board from time to time may, in its sole discretion, at the written request of the City, authorize the issuance of Additional Bonds for the purposes and upon the terms and conditions provided in **Section 203** of the Indenture; provided that (1) the terms of such Additional Bonds, the purchase price to be paid therefor and the manner in which the proceeds thereof are to be disbursed shall have been approved by resolutions adopted by the Board and the City; (2) the Board and the City shall have entered into a Supplemental Financing Agreement to acknowledge that Loan Payments are revised to the extent necessary to provide for the payment of the principal of, redemption premium, if any, and interest on the Additional Bonds and to extend the term of this Financing Agreement if the maturity of any of the Additional Bonds would otherwise occur after the expiration of the term of this Financing Agreement; and (3) the Board and the City shall have otherwise complied with the provisions of this Financing Agreement and **Section 203** of the Indenture with respect to the issuance of such Additional Bonds.

ARTICLE VIII

ASSIGNMENT OF BOARD’S RIGHTS UNDER FINANCING AGREEMENT

Section 8.1. Assignment by the Board. The Board, by means of the Indenture and as security for the payment of the principal of, purchase price, and redemption premium, if any, and interest on the Series 2025A Bonds, will assign, pledge and grant a security interest in all of its rights, title and interests in, to and under this Financing Agreement, including Loan Payments and Additional Payments and other revenues, moneys and receipts received by it pursuant to this Financing Agreement, to the Trustee (reserving its Unassigned Board’s Rights) for the benefit of the bondowners.

Section 8.2. Restriction on Transfer of Board’s Rights. The Board will not sell, assign, transfer or convey its interests in this Financing Agreement except pursuant to the Indenture.

ARTICLE IX

EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. The term “Event of Default” or “Default” shall mean any one or more of the following events:

- (a) Failure by the City to make timely payment of any Loan Payment.
- (b) Failure by the City to make any Additional Payment when due and, after notice of such failure, the City shall have failed to make such payment within 10 days following the due date.
- (c) Failure by the City to observe and perform any covenant, condition or agreement on the part of the City under this Financing Agreement or the Indenture, other than as referred to in the preceding subparagraphs (a) and (b) of this Section, for a period of 30 days after written notice of such default has been given to the City by the Trustee or the Board during which time such default is neither cured by the City nor waived in writing by the Trustee and the Board, provided that, if the failure stated in the notice cannot be corrected within said 30-day period, the Trustee and the Board may consent in writing to an extension of such time prior to its expiration and the Trustee and the Board will not unreasonably withhold their consent to such an extension if corrective action is instituted by the City within the 30-day period and diligently pursued to completion and if such consent, in their judgment, does not materially adversely affect the interests of the bondowners.
- (d) Any representation or warranty by the City herein or in any certificate or other instrument delivered under or pursuant to this Financing Agreement or the Indenture or in connection with the financing of the Projects shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made, unless waived in writing by the Board and the Trustee or cured by the City, if such representation or warranty can be cured to the satisfaction of the Board and the Trustee within 30 days after notice thereof has been given to the City.

Section 9.2. Remedies on Default. Subject to the provisions of **Section 9.7** hereof, whenever any Event of Default shall have occurred and be continuing, the Trustee, as the assignee of the Board, may take any one or more of the following remedial steps; provided that if the principal of all Bonds then Outstanding and the interest accrued thereon shall have been declared immediately due and payable pursuant to the provisions of **Section 702** of the Indenture, all Loan Payments for the remainder of the term of the Loan shall become immediately due and payable without any further act or action on the part of the Board or the Trustee and the Trustee may immediately proceed (subject to the provisions of **Section 9.7** hereof) to take any one or more of the remedial steps set forth in subparagraph (b) of this Section:

- (a) By written notice to the City declare the outstanding principal of the Loan due in such Fiscal Year to be immediately due and payable, together with interest on overdue payments of principal and redemption premium, if any, and, to the extent permitted by law, interest, at the rate or rates of interest specified in the respective Bonds or the Indenture, without presentment, demand or protest, all of which are expressly waived.
- (b) Take whatever other action at law or in equity is necessary and appropriate to exercise or to cause the exercise of the rights and powers set forth herein or in the Indenture, as

may appear necessary or desirable to collect the amounts payable pursuant to this Financing Agreement then due and thereafter to become due or to enforce the performance and observance of any obligation, agreement or covenant of the City under this Financing Agreement or the Indenture.

In the enforcement of the remedies provided in this Section, the Trustee may treat all fees, costs and expenses of enforcement, including reasonable legal, accounting and advertising fees and expenses, as Additional Payments then due and payable by the City.

Any amount collected pursuant to action taken under this Section shall be paid to the Trustee and applied, first, to the payment of any costs, expenses and fees incurred by the Board or the Trustee as a result of taking such action and, next, any balance shall be used to satisfy any Loan Payments then due by payment into the Debt Service Fund and applied in accordance with the Indenture and, then, to satisfy any other Additional Payments then due or to cure any other Event of Default.

Notwithstanding the foregoing, the Trustee shall not be obligated to take any step that in its opinion will or might cause it to expend time or money or otherwise incur liability, unless and until indemnity satisfactory to it has been furnished to the Trustee at no cost or expense to the Trustee, as may be provided in **Section 802** and **Section 804** of the Indenture.

The provisions of this Section are subject to the limitation that the annulment of a declaration that the Bonds are immediately due and payable shall automatically constitute an annulment of any corresponding declaration made pursuant to subparagraph (a) of this Section and a waiver and rescission of the consequences of such declaration and of the Event of Default with respect to which such declaration has been made, provided that no such waiver or rescission shall extend to or affect any other or subsequent Default or impair any right consequent thereon. In the event any covenant, condition or agreement contained in this Financing Agreement shall be breached or any Event of Default shall have occurred and such breach or Event of Default shall thereafter be waived by the Trustee, such waiver shall be limited to such particular breach or Event of Default.

Section 9.3. No Remedy Exclusive. Subject to the provisions of **Section 9.7** hereof, no remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon a Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 9.4. Agreement to Pay Attorneys' Fees and Expenses. Subject to the provisions of **Section 3.7** hereof, in connection with any Event of Default by the City, if the Board or the Trustee employs attorneys or incurs other expenses for the collection of amounts payable hereunder or the enforcement of the performance or observance of any covenants or agreements on the part of the City herein contained, the City agrees that it will, on demand therefor, pay to the Board and the Trustee the reasonable fees of such attorneys and such other reasonable fees, costs and expenses so incurred by the Board and the Trustee.

Section 9.5. Board and City to Give Notice of Default. The Board and the City shall each, at the expense of the City, promptly give to the Trustee written notice of any Default of which the Board

or the City, as the case may be, shall have actual knowledge or written notice, but the Board shall not be liable for failing to give such notice.

Section 9.6. Performance of the City's Obligations. If the City shall fail to keep or perform any of its obligations as provided in this Financing Agreement, then the Board or the Trustee may (but shall not be obligated so to do), upon the continuance of such failure on the City's part for 15 days after notice of such failure is given to the City by the Board or the Trustee, and without waiving or releasing the City from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all sums so paid by the Board or the Trustee and all necessary incidental costs and expenses incurred by the Board or the Trustee in performing such obligations shall be deemed to be Additional Payments and shall be paid to the Board or the Trustee plus interest at the Prime Rate plus 2% on demand.

Section 9.7. Remedial Rights Assigned to the Trustee. Upon the execution and delivery of the Indenture, the Board will thereby have assigned to the Trustee all rights and remedies conferred upon or reserved to the Board by this Financing Agreement, reserving only the Unassigned Board's Rights. The Trustee shall have the exclusive right to exercise such rights and remedies conferred upon or reserved to the Board by this Financing Agreement in the same manner and to the same extent, but under the limitations and conditions imposed thereby and hereby. The Trustee and the bondowners shall be deemed third party creditor beneficiaries of all representations, warranties, covenants and agreements contained herein.

ARTICLE X

PREPAYMENT AND ACCELERATION OF LOAN PAYMENTS

Section 10.1. Prepayment at the Option of the City. Upon the exercise by the City of its option to cause the Bonds or any portion thereof to be redeemed pursuant to the Indenture, the City shall prepay Loan Payments in whole or in part at the times and at the prepayment prices sufficient to redeem all or a corresponding portion of the Bonds then Outstanding in accordance with the Indenture. At the written direction of the City such prepayments shall be applied to the redemption of the Bonds in whole or in part in accordance with the Indenture.

Section 10.2. Mandatory Prepayment to Satisfy Scheduled Mandatory Sinking Fund Redemption Requirements. The City shall prepay Loan Payments at the times, in the amounts and at the prepayment prices sufficient to redeem corresponding portions of the Bonds in accordance with any mandatory sinking fund redemption provisions of the Indenture. The City shall be entitled to all credits on such prepayment of a portion of Loan Payments, as set forth in the Indenture, and the City shall comply with all terms and provisions of the Indenture with respect thereto.

Section 10.3 Right to Prepay at Any Time. The City shall have the option at any time to prepay all of the Loan Payments, Additional Payments and other amounts it is required to pay hereunder by paying to the Trustee all such sums as are sufficient to satisfy and discharge the Indenture and paying or making provision for the payment of all other sums payable hereunder.

Section 10.4. Notice of Prepayment. To exercise an option granted by **10.1** or **10.3**, the City shall give written notice to the Board and the Trustee which shall specify therein the date upon which a prepayment of Loan Payments will be made, which date shall be not less than 45 days from the date the notice is received by the Trustee. In the Indenture, the Board has directed the Trustee to forthwith take all

steps (other than the payment of the money required to redeem the Bonds) necessary under the applicable provisions of the Indenture to effect any redemption of the then Outstanding Bonds, in whole, or in part, pursuant to **Section 302** of the Indenture.

Section 10.5. Precedence of this Article. The rights, options and obligations of the City set forth in this Article may be exercised or shall be fulfilled, as the case may be, whether or not a Default exists hereunder, provided that such Default will not result in nonfulfillment of any condition to the exercise of any such right or option.

ARTICLE XI

SUPPLEMENTAL FINANCING AGREEMENTS

Section 11.1. Supplemental Financing Agreements without Consent of Bondowners. Without the consent of the owners of any Bonds, the Board and the City may from time to time enter into one or more Supplemental Financing Agreements, for any of the following purposes:

- (a) to subject to this Financing Agreement additional property or to more precisely identify any project financed or refinanced out of the proceeds of any series of Bonds, or to substitute or add additional property thereto; or
- (b) to add to the conditions, limitations and restrictions on the authorized amount, terms or purposes of the Loan, as herein set forth, additional conditions, limitations and restrictions thereafter to be observed; or
- (c) in connection with the issuance of any Additional Bonds, to make such other provisions as provided in **Section 7.1**; or
- (d) to evidence the succession of another entity to the City and the assumption by any such successor of the covenants of the City herein contained; or
- (e) to add to the covenants of the City or to the rights, powers and remedies of the Trustee for the benefit of the owners of all or any series of Bonds or to surrender any right or power herein conferred upon the City; or
- (f) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein or to make any other provisions, with respect to matters or questions arising under this Financing Agreement, which shall not be inconsistent with the provisions of this Financing Agreement, provided such action shall not adversely affect the interests of the owners of the Bonds (and the Trustee shall be entitled to receive and rely upon and Opinion of Counsel in exercising such judgment).

Section 11.2. Supplemental Financing Agreements with Consent of Bondowners. With the prior written consent of the owners of not less than a majority in principal amount of the Bonds then Outstanding affected by such Supplemental Financing Agreement, the Board and the City may enter into Supplemental Financing Agreements, in form satisfactory to the Trustee, for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Financing Agreement or of modifying in any manner the rights of the Trustee and the owners of the Bonds under this Financing Agreement; provided, however, that no such Supplemental Financing Agreement shall, without the consent of the owner of each Outstanding Bond affected thereby:

(a) change the stated maturity of the principal of, or any installment of interest on, the Loan, or reduce the principal amount thereof or the interest thereon or any premium payable upon the redemption thereof, or change any place of payment where (except as may be required in connection with the appointment of a successor Trustee), or the coin or currency in which, the Loan, or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the stated maturity thereof (or, in the case of redemption, on or after the redemption date); or

(b) reduce the percentage in principal amount of the Outstanding Bonds, the consent of whose owners is required for any such Supplemental Financing Agreement, or the consent of whose owners is required for any waiver provided for in this Financing Agreement of compliance with certain provisions of this Financing Agreement or certain defaults hereunder and their consequences; or

(c) modify any of the provisions of this Section, except to increase any percentage provided thereby or to provide that certain other provisions of this Financing Agreement cannot be modified or waived without the consent of the owner of each Bond affected thereby.

The Trustee may in its discretion determine whether or not any Bonds would be affected by any Supplemental Financing Agreement and any such determination shall be conclusive upon the owners of all Bonds, whether theretofore or thereafter authenticated and delivered under the Indenture. The Trustee shall not be liable for any such determination made in good faith.

It shall not be necessary for the required percentage of owners of Bonds under this Section to approve the particular form of any proposed Supplemental Financing Agreement, but it shall be sufficient if such act shall approve the substance thereof.

Section 11.3. Execution of Supplemental Financing Agreements. In executing or consenting to any Supplemental Financing Agreement permitted by this Article, the Board and the Trustee shall be entitled to receive, and, subject to **Article VIII** of the Indenture, shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such Supplemental Financing Agreement is authorized and permitted by and in compliance with this Financing Agreement. The Trustee may, but shall not be obligated to, consent to any such Supplemental Financing Agreement which affects the Trustee's own rights, duties or immunities under this Financing Agreement, the other Transaction Documents or otherwise.

Section 11.4. Effect of Supplemental Financing Agreements. Upon the execution of any Supplemental Financing Agreement under this Article, this Financing Agreement shall be modified in accordance therewith and such Supplemental Financing Agreement shall form a part of this Financing Agreement for all purposes; and the City, the Board, the Trustee and every owner of Bonds theretofore or thereafter authenticated and delivered under the Indenture shall be bound thereby.

Section 11.5. Reference in Bonds to Supplemental Financing Agreements. Bonds authenticated and delivered after the execution of any Supplemental Financing Agreement pursuant to this Article may, and if required by the Trustee shall, bear a notation in form approved by the Trustee as to any matter provided for in such Supplemental Financing Agreement. If the Board shall so determine, new Bonds so modified as to conform, in the opinion of the Trustee and the Board, to any such Supplemental Financing Agreement may be prepared and executed by the Board and authenticated and delivered by the Trustee in exchange for Outstanding Bonds.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Authorized Representatives. Whenever under this Financing Agreement the approval of the Board is required or the Board is required or permitted to take some action, such approval shall be given or such action shall be taken by the Board Representative, and the City and the Trustee shall be authorized to act on any such approval or action. Any approval shall not be unreasonably withheld or delayed.

Whenever under this Financing Agreement the approval of the City is required or the City is required or permitted to take some action, such approval shall be given or such action shall be taken by the City Representative, and the Board and the Trustee shall be authorized to act on any such approval or action.

Section 12.2. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by hand delivery or overnight delivery service or received by registered or certified mail, postage prepaid, return receipt requested, addressed as specified in **Section 1101** of the Indenture. A duplicate copy of each notice, certificate or other communication given hereunder to any party mentioned in said **Section 1101** shall be given to all other parties mentioned therein (other than the bondowners unless a copy is required to be furnished to them by other provisions of this Financing Agreement). The Board, the City or the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent to it.

Section 12.3. Performance Date Not a Business Day. If any date for the payment of principal of, or redemption premium, if any, or interest on the Series 2025A Bonds or the taking of any other action hereunder is not a Business Day, then such payment shall be due, or such action shall be taken, on the first Business Day thereafter with the same force and effect as if made on the date fixed for payment or performance.

Section 12.4. Binding Effect. This Financing Agreement shall inure to the benefit of and shall be binding upon the Board and the City and their respective successors and assigns.

Section 12.5. Execution in Counterparts. This Financing Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6. No Pecuniary Liability. All covenants, obligations and agreements of the City contained in this Financing Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future councilmember, commissioner, director, officer, agent or employee of the City other than in their official capacity.

Section 12.7. Extent of Covenants of the Board; No Personal or Pecuniary Liability. All covenants, obligations and agreements of the Board contained in this Financing Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the Board in other than his official capacity, and no official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or

accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Board contained in this Financing Agreement or in the Indenture. No provision, covenant or agreement contained in this Financing Agreement, the Indenture or the Bonds, or any obligation herein or therein imposed upon the Board, or the breach thereof, shall constitute or give rise to or impose upon the Board a pecuniary liability or a charge. No provision hereof shall be construed to impose a charge against the general credit of the Board or any personal or pecuniary liability upon any director, officer, agent or employee of the Board.

Section 12.8. Net Loan. Subject to the limitations described in **Sections 3.5, 3.7 and 4.1**, the parties hereto agree (a) that the payments of Loan Payments are designed to provide the Board and the Trustee with moneys adequate in amount to pay all principal of, redemption premium, if any, and interest accruing on the Bonds as the same become due and payable, (b) that to the extent that the payments of Loan Payments are not sufficient to provide the Board and the Trustee with funds sufficient for the purposes aforesaid, the City shall be obligated to pay (subject to the limitations set forth in **Section 3.5** hereof) to, and they do hereby covenant and agree to pay, upon demand therefor, as Additional Payments, such further moneys, in cash, as may from time to time be required for such purposes, and (c) that if after the principal of, redemption premium, if any, and interest on the Bonds and all costs incident to the payment of the Bonds have been paid in full (including all Additional Payments) the Trustee or the Board holds unexpended funds received in accordance with the terms hereof, such unexpended funds shall, after payment therefrom of all sums then due and owing by the City under the terms of this Financing Agreement, be distributed in accordance with **Article IV** of the Indenture.

Section 12.9. Complete Agreement. The Board and the City understand that oral agreements or commitments to loan money, extend credit or to forbear from enforcing repayment of a debt including promises to extend or renew such debt are not enforceable. To protect the Board and the City from misunderstanding or disappointment, any agreements the Board and the City reach covering such matters are contained in this Financing Agreement, which is the complete and exclusive statement of the agreement between the Board and the City, except as the Board and the City may later agree in writing to modify this Financing Agreement.

Section 12.10. Severability. If any provision of this Financing Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Financing Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 12.11. Governing Law. This Financing Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

Section 12.12. Third Party Beneficiaries. The Trustee and the bondowners shall be deemed to be third party beneficiaries under this Financing Agreement.

Section 12.13. Electronic Storage of Documents. The City and the Board agree that the transaction described herein may be conducted and related documents may be stored by electronic means.

IN WITNESS WHEREOF, the **MISSOURI DEVELOPMENT FINANCE BOARD** and the **CITY OF INDEPENDENCE, MISSOURI** have caused this instrument to be executed on their behalf all as of the date first above written.

(Seal)

MISSOURI DEVELOPMENT FINANCE BOARD

By: _____
Executive Director

CITY OF INDEPENDENCE, MISSOURI

(Seal)

By: _____
City Manager

ATTEST:

By: _____
City Clerk

TAX COMPLIANCE AGREEMENT

Dated as of May 1, 2025

Among

**MISSOURI DEVELOPMENT FINANCE BOARD,
CITY OF INDEPENDENCE, MISSOURI,**

And

**UMB BANK, N.A.,
as Trustee**

\$ _____

**Missouri Development Finance Board
Infrastructure Facilities Revenue Bonds
(City of Independence, Missouri – Public Safety Projects)
Series 2025A**

TAX COMPLIANCE AGREEMENT

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Exhibit A: Debt Service Schedule and Proof of Bond Yield

Exhibit B: IRS Form 8038-G

Schedule A -- Attachment to Form-8038G

Exhibit C: Resolution of Official Intent

Exhibit D: Description of Property Comprising the Financed Facility

Exhibit E: Sample Annual Compliance Checklist

Exhibit F: Sample Final Written Allocation

* * *

TAX COMPLIANCE AGREEMENT

THIS TAX COMPLIANCE AGREEMENT (the “Tax Agreement”), entered into as of May 1, 2025, among the **MISSOURI DEVELOPMENT FINANCE BOARD**, a body corporate and politic duly organized and existing under the laws of the State of Missouri (the “Board”), the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri (the “City”), and **UMB BANK, N.A.**, a national banking association duly organized and existing under the laws of the United States of America, as trustee (the “Trustee”).

RECITALS

1. This Tax Agreement is being executed and delivered in connection with the issuance by the Board of \$_____ principal amount of Infrastructure Facilities Revenue Bonds (City of Independence, Missouri – Public Safety Projects), Series 2025A (the “Bonds”), under a Bond Trust Indenture dated the date of this Tax Agreement (the “Indenture”) between the Board and the Trustee, for the purpose of making a loan of the proceeds of such Bonds to the City under a Financing Agreement dated the date of this Tax Agreement (the “Financing Agreement”) between the Board and the City, to provide funds for certain purposes as described in this Tax Agreement and in the Indenture and Financing Agreement.

2. The Internal Revenue Code of 1986, as amended (the “Code”), and the applicable Regulations and rulings issued by the U.S. Treasury Department (the “Regulations”), impose certain limitations on the uses and investment of the Bond proceeds and of certain other money relating to the Bonds and set forth the conditions under which the interest on the Bonds will be excluded from gross income for federal income tax purposes.

3. The Board and the Trustee are entering into this Tax Agreement in order to set forth certain facts, covenants, representations, and expectations relating to the use of Bond proceeds and the property financed or refinanced with those proceeds and the investment of the Bond proceeds and of certain other related money, in order to establish and maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

4. The Board adopted a Tax-Exempt Financing Compliance Policy and Procedure on March 26, 2012 (the “Tax Compliance Procedure”) for the purpose of setting out general procedures to continuously monitor and comply with the federal income tax requirements set out in the Code and the Regulations.

5. This Tax Agreement is entered into as required by the Tax Compliance Procedure to set out specific tax compliance procedures applicable to the Bonds.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, covenants and agreements set forth in this Tax Agreement, the Board and the Trustee represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. Except as otherwise provided in this Tax Agreement or unless the context otherwise requires, capitalized words and terms used in this Tax Agreement have the same meanings as set forth in the Indenture, and certain other words and phrases have the meanings assigned in Code §§ 103, 141-150 and the Regulations. The following words and terms used in this Tax Agreement have the following meanings:

“Adjusted Gross Proceeds” means the Gross Proceeds of the Bonds reduced by amounts (1) in a Bona Fide Debt Service Fund or a reasonably required reserve or replacement fund, (2) that as of the Issue Date are not expected to be Gross Proceeds, but which arise after the end of the applicable spending period, and (3) representing grant repayments or sale or Investment proceeds of any purpose Investment.

“Annual Compliance Checklist” means a checklist for the Bonds designed to measure compliance with the requirements of this Tax Agreement and the Tax Compliance Procedure after the Issue Date as further described in **Section 4.01** and substantially in the form attached as **Exhibit E**.

“Available Construction Proceeds” means the sale proceeds of the Bonds, increased by (a) Investment earnings on the sale proceeds, (b) earnings on amounts in a reasonably required reserve or replacement fund allocable to the Bonds but not funded from the Bonds, and (c) earnings on such earnings, reduced by sale proceeds (1) in any reasonably required reserve fund or (2) used to pay issuance costs of the Bonds. But Available Construction Proceeds do not include Investment earnings on amounts in a reasonably required reserve or replacement fund after the earlier of (i) the second anniversary of the Issue Date or (ii) the date the Financed Facility is substantially completed.

“Board” means the Missouri Development Finance Board and its successors and assigns or any body, agency or instrumentality of the State of Missouri succeeding to or charged with the powers, duties and functions of the Board.

“Bona Fide Debt Service Fund” means a fund, which may include Bond proceeds, that (a) is used primarily to achieve a proper matching of revenues with principal and interest payments within each Bond Year; and (b) is depleted at least once each Bond Year, except for a reasonable carryover amount not to exceed the greater of (1) the earnings on the fund for the immediately preceding Bond Year, or (2) one-twelfth of the principal and interest payments on the Bonds for the immediately preceding Bond Year.

“Bond” or **“Bonds”** means any Bond or Bonds described in the recitals, authenticated and delivered under the Indenture.

“Bond Compliance Officer” means the person named in the Tax Compliance Procedure.

“Bond Counsel” means Gilmore & Bell, P.C., or other firm of nationally recognized bond counsel acceptable to the Board and the City.

“Bond Year” means each one-year period (or shorter period for the first Bond Year) ending November 1, or another one-year period selected by the City.

“City” means the City of Independence, Missouri, a constitutional charter city and political subdivision of the State of Missouri, and its successors and assigns.

“Code” means the Internal Revenue Code of 1986, as amended.

“Computation Date” means each date on which arbitrage rebate for the Bonds is computed. The City may treat any date as a Computation Date, subject to the following limits:

- (a) the first rebate installment payment must be made for a Computation Date not later than 5 years after the Issue Date;
- (b) each subsequent rebate installment payment must be made for a Computation Date not later than five years after the previous Computation Date for which an installment payment was made; and
- (c) the date the last Bond is discharged is the final Computation Date.

The City selects May 1, 2030, as the first Computation Date but reserves the right to select a different date consistent with the Regulations.

“Costs of Issuance Account” means the Series 2025A Costs of Issuance Account in the Missouri Development Finance Board – City of Independence, Missouri – CIP Infrastructure Facilities Costs of Issuance Fund, established pursuant to the Indenture.

“Debt Service Fund” means the Series 2025A Debt Service Account in the Missouri Development Finance Board – City of Independence, Missouri – CIP Infrastructure Facilities Debt Service Fund, established pursuant to the Indenture.

“Debt Service Reserve Fund” means the Series 2025A Debt Service Reserve Account in the Missouri Development Finance Board – City of Independence, Missouri – CIP Infrastructure Facilities Debt Service Reserve Fund, established pursuant to the Indenture.

“Final Written Allocation” means the Final Written Allocation of expenditures prepared by the Bond Compliance Officer in accordance with the Tax Compliance Procedure and **Section 4.2(b)** of this Tax Agreement.

“Financed Facility” means any of the property financed or refinanced with the proceeds of the Bonds and Qualified Equity as described on **Exhibit D**.

“Financing Agreement” means the Financing Agreement of even date herewith between the Board and the City.

“Gross Proceeds” means (a) sale proceeds (any amounts actually or constructively received by the Board from the sale of the Bonds, including amounts used to pay underwriting discount or fees, but excluding pre-issuance accrued interest), (b) Investment proceeds (any amounts received from investing sale proceeds or other Investment proceeds), (c) any amounts held in a sinking fund for the Bonds, (d) any amounts held in a pledged fund or reserve fund for the Bonds, and (e) any other replacement proceeds.

Specifically, Gross Proceeds includes (but is not limited to) amounts held in the following funds and accounts:

- (1) Project Fund.
- (2) Debt Service Reserve Fund.

- (3) Costs of Issuance Fund.
- (4) Debt Service Fund.
- (5) Rebate Fund (to the extent funded with sale proceeds or investment proceeds of the Bonds).

“Guaranteed Investment Contract” is any Investment with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, including any agreement to supply Investments on two or more future dates (*e.g.*, a forward supply contract).

“Indenture” means the Bond Trust Indenture as originally executed by the Board and the Trustee, as amended and supplemented in accordance with the provisions of the Indenture.

“Investment” means any security, obligation, annuity contract or other Investment-type property that is purchased directly with, or otherwise allocated to, Gross Proceeds, including the Investment element of an interest rate cap agreement. Such term does not include a tax-exempt bond, except for “specified private activity bonds” as such term is defined in Code § 57(a)(5)(C), but does include the Investment element of most interest rate caps.

“IRS” means the United States Internal Revenue Service.

“Issue Date” means May __, 2025.

“Loan” means the loan of proceeds made by the Board to the City under the Financing Agreement.

“Management Agreement” means a legal agreement defined in Regulations § 1.141-3(b) as a management, service, or incentive payment contract with an entity that provides services involving all or a portion of any function of the Financed Facility, such as a contract to manage the entire Financed Facility or a portion of the Financed Facility. Contracts for services that are solely incidental to the primary governmental function of the Financed Facility (for example, contracts for janitorial, office equipment repair, billing, or similar services), however, are not treated as Management Agreements.

“Measurement Period” means, with respect to each item of property financed as part of the Financed Facility, the period beginning on the later of (a) the Issue Date or (b) the date the property is placed in service and ending on the earlier of (1) the final maturity date of the Bonds or (2) the end of the expected economic useful life of the property.

“Minor Portion” means the lesser of \$100,000 or 5% of the sale proceeds of the Bonds.

“Net Proceeds” means the sale proceeds of the Bonds (excluding pre-issuance accrued interest), less any proceeds deposited in a reasonably required reserve or replacement fund, plus all Investment earnings on such sale proceeds.

“Non-Qualified Use” means use of Bond proceeds or the Financed Facility in a trade or business carried on by any Non-Qualified User. The rules set out in Regulations § 1.141-3 determine whether Bond proceeds or the Financed Facility are “used” in a trade or business. Generally, ownership, a lease, or any other use that grants a Non-Qualified User a special legal right or entitlement with respect to the Financed Facility, will constitute use under Regulations § 1.141-3.

“Non-Qualified User” means any person or entity other than a Qualified User.

“Official Intent Date” means January 6, 2025, as described in **Section 2.2(s)**.

“Opinion of Bond Counsel” means the written opinion of Gilmore & Bell, P.C. or other nationally recognized firm of bond counsel. Unless otherwise specifically noted herein an Opinion of Bond Counsel must conclude that the action or proposed action or the failure to act or proposed failure to act for which the opinion is required will not adversely affect the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

“Output Contract” is defined in Regulations § 1.141-7 and generally includes any contract with a Non-Qualified User that provides for the purchase of the output of Financed Facility. A similar contract with a Qualified User is not an Output Contract.

“Post-Issuance Tax Requirements” means those requirements related to the use of proceeds of the Bonds, the use of the Financed Facility and the investment of Gross Proceeds after the Issue Date of the Bonds.

“Project” means all of the property acquired, developed, constructed, renovated, and equipped by the City using proceeds of the Bonds and Qualified Equity, as described on **Exhibit D**.

“Project Fund” means the Missouri Development Finance Board – City of Independence, Missouri - CIP Infrastructure Facilities Project Fund, and within such fund separate accounts for each separate project, initially a “Series 2025A Capital Improvements Project Account.”

“Qualified Equity” means funds (but excluding an existing equity ownership interest in real property or tangible personal property) that are not derived from proceeds of a tax-exempt financing that are spent on the Project on a date that is no earlier than a date on which such expenditures would be eligible for reimbursement by proceeds of the Bonds under Regulations § 1.150-2(d)(2) and ending not later than the date the Project is capable of and actually used at substantially its designed level.

“Qualified Use Agreement” means any of the following:

(1) A lease or other short-term use by members of the general public who occupy the Financed Facility on a short-term basis in the ordinary course of the City’s governmental purposes.

(2) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 200 days in length pursuant to an arrangement whereby (a) the use of the Financed Facility under the same or similar arrangements is predominantly by natural persons who are not engaged in a trade or business and (b) the compensation for the use is determined based on generally applicable, fair market value rates that are in effect at the time the agreement is entered into or renewed. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(3) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 100 days in length pursuant to arrangements whereby (a) the use of the property by the person would be general public use but for the fact that generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business, (b) the compensation for the use under the arrangement is determined based on applicable, fair market value rates that are in effect at the time the agreement

is entered into or renewed, and (c) the Financed Facility was not constructed for a principal purpose of providing the property for use by that Qualified User or Non-Qualified User. Any Qualified User or Non-Qualified User using all or any portion of the Financed Facility under this type of arrangement may have a right of first refusal to renew the agreement at rates generally in effect at the time of the renewal.

(4) Agreements with Qualified Users or Non-Qualified Users to use all or a portion of the Financed Facility for a period up to 50 days in length pursuant to a negotiated arm's-length arrangement at fair market value so long as the Financed Facility was not constructed for a principal purpose of providing the property for use by that person.

“Qualified User” means a State, territory, possession of the United States, the District of Columbia, or any political subdivision thereof, or any instrumentality of such entity, but it does not include the United States or any agency or instrumentality of the United States.

“Reasonable Retainage” means Gross Proceeds retained by the Board for reasonable business purposes, such as to ensure or promote compliance with a construction contract; provided that such amount may not exceed (a) for purposes of the 18-month spending test, 5% of net sale proceeds of the Bonds on the date 18 months after the Issue Date, or (b) for purposes of the 2-year spending test, 5% of the Available Construction Proceeds as of the end of the 2-year spending period.

“Rebate Analyst” means Gilmore & Bell, P.C. or any successor Rebate Analyst selected pursuant to this Tax Agreement.

“Rebate Fund” means the Series 2025A Rebate Account in the Missouri Development Finance Board – City of Independence, Missouri – CIP Infrastructure Facilities Rebate Fund, established pursuant to the Indenture.

“Regulations” means all Regulations issued by the U.S. Treasury Department to implement the provisions of Code §§ 103 and 141 through 150 and applicable to the Bonds.

“Tax Agreement” means this Tax Compliance Agreement as it may from time to time be amended and supplemented in accordance with its terms.

“Tax Compliance Procedure” means the Board’s Tax-Exempt Financing Compliance Policy and Procedure, dated March 26, 2012.

“Tax-Exempt Bond File” means documents and records for the Bonds, maintained by the Bond Compliance Officer pursuant to the Tax Compliance Procedure and this Tax Agreement.

“Transcript” means the Transcript of Proceedings relating to the authorization and issuance of the Bonds.

“Trustee” means UMB Bank, N.A., and its successor or successors and any other corporation or association which at any time may be substituted in its place at the time serving as trustee under the Indenture.

“Underwriter” means Stifel, Nicolaus & Company, Incorporated, underwriter of the Bonds.

“Yield” means yield on the Bonds, computed under Regulations § 1.148-4, and yield on an Investment, computed under Regulations § 1.148-5.

ARTICLE II

GENERAL REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the Board. The Board represents and covenants to the City and the Trustee as follows:

- (a) *Organization and Authority.* The Board (1) is a body corporate and politic organized and existing under the laws of the State of Missouri, and (2) has lawful power and authority to issue the Bonds for the purposes set forth in the Indenture, to enter into, execute and deliver the Indenture, the Financing Agreement, the Bonds, and this Tax Agreement and to carry out its obligations under this Tax Agreement and under such documents, and (3) by all necessary action has been duly authorized to execute and deliver the Indenture, the Financing Agreement, the Bonds, and this Tax Agreement, acting by and through its duly authorized officials.
- (b) *Tax-Exempt Status of Bonds—General Representation and Covenants.* In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the Board (1) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (2) will not use or invest, or permit the use or Investment of, any Bond proceeds, other money held under the Indenture, or other funds of the Board, in a manner that would violate applicable provisions of the Code; and (3) will not use, or permit the use of, any portion of the Financed Facility in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.
- (c) *IRS Form 8038-G.* Attached as **Exhibit B** is a copy of IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) that is being executed by a representative of the Board and which is being filed with the Internal Revenue Service in connection with the issuance of the Bonds as required by Code § 149(e). Bond Counsel prepared Form 8038-G in connection with the issuance of the Bonds. The Board knows of no inaccuracies in the Form 8038-G prepared by Bond Counsel. The Qualified Users of the proceeds of the Bonds and their EIN numbers are set out on the attachment to IRS Form 8038-G.
- (d) *Registered Bonds.* The Indenture requires that all of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).
- (e) *Hedge Bonds.* At least 85% of the net sale proceeds (the sale proceeds of the Bonds less any sale proceeds invested in a reserve fund) of the Bonds will be used to carry out the governmental purpose of the Bonds within 3 years after the Issue Date, and not more than 50% of the proceeds of the Bonds will be invested in Investments having a substantially guaranteed Yield for 4 years or more.
- (f) *Single Issue.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the Board (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).

- (g) *Bank Qualified Tax-Exempt Obligation.* The Bonds are not “qualified tax exempt obligations” under Code § 265(b)(3).
- (h) *Board Reliance on Other Parties.* The expectations, representations and covenants of the Board concerning uses of Bond proceeds and certain other moneys described in this Tax Agreement and other matters are based in whole or in part upon covenants, representations and certifications of the City and other parties set forth in this Tax Agreement or exhibits to this Tax Agreement. Although the Board has made no independent investigation of the representation of other parties, the Board is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation made in this Tax Agreement or exhibits to this Tax Agreement.
- (i) *Compliance with Future Tax Requirements.* The Board understands that the Code and the Regulations may impose new or different restrictions and requirements on the Board in the future. The Board will comply with such future restrictions that are necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

Section 2.2. Representations and Covenants of the City. The City represents and covenants to the Board and the Trustee as follows:

- (a) *Organization and Authority.* The City (1) is a constitutional charter city and political subdivision duly organized and validly existing under the laws of the State of Missouri, (2) has lawful power and authority to enter into, execute and deliver the Financing Agreement and this Tax Agreement and to carry out its obligations under such agreements, and (3) by all necessary action has been duly authorized to execute and deliver the Financing Agreement and this Tax Agreement, acting by and through its duly authorized officials.
- (b) *Tax-Exempt Status of Bonds–General Representation and Covenants and Allocation of Proceeds to Project.*

(1) In order to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes, the City (A) will take whatever action, and refrain from whatever action, necessary to comply with the applicable requirements of the Code; (B) will not use or invest, or permit the use or Investment of, any Bond proceeds, other money held under the Indenture, or other funds of the City, in a manner that would violate applicable provisions of the Code; and (C) will not use, or permit the use of, any portion of the Financed Facility in a manner that would cause any Bond to become a “private activity bond” as defined in Code § 141.

(2) The City will finance the Project with Bond proceeds and Qualified Equity. For purposes of the covenants in this **Section 2.2** relating to Non-Qualified Use of the Project, any Non-Qualified Use shall be treated as first allocated entirely to the portion of the Project financed with Qualified Equity, and then, but only to the extent of any excess Non-Qualified Use, to the portion of the Project financed by Bond proceeds (that is, the Financed Facility).

- (c) *Governmental Obligations–Use of Proceeds.* Throughout the Measurement Period, all of the Financed Facility has been and is expected to be owned by the City or another Qualified User. Throughout the Measurement Period, no portion of the Financed Facility has been or is expected to be used in a Non-Qualified Use. Throughout the Measurement Period, the City has not and will not permit any Non-Qualified Use of the Financed Facility without first obtaining an Opinion of Bond Counsel.
- (d) *Governmental Obligations–Private Security or Payment.* As of the Issue Date, the City expects that none of the principal of and interest on the Bonds will be (under the terms of the Bonds or any underlying arrangement) directly or indirectly:
 - (1) secured by (i) any interest in property used or to be used for a private business use, or (ii) any interest in payments in respect of such property; or
 - (2) derived from payments (whether or not such payments are made to the City) in respect of property, or borrowed money, used or to be used for a private business use.

For purposes of the forgoing, taxes of general application, including payments in lieu of taxes, are not treated as private payments or as private security. The City will not permit any private security or payment with respect to the Bonds without first obtaining an Opinion of Bond Counsel.

- (e) *No Private Loan.* Not more than 5% of the Net Proceeds of the Bonds will be loaned directly or indirectly to any Non-Qualified User.
- (f) *Management Agreements.* As of the Issue Date, the City has no Management Agreements with Non-Qualified Users. During the Measurement Period, the City has not and will not enter into or renew any Management Agreement with any Non-Qualified User without first obtaining an Opinion of Bond Counsel.
- (g) *Leases.* As of the Issue Date, the City has not entered into any leases of any portion of the Financed Facility other than Qualified Use Agreements. During the Measurement Period, the City has not and will not enter into or renew any lease or similar agreement or arrangement other than a Qualified Use Agreement without first obtaining an Opinion of Bond Counsel.
- (h) *Output Contracts.* As of the Issue Date, the City does not have any Output Contract. During the Measurement Period, the City has not and will not enter into any Output Contract without first obtaining an Opinion of Bond Counsel.
- (i) *Limit on Maturity of Bonds.* A list of the assets included in the Financed Facility and a computation of the “average reasonably expected economic life” is attached to this Tax Agreement as **Exhibit D**. Based on this computation, the “average maturity” of the Bonds, as computed by the Underwriter, does not exceed 120% of the average reasonably expected economic life of the Financed Facility.
- (j) *Compliance with Future Tax Requirements.* The City understands that the Code and the Regulations may impose new or different restrictions and requirements on the City in the future. The City will comply with such future restrictions that are necessary to maintain

the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

- (k) *Single Issue; No Other Obligations of the City.* The Bonds constitute a single “issue” under Regulations § 1.150-1(c). No other debt obligations of the City (1) are being sold within 15 days of the sale of the Bonds, (2) are being sold under the same plan of financing as the Bonds, and (3) are expected to be paid from substantially the same source of funds as the Bonds (disregarding guarantees from unrelated parties, such as bond insurance).
- (l) *Registered Bonds.* All of the Bonds will be issued and held in registered form within the meaning of Code § 149(a).
- (m) *Bonds Not Federally Guaranteed.* The City will not take any action or permit any action to be taken which would cause any Bond to be “federally guaranteed” within the meaning of Code § 149(b).
- (n) *Hedge Bonds.* At least 85% of the net sale proceeds (the sale proceeds of the Bonds less any sale proceeds invested in a reserve fund) of the Bonds will be used to carry out the governmental purpose of the Bonds within 3 years after the Issue Date, and not more than 50% of the proceeds of the Bonds will be invested in Investments having a substantially guaranteed Yield for 4 years or more.
- (o) *Interest Rate Swap.* As of the Issue Date, the City has not entered into an interest rate swap agreement or any other similar arrangement designed to modify its interest rate risk with respect to the Bonds. The City will not enter into any such arrangement in the future without obtaining an Opinion of Bond Counsel.
- (p) *Guaranteed Investment Contract.* As of the Issue Date of the Bonds, the City does not expect to enter into a Guaranteed Investment Contract for any Gross Proceeds of the Bonds. The City will be responsible for complying with **Section 4.2(d)** if it decides to enter into a Guaranteed Investment Contract at a later date.
- (q) *Reports to IRS; Form 8038-G.* The City will assist the Board in filing all appropriate returns, reports and attachments to income tax returns required by the Code, including without limitation the Information Return for Tax-Exempt Governmental Obligations (Form 8038-G). The information contained in Parts II through VI of IRS Form 8038-G, attached as **Exhibit B**, was provided to the Board and Bond Counsel by the City, and such information is true, complete and correct as of the Issue Date.
- (r) *Arbitrage Certifications.* The facts, estimates and expectations recited in **Article III** of this Tax Agreement, regarding the purpose of the Bonds, the investment and expenditure of Bond proceeds, the Financed Facility, the funds and accounts created in the Indenture, the yield on investments and the computation and payment of arbitrage rebate, are true and accurate as of the Issue Date; and the City believes that the estimates and expectations recited in such Article are reasonable as of the Issue Date. The Board, the Trustee, Gilmore & Bell, P.C., Bond Counsel, and the Underwriter may rely on such statements and expectations. The City does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148; and to the best of the City’s knowledge and belief, there are no other facts, estimates or circumstances that would materially change such expectations.

(s) *Expenditure of Bond Proceeds.*

(1) Allocation. The City will evidence each allocation of the proceeds of the Bonds and Qualified Equity for the Project to an expenditure in writing. No allocation will be made more than 18 months following the later of (i) the date of the expenditure or (ii) the date the Financed Facility was placed in service.

(2) Reimbursement of Expenditures; Official Intent. On the Official Intent Date, the governing body of the City adopted a resolution declaring the intent of the City to finance the Financed Facility with tax-exempt bonds and to reimburse the City for expenditures made for the Financed Facility prior to the issuance of those bonds. A copy of the resolution is attached to this Tax Agreement as **Exhibit C**. [The City will not allocate any proceeds of the Bonds to reimburse an expenditure paid prior to the Issue Date.] [\$ _____ of the proceeds of the Bonds will be allocated to expenditures paid by the City prior to the Issue Date and should be shown on line 45 of Form 8038-G. No portion of the Net Proceeds of the Bonds will be used to reimburse an expenditure paid by the City more than 60 days prior to the date the resolution was adopted [**.**] [**except as described on **Exhibit D****]. Each expenditure listed on **Exhibit D** may be reimbursed from the proceeds of the Bonds for the reasons permitted under Regulations § 1.150-2(f) (for example, issuance costs, de minimis amounts, and preliminary expenditures), as set forth on **Exhibit D.****] No reimbursement allocation will be made for an expenditure made more than 3 years before the date of the reimbursement allocation.

Section 2.3. Representations and Covenants of the Trustee. The Trustee represents and covenants to the Board and the City as follows:

- (a) The Trustee will comply with the provisions of this Tax Agreement that apply to it as Trustee and any written letter or opinion of Bond Counsel, specifically referencing the Bonds and received by the Trustee, that sets forth any action necessary to comply with any statute, regulation or ruling that may apply to it as Trustee and relating to reporting requirements or other requirements necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes.
- (b) The Trustee, acting on behalf of the Board and the City, may from time to time cause a firm of attorneys, consultants or independent accountants or an Investment banking firm to provide the Trustee with such information as it may request in order to determine all matters relating to (a) the Yield on the Bonds as it relates to any data or conclusions necessary to verify that the Bonds are not “arbitrage bonds” within the meaning of Code § 148, and (b) compliance with arbitrage rebate requirements of Code § 148(f). The City will pay all costs and expenses incurred in connection with supplying the foregoing information.
- (c) The Trustee, acting on behalf of the City, will retain records related to the investment and expenditure of Gross Proceeds held in funds and accounts maintained by the Trustee and any records provided to the Trustee by the City related to the Post-Issuance Tax Requirements in accordance with **Section 4.2(a)** of this Tax Agreement. The Trustee will retain these records until three years following the final maturity of the Bonds or any obligation issued to refund the Bonds; *provided*, however, that if the Trustee is not retained to serve as trustee for any obligations issued to refund the Bonds, then the

Trustee may satisfy its record retention duties under this **Section 2.3(c)** by providing copies of all such records related to the Bonds to the trustee for the refunding obligations or other party agreed upon by the City.

Section 2.4. Survival of Representations and Covenants. All representations, covenants and certifications of the Board, the City and the Trustee contained in this Tax Agreement or in any certificate or other instrument delivered by the Board, the City or the Trustee under this Tax Agreement, will survive the execution and delivery of such documents and the issuance of the Bonds, as representations of facts existing as of the date of execution and delivery of the instruments containing such representations. The foregoing covenants of this Section will remain in full force and effect notwithstanding the defeasance of the Bonds.

ARTICLE III

ARBITRAGE CERTIFICATIONS AND COVENANTS

Section 3.1. General. The purpose of this Article is to certify, under Regulations § 1.148-2(b), the Board's and the City's expectations as to the sources, uses and investment of Bond proceeds and other money, in order to support the Board's conclusion that the Bonds are not arbitrage bonds. The person executing this Tax Agreement on behalf of the Board is an officer of the Board responsible for issuing the Bonds.

Section 3.2. Reasonable Expectations. The facts, estimates and expectations set forth in this Article are based upon and in reliance upon the Board's understanding of the documents and certificates that comprise the Transcript, and the representations, covenants and certifications of the parties contained therein. To the Board's knowledge, the facts and estimates set forth in this Tax Agreement are accurate, and the expectations of the Board set forth in this Tax Agreement are reasonable. The Board has no knowledge that would cause it to believe that the representations, warranties and certifications described in this Tax Agreement are unreasonable or inaccurate or may not be relied upon.

Section 3.3. Purpose of Financing. The Bonds are being issued for the purpose of providing a loan to the City to (1) pay costs of the Project, (2) fund a debt service reserve fund for the Bonds, and (3) pay costs of issuance of the Bonds.

Section 3.4. Funds and Accounts. The following funds and accounts have been established under the Indenture:

- (1) Project Fund.
- (2) Costs of Issuance Fund.
- (3) Debt Service Fund.
- (4) Debt Service Reserve Fund.
- (5) Rebate Fund.

Section 3.5. Amount and Use of Bond Proceeds.

- (a) *Amount of Bond Proceeds.* The total proceeds to be received by the Board from the sale of the Bonds will be as follows:

Principal Amount	\$ _____
Original Issue Premium	_____
Underwriting Discount	(_____)
Total Proceeds	\$ _____

(b) *Use of Bond Proceeds and Other Money.* The Bond proceeds are expected to be allocated to expenditures as follows:

- (1) \$ _____, equal to the Debt Service Reserve Requirement, will be deposited in the Debt Service Reserve Fund.
- (2) \$ _____ of Bond proceeds will be deposited in the Costs of Issuance Fund and used to pay costs of issuance.
- (3) \$ _____ of Bond proceeds will be deposited in the Project Fund and used to pay costs of the Project in accordance with the Indenture.

Section 3.6. Multipurpose Issue. The Board is applying the arbitrage rules to separate financing purposes of the issue that have the same initial temporary period as if they constitute a single issue for purposes pursuant to Regulations § 1.148-9(h)(3)(i).

Section 3.7. No Advance Refunding. No proceeds of the Bonds will be used more than 90 days following the Issue Date to pay principal or interest on any other debt obligation.

Section 3.8. No Current Refunding. No proceeds of the Bonds will be used to pay principal or interest on any other debt obligation.

Section 3.9. Completion of the Financed Facility. The Financed Facility has previously been completed.

Section 3.10. Financing Agreement/Sinking Funds. The Board is loaning the Bond proceeds to the City under the Financing Agreement. The City is required under the Financing Agreement to make periodic payments to the Trustee in amounts sufficient to pay the principal of and interest on the Bonds. The Trustee will deposit such payments into the Debt Service Fund. Except for the Debt Service Fund and the Debt Service Reserve Fund neither the Board nor the City has established or expects to establish any sinking fund or other similar fund that is expected to be used to pay principal of or interest on the Bonds. The Debt Service Fund is used primarily to achieve a proper matching of revenues with principal and interest payments on the Bonds within each Bond Year, and the Board and the City expect that the Debt Service Fund will qualify as a Bona Fide Debt Service Fund.

Section 3.11. Reserve, Replacement and Pledged Funds.

- (a) *Debt Service Reserve Fund.* The Indenture establishes a Debt Service Reserve Fund and requires that it be funded at the time of issuance of the Bonds in the amount equal to \$ _____, the Debt Service Reserve Requirement. The amount to be held in the Debt Service Reserve Fund will not exceed the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date, or (3) 125% of the average

annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount. Any amounts in the Debt Service Reserve Fund in excess of the Debt Service Reserve Requirement will be transferred to the Debt Service Fund.

- (b) *No Other Replacement or Pledged Funds.* None of the Bond proceeds will be used as a substitute for other funds that were intended or earmarked to pay costs of the Financed Facility, and that instead has been or will be used to acquire higher Yielding Investments. Except for the Debt Service Fund and the Debt Service Reserve Fund there are no other funds pledged or committed in a manner that provides a reasonable assurance that such funds would be available for payment of the principal of or interest on the Bonds if the Board or the City encounters financial difficulty.

Section 3.12. Purpose Investment Yield. The Yield on the Loan does not exceed the Yield on the Bonds by more than 1/8%, as permitted by Regulations § 1.148-2(d)(2)(i). In determining such Loan yield, “qualified administrative costs” of the Loan paid by the City are taken into account to increase payments for, and reduce receipts from, the Loan, as permitted by Regulations § 1.148-5(e)(3). “Qualified administrative costs” are (1) costs or expenses paid, directly or indirectly, to purchase, carry, sell or retire the Loan, and (2) costs of issuing, carrying or repaying the Bonds, and the underwriting fees; but fees paid to the Board are not qualified administrative costs.

Section 3.13. Issue Price and Yield on Bonds.

- (a) *Issue Price.* Based on the Underwriter’s certifications in the Underwriter’s Receipt for Bonds and Closing Certificate, the Board and the City hereby elect to establish the issue prices of the Bonds pursuant to Regulations § 1.148-1(f)(2)(i) (relating to the so-called “general rule”). Therefore, the aggregate issue price of the Bonds for such purpose is \$ _____.
- (b) *Bond Yield.* Based on the issue price, the Yield on the Bonds is _____%, as computed by Bond Counsel and shown on **Exhibit A**. Neither the Board nor the City has entered into an interest rate swap agreement with respect to any portion of the proceeds of the Bonds.

Section 3.14. Miscellaneous Arbitrage Matters.

- (a) *No Abusive Arbitrage Device.* The Bonds are not and will not be part of a transaction or series of transactions that has the effect of (1) enabling the Board or the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (2) overburdening the tax-exempt bond market.
- (b) *No Over-Issuance.* The sale proceeds of the Bonds, together with expected Investment earnings thereon and other money contributed by the Board or the City, do not exceed the cost of the governmental purpose of the Bonds as described above.

Section 3.15. Conclusion. On the basis of the facts, estimates and circumstances set forth in this Tax Agreement, the Board does not expect that the Bond proceeds will be used in a manner that would cause any Bond to be an “arbitrage bond” within the meaning of Code § 148 and the Regulations.

ARTICLE IV

POST-ISSUANCE TAX REQUIREMENTS, POLICIES AND PROCEDURES

Section 4.1. General.

- (a) *Purpose.* The purpose of this **Article IV** is to set forth the policies and procedures governing compliance with the federal income tax requirements that apply after the Bonds are issued. The Board and the City recognize that interest on the Bonds will remain excludable from gross income only if Post-Issuance Tax Requirements are satisfied after the Issue Date. The Board and the City further acknowledge that written evidence substantiating compliance with Post-Issuance Tax Requirements must be retained in order to permit the Bonds to be refinanced with tax-exempt obligations and support the position that interest on the Bonds is excludable from gross income for federal income tax purposes in the event of an audit of the Bonds by the IRS.
- (b) *Written Policies and Procedures of the Board and the City.* The Board and the City intend for the Tax Compliance Procedure, as supplemented by this Tax Agreement, to be their primary written policies and procedures related to Post-Issuance Tax Requirements for the Bonds and to supplement any other general formal policies and procedures related to tax compliance previously established. The provisions of this Tax Agreement are intended to be consistent with the Tax Compliance Procedure. In the event of any inconsistency between the Tax Compliance Procedure and this Tax Agreement, the terms of this Tax Agreement will govern.
- (c) *City Responsible for Post-Issuance Tax Requirements.* The Board and the City acknowledge that the investment and expenditure of Bond proceeds are primarily within the control of the City, and that substantially all of the Bond proceeds are expected to finance property that will be owned and controlled by the City. For these reasons, the Board is relying on the City to carry out the Post-Issuance Tax Requirements as set forth in this Tax Agreement. The City hereby agrees to undertake these obligations.
- (d) *Bond Compliance Officer.* The Bond Compliance Officer will be responsible for working with the City and City officials, departments and administrators and for consulting with Bond Counsel, other legal counsel and outside experts to the extent necessary to comply with the Post-Issuance Tax Requirements.
- (e) *Cooperation of Board.* The Board will cooperate with the City regarding the Post-Issuance Tax Requirements and will take any action that is necessary to cause interest on the Bonds to remain excludable from gross income for federal income tax purposes, including, without limitation, executing IRS Form 8038-T in connection with the payment of arbitrage rebate and participating in any federal income tax audit of the Bonds or similar proceedings under a “voluntary compliance agreement program” (VCAP) procedure or “remedial action” procedure pursuant to Regulations § 1.141-12. Prior to taking any such action, the Board is entitled to receive an Opinion of Bond Counsel, addressed to the Board, the City and the Trustee that the action will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes.

- (f) *Payment of Costs of Post-Issuance Tax Requirements.* The parties to this Tax Agreement understand and intend that all costs of the Post-Issuance Tax Requirements will be paid or reimbursed by the City. Neither the Board nor the Trustee is required to incur any cost in connection with any action taken related to the Post-Issuance Tax Requirements, and the Board and the Trustee will be entitled to recover from the City all legal and other fees and expenses incurred in connection with compliance with this **Article IV** pursuant to the provisions of the Indenture.

Section 4.2. Procedures Regarding Record Keeping.

- (a) *Record Keeping.* The City will maintain the Tax-Exempt Bond File for the Bonds in accordance with the Tax Compliance Procedure. Unless otherwise specifically instructed in an Opinion of Bond Counsel or to the extent otherwise provided in this Tax Agreement, the Bond Compliance Officer shall retain records related to Post-Issuance Tax Requirements until 3 years following the final maturity of the Bonds or any obligation issued to refund the Bonds. Any records maintained electronically must comply with Section 4.01 of Revenue Procedure 97-22, which generally provides that an electronic storage system must (1) ensure an accurate and complete transfer of the hardcopy records which indexes, stores, preserves, retrieves and reproduces the electronic records, (2) include reasonable controls to ensure integrity, accuracy and reliability of the electronic storage system and to prevent unauthorized alteration or deterioration of electronic records, (3) exhibit a high degree of legibility and readability both electronically and in hardcopy, (4) provide support for other books and records of the City and (5) not be subject to any agreement that would limit the ability of the IRS to access and use the electronic storage system on the Board's premises. If requested, the City will provide the Board with a complete copy of the Tax-Exempt Bond File.
- (b) *Accounting and Allocation of Bond Proceeds to Expenditures.* Bond proceeds, and other money contributed by the City, will be used as described in **Section 3.5** and **3.8**. The City will maintain accounting records showing the investment and expenditure of this money as part of the Tax-Exempt Bond File in the level of detail required by the Tax Compliance Procedure. A sample form of Final Written Allocation is attached as **Exhibit F**.
- (c) *Annual Compliance Checklist.* Attached as **Exhibit E** is a form of Annual Compliance Checklist for the Bonds. The Bond Compliance Officer, or someone designated by the Bond Compliance Officer, will prepare and complete an Annual Compliance Checklist for the Financed Facilities at least annually in accordance with the Tax Compliance Procedure. In the event the Annual Compliance Checklist identifies a deficiency in compliance with the requirements of this Tax Agreement, the Bond Compliance Officer will consult with the Board and, in conjunction with the City, will take the actions identified in an Opinion of Bond Counsel or the Tax Compliance Procedure to correct any deficiency.
- (d) *Opinions of Bond Counsel.* The City is responsible for obtaining and delivering to the Board and the Trustee any Opinion of Bond Counsel required under the provisions of this Tax Agreement, including any Opinion of Bond Counsel required by this Tax Agreement or the annual compliance checklist.

Section 4.3. Temporary Periods/Yield Restriction. Except as described below, Gross Proceeds must not be invested at a Yield greater than the Yield on the Bonds:

- (a) *Project Account of the Project Fund and Cost of Issuance Fund.* Bond proceeds deposited in the Project Account of the Project Fund and Cost of Issuance Fund and investment earnings on such proceeds may be invested without Yield restriction for up to 3 years following the Issue Date. If any unspent proceeds remain in such funds after 3 years, such amounts may continue to be invested without yield restriction so long as the City pays to the IRS all yield reduction payments in accordance with Regulations § 1.148-5(c). These payments are required whether or not the Bonds are exempt from the arbitrage rebate and yield reduction amounts requirements of Code § 148.
- (b) *Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, money in such account may be invested without Yield restriction for 13 months after the date of deposit. Earnings on such amounts may be invested without Yield restriction for one year after the date of receipt of such earnings.
- (c) *Debt Service Reserve Fund.* Money in the Debt Service Reserve Fund may be invested without Yield restriction up to the least of (1) 10% of the stated principal amount of the Bonds, (2) the maximum annual principal and interest requirements on the Bonds (determined as of the Issue Date), or (3) 125% of the average annual principal and interest requirements on the Bonds (determined as of the Issue Date). If the aggregate initial offering price of the Bonds to the public is less than 98% or more than 102% of par, such offering price must be used in clause (1) in lieu of the stated principal amount.
- (d) *Minor Portion.* In addition to the amounts described above, Gross Proceeds not exceeding the Minor Portion may be invested without Yield restriction.

Section 4.4. Fair Market Value.

- (a) *General.* No Investment may be acquired with Gross Proceeds for an amount (including transaction costs) in excess of the fair market value of such Investment, or sold or otherwise disposed of for an amount (including transaction costs) less than the fair market value of the Investment. The fair market value of any Investment is the price a willing buyer would pay to a willing seller to acquire the Investment in a bona fide, arm's-length transaction. Fair market value will be determined in accordance with § 1.148-5 of the Regulations.
- (b) *Established Securities Market.* Except for Investments purchased for a Yield-restricted defeasance escrow, if an Investment is purchased or sold in an arm's-length transaction on an established securities market (within the meaning of Code § 1273), the purchase or sale price constitutes the fair market value. Where there is no established securities market for an Investment, market value must be established using one of the paragraphs below. The fair market value of Investments purchased for a Yield-restricted defeasance escrow must be determined in a bona fide solicitation for bids that complies with § 1.148-5 of the Regulations.
- (c) *Certificates of Deposit.* The purchase price of a certificate of deposit (a "CD") is treated as its fair market value on the purchase date if (1) the CD has a fixed interest rate, a fixed payment schedule, and a substantial penalty for early withdrawal, (2) the Yield on the CD

is not less than the Yield on reasonably comparable direct obligations of the United States, and (3) the Yield is not less than the highest Yield published or posted by the CD issuer to be currently available on reasonably comparable CDs offered to the public.

(d) *Guaranteed Investment Contracts.* The purchase price of a Guaranteed Investment Contract is treated as its fair market value on the purchase date if all of the following requirements are met:

(1) Bona Fide Solicitation for Bids. The Board or the Trustee makes a bona fide solicitation for the Guaranteed Investment Contract, using the following procedures:

- (A) The bid specifications are in writing and are timely forwarded to potential providers, or are made available on an internet website or other similar electronic media that is regularly used to post bid specifications to potential bidders. A writing includes a hard copy, a fax, or an electronic e-mail copy.
- (B) The bid specifications include all “material” terms of the bid. A term is material if it may directly or indirectly affect the Yield or the cost of the Guaranteed Investment Contract.
- (C) The bid specifications include a statement notifying potential providers that submission of a bid is a representation (i) that the potential provider did not consult with any other potential provider about its bid, (ii) that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the Board, the City, the Trustee or any other person (whether or not in connection with the bond issue), and (iii) that the bid is not being submitted solely as a courtesy to the Board, the City, the Trustee or any other person, for purposes of satisfying the requirements of the Regulations.
- (D) The terms of the bid specifications are “commercially reasonable.” A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the Yield of the Guaranteed Investment Contract.
- (E) The terms of the solicitation take into account the City’s reasonably expected deposit and draw-down schedule for the amounts to be invested.
- (F) All potential providers have an equal opportunity to bid. If the bidding process affords any opportunity for a potential provider to review other bids before providing a bid, then providers have an equal opportunity to bid only if all potential providers have an equal opportunity to review other bids. Thus, no potential provider may be given an opportunity to review other bids that is not equally given to all potential providers (that is no exclusive “last look”).
- (G) At least three “reasonably competitive providers” are solicited for bids. A reasonably competitive provider is a provider that has an established

industry reputation as a competitive provider of the type of Investments being purchased.

- (2) Bids Received. The bids received must meet all of the following requirements:
 - (A) At least three bids are received from providers that were solicited as described above and that do not have a “material financial interest” in the issue. For this purpose, (i) a lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the Issue Date of the issue, (ii) any entity acting as a financial advisor with respect to the purchase of the Guaranteed Investment Contract at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue, and (iii) a provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.
 - (B) At least one of the three bids received is from a reasonably competitive provider, as defined above.
 - (C) If an agent or broker is used to conduct the bidding process, the agent or broker did not bid to provide the Guaranteed Investment Contract.
- (3) Winning Bid. The winning bid is the highest yielding bona fide bid (determined net of any broker’s fees).
- (4) Fees Paid. The obligor on the Guaranteed Investment Contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the Guaranteed Investment Contract.
- (5) Records. The City and the Trustee retains the following records with the bond documents until three years after the last outstanding Bond is redeemed:
 - (A) A copy of the Guaranteed Investment Contract.
 - (B) The receipt or other record of the amount actually paid for the Guaranteed Investment Contract, including a record of any administrative costs paid by the Board or Trustee, and the certification as to fees paid, described in paragraph (d)(4) above.
 - (C) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.
 - (D) The bid solicitation form and, if the terms of Guaranteed Investment Contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.
- (e) *Other Investments.* If an Investment is not described above, the fair market value may be established through a competitive bidding process, as follows:

- (1) at least three bids on the Investment must be received from persons with no financial interest in the Bonds (*e.g.*, as underwriters or brokers); and
- (2) the Yield on the Investment must be equal to or greater than the Yield offered under the highest bid.

Section 4.5. Certain Gross Proceeds Exempt from the Rebate Requirement.

- (a) *General.* A portion of the Gross Proceeds of the Bonds may be exempt from rebate pursuant to one or more of the following exceptions. The exceptions typically will not apply with respect to all Gross Proceeds of the Bonds and will not otherwise affect the application of the Investment limitations described in **Section 4.3**. Unless specifically noted, the obligation to compute, and if necessary, to pay rebate as set forth in **Section 4.6** applies even if a portion of the gross proceeds of the Bonds is exempt from the rebate requirement. To the extent all or a portion of the Bonds is exempt from Rebate the Rebate Analyst may account for such fact in connection with its preparation of a rebate report described in **Section 4.6**.
- (b) *Applicable Spending Exceptions.*
 - (1) The City and (based solely on the expectations of the City) the Board expect that at least 75% of the Available Construction Proceeds will be used for construction or rehabilitation expenditures for property owned by the City.
 - (2) The following optional rebate spending exceptions can apply to the Bonds:
 - (i) 6-month spending exception (Code § 148(f)(4)(B) and Regulations § 1.148-7(c)).
 - (ii) 18-month spending exception (Regulations § 1.148-7(d)).
 - (iii) 2-year spending exception (Code § 148(f)(4)(C) and Regulations § 1.148-7(e)).
- (c) *Special Elections Made with Respect to Spending Exception Elections.* No special elections are being made in connection with the application of the spending exceptions.
- (d) *Bona Fide Debt Service Fund.* To the extent that the Debt Service Fund qualifies as a Bona Fide Debt Service Fund, Investment earnings in the fund cannot be taken into account in computing arbitrage rebate and yield reduction amounts (1) with respect to such portion that meets the 6-month, 18-month or 2-year spending exception, or (2) for a given Bond Year, if the gross earnings on the Debt Service Fund for such Bond Year are less than \$100,000. If the average annual debt service on the Bonds does not exceed \$2,500,000, the \$100,000 earnings test may be treated as satisfied in every Bond Year.
- (e) *Documenting Application of Spending Exception.* At any time prior to the first Computation Date, the City may engage the Rebate Analyst to determine whether one or more spending exceptions has been satisfied, and the extent to which the City must continue to comply with **Section 4.6** hereof.
- (f) *General Requirements for Spending Exception.* The following general requirements apply in determining whether a spending exception is met.

- (1) Using Adjusted Gross Proceeds or Available Construction Proceeds to pay principal of any Bonds is not taken into account as an expenditure for purposes of meeting any of the spending tests.
- (2) The 6-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent within 6 months following the Issue Date. The test may still be satisfied even if up to 5% of the sale proceeds remain at the end of the initial 6-month period, so long as this amount is spent within 1 year of the Issue Date.
- (3) The 18-month spending exception generally is met if all Adjusted Gross Proceeds of the Bonds are spent in accordance with the following schedule:

Time Period After the Issue Date	Minimum Percentage of Adjusted Gross Proceeds Spent
6 months	15%
12 months	60%
18 months (Final)	100%

- (4) The 2-year spending exception generally is met if all Available Construction Proceeds are spent in accordance with the following schedule:

Time Period After the Issue Date	Minimum Percentage of Available Construction Proceeds Spent
6 months	10%
12 months	45%
18 months	75%
24 months (Final)	100%

- (5) For purposes of applying the 18-month and 2-year spending exceptions only, the failure to satisfy the **final** spending requirement is disregarded if the Board uses due diligence to complete the Financed Facility and the failure does not exceed the lesser of 3% of the aggregate issue price the Bonds or \$250,000. **No such exception applies for any other spending period.**
- (6) For purposes of applying the 18-month and 2-year spending exceptions only, the Bonds meet the applicable spending test even if, at the end of the **final** spending period, proceeds not exceeding a Reasonable Retainage remain unspent, so long as such Reasonable Retainage is spent within 30 months after the Issue Date in the case of the 18-month spending exception or 3 years after the Issue Date in the case of the 2-year spending exception.

Section 4.6. Computation and Payment of Arbitrage Rebate.

- (a) *Rebate Fund.* The Trustee will keep the Rebate Fund separate from all other funds and will administer the Rebate Fund under this Tax Agreement. Any Investment earnings derived from the Rebate Fund will be credited to the Rebate Fund, and any Investment loss will be charged to the Rebate Fund.
- (b) *Computation of Rebate Amount.* The Trustee will provide the Rebate Analyst Investment reports relating to each fund held by the Trustee that contains Gross Proceeds of the Bonds at such times as reports are provided to the Board, and not later than ten days following each Computation Date. The City will provide the Rebate Analyst with copies of Investment reports for any funds containing Gross Proceeds that are held by a party other than the Trustee annually as of the end of each Bond Year and not later than ten days following each Computation Date. Each Investment report provided to the Rebate Analyst will contain a record of each Investment, including (1) purchase date, (2) purchase price, (3) information establishing the fair market value on the date such Investment was allocated to the Bonds, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) frequency of interest payments, (8) disposition price, (9) any accrued interest received, and (10) disposition date. Such records may be supplied in electronic form. The Rebate Analyst will compute rebate following each Computation Date and deliver a written report to the Trustee, the Board and the City together with an opinion or certificate of the Rebate Analyst stating that arbitrage rebate was determined in accordance with the Regulations. Each report and opinion will be provided not later than 45 days following the Computation Date to which it relates. In performing its duties, the Rebate Analyst may rely, in its discretion, on the correctness of financial analysis reports prepared by other professionals. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is less than the arbitrage rebate due, the City will, within 55 days after such Computation Date, pay to the Trustee the amount of the deficiency for deposit into the Rebate Fund. If the sum of the amount on deposit in the Rebate Fund and the value of prior rebate payments is greater than the Rebate Amount, the Trustee will transfer such surplus in the Rebate Fund to the Debt Service Fund. After the final Computation Date or at any other time if the Rebate Analyst has advised the Trustee, any money left in the Rebate Fund will be paid to the City and may be used for any purpose not prohibited by law.
- (c) *Rebate Payments.* Within 60 days after each Computation Date, the Trustee must pay (but solely from money in the Rebate Fund or provided by the City) to the United States the rebate amount then due, determined in accordance with the Regulations. Each payment must be (1) accompanied by IRS Form 8038-T and such other forms, documents or certificates as may be required by the Regulations, and (2) mailed or delivered to the IRS at the address shown below, or to such other location as the IRS may direct:

Internal Revenue Service Center
Ogden, UT 84201

Section 4.7. Successor Rebate Analyst. If the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason, or if the City or the Board desires that a different firm act as the Rebate Analyst, then the City by an instrument or concurrent instruments in writing delivered to the firm then serving as the Rebate Analyst and any other party to this Tax Certificate, will engage a successor Rebate Analyst. In each case the successor Rebate Analyst must be a firm of nationally recognized bond counsel or a firm of independent certified public accountants and such firm must

expressly agree to undertake the responsibilities assigned to the Rebate Analyst hereunder. In the event the firm acting as the Rebate Analyst resigns or becomes incapable of acting for any reason and the City fails to appoint a qualified successor Rebate Analyst within thirty (30) days following notice of such resignation then the Trustee will appoint a firm to act as the successor Rebate Analyst.

Section 4.8. Rebate Report Records. The Trustee and the City will retain copies of each arbitrage rebate report and opinion until three years after the final Computation Date.

Section 4.9. Filing Requirements. The Trustee, the Board and the City will file or cause to be filed with the Internal Revenue Service such reports or other documents as are required by the Code in accordance with an Opinion of Bond Counsel.

Section 4.10. Survival after Defeasance. Notwithstanding anything in the Indenture to the contrary, the obligation to pay arbitrage rebate to the United States will survive the payment or defeasance of the Bonds.

Section 4.11. Tax Audits. The Board and the City acknowledge that the IRS has a routine tax audit program in place and that the cost of professional representation and compliance with requests for records and other information that are a part of such an audit can be substantial, even if no violation of tax laws are found. The Board and the City also recognize that under current administrative procedures the IRS must direct audit inquiries to the Board, even though the City has the primary responsibility for maintaining the exclusion of interest on the Bonds from gross income for federal income tax purposes. Upon receipt of notice of the commencement of any audit of the Bonds, the Board or the City will notify the other promptly. Throughout the term of the audit and any subsequent proceedings, the Board and the City will provide copies to one another of any correspondence received from or transmitted to the IRS by the other. The Board may hire its own legal counsel to represent its interests in connection with the audit or in any further proceeding that results from the audit. At the request of the Board, the City will hire separate legal counsel to represent the City's interests in the audit. The City, upon written request of the Board, will assume responsibility for responding to information and document requests made by the auditor that are within the knowledge or possession of the City. Promptly on demand by the Board in writing, the City will pay costs incurred by the Board in connection with the audit or any legal or administrative proceeding resulting from the audit (including the Board's reasonable attorney's fees and expenses). So long as the City shall not be in default under the terms of the Financing Agreement, neither the Board nor the City shall have the right to represent or otherwise bind the other party in connection with any settlement related to the tax-exempt status of the Bonds. Nothing contained in this section is intended to limit the rights of the Board to recovery under the Financing Agreement or any other agreement or certificate executed in connection with the issuance of the Bonds.

ARTICLE V

MISCELLANEOUS PROVISIONS

Section 5.1. Term of Tax Agreement. This Tax Agreement will be effective concurrently with the issuance and delivery of the Bonds and will continue in force and effect until the principal of, redemption premium, if any, and interest on all Bonds have been fully paid and all such Bonds are cancelled; provided that, the provisions of **Article IV** of this Tax Agreement regarding payment of arbitrage rebate and all related penalties and interest will remain in effect until all such amounts are paid to the United States.

Section 5.2. Amendments. This Tax Agreement may be amended from time to time by the parties to this Tax Agreement without notice to or the consent of any of the Bondowners, but only if such amendment is in writing and is accompanied by an Opinion of Bond Counsel to the effect that, under then existing law, assuming compliance with this Tax Agreement as so amended such amendment will not cause interest on any Bond to be included in gross income for federal income tax purposes. No such amendment will become effective until the Board and the Trustee receive this Opinion of Bond Counsel.

Section 5.3. Opinion of Bond Counsel. The Board, the City and the Trustee may deviate from the provisions of this Tax Agreement if furnished with an Opinion of Bond Counsel addressed to each of them to the effect that the proposed deviation will not adversely affect the exclusion of interest on the Bonds from gross income for federal income tax purposes. The Board, the City and the Trustee will comply with any further or different instructions provided in an Opinion of Bond Counsel to the effect that the further or different instructions need to be complied with in order to maintain the validity of the Bonds or the exclusion from gross income of interest on the Bonds.

Section 5.4. Reliance. In delivering this Tax Agreement, the Board, the City and the Trustee are making only those certifications, representations and agreements as are specifically attributed to them in this Tax Agreement. None of the Board, the City or the Trustee is aware of any facts or circumstances which would cause it to question the accuracy of the facts, circumstances, estimates or expectations of any other party providing certifications as part of this Tax Agreement and, to the best of their knowledge, those facts, circumstances, estimates and expectations are reasonable. The parties to this Tax Agreement understand that its certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

Section 5.5. Severability. If any provision in this Tax Agreement or in the Bonds is determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected or impaired.

Section 5.6. Benefit of Agreement. This Tax Agreement is binding upon the Board, the City and the Trustee and their respective successors and assigns, and inures to the benefit of the parties to this Tax Agreement and the owners of the Bonds. Nothing in this Tax Agreement or in the Indenture, the Financing Agreement or the Bonds, express or implied, gives to any person, other than the parties to this Tax Agreement and their successors and assigns, and the owners of the Bonds, any benefit or any legal or equitable right, remedy or claim under this Tax Agreement. The certifications and representations made in this Tax Agreement and the expectations presented in this Tax Agreement are intended, and may be relied upon, as a certification of an officer of the Board given in good faith described in Regulations § 1.148-2(b)(2). The City understands that its certifications in this Tax Agreement and in its Closing Certificate will be relied upon by the Board in the issuance of the Bonds and execution of this Tax Agreement. The Board and the City understand that such certifications will be relied upon by the law firm of Gilmore & Bell, P.C., in rendering its opinion as to the validity of the Bonds and the exclusion from federal gross income of the interest on the Bonds.

Section 5.7. Default; Breach and Enforcement. Any misrepresentation of a party contained herein or any breach of a covenant or agreement contained in this Tax Agreement may be pursued by the Bondowners or the other party or parties to this Tax Agreement pursuant to the terms of the Indenture or any other document which references this Tax Agreement and gives remedies for a misrepresentation or breach thereof.

Section 5.8. Execution in Counterparts. This Tax Agreement may be executed in any number of counterparts, each of which so executed will be deemed to be an original, but all such counterparts will together constitute the same instrument.

Section 5.9. Governing Law. This Tax Agreement will be governed by and construed in accordance with the laws of the State of Missouri.

Section 5.10. Electronic Transactions. The parties agree that the transaction described in this Tax Agreement may be conducted, and related documents may be stored, by electronic means.

[Remainder of Page Intentionally Blank.]

The parties to this Tax Agreement have caused this Tax Agreement to be duly executed by their duly authorized officers as of the Issue Date of the Bonds.

**MISSOURI DEVELOPMENT FINANCE
BOARD**

[SEAL]

By: _____
Name: Mark Stombaugh
Title: Executive Director

CITY OF INDEPENDENCE, MISSOURI

By: _____
City Manager

UMB BANK, N.A., as Trustee

By: _____

Name:

Title:

EXHIBIT A

DEBT SERVICE SCHEDULE AND PROOF OF BOND YIELD

EXHIBIT B

IRS FORM 8038-G

ATTACHMENT TO IRS FORM 8038-G:

§ _____
**Missouri Development Finance Board
Infrastructure Facilities Revenue Bonds
(City of Independence, Missouri – Public Safety Projects)
Series 2025A**

PART II: Type of Issue

Line 11-18 Users of Bond Proceeds:

Form 8038-G Line Number	User Name	Employer Identification Number	Governmental or Nongovernmental Entity
15	City of Independence, Missouri	44-6000190	Governmental

EXHIBIT C

RESOLUTION OF OFFICIAL INTENT

EXHIBIT D

**DESCRIPTION OF PROPERTY COMPRISING THE FINANCED FACILITY AND LIST OF
REIMBURSEMENT EXPENDITURES**

EXHIBIT E

**SAMPLE
ANNUAL COMPLIANCE CHECKLIST**

Name of tax-exempt bonds ("Bonds") financing Financed Asset:	\$ _____ Missouri Development Finance Board Infrastructure Facilities Revenue Bonds (City of Independence, Missouri – Public Safety Projects) Series 2025A
Issue Date of Bonds:	<u>May</u> __, 2025
Placed in service date of Financed Facility:	_____
Name of Bond Compliance Officer:	_____
Period covered by request ("Annual Period"):	_____

Item	Question	Response
1 Ownership	Was the entire Financed Facility owned by the City during the entire Annual Period?	☐ Yes ☐ No
	If answer above was "No," was an Opinion of Bond Counsel obtained prior to the transfer?	☐ Yes ☐ No
	If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.	
	If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	

2 Leases & Other Rights to Possession	During the Annual Period, was any part of the Financed Facility leased at any time pursuant to a lease or similar agreement for more than 50 days?	☐ Yes ☐ No
	If answer above was "Yes," was an Opinion of Bond Counsel obtained prior to entering into the lease or other arrangement?	☐ Yes ☐ No
	If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.	
	If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	

Item	Question	Response
3 Management or Service Agreements	During the Annual Period, has the management of all or any part of the operations of the Financed Facility (e.g., cafeteria, gift shop, etc.) been assumed by or transferred to another entity?	☐ Yes ☐ No
	If answer above was "Yes," was an Opinion of Bond Counsel obtained prior to entering into the management agreement?	☐ Yes ☐ No
	If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.	
	If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	
4 Output Contracts	During the Annual Period, has the City entered into any Non-Qualified Output Agreements (<i>i.e.</i> any agreement having a term that is greater than 3 years for the sale of output of the facility, any agreement for the sale of a significant amount of the output of the facility, or "spot" sales having a term greater than 30 days)?	☐ Yes ☐ No
	If Yes: Attach a copy of the agreement(s) and Opinion of Counsel.	
5 Other Use	Was any other agreement entered into with an individual or entity that grants special legal rights to the Financed Facility?	☐ Yes ☐ No
	If answer above was "Yes," was an Opinion of Bond Counsel obtained prior to entering into the agreement?	☐ Yes ☐ No
	If Yes, include a copy of the Opinion in the Tax-Exempt Bond File.	
	If No, contact Bond Counsel and include description of resolution in the Tax-Exempt Bond File.	
6 Arbitrage & Rebate	Have all rebate and yield reduction calculations mandated in the Tax Compliance Agreement been prepared for the current year?	☐ Yes ☐ No
	If No, contact Rebate Analyst and incorporate report or include description of resolution in the Tax-Exempt Bond File.	

Bond Compliance Officer: _____

Date Completed: _____

EXHIBIT F

SAMPLE FINAL WRITTEN ALLOCATION

\$ _____
Missouri Development Finance Board
Infrastructure Facilities Revenue Bonds
(City of Independence, Missouri – Public Safety Projects)
Series 2025A

Final Written Allocation

The undersigned is the _____ of the City of Independence, Missouri (the “City”) and in that capacity is authorized to execute federal income tax returns required to be filed by the City and to make appropriate elections and designations regarding federal income tax matters on behalf of the City. This allocation of the proceeds of the bond issue referenced above (the “Bonds”) is necessary for the City to satisfy ongoing reporting and compliance requirements under federal income tax laws.

Purpose. This document, together with the schedules and records referred to below, is intended to memorialize allocations of Bond proceeds to expenditures for purposes of §§ 141 and 148 of the Internal Revenue Code (the “Code”). All allocations are or were previously made no later than 18 months following the date the expenditure was made by the City or, if later, the date the “project” was “placed in service” (both as defined below), and no later than 60 days following the 5th anniversary of the issue date of the Bonds.

Background. The Bonds were issued on May __, 2025 (the “Issue Date”), by the Missouri Development Finance Board (the “Board”). The Bonds were issued in order to provide funds needed to construct, equip and furnish public safety improvements for the City (the “Project”). The Bonds were issued pursuant to a Bond Indenture of the Board. Proceeds of the Bonds were deposited to the following accounts:

Project Fund.
Costs of Issuance Fund.
Debt Service Reserve Fund.

Sources Used to Fund Project Costs and Allocation of Proceeds to Project Costs. A portion of the costs of the Project was paid from sale proceeds of the Bonds and the remaining portion of the costs of the Project was paid from earnings from the investment of bond sale proceeds and from other money of the City as shown on **Schedule 1** to this Final Written Allocation.

Identification of Financed Assets. The portions of the Project financed from Bond proceeds (i.e., the “Financed Facility” referenced in the Tax Compliance Agreement) are listed on page 1 of **Schedule 2** to this Final Written Allocation.

Identification and Timing of Expenditures for Arbitrage Purposes. For purposes of complying with the arbitrage rules, the City allocates the proceeds of the Bonds to the various expenditures described in the invoices, requisitions or other substantiation attached as **Schedule 2** to this Final Written Allocation. In each case, the cost requisitioned was either paid directly to a third party or reimbursed the City for an amount it had previously paid or incurred. Amounts received from the sale of the Bonds and

retained as underwriters discount are allocated to that purpose and spent on the Issue Date. Amounts allocated to interest expense are treated as paid on the interest payment dates for the Bonds.

Placed In Service. The Project was “placed in service” on the date set out on **Schedule 2** to this Final Written Allocation. For this purpose, the assets are considered to be “placed in service” as of the date on which, based on all the facts and circumstances: (a) the constructing and equipping of the asset has reached a degree of completion which would permit its operation at substantially its design level; and (b) the asset is, in fact, in operation at that level.

This allocation has been prepared based on statutes and regulations existing as of this date. The City reserves the right to amend this allocation to the extent permitted by future Treasury Regulations or similar authorities.

CITY OF INDEPENDENCE, MISSOURI

By: _____
Title: _____

Dated: _____

Name of Legal Counsel/Law Firm Reviewing Final Written Allocation:

Date of Review: _____

**SCHEDULE 1
TO FINAL WRITTEN ALLOCATION**

ALLOCATION OF SOURCES AND USES

[Insert Spreadsheet]

**SCHEDULE 2
TO FINAL WRITTEN ALLOCATION**

**IDENTIFICATION OF FINANCED FACILITY
&
DETAILED LISTING OF EXPENDITURES**

[Insert Spreadsheet]

CONTINUING DISCLOSURE UNDERTAKING

This **CONTINUING DISCLOSURE UNDERTAKING** (the “Disclosure Undertaking”) dated as of May 1, 2025, is executed and delivered by the City of Independence, Missouri (the “City”), in connection with the issuance of Infrastructure Facilities Revenue Bonds (City of Independence, Missouri - Public Safety Projects), Series 2025A issued by the Missouri Development Finance Board (the “Board”) on behalf of the City in the aggregate principal amount of \$_____ (the “Bonds”). The Bonds are issued pursuant to a Bond Trust Indenture dated as of May 1, 2025 (the “Indenture”) between the Board of UMB Bank, N.A., as trustee.

In order to permit the Underwriter (defined below) to comply with the provisions of Rule 15c2-12 of the Securities and Exchange Commission, as amended, in connection with the public offering of the Bonds, the City, in consideration of the mutual covenants herein contained and other good and lawful consideration, hereby agrees, for the sole and exclusive benefit of holders and Beneficial Owners (as hereinafter defined) of the Bonds, as follows:

Section 1. Definitions. Capitalized terms used but not defined herein as follows shall have the meaning ascribed to them in the Indenture.

“Annual Financial Information” shall mean the information specified in Section 3 hereof.

“Beneficial Owner” means any registered owner of any Bonds and any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Bonds” shall mean the bonds described above.

“City” shall mean the City of Independence, Missouri, a municipality of the State of Missouri constituting a political subdivision, and any successor thereto.

“EMMA” means the Electronic Municipal Market Access system for municipal securities disclosures.

“Fiscal Year” means the 12-month period beginning on July 1 and ending on June 30 or any other 12-month period selected by the City as the Fiscal Year of the City for financial reporting purposes.

“Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of (a) or (b) in this definition; provided however, the term Financial Obligation shall not include “municipal securities” (as such term is defined in the Securities Exchange Act of 1934, as amended) as to which a “final official statement” (as such term is defined in Rule 15c2-12) has been provided to the MSRB consistent with Rule 15c2-12.

“Financing Agreement” means the Financing Agreement dated as of May 1, 2025, between the City and the Board with respect to the Bonds.

“GAAP” shall mean accounting principles generally accepted in the United States of America as prescribed from time to time for governmental units by the Governmental Accounting Standards Board.

“GAAS” shall mean generally accepted auditing standards as in effect from time to time in the United States.

“MSRB” shall mean the Municipal Securities Rulemaking Board.

“Obligated Person” shall mean the person (including an issuer of separate securities) that is committed by contract or other arrangements structured to support payment of all or part of the obligations under the municipal securities.

“Official Statement” shall mean the Official Statement related to the Bonds dated April ___, 2025.

“Rule 15c2-12” shall mean Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended from time to time.

“Underwriter” shall mean Stifel, Nicolaus & Company, Incorporated.

Section 2. Obligations to Provide Continuing Disclosure.

(a) Obligations of the City.

- (i) The City hereby undertakes, for the benefit of the holders and Beneficial Owners of the Bonds, to provide, no later than January 2 of each year commencing January 2, 2026 (or, if the City’s Fiscal Year shall no longer end on June 30, 180 days after the end of each of its Fiscal Years) to the MSRB via EMMA, the City’s annual report (the “Annual Report”), which includes (A) the audited financial statements of the City for the prior fiscal year, and (B) updates to the information in *Appendix A* to the Official Statement in the tables labeled “FINANCIAL INFORMATION CONCERNING THE CITY – Property Valuations - *Current Assessed Valuation*, - *History of Property Valuation*, - *Major Property Taxpayers*, - *Obligations of the City*, and - *Overlapping or Underlying Indebtedness*.” If the City’s audited financial statements are not then available, unaudited financial statements in a format similar to the financial statements contained in the final Official Statement relating to the Bonds and the operating information described in (B) above shall be provided no later than January 2 of each year commencing January 2, 2026 (or, if the City’s Fiscal Year shall no longer end on June 30, 180 days after the end of each of its Fiscal Years) and the audited financial statements shall be promptly delivered to the MSRB if and when they become available. The Annual Report shall be provided to the MSRB in such manner and format as prescribed by the MSRB.

- (ii) The Trustee, based upon information that has been provided to and actually received by it in its capacity as Trustee, if other than an officer of the City, shall notify the City of the occurrence of any of the events with respect to the Bonds listed in Section 2(a)(iii) hereof promptly upon becoming aware of the occurrence of any such event.

(iii) The City hereby undertakes, for the benefit of the holders and Beneficial Owners of the Bonds, to provide to the MSRB via EMMA and the Trustee, not later than 10 Business Days from the occurrence thereof, notice of any of the following events with respect to the Bonds:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions; the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Series 2025A Bonds, or other material events affecting the tax status of the Series 2025A Bonds;
- (7) modifications to rights of bondholders, if material;
- (8) Bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the City;
- (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of the trustee, if material;
- (15) incurrence of a Financial Obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the City, any of which affect security holders, if material; and
- (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the City, any of which reflect financial difficulties.

(iv) The City shall also provide to the MSRB in a timely manner notice of any failure of the City to provide the MSRB the Annual Report required by paragraph (i) of this Section 2(a) on or before the date specified.

(v) Notwithstanding the foregoing, notice of listed events described in (iii)(8) and (9) above need not be given any earlier than the notice (if any) of the underlying event is given to holders of affected Bonds pursuant to the Indenture.

(b) Termination or Modification of Disclosure Obligation. The City's obligations herein shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If the City's obligations hereunder are assumed in full by some other entity, such person shall be responsible for compliance with this Disclosure Undertaking in the same manner as if it were the City, and the City shall have no further responsibility hereunder. If such termination or substitution occurs prior to the final

maturity of the Bonds the City shall give notice of such termination or substitution in the same manner as for a Material Event under **Section 2(a)(iii)**.

(c) Other Information. Nothing herein shall be deemed to prevent the City from disseminating any other information in addition to that required hereby in the manner set forth herein or in any other manner. If the City should disseminate any such additional information, the City shall have no obligation hereunder to update such information or include it in any future materials disseminated hereunder.

Section 3. Annual Financial Information.

(a) Specified Information. The Annual Financial Information of the City shall consist of the Annual Report as described in Section 2(a)(i).

(b) Incorporation by Reference. Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the City is an “obligated person” (as defined by Rule 15c2-12), which have been provided to the MSRB and is available through EMMA or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the MSRB via EMMA. The City shall clearly identify each such other document so included by reference.

(c) Informational Categories. The requirements contained in this Disclosure Undertaking are intended to set forth a general description of the type of financial information and operating data to be provided by the City, such descriptions are not intended to state more than general categories of financial information and operating data; and where the provisions of this Disclosure Undertaking call for information that no longer can be generated or is no longer relevant because the operations to which it related have been materially changed or discontinued, a statement to that effect shall be provided.

Section 4. Financial Statements.

The annual financial statements of the City for each fiscal year shall be prepared in accordance with GAAP (unless applicable accounting principles are otherwise disclosed) and audited by an independent accounting firm in accordance with GAAS. The annual financial statements may be provided by specific incorporation by reference to any other documents which have been filed with the MSRB and the Securities and Exchange Commission.

Section 5. Remedies.

If the City should fail to comply with any provision of this Disclosure Undertaking, then any holder or Beneficial Owner of Bonds may enforce, for the equal benefit and protection of all the holders or Beneficial Owners of the Bonds similarly situated, by mandamus or other suit or proceeding at law or in equity, against such party and any of its officers, agents and employees, and may compel such party or any such officers, agents or employees to perform and carry out their duties under this Disclosure Undertaking; provided that the sole and exclusive remedy for breach of this Disclosure Undertaking shall be an action to compel specific performance of the obligations of such party hereunder, and no person or entity shall be entitled to recover monetary damages hereunder under any circumstances; and provided, further, that the rights of any holder or Beneficial Owner to challenge the adequacy of the information provided in accordance with Sections 2 and 3 hereunder are conditioned upon the provisions of the Indenture with respect to the enforcement of remedies of holders upon the occurrence of an Event of Default as though such provisions applied hereunder. Failure of any party to perform its obligations

hereunder shall not constitute an Event of Default under any agreement executed and delivered in connection with the issuance of the Bonds.

Section 6. Parties in Interest.

The provisions of this Disclosure Undertaking shall inure solely to the benefit of holders and Beneficial Owners from time to time of the Bonds, the Underwriter, the City and the Trustee, and shall create no rights in any other person or entity.

Section 7. Amendments.

(a) Without the consent of any of the holders or Beneficial Owners of the Bonds, the City, at any time and from time to time, may amend or make changes this Disclosure Undertaking for any purpose, if:

(i) the amendment is made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City or any type of business or affairs it conducts;

(ii) the undertakings set forth herein, as amended, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of Rule 15c2-12 on the date hereof, after taking into account any amendments to, or interpretation by the staff of the Securities and Exchange Commission of, Rule 15c2-12, as well as any change in circumstances; and

(iii) the amendment, in the opinion of nationally recognized bond counsel, does not materially impair the interests of the holders or Beneficial Owners of the Bonds.

(b) Annual Financial Information for any fiscal year containing any amended operating data or financial information for such fiscal year shall explain, in narrative form, the reasons for such amendment and the impact of the change in the type of operating data or financial information in the Annual Financial Information being provided for such fiscal year. If a change in accounting principles is included in any such amendment, such Annual Financial Information shall present a comparison between the financial statements or information prepared on the basis of the amended accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information. To the extent reasonably feasible such comparison shall also be quantitative. A notice of any such change in accounting principles shall be sent in a timely manner by the City to the MSRB.

Section 8. Termination.

This Disclosure Undertaking shall remain in full force and effect until such time as all principal, redemption premiums, if any, and interest on the Bonds shall have been paid in full or the Bonds shall have otherwise been paid or legally defeased pursuant to the Indenture; provided, however, that if Rule 15c2-12 (or successor provision) shall be amended, modified or changed so that all or any part of the information currently required to be provided thereunder shall no longer be required to be provided thereunder, then such information shall no longer be required to be provided hereunder; and provided, further, that if and to the extent Rule 15c2-12 (or successor provision), or any provision thereof, is repealed or shall be declared by a court of competent and final jurisdiction to be, in whole or in part, invalid, unconstitutional, null and void, or otherwise inapplicable to the Bonds, then the information

required to be provided hereunder, insofar as it was required to be provided by a provision of Rule 15c2-12 so declared, shall no longer be required to be provided hereunder. Upon any legal defeasance of the Bonds, the City shall provide notice of such defeasance to the MSRB and such notice shall state whether the Bonds have been defeased to maturity or to redemption and the timing of such maturity or redemption.

Section 9. Notices.

Any notices or communications to the City may be given as follows:

City of Independence, Missouri
111 East Maple
City of Independence, Missouri 64050
Attention: Director of Finance

The City may, by written notice to the Trustee, designate a different address to which subsequent notices or communications should be sent.

Section 10. Designated Agents.

The City may, from time to time, appoint or designate one or more agents (each, a “designated agent”) to submit Annual Financial Information, Material Event notices, and other notices or reports with the MSRB via EMMA. The City hereby appoints the Trustee and Gilmore & Bell, P.C. as designated agents of the City solely for the purpose of submitting City-approved Annual Financial Information, event notices, and other notices or reports to the MSRB via EMMA as requested by the City. The City may revoke this designation at any time upon written notice to the designated agent, and may designate one or more additional designated agents for purposes of this **Section 10** from time to time by written designation to the newly appointed designated agent.

Section 11. Electronic Transactions.

The arrangement described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 12. Governing Law.

This Disclosure Undertaking shall be governed by and construed in accordance with the laws of the State of Missouri.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned has duly authorized, executed and delivered this Disclosure Undertaking as of the date first above written.

CITY OF INDEPENDENCE, MISSOURI,
as Obligated Person

By: _____
Name: Zachary Walker
Title: City Manager

BOND PURCHASE AGREEMENT

relating to

\$ _____

**Missouri Development Finance Board
Infrastructure Facilities Revenue Bonds
(City of Independence, Missouri - Public Safety Projects)
Series 2025A**

April __, 2025

Missouri Development Finance Board
221 Boliver Street, Suite 300
Jefferson City, Missouri 65101
Attention: Executive Director

City of Independence, Missouri
City Hall
111 East Maple Avenue
Independence, Missouri 64050
Attention: City Manager

Ladies and Gentlemen:

The undersigned, Stifel, Nicolaus & Company, Incorporated (the “**Underwriter**”), offers to enter into the following agreement (this “**Agreement**”) with Missouri Development Finance Board (the “**Issuer**”) and the City of Independence, Missouri (the “**City**”) which, upon acceptance of this offer by the Issuer and the City, will be binding upon the Issuer, the City and the Underwriter. This offer is made subject to the written acceptance of this Agreement by the Issuer and the City on or before 5:00 p.m. (central time), on the date indicated above (or such later time as we may mutually agree upon) and, if not so accepted, may be withdrawn by the Underwriter upon written notice to the Issuer and the City by the Underwriter at any time before its acceptance hereof.

Terms not otherwise defined herein shall have the same meanings as set forth in the Indenture (as defined in **Section 1** of this Agreement).

Section 1. Purchase and Sale of the Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriter hereby agrees to purchase from the Issuer for offering to the public, and the Issuer hereby agrees to sell and deliver to the Underwriter for such purpose, all, but not less than all, of the Infrastructure Facilities Revenue Bonds (City of Independence, Missouri - Public Safety Projects) Series 2025A (the “**Bonds**”). The purchase price for the Bonds shall be \$_____ (reflecting net original issue premium of \$_____ and an underwriting discount of \$_____). The payment for and delivery of the Bonds pursuant to **Section 7** is called the “**Closing**.”

(b) The Bonds are being issued by the Issuer pursuant to the terms of the Bond Trust Indenture, dated as of May 1, 2025 (the “**Indenture**”), by and between the Issuer and UMB Bank, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee (the “**Trustee**”). The Bonds shall mature on the dates, in the years and in the amounts, shall bear interest at fixed interest rates

and shall be offered at the initial public offering prices as described on **Schedule I** attached hereto and made a part hereof.

(c) Proceeds of the Bonds will be used to (i) finance the Projects (as defined in the Indenture), and (ii) pay the costs of issuance of the Bonds.

Section 2. Public Offering.

(a) The Underwriter intends to make an initial bona fide public offering of the Bonds at prices not in excess of the initial public offering price or prices (or with yield or yields not lower than the yield or yields) set forth in **Schedule I** hereto, plus accrued interest thereon (if any), but may subsequently change such initial offering prices or yields at any time without notice in connection with the marketing of the Bonds. The foregoing notwithstanding, the Underwriter may offer and sell the Bonds to certain dealers (including dealers depositing Bonds into unit investment trusts or mutual funds) at a price or prices lower (or yield or yields higher) than the public offering prices or yields set forth in **Schedule I** hereto.

(b) The Issuer and the City acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's-length commercial transaction between the Issuer, the City and the Underwriter, (ii) with respect to the engagement of the Underwriter by the Issuer and the City, including in connection with the purchase, sale and offering of the Bonds, and discussions, conferences, negotiations and undertakings in connection therewith, the Underwriter is and has been acting solely as a principal and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), agent or a fiduciary of the Issuer or the City, (iii) the Underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the Issuer or the City with respect to the offering of the Bonds or the process leading thereto (whether or not the Underwriter, or any affiliate of the Underwriter, has advised or is currently advising the Issuer or the City on other matters) or any other obligation to the Issuer or the City except the obligations expressly set forth in this Agreement; (iv) each of the Issuer and the City has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds and (v) this Agreement expresses the entire relationship between the parties hereto.

Section 3. Official Statement.

(a) The City will deliver to the Underwriter within seven business days after the date hereof, or within sufficient time to accompany any confirmation that requests payment from any customer of the Underwriter, whichever comes first, the final Official Statement, dated as of the date hereof, relating to the Bonds (which, together with the cover page, and all exhibits, appendices, maps, pictures, diagrams, reports and statements included therein or attached thereto and any amendments and supplements that may be authorized for use with respect to the Bonds are herein called the "**Official Statement**") executed on behalf of the City by a duly authorized representative thereof in such quantity that the Underwriter may reasonably request to enable the Underwriter to provide the Official Statement to potential customers and to comply with any rules of the Municipal Securities Rulemaking Board (the "**MSRB**") and the Securities and Exchange Commission (the "**SEC**").

The Issuer and the City consent to the use by the Underwriter prior to the date upon which the Official Statement is executed and available for distribution, of the Preliminary Official Statement dated April __, 2025 (the "**Preliminary Official Statement**"). The Preliminary Official Statement has been prepared by the City for use by the Underwriter in connection with the public offering, sale and distribution of the Bonds. The Underwriter confirms that it has reviewed the Preliminary Official Statement in accordance with the requirements of the Rule.

(b) For purposes of Rule 15c2-12 promulgated by the SEC under the Securities Exchange Act of 1934 (17 C.F.R. § 240.15c2-12 (as in effect and interpreted from time to time, the "**Rule**")), the Issuer and the

City have deemed the Preliminary Official Statement, as of its date, the final official statement, with certain omissions therein as permitted by the Rule to be completed in connection with the pricing of the Bonds. The Issuer and the City approve the Official Statement. Notwithstanding the foregoing, (i) the Issuer's representations hereunder are limited to those portions of the Preliminary Official Statement under the captions "INTRODUCTORY STATEMENT – The Board," "THE BOARD" and "LITIGATION – The Board" and (ii) the City's representations hereunder do not include those portions of the Preliminary Official Statement under the captions, "INTRODUCTORY STATEMENT – The Board," "THE BOARD" and "LITIGATION – The Board."

The Issuer and the City agree to provide to the Underwriter all information concerning the Issuer and the City, respectively, necessary to comply with the requirements of the Rule.

The City represents and warrants to the Underwriter that Rubin Brown LLP has informed the City that no specific approval or consent is necessary for the inclusion of the audit report included as Appendix B to the Preliminary Official Statement and the Official Statement.

(c) The Issuer and the City represent that their respective governing bodies have authorized the Official Statement to be used by the Underwriter in connection with the public offering and the sale of the Bonds. Each of the Issuer and the City hereby confirms that it does not object to the distribution of the Official Statement in electronic form.

(d) If, after the date of this Agreement to and including the date the Underwriter is no longer required to provide an Official Statement to potential customers who request the same pursuant to the Rule (the earlier of (i) 90 days from the "end of the underwriting period" (as defined in the Rule) and (ii) the time when the Official Statement is available to any person from the MSRB, but in no case less than 25 days after the "end of the underwriting period" for the Bonds), the Issuer or the City becomes aware of any fact or event which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or if it is necessary to amend or supplement the Official Statement to comply with law, the Issuer or the City, as applicable, will notify the Underwriter (and for the purposes of this clause provide the Underwriter with such information as it may from time to time request), and if, in the opinion of the Underwriter, such fact or event requires preparation and publication of a supplement or amendment to the Official Statement, the City will forthwith prepare and furnish, at the City's own expense (in a form and manner approved by the Underwriter), a reasonable number of copies of either amendments or supplements to the Official Statement so that the statements in the Official Statement as so amended and supplemented will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or so that the Official Statement will comply with law. If such notification shall be subsequent to the Closing Date (as defined in **Section 7**), the City shall furnish such legal opinions, certificates, instruments and other documents as the Underwriter may deem necessary to evidence the truth and accuracy of such supplement or amendment to the Official Statement. The obligations of the Issuer set forth in this paragraph shall not require the Issuer to monitor the business and affairs of the City. In connection with the foregoing, the Issuer will only be required to prepare and furnish amendments or supplements, at the expense of the City, relating to information under the captions "INTRODUCTORY STATEMENT – The Board," "THE BOARD" and "LITIGATION – The Board" in the Official Statement.

(e) The Underwriter hereby agrees to file the Official Statement with the MSRB. Unless otherwise notified in writing by the Underwriter, the Issuer and the City can assume that the "end of the underwriting period" for purposes of the Rule is the Closing Date.

Section 4. Ongoing Disclosure. The City covenants and agrees to enter into a written agreement or contract, constituting an undertaking to provide ongoing disclosure about the City, for the benefit of the beneficial owners of the Bonds, as required by section (b)(5) of the Rule. The form and substance of such undertaking shall be set forth in the Undertaking (as defined below) delivered at Closing, which agreement

shall be substantially as described in the Official Statement, with such changes as may be agreed upon in writing by the Underwriter. Such undertaking, as set forth in the Continuing Disclosure Undertaking, is hereinafter referred to collectively as the “**Undertaking.**”

Section 5. Representations, Warranties and Agreements of the Issuer. The Issuer represents and warrants to and covenants with the Underwriter that:

(a) The Issuer is a body corporate and politic duly created and existing under the laws of the State of Missouri (the “**State**”), including particularly the Missouri Development Finance Board Act, Sections 100.250 to 100.297, inclusive, of the Revised Statutes of Missouri, as amended (the “**Act**”), and has full legal right, power and authority, and at the Closing Date will have full legal right, power and authority (i) to adopt, and has duly adopted a resolution by the governing body of the Issuer on March 18, 2025 authorizing the issuance of the Bonds and the execution and delivery of the Issuer Agreements (as defined below) (the “**Bond Resolution**”), (ii) to issue and deliver the Bonds for the purposes for which they are to be issued as set forth in the Official Statement, (iii) to make the proceeds of the Bonds available to the City under the Financing Agreement, dated as of May 1, 2025 (the “**Financing Agreement**”), between the Issuer and the City, for the purposes set forth therein and as described in the Official Statement, (iv) to execute and deliver this Agreement, the Bond Resolution, the Indenture, the Financing Agreement and the Tax Compliance Agreement (collectively, the “**Issuer Agreements**”), (v) to pledge and assign to the Trustee the property constituting the Trust Estate (as defined in the Indenture) as security for the payment of the principal of, premium, if any, and interest on the Bonds, and (vi) to consummate the transactions contemplated by, and perform its obligations under, the Bonds and the Issuer Agreements.

(b) The Issuer has duly authorized and approved the execution and delivery of the Issuer Agreements. The Issuer has taken all necessary action required to make the Issuer Agreements and the Bonds the valid and binding obligations of the Issuer which they purport to be; and when executed and delivered by the parties thereto, the Issuer Agreements and the Bonds will constitute valid and binding agreements of the Issuer and will be enforceable against the Issuer in accordance with their respective terms subject to the qualification that the enforcement thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors’ rights generally and by the availability of equitable remedies.

(c) To the best of its knowledge, the Issuer is not in any manner which would materially affect the authorization, issuance, tax-exempt status of the Bonds or sale of the Bonds, in breach of or in default under any existing law, court or administrative regulation, decree, order, agreement, indenture, financing agreement, bond, resolution, mortgage, lease, sublease or other instrument to which it is a party or by which it is bound, and no event has occurred or is continuing which, with the passage of time or the giving of notice, or both, would constitute a material default or event of default by the Issuer thereunder.

(d) To the best of its knowledge, the execution, delivery and due performance by the Issuer of the Issuer Agreements and the Bonds and any other documents contemplated herein or in the Official Statement will not conflict with or result in a violation or breach of, or constitute a default under any indenture, agreement, mortgage, lease, or instrument to which the Issuer is a party or by which it is bound, or any existing law, court or administrative regulation, order or decree to which the Issuer is subject, or result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Issuer other than as contemplated by the Financing Agreement and the Indenture. The Issuer has obtained all consents which its counsel and Gilmore & Bell, P.C. (“**Bond Counsel**”) have advised are necessary in connection with the issuance and sale of the Bonds and the Issuer’s obligations under the Issuer Agreements, including any governmental authority of the State or the United States of America, provided, however, that no representation is made concerning compliance with the registration requirements of the Federal securities laws or the securities or “blue sky” laws of the various states.

(e) There is no action, suit, proceeding or investigation at law or in equity or before or by any court, public board, governmental agency or body pending or, to the best knowledge of the Issuer, threatened

against or affecting the Issuer, attempting to restrain or enjoin the issuance or delivery of the Bonds or questioning or affecting the validity of the Bonds or the proceedings or authority under which they are to be issued or questioning the right of the Issuer to enter into the Issuer Agreements to secure the Bonds in the manner provided in the Indenture or wherein an unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Issuer Agreements or the Official Statement, or which, in any way, would adversely affect the validity or enforceability of the Bonds or the Issuer Agreements or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby and by the Official Statement or the exclusion of interest on the Bonds from the gross income of the owners thereof for Federal income tax purposes referred to under the caption “TAX MATTERS” in the Official Statement.

(f) No event has occurred and is continuing which, with the lapse of time or the giving of notice, or both, would constitute an event of default under the Issuer Agreements.

(g) The information under the captions “INTRODUCTORY STATEMENT – The Board,” “THE BOARD” and “LITIGATION – The Board” in the Official Statement has been supplied by the Issuer and as of its date did not, and such information in the Official Statement as of its date does not and on the Closing Date will not, contain any untrue or misleading statements of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(h) Neither the Issuer nor its revenues are subject to taxation under the Internal Revenue Code of 1986, as amended (the “**Code**”), or the laws of the State.

(i) The Issuer will cooperate with the Underwriter and its counsel in endeavoring to qualify the Bonds for offering and sale under the securities or “blue sky” laws of such jurisdictions of the United States as the Underwriter may request; provided, however, that the Issuer shall have no responsibility for payment of expenses in connection therewith and will not be requested to execute any special consent to service of process in connection with any such qualification in any jurisdiction. The City will pay the reasonable expenses of any action taken under this paragraph.

(j) The Issuer will apply the proceeds from the sale of the Bonds as specified in the Indenture and the Financing Agreement. So long as any of the Bonds remain outstanding and, except as may be authorized by the Indenture and the Financing Agreement, the Issuer will not issue or sell any bonds or obligations, other than the Bonds or any Additional Bonds authorized pursuant to the terms of the Indenture, the principal of or premium, if any, or interest on which will be payable from the Trust Estate.

(l) Neither the creation, organization or existence of the Issuer nor the right of the present directors of the Issuer to their offices nor the title of the officials of the Issuer to their respective offices are being contested and no authority or proceeding for the issuance of the Bonds has been repealed, revoked or rescinded.

(m) The Issuer agrees to cooperate reasonably with the Underwriter to obtain CUSIP identification numbers to be printed on the Bonds as the Underwriter may request.

(n) Any certificate signed by an authorized officer of the Issuer and delivered to the Underwriter or Bond Counsel shall be deemed a representation and warranty by the Issuer to the Underwriter as to statements made therein.

(o) The Issuer covenants that between the date hereof and the Closing it will take no actions which will cause the representations and warranties made in this **Section 5** to be untrue as of the Closing.

Section 6. Representations, Warranties and Agreements of the City. The City represents, warrants and agrees as follows:

(a) The City, a constitutional charter city and political subdivision duly organized and existing under the laws of the State, and has full legal right, power and authority, and at the Closing Date will have full legal right, power and authority (i) to pass, and has duly passed an ordinance by the governing body of the City on April __, 2025 authorizing the execution and delivery of the City Agreements (as defined below) and approving the form of the Indenture (the “**Authorizing Ordinance**”), (ii) to make use of the proceeds of the Bonds made available to the City under the Financing Agreement for the purposes set forth therein and as described in the Official Statement, (iii) to execute and deliver this Agreement, the Financing Agreement, the Undertaking and the Tax Compliance Agreement (collectively, the “**City Agreements**”), and (vi) to consummate the transactions contemplated by, and perform its obligations under, the Bonds and the City Agreements.

(b) The information contained in the Official Statement is, and the information contained in the Official Statement, at all times during the period from its date to and including the date 25 days following the “end of the underwriting period” (as such term is described in the Rule), will be true and correct in all material respects and the Official Statement does not contain, and the Official Statement during such period will not contain, any untrue statement of a material fact and the Official Statement does not omit, and the Official Statement during such period will not omit, to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, that this representation and warranty shall not be deemed to cover or apply to statements in or omissions from the Preliminary Official Statement or the Official Statement under the captions “INTRODUCTORY STATEMENT – The Board,” “THE BOARD,” “LITIGATION – the Board,” or “UNDERWRITING” or any information regarding DTC.

(c) Except as described in the Official Statement, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any court, public board, or governmental agency or body pending or, to the best knowledge of the City, threatened against or affecting the City or the property of the City (and, to the knowledge of the City, there is no meritorious basis therefor), which involves the City (i) which might reasonably (x) adversely affect or question the payments required to be made under any of the City Agreements or (y) materially and adversely affect the financial condition of the City, or (ii) wherein an adverse decision, ruling or finding would (x) materially and adversely affect the transactions contemplated by the Official Statement and this Agreement or (y) materially and adversely affect the validity or enforceability of the Bonds, the Indenture, the City Agreements or any other documents, certificates or agreements executed or delivered by the City in connection with the transactions contemplated by the foregoing or the amounts to be received by the Issuer pursuant to the City Agreements or (z) materially and adversely affect the due organization, corporate existence or corporate powers of the City or the titles of its officers to their respective offices.

(d) This Agreement has been duly authorized, executed and delivered by the City and, assuming the due authorization execution and delivery by and the binding effect on the other parties thereto, this Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms, subject to the qualification that the enforcement thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors’ rights generally and by the availability of equitable remedies.

(e) Each of the City Agreements have been duly authorized by the City and, assuming the due authorization, execution and delivery by and the binding effect thereof on the other parties thereto, when executed by the City, each such instrument will constitute the legal, valid and binding obligation of the City enforceable in accordance with its terms, subject to the qualification that the enforcement thereof may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting creditors’ rights generally and by the availability of equitable remedies.

(f) The City will not take or omit to take any action which action or omission will in any way cause the proceeds of the sale of the Bonds to be applied in a manner contrary to that provided in the City Agreements or as described in the Official Statement (together with the City Agreements and the Indenture, collectively, the “**Bond Documents**”) as in force from time to time.

(g) No default, event of default or event which, with notice or lapse of time or both, would constitute a default, or an event of default or a default under the Bond Documents, or under any agreement or instrument to which the City is a party or by which the City is bound or to which any of the property or assets of the City is subject has occurred and is continuing where the failure to cure the same might reasonably materially adversely affect the performance by the City of its obligations under the City Agreements or the consummation of the transactions contemplated by the Official Statement or this Agreement; neither the execution or delivery of the City Agreements, nor the consummation of any other of the transactions contemplated thereby or by this Agreement or the Official Statement nor the fulfillment of the terms hereof or thereof, will conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any corporate restriction or any indenture, agreement or instrument to which the City is bound, any order, rule or regulation applicable to the City of any court, Federal or state regulatory body, administrative agency or other governmental body having jurisdiction over the City or any of its properties or operations, or (except as contemplated thereby) will result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any such restriction, agreement, instrument, order, rule or regulation, except for encumbrances permitted pursuant to the terms of the Bond Documents.

(h) [Reserved].

(i) The City has received and there remain currently in full force and effect, or will receive prior to the Closing Date, all governmental consents and approvals that would constitute a condition precedent to, or the failure to obtain which would materially adversely affect, the performance by the City of its obligations under the City Agreements or the consummation of the transactions contemplated by the Official Statement or this Agreement.

(j) The audited financial statements of the City included as Appendix B to the Official Statement present fairly the financial position of the City as of the respective dates of such financial statements, and the results of operations and changes in net assets and in financial position of the City for the respective periods covered thereby, all in conformity with generally accepted accounting principles consistently applied throughout the periods involved, except as disclosed in the Official Statement.

(m) Subsequent to the respective dates as of which information is given in the Official Statement, and except as contemplated by the Official Statement, the City has not incurred any material liabilities or obligations, direct or contingent, nor entered into any material transactions not in the ordinary course of business and there has not been any material adverse change in the City’s condition (financial or otherwise), revenues, business, properties or prospects whether or not arising in the ordinary course of business nor any material change in its short term debt or long term debt.

(n) Except as described in the Preliminary Official Statement and to be described in the Official Statement relating to the Bonds, during the past five years, the City has not failed in any material way to comply with any prior continuing disclosure undertakings pursuant to the Rule.

(o) On or before the Closing Date, the City shall execute the Bond Documents to which it is a party.

(p) Any certificate signed by an authorized officer of the City delivered to the Issuer, to Bond Counsel or to the Underwriter shall be deemed a representation and warranty by the City to the Issuer and the Underwriter as to the statements made therein.

(q) The City will cooperate with the Underwriter and its counsel in endeavoring to qualify the Bonds for offering and sale under the securities or “blue sky” laws of such jurisdictions of the United States as the Underwriter may request; provided, however, that the City shall have no responsibility for payment of expenses in connection therewith and will not be requested to execute any special consent to service of process in connection with any such qualification in any jurisdiction. The City will pay the reasonable expenses of any action taken under this paragraph.

(r) The City covenants that between the date hereof and the Closing it will take no actions which will cause the representations and warranties made in this **Section 6** to be untrue as of the Closing.

Section 7. Closing.

(a) At 10:00 a.m. (central time) on May ____, 2025 (the “**Closing Date**”), or at such other time or such other date as shall have been mutually agreed upon by the Issuer, the City and the Underwriter (the “**Closing Time**”), the Issuer will deliver, or cause to be delivered, to the Underwriter, the Bonds, in definitive form duly executed and authenticated by the Trustee together with the other documents hereinafter mentioned; and the Underwriter will accept such delivery and pay the purchase price of the Bonds by delivering to the Issuer immediately available funds payable to the order of the Issuer in an amount equal to the purchase price set forth in **Section 1** hereof.

(b) Payment for the Bonds shall be made to the Issuer in immediately available funds or such other arrangement as shall be mutually agreeable on or before the Closing Time. The Bonds will be registered in the name of Cede and Co., as nominee for DTC. Delivery of the Bonds shall be made to the Paying Agent in its capacity as FAST Agent for DTC, in definitive form, as fully registered bonds duly executed and authenticated and bearing CUSIP numbers (provided neither the printing of a wrong number on any Bond nor the failure to print a number thereon shall constitute cause to refuse delivery of any Bond); provided, however, that the Bonds may be delivered in temporary form.

(c) The Underwriter shall have the right to delay the Closing and reschedule the Closing Date, if, subsequent to the date hereof, and at any time prior to the Closing, a material disruption in securities settlement, payment or clearance services affecting the Bonds shall have occurred. The Closing Date shall be rescheduled to a date mutually agreed upon by the Issuer and the Underwriter once the material disruption has been alleviated.

Section 8. Closing Conditions. The Underwriter has entered into this Agreement in reliance upon the representations, warranties and agreements of the Issuer and the City contained herein, and in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the City of their obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter’s obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds shall be conditioned upon the performance by the Issuer and the City of their obligations to be performed hereunder and under such documents and instruments at or prior to the Closing, and shall also be subject to the following additional conditions, including the delivery by the Issuer and the City of such documents as are enumerated herein, in form and substance reasonably satisfactory to the Underwriter:

(a) The representations and warranties of the Issuer and the City contained herein shall be true, complete and correct on the date hereof and on and as of the Closing Date, as if made on the Closing Date.

(b) The Issuer and the City shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing Time.

(c) At the Closing Time, each of the Bond Documents shall have been duly authorized, executed and delivered, and each of the foregoing shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to by the Underwriter; and the Official Statement and any amendments or supplements thereto shall have been duly authorized and executed. The net proceeds of the sale of the Bonds and any funds to be provided by the City shall be deposited and applied as described in the Official Statement and the Indenture and the Issuer and the City shall have duly adopted and there shall be in full force and effect such ordinances and/or resolutions as shall be required in order for parties to deliver each the opinions referred to hereafter.

(d) By the Closing Time, the Underwriter must receive electronic copies of the following documents, each satisfactory in form and substance to the Underwriter:

- (i) Executed counterparts of the Bond Documents.
- (ii) The Bond Resolution.
- (iii) The executed Authorizing Ordinance.

(iv) A certificate, dated the Closing Date, signed by an authorized official of the Issuer, to the effect that (A) the representations and warranties of the Issuer contained in **Section 5** hereof are true and correct on and as of the Closing Date as if such representations and warranties had been made on and as of the Closing Date, (B) no litigation or proceeding against it is pending or, to its knowledge, threatened in any court or administrative body nor is there any basis for litigation which would (1) contest the right of the members or officials of the Issuer to hold and exercise their respective positions, (2) contest the due organization and valid existence of the Issuer, (3) contest the validity, due authorization and execution of the Bonds and the Issuer Agreements or (4) attempt to limit, enjoin or otherwise restrict or prevent the Issuer from functioning and collecting revenues pursuant to the Issuer Agreements; (C) the Bond Resolution authorizing the execution, delivery and/or performance of the Issuer Agreements and the Bonds has been duly adopted by the Issuer, is in full force and effect and has not been modified, amended or repealed; and (D) no event affecting the Issuer has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which is necessary to disclose therein in order to make the statements and information contained therein under the captions "INTRODUCTORY STATEMENT – The Board," "THE BOARD" and "LITIGATION – The Board" not misleading in any material respect as of the Closing Time, and the information under the captions "INTRODUCTORY STATEMENT – The Board," "THE BOARD" and "LITIGATION – The Board" contained in the Official Statement is correct in all material respects and, as of the date of the Official Statement did not, and as of the Closing Date does not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(v) A certificate, dated the Closing Date, signed by an authorized official of the City, to the effect that (A) the representations and warranties of the City contained in **Section 6** hereof are true and correct on and as of the Closing Date as if such representations and warranties had been made on and as of the Closing Date, (B) except as disclosed in the Official Statement, no litigation or proceeding against it is pending or, to its knowledge, threatened in any court or administrative body nor is there any basis for litigation which would (1) contest the right of the members or officials of the City to hold and exercise their respective positions, (2) contest the due organization and valid existence of the City, (3) contest the validity, due authorization and execution of the City Agreements or (4) attempt to limit, enjoin or otherwise restrict or prevent the City from functioning and collecting revenues pursuant to the City

Agreements; (C) the Authorizing Ordinance authorizing the execution, delivery and/or performance of the City Agreements has been duly authorized and delivered by the City, is in full force and effect and has not been modified, amended or repealed; and (D) no event affecting the City has occurred since the date of the Official Statement which should be disclosed in the Official Statement for the purpose for which it is to be used or which is necessary to disclose therein in order to make the statements and information contained therein not misleading in any material respect as of the Closing Time, and the information contained in the Official Statement is correct in all material respects and, as of the date of the Official Statement did not, and as of the Closing Date does not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, with the exception of information under the captions “INTRODUCTORY STATEMENT – The Board,” “THE BOARD,” and “LITIGATION – the Board,” or “UNDERWRITING” or any information regarding DTC, as to which no representation is made.

(vi) A certificate of one or more authorized officers of the Trustee, dated the Closing Date, as to the due execution and delivery of the Indenture by the Trustee and the due authentication and delivery of the Bonds by the Trustee.

(vii) The unqualified approving opinion of Bond Counsel, dated the Closing Date, addressed to the Underwriter, in substantially the form attached as Appendix E to the Preliminary Official Statement.

(viii) The opinion of the counsel to the Issuer, dated the Closing Date, addressed to the Underwriter, the City and the Trustee, in substantially the form attached as **Exhibit B** hereto.

(ix) The opinion of the counsel to the City, dated the Closing Date, addressed to the Underwriter, the Issuer, Bond Counsel and the Trustee, in substantially the form attached as **Exhibit C** hereto.

(x) A supplemental opinion of Bond Counsel, dated the Closing Date, addressed to the Underwriter, in substantially the form attached as **Exhibit D** hereto.

(xi) The opinion of Gilmore & Bell, P.C., as disclosure counsel, dated the Closing Date, addressed to the Issuer, the City and the Underwriter, in substantially the form attached as **Exhibit E** hereto.

(xii) The opinion of Pierson Ferdinand LLP (“**Underwriter’s Counsel**”), dated the Closing Date, addressed to the Underwriter, in substantially the form attached as **Exhibit F** hereto.

(xiii) Evidence that the Bonds have been rated “_____” (_____ outlook) by S&P Global Ratings.

(xiv) Specimen Bonds.

(xv) Receipts or other evidence that financing statements have been filed for recording under the Uniform Commercial Code with the Secretary of State of the State with respect to the security interests granted or assigned by the Indenture.

(xvi) Evidence that IRS Form 8038-G has been prepared for filing by the Issuer with the Internal Revenue Service regarding the Bonds.

(xvii) A certificate of the Trustee to the effect that all moneys delivered to the Trustee under and pursuant to the Indenture have been duly deposited to the credit of the appropriate funds established under or in accordance with the Indenture or otherwise applied as provided in the Indenture and that the Trustee has no knowledge of any default or event of default under the Indenture.

(xviii) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriter or counsel to the Underwriter, Bond Counsel or counsel to the Issuer may reasonably request to evidence compliance by the Issuer and the City with legal requirements, the tax exempt status of the Bonds, the truth and accuracy, as of the Closing Time, of the respective representations and warranties of the Issuer and the City contained herein, in the Issuer Agreements or in the Indenture and the due performance or satisfaction by the Issuer and the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the City.

The Issuer and the City shall furnish the Underwriter with conformed copies of such additional opinions, certificates, letters and documents as the Underwriter reasonably requests.

(e) At the Closing Time, there shall not have occurred any change or any development involving a prospective change in the condition, financial or otherwise, or in the revenues or operations of the City, from that set forth in the Official Statement that in the judgment of the Underwriter, is material and adverse and, in the judgment of the Underwriter, materially impairs the investment quality of the Bonds or the ability of the Underwriter to market the Bonds on the terms and in the manner contemplated in the Official Statement.

(f) If the Issuer or the City is unable to satisfy any such condition, or if the Underwriter's obligations are terminated for any reason permitted by this Agreement, this Agreement may be canceled by the Underwriter, and, upon such cancellation, the Underwriter, the Issuer and the City shall not be under further obligation except as provided in **Section 10** hereof.

Section 9. Termination. The Underwriter shall have the right to cancel its obligation to purchase the Bond and to terminate this Agreement by written notice to the Issuer and the City if, between the effective date to and including the Closing Time, in the Underwriter's sole and reasonable judgment any of the following events shall occur (each a "**Termination Event**"):

(a) the market price or marketability of the Bonds, or the ability of the Underwriter to enforce contracts for the sale of the Bonds, shall be materially adversely affected by any of the following events:

(i) legislation shall have been enacted by the Congress of the United States or the legislature of the State or shall have been favorably reported out of committee of either body or be pending in committee of either body, or shall have been recommended to the Congress for passage by the President of the United States or a member of the President's Cabinet, or a decision shall have been rendered by a court of the United States or the State or the Tax Court of the United States, or a ruling, resolution, regulation or temporary regulation, release or announcement shall have been made or shall have been proposed to be made by the Treasury Department of the United States or the Internal Revenue Service, or other federal or state authority with appropriate jurisdiction, with respect to federal or state taxation upon interest received on obligations of the general character of the Bonds; or

(ii) there shall have occurred (1) an outbreak or escalation of hostilities or the declaration by the United States of a national emergency or war or (2) any other calamity or crisis in the financial markets of the United States or elsewhere or the escalation of such calamity or crisis; or

(iii) a general suspension of trading on the New York Stock Exchange or other major exchange shall be in force, or minimum or maximum prices for trading shall have been fixed and be in force, or maximum ranges for prices for securities shall have been required and be in force on any such exchange, whether by virtue of determination by that exchange or by order of the SEC or any other governmental authority having jurisdiction; or

(iv) legislation shall have been enacted by the Congress of the United States or shall have been favorably reported out of committee or be pending in committee, or shall have been recommended to the Congress for passage by the President of the United States or a member of the President's Cabinet, or a decision by a court of the United States shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the SEC or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that any obligations of the general character of the Bonds or the Bond Documents, or any comparable securities of the Issuer or the City, are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended (the "**Securities Act**") or the Trust Indenture Act of 1933, as amended (the "**Trust Indenture Act**") or otherwise, or would be in violation of any provision of the federal securities laws; or

(v) except as disclosed in or contemplated by the Official Statement, any material adverse change in the affairs of the Issuer or the City shall have occurred; or

(vi) any rating on securities of the Issuer or the City which are secured by a pledge or application of the Trust Estate on a parity with the Bonds is reduced or withdrawn or placed on credit watch with negative outlook by any major credit rating agency; or

(b) any event or circumstance shall exist that either makes untrue or incorrect in any material respect any statement or information in the Official Statement (other than any statement provided by the Underwriter) or is not reflected in the Official Statement but should be reflected therein in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the Issuer or the City refuses to permit the Official Statement to be supplemented to supply such statement or information, or the effect of the Official Statement as so supplemented is to materially adversely affect the market price or marketability of the Bonds or the ability of the Underwriter to enforce contracts for the sale of the Bonds; or

(c) a general banking moratorium shall have been declared by federal or State authorities having jurisdiction and be in force; or

(d) a material disruption in securities settlement, payment or clearance services affecting the Bonds shall have occurred; or

(e) any new restriction on transactions in securities materially affecting the market for securities (including the imposition of any limitation on interest rates) or the extension of credit by, or a charge to the net capital requirements of, underwriters shall have been established by the New York Stock Exchange, the SEC, any other federal or State agency or the Congress of the United States, or by Executive Order; or

(f) a decision by a court of the United States shall be rendered, or a stop order, release, regulation or no-action letter by or on behalf of the SEC or any other governmental agency having

jurisdiction of the subject matter shall have been issued or made, to the effect that the issuance, offering or sale of the Bonds, including the underlying obligations as contemplated by this Agreement or by the Official Statement, or any document relating to the issuance, offering or sale of the Bonds, is or would be in violation of any provision of the federal securities laws at the Closing Date, including the Securities Act, the Securities Exchange Act of 1933, as amended (the “**Exchange Act**”), and the Trust Indenture Act.

Upon the occurrence of a Termination Event and the termination of this Agreement by the Underwriter, all obligations of the Issuer, the City and the Underwriter under this Agreement shall terminate, without further liability, except that the City and the Underwriter shall pay their respective expenses as set forth in **Section 10** hereof.

Section 10. Expenses.

(a) If the Bonds are sold to the Underwriter by the Issuer on or prior to the Closing Date, the City shall pay out of the proceeds of the Bonds the following expenses incident to the performance of its obligations hereunder: (i) the cost of the preparation, printing and distribution of the Bonds Documents (for distribution on or subsequent to the date of execution of this Agreement); (ii) the cost of the preparation of the Preliminary Official Statement and the Official Statement; (iii) the cost of preparation and printing of the definitive Bonds; (iv) the fees and disbursements of Bond Counsel, the Trustee, Underwriter’s counsel, the Issuer and counsel to the Issuer, and the City and counsel to the City; (v) the Underwriter’s underwriting fee; (vi) the Underwriter’s charge for cost of funds, DTC, Ipreo, Lumesis report and CUSIP fees; and (vii) all other fees and expenses reasonably incurred in connection with the preparation of the Bond Documents and/or the initial offering and sale of the Bonds except those to be paid by the Underwriter pursuant to the last paragraph of this **Section 10**.

(b) If the Bonds are sold to the Underwriter by the Issuer on or prior to the Closing Date, the Issuer shall pay out of the proceeds of the Bonds the discount of the Underwriter or the purchase price paid for the Bonds shall reflect such discount.

(c) The Underwriter shall pay: (i) all advertising expenses in connection with the public offering of the Bonds; (ii) filing fees in connection with the “Blue Sky” registration of the Bonds; and (iii) all travel, entertainment, postage, photocopying, telephone, fax, computer, word processing and other similar expenses incurred by the Underwriter in connection with the public offering and distribution of the Bonds.

(d) If this Agreement shall be terminated by the Underwriter because of any failure or refusal on the part of the Issuer or the City to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Issuer or the City shall be unable to perform its obligations under this Agreement, the City will reimburse the Underwriter for all out-of-pocket expenses (including the fees and disbursements of Underwriter’s Counsel) reasonably incurred by the Underwriter in connection with this Agreement or the offering contemplated hereunder.

(e) Notwithstanding anything to the contrary in this **Section 10** or otherwise in this Agreement, neither the Issuer nor the City shall be liable for costs described in **Section 10(a)(v)** or **(vi)** in excess of the limits placed on such costs in the Investment Banking Engagement Agreement relating to the Bonds executed by the Underwriter, the Issuer and the City.

Section 11. Establishment of Issue Price for the Bonds.

(a) The Underwriter agrees to assist the Issuer and the City in establishing the issue price of the Bonds and shall execute and deliver to the Issuer and the City at Closing an “issue price” or similar certificate, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as **Exhibit A**, with such modifications as may be appropriate or necessary, which, in the reasonable

judgment of the Underwriter, the Issuer, the City and Bond Counsel, accurately reflects, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) The Underwriter has offered the Bonds to the public on or before the date of this Agreement at the offering price or prices (the “**initial offering price**”), or at the corresponding yield or yields, set forth in **Schedule I** attached hereto. The Issuer, the City and the Underwriter agree that the restrictions set forth in the next sentence shall apply to all maturities of the Bonds, which will allow the City and the Issuer to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “**hold-the-offering-price rule**”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (i) the close of the fifth (5th) business day after the sale date; or
- (ii) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the City and the Issuer when the Underwriter has sold 10% of each maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

The Issuer and the City acknowledge that, in making the representation set forth in this subsection, the Underwriter will rely on (i) the agreement of each underwriter to comply with the hold-the-offering-price rule, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that the Underwriter is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, as set forth in the third-party distribution agreement and the related pricing wires. The Issuer and the City further acknowledge that the Underwriter shall be solely liable for its failure to comply with its agreement regarding the hold-the-offering-price rule and that the Underwriter shall not be liable for the failure of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Bonds.

(c) The Underwriter confirms that:

- (i) any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which the Underwriter is a party) relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such third-party distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either 10% of that maturity of the Bonds have been sold to the public or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the related pricing wires, and
- (ii) any agreement among underwriters relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter that is a party to a third-party distribution agreement to be employed in connection with

the initial sale of the Bonds to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either 10% of that maturity of the Bonds have been sold to the public or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the related pricing wires.

(d) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to an underwriter (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(i) “public” means any person other than an underwriter or a related party to an underwriter,

(ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the public),

(iii) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) “sale date” means the date of execution of this Agreement by all parties.

Section 12. Reimbursement for Certain Liabilities.

(a) To the extent permitted by applicable law, and without waiver of sovereign immunity or any other immunity to which it may be entitled, the City shall be liable to the Underwriter and the Issuer, the directors, officer, employees and agents of the Underwriter and the Issuer, and each person who controls the Underwriter and the Issuer, within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, (each, a “**Protected Underwriter/Issuer Party**”) for indemnity against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Securities Act, the Exchange Act or other Federal or state law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Official Statement or the Official Statement (or in a supplement or amendment thereto) or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and the City shall be liable to reimburse each such Protected Underwriter/Issuer Party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that the City will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or mission or alleged omission made in the Preliminary Official Statement or the

Official Statement, or in any amendment thereof or supplement thereto, in reliance upon and in conformity with written information furnished to the City by the Issuer specifically for inclusion therein, or written information furnished to the City by the Underwriter specifically for inclusion under the heading “UNDERWRITING” therein. This protection will be in addition to any liability which the City may otherwise have.

(b) The Underwriter will reimburse the Issuer and the City, and hold them harmless, together with each of its members, directors, officers, and employees, and each person who controls the Issuer or the City within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each a “**Protected Issuer/City Party**” and, together with a Protected Underwriter/Issuer Party, a “**Protected Party**”), to the same extent as the foregoing reimbursement from the City to the Underwriter and Issuer, but only with reference to written information relating to the Underwriter furnished by the Underwriter specifically for inclusion in the preparation of the Preliminary Official Statement and the Official Statement. This reimbursement agreement will be in addition to any liability which the Underwriter may otherwise have. Each of the Issuer and the City acknowledges that the statements under the heading “UNDERWRITING” in the Preliminary Official Statement and the Official Statement constitute the only information furnished in writing by or on behalf of the Underwriter for inclusion in the Preliminary Official Statement and the Official Statement.

(c) In case any claim shall be made or action brought against a Protected Party for which reimbursement may be sought against any reimbursing party, as provided above, the Protected Party shall promptly notify the reimbursing party in writing setting forth the particulars of such claim or action and the reimbursing party shall assume the defense thereof, including the retaining of counsel acceptable to such Protected Party and the payment of all expenses and shall have the right to negotiate and consent to settlement. A Protected Party shall have the right to retain separate counsel in any such action and to participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such Protected Party unless the employment of such counsel has been specifically authorized by the reimbursing party or the reimbursing party shall not have employed counsel reasonably acceptable to the Protected Party to have charge of the defense of such action or proceeding or the Protected Party shall have reasonably concluded that there may be defenses available to it which are different from or additional to those available to the reimbursing party (in which case the reimbursing party shall not have the right to direct the defense of such action or proceeding on behalf of the Protected Party), in any of which events, such legal or other expenses shall be borne by the reimbursing party. No party shall be liable for any settlement of any action effected without its consent, but if settled with the consent of the reimbursing party or if there is a final judgment for the plaintiff in any action with or without written consent of the reimbursing party, the reimbursing party agrees to reimburse and hold harmless the Protected Parties to the extent of the provisions set forth above from and against any loss or liability by reason of such settlement or judgment.

(d) If the reimbursement provided for in this **Section 12** is unenforceable, or is unavailable to a reimbursing party in respect of any losses, claims, damages, or liabilities (or actions in respect thereof) of the type subject to reimbursement herein, then the reimbursing party shall, in lieu of reimbursing such person, contribute to the amount paid or payable by such person as a result of such losses, claims, damages, or liabilities (or actions in respect thereof). In the case of the City and the Underwriter, contribution shall be in such proportion as is appropriate to reflect the relative benefits received by the City, on the one hand, and the Underwriter, on the other, from the sale of the Bonds. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law then the reimbursing party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the City, on the one hand, and the Underwriter, on the other, in connection with the statements or omissions which resulted in such losses, claims damages or liabilities (or action in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the City on the one hand and the Underwriter on the other shall be deemed to be in the same proportion as the total proceeds of sale of the Bonds paid to the City pursuant to **Section 1** hereof (before deducting

expenses) bear to the underwriting discount received by the Underwriter (the difference between the initial public offering price for the Bonds and the price to be paid therefor by the Underwriter as set forth in the Official Statement under the heading “UNDERWRITING”). The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the City or the Underwriter and the parties’ relative intent, knowledge, access to information, and opportunity to correct or prevent such untrue statement or omission. The City and the Underwriter agree that it would not be just and equitable if contribution pursuant to this subsection were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection. The amount paid or payable by any person as a result of the losses, claims, damages, or liabilities (or actions in respect thereof) referred to above shall be deemed to include any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this paragraph, however, the Underwriter shall not be required to contribute an amount in excess of the amount by which such initial public offering price exceeds the amount of any damages which the Underwriter have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 10(b) of the Securities Act) with respect to a claim shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation with respect to such claim.

(e) The provisions of this **Section 12** shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of the Underwriter, (ii) delivery of and payment for the Bonds hereunder, and (iii) any termination of this Bond Purchase Agreement.

Section 13. Notices. Any notice or other communication to be given to the Issuer or the City under this Agreement may be given by delivering the same in writing at such party’s address set forth above, and any notice or other communication to be given to the Underwriter under this Agreement may be given by delivering it in writing to the Underwriter at the following address: Stifel, Nicolaus & Company, Incorporated, 4622 Pennsylvania Avenue, Suite 1210, Kansas City, Missouri 64112, Attention: Michael Short.

Section 14. Parties in Interest; Survival of Representations and Warranties. This Agreement as heretofore specified shall constitute the entire agreement between the Issuer, the City, and the Underwriter and is made solely for the benefit of the Issuer and the Underwriter (including successors or assigns of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. This Agreement may not be assigned by the Issuer or the City. All of the Issuer’s and the City’s representations, warranties and agreements contained in this Agreement shall remain operative and in full force and effect, regardless of (i) any investigations made by or on behalf of the Underwriter; (ii) delivery of and payment for the Bonds pursuant to this Agreement; and (iii) any termination of this Agreement.

Section 15. Effectiveness. This Agreement shall become effective upon the acceptance hereof by the Issuer and the City and shall be valid and enforceable at the time of such acceptance.

Section 16. Choice of Law. This Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York without regard to choice of law rules (other than New York General Obligations Laws Section 5-1401 and 5-1402); provided, however, that the obligation of the Issuer and the City shall be governed by, and construed and interpreted in accordance with the laws of the State of Missouri.

Section 17. Anti-Discrimination. The Underwriter hereby certifies and agrees that, to the extent that the “Anti -discrimination Against Israel Act,” Section 34.600, Revised Statutes of Missouri (the “**Israel Act**”), is applicable to any contract entered into with the Issuer or the City in connection with the Bonds, the Underwriter is not currently engaged in and shall not, for the duration of such contract, engage in a boycott of goods or services from the State of Israel (“**Israel**”), companies doing business in or with Israel or authorized by, licensed by or organized under the laws of Israel or persons or entities doing business with Israel, in all

respects within the meaning of the Israel Act. Failure to comply with the foregoing certification shall be enforceable in accordance with the terms of such contract. The foregoing certification shall not be deemed an admission or agreement that the Israel Act is applicable to the aforesaid contracts but the foregoing certification is enforceable if the Israel Act is applicable. If the Israel Act is determined not to apply to the applicable contract for any reason including the repeal or amendment of the Israel Act or any ruling of a court of competent jurisdiction as to the unenforceability or invalidity of the Israel Act, then the certification shall be of no effect.

Section 18. Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any Constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatever.

Section 19. Business Day. For purposes of this Agreement, “business day” means any day on which the New York Stock Exchange is open for trading.

Section 20. Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provisions of this Agreement.

Section 21. Electronic Transactions. The parties agree that the transaction described herein may be conducted and related documents may be sent, stored and received by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 22. Counterparts; Electronic Signatures. This Agreement may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document. A signature to this Bond Purchase Agreement delivered by facsimile, e-mail in portable document format (.pdf) or DocuSign electronic signature system shall be deemed to be an original manual signature and shall be binding upon the executing party and have the same legal effect as an original manual signature.

(Remainder of this page intentionally left blank)

If the City and the Issuer agree with the foregoing, please sign the enclosed counterpart of this Agreement and return it to the Underwriter. This Agreement will become a binding agreement among the Issuer, the City and the Underwriter when at least one counterpart of this Agreement has been signed on behalf of each of the parties.

Very truly yours,

**STIFEL, NICOLAUS & COMPANY,
INCORPORATED**

By: _____
Name: _____
Title: _____

We agree to the foregoing:

Accepted and agreed to on April ____, 2025 at
_____:_____.m.:

**MISSOURI DEVELOPMENT FINANCE
BOARD**

By: _____
Name: Mark Stombaugh
Title: Executive Director

Accepted and agreed on April ____, 2025 at
_____:_____.m.:

CITY OF INDEPENDENCE, MISSOURI

By: _____
Name: Zachary Walker
Title: City Manager

SCHEDULE I

\$ _____

**Missouri Development Finance Board
Infrastructure Facilities Revenue Bonds
(City of Independence, Missouri - Public Safety Projects)
Series 2025A**

Dated: April __, 2025

[*to be inserted following pricing*]

EXHIBIT A

FORM OF ISSUE PRICE CERTIFICATE

related to

\$ _____

**Missouri Development Finance Board
Infrastructure Facilities Revenue Bonds
(City of Independence, Missouri - Public Safety Projects)
Series 2025A**

The undersigned, on behalf of Stifel, Nicolaus & Company, Incorporated (the “**Original Purchaser**”), as the Original Purchaser of the above-described bonds (the “**Bonds**”), being issued on the date of this Certificate by Missouri Development Finance Board (the “**Issuer**”), certifies and represents as follows:

1. Initial Offering Price of the Bonds.

(a) As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective price listed in **Schedule A**.

The Original Purchaser offered the Bonds to the Public for purchase in a bona fide initial offering at the respective initial offering prices listed in **Schedule A** (the “**Initial Offering Prices**”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this certificate as **Schedule B**.

(b) As set forth in the Bond Purchase Agreement, dated April __, 2025 among the Issuer, the City of Independence, Missouri (the “**City**”) and the Original Purchaser, the Original Purchaser has agreed in writing that, (i) for each Hold-the-Offering-Price Maturity of the Bonds, they would neither offer nor sell any of the Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “**hold-the-offering-price rule**”), and (ii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. The Original Purchaser has not offered or sold any unsold Bonds of any Maturity at a price higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.

2. Defined Terms.

(a) “**General Rule Maturities**” means those Maturities of the Bonds listed in **Schedule A** hereto as the “General Rule Maturities”.

(b) “**Hold-the-Offering-Price Maturities**” means those Maturities of the Bonds, if any, listed in **Schedule A** hereto as the “Hold-the-Offering-Price Maturities.”

(c) “**Holding Period**” means, with respect to any Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth (5th) business day after the Sale Date (April __, 2025), or (ii) the date on which the Original Purchaser has sold at least 10% of such Maturity to the Public at prices that are no higher than the Initial Offering Price for such Maturity.

(d) **“Maturity”** means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(e) **“Public”** means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term **“related party”** for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(f) **“Sale Date”** means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is April ____, 2025.

(g) **“Underwriter”** means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the tax certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Gilmore & Bell, P.C. in connection with rendering their opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038-G, and other federal income tax advice they may give to the Issuer from time to time relating to the Bonds. The representations set forth herein are not necessarily based on personal knowledge.

**STIFEL, NICOLAUS & COMPANY,
INCORPORATED**, as Underwriter

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Date: April ____, 2025

SCHEDULE A

INITIAL OFFERING PRICES

[*to be inserted following pricing*]

General Rule Maturities

[*All Maturities*][*insert list of applicable maturities*]

Hold-the-Offering-Price Maturities

[*None*][*insert list of applicable maturities*]

SCHEDULE B

Sale Price Documentation

[Attach Actual Sales Data Certification or Documentation]

EXHIBIT B

FORM OF OPINION OF ISSUER'S COUNSEL

[LETTERHEAD OF GILMORE & BELL, P.C.]

[*final draft from Closing Documents to be inserted*]

EXHIBIT C

FORM OF OPINION OF CITY'S COUNSEL

[LETTERHEAD OF LAUBER MUNICIPAL LAW, LLC]

[*final draft from Closing Documents to be inserted*]

EXHIBIT D

FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

[LETTERHEAD OF GILMORE & BELL, P.C.]

[*final draft from Closing Documents to be inserted*]

EXHIBIT E

FORM OF DISCLOSURE OPINION OF BOND COUNSEL

[LETTERHEAD OF GILMORE & BELL, P.C.]

[*final draft from Closing Documents to be inserted*]

EXHIBIT F

FORM OF OPINION OF UNDERWRITER'S COUNSEL

[LETTERHEAD OF PIERSON FERDINAND LLP]

April __, 2025

Stifel, Nicolaus & Company, Incorporated
St. Louis, Missouri

Re: \$_____ Missouri Development Finance Board, Infrastructure Facilities Revenue Bonds (City of Independence, Missouri - Public Safety Projects), Series 2025A

Ladies and Gentlemen:

We have served as special counsel to Stifel, Nicolaus & Company, Incorporated (the “**Underwriter**”) in connection with its purchase of the above-referenced bonds (the “**Bonds**”) pursuant to the terms of a Bond Purchase Agreement, dated April __, 2025 (the “**Bond Purchase Agreement**”), among the Missouri Development Finance Board (the “**Issuer**”), the City of Independence, Missouri (the “**City**”) and the Underwriter. The Bonds are being issued by the Issuer pursuant to a Bond Trust Indenture, dated as of May 1, 2025 (the “**Bond Indenture**”), between the Issuer and UMB Bank, N.A., as trustee. Each term used herein and not otherwise defined herein shall have the meaning ascribed to it in the Bond Indenture.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of the following:

- (a) the Bond Indenture;
- (b) the Financing Agreement, dated as of May 1, 2025, between the Issuer and the City;
- (c) the Preliminary Official Statement dated March __, 2025 relating to the Bonds (the “**Preliminary Official Statement**”) and the Official Statement dated April __, 2025 relating to the Bonds (the “**Official Statement**”);
- (d) the Continuing Disclosure Undertaking, dated as of May 1, 2025 (the “**Undertaking**”), executed by the City and relating to the Bonds; and
- (e) the legal opinions of (i) Gilmore & Bell, P.C., Bond Counsel, (ii) Gilmore & Bell, P.C., as special counsel to the Issuer, (iii) Gilmore & Bell, P.C., as disclosure counsel, and (iv) Lauber Municipal Law, counsel to the City, all of even date herewith.

In addition, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of all such other agreements, certificates, records of proceedings, instruments and documents of the Issuer, the City, public officials and other persons as we have deemed appropriate. In such examination, we have assumed, but have not independently verified, that the signatures on all opinions, certificates and other documents that we have examined are genuine. In addition, we have participated in conferences with representatives of the Issuer, the City, its municipal advisor and its auditor, and the legal representatives of the foregoing and representatives of the law firms listed above.

Based on the foregoing, we are of the opinion that:

1. As of the date hereof and under existing law, the Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Bond Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended.
2. The Undertaking complies with the requirements of paragraph (b)(5) of Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, in effect as of the date hereof.

In providing the statement of belief set forth in the paragraph immediately below, reference is made to the Preliminary Official Statement and the Official Statement. As your counsel, we reviewed the Preliminary Official Statement and the Official Statement and certain other documents and have participated in conferences in which the contents of the Preliminary Official Statement and the Official Statement and other matters were discussed. The purpose of our professional engagement was not to establish or to confirm factual matters set forth in the Preliminary Official Statement or the Official Statement, and we have not undertaken to verify independently any of such factual matters.

Subject to the foregoing, and on the basis of the information we gained in the course of performing the services referred to above, we confirm to you that no facts have come to the attention of the attorneys in our firm rendering legal services in connection with this matter that cause them to believe that the Preliminary Official Statement as of its date or the Official Statement as of its date or as of the date hereof contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading; provided, however, we do not assume responsibility for the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement, nor do we express any belief with respect to any financial and statistical data and forecasts, projections, numbers, estimates, assumptions, expressions of opinion, and information under the captions "LITIGATION" and "TAX MATTERS" contained or incorporated by reference in the Preliminary Official Statement or the Official Statement and its Appendices, which we expressly exclude from the scope of this paragraph.

This letter is furnished by us solely for your benefit in your role as underwriter and may not be relied upon by any other person or entity. We disclaim any obligation to supplement this letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in the law that may hereafter occur.

We are members of the Bar of the State of Missouri and the opinions contained herein are limited to the laws of the State of Missouri and the Federal laws of the United States of America.

This opinion is delivered to you for use by you only and may not be used or relied upon by, or published or communicated to, any third party for any purpose whatsoever without our prior written approval in each instance.

Sincerely yours,

PIERSON FERDINAND LLP

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-017 **2R** An ordinance authorizing the acceptance of a monetary donation to the George Owens Nature Park (GONP) to establish a butterfly garden and adopting amendments to the Fiscal Year 2024-2025 budget, which was approved by Ordinance No. 19561. **2R**

Recommendations:

Parks, Recreation and Tourism recommends acceptance of this donation.

Background:

Last summer, the family of Michelle 'Mickey' Ogradnik held a Celebration of Life at George Owens Nature Park (GONP). Ms. Ogradnik's family wishes to donate \$1,000 per year for three years for the creation and maintenance of a butterfly garden at GONP to honor her memory.

Emergency Justification:**Fiscal Impact:**

The Fiscal Impact to the City is \$3,000, at \$1,000 per year for three years, to be received as grant revenue. Revenue will be received to the Parks, Recreation and Tourism Department's Grant Fund account in FY2024-25 to 0156050-3435-BFLY for \$1,000. In the future, revenues for donations will be added when the donations are received. The revenue offsets increased expenditures to the Parks, Recreation and Tourism Grant Fund account 0156050-5309-BFLY in the amount of \$1,000 for FY 2024-2025.

Council Action:

Department / Contact	Parks, Recreation and Tourism /
---------------------------------	---------------------------------

REVIEWERS

Morris Heide
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Appropriations Ordinance FY24-25 - PRT BFLY
2. GO Butterfly Garden Emails

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF A MONETARY DONATION TO THE GEORGE OWENS NATURE PARK (GONP) TO ESTABLISH A BUTTERFLY GARDEN AND ADOPTING AMENDMENTS TO THE FISCAL YEAR 2024-2025 BUDGET, WHICH WAS APPROVED BY ORDINANCE NO. 19561.

WHEREAS, the City wishes to establish a butterfly garden at the George Owens Nature Park (GONP); and,

WHEREAS, the family of Michelle “Mickey” Ogrodnik wishes to make an annual donation of \$1,000 per year for the next three years for the creation and maintenance of a butterfly garden at GONP; and,

WHEREAS, the adopted Operating and Capital budgets for the 2024-25 fiscal year were approved by the City Council by Ordinance No. 19561; and,

WHEREAS, since that time some circumstances have arisen that necessitate changes to the appropriations established in the adopted budget; and,

WHEREAS, these changes are listed in detail in terms of background, purpose, and funding source in the attached agenda item cover sheet;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. Increased revenues in the Grant Fund (015) in the amount of \$1,000 and increased appropriations in the Grant Fund (015) in the amount of \$1,000 for a butterfly garden.

PASSED THIS _____ DAY OF _____, 2025, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

ATTEST:

City Clerk

APPROVED - FORM AND LEGALITY:

City Counselor

REVIEWED BY:

Presiding Officer of the City Council
of the City of Independence, Missouri

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, sufficient to meet the obligation hereby incurred.

Source is: As Indicated Above

City Manager

Director of Finance and Administration
City of Independence, Missouri

Kimberle Franks

Subject: FW: GONP Park Donation - Butterfly Garden

From: Jeff Umbreit <jumbreit@indepmo.org>
Sent: Thursday, February 27, 2025 11:25 AM
To: Kimberle Franks <kfranks@indepmo.org>
Subject: RE: GONP Park Donation - Butterfly Garden

Below is what I typed up for Morris's weekly good news items, just in case it's helpful.

Name is Michelle "Mickey" Ogradnik.

Butterfly Memorial Garden Donated to George Owens Nature Park – Last summer, George Owens Nature Park hosted a celebration of life ceremony for Michelle "Mickey" Ogradnik in the Eva Cooper Lodge.

Below is part of the text from Mickey's sister, Pam, after this ceremony.

"We held the butterfly release for my sister, Michelle "Mickey" Ogradnik, last June. Thank you for the fantastic venue for her celebration of life! And it's our desire to fund a butterfly garden in her memory. The plan is to provide \$1,000 a year for three years, and possibly longer."

Pam just sent us the first check to begin the creation of "Mickey's Butterfly Garden" in 2025. This garden will be filled with; native plants beneficial to a variety of butterflies, public educational stations, new butterfly and pollinator programming opportunities and a sitting area for individuals and families to enjoy the natural beauty of "Mickey's Butterfly Gardn". The garden design and plant layout will be developed this spring with the goal of getting native plants established this year and continued additions each year.

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-018 **2R** An ordinance authorizing the acceptance of funding from the US Department of Agriculture's Gus Schumacher Nutrition Incentive Program, through a recipient award from the Mid-America Regional Council (MARC) and sub-recipient Cultivate KC, which allocates \$11,992.50 to the City of Independence, Missouri, for nutrition incentives for the Double Up Food Bucks Program and adopting amendments to the Fiscal Year 2024-2025 budget, which was approved by ordinance NO. 19561. **2R**

Recommendations:

The Parks, Recreation and Tourism Department recommends acceptance of this grant award.

Background:

MARC is the recipient of the US Department of Agriculture's Gus Schumacher Nutrition Incentive Program. MARC partners with Cultivate KC, as a sub-recipient, to coordinate the Double Up Food Bucks (DUFb) program. The DUFb program provides nutrition incentives to match Supplemental Nutrition Assistance Program (SNAP) token purchases of up to \$25 per day at the Independence Farmers Market. The goal of the program is to allow participants to increase their SNAP benefits by purchasing locally grown fruits and vegetables while improving access to affordable, healthy produce.

This program was in place at the Independence Farmers Market in the past when the market was operated by a contractor. PRT staff assumed the day-to-day operations of the Farmers Market; therefore, the DUFb grant is now awarded to the City.

Emergency Justification:**Fiscal Impact:**

The fiscal impact to the City is net-zero. Grant revenues will increase by \$11,992.50 to be received to account 0156050-3219-DUFb. This revenue offsets increased expenditures the Parks, Recreation, and Tourism Department's Grant Fund as follows: \$10,675.00 to 0156050-5240-DUFb and \$1,317.50 to 0156050-5205-DUFb.

Council Action:

Department / Contact	Parks, Recreation and Tourism /
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REVIEWERS

Morris Heide
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Appropriations Ordinance FY24-25 - PRT DUFB
2. 2025 DUFB Contract

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF FUNDING FROM THE US DEPARTMENT OF AGRICULTURE'S GUS SCHUMACHER NUTRITION INCENTIVE PROGRAM, THROUGH A RECIPIENT AWARD FROM THE MID-AMERICA REGIONAL COUNCIL (MARC) AND SUB-RECIPIENT CULTIVATE KC, WHICH ALLOCATES \$11,992.50 TO THE CITY OF INDEPENDENCE, MISSOURI, FOR NUTRITION INCENTIVES FOR THE DOUBLE UP FOOD BUCKS PROGRAM AND ADOPTING AMENDMENTS TO THE FISCAL YEAR 2024-2025 BUDGET, WHICH WAS APPROVED BY ORDINANCE NO. 19561.

WHEREAS, the City wishes to partner with Cultivate KC to implement a nutrition incentive for customers using the Supplemental Nutrition Assistance Program (SNAP) at the Independence Farmer's Market; and,

WHEREAS, the adopted Operating and Capital budgets for the 2024-25 fiscal year were approved by the City Council by Ordinance No. 19561; and,

WHEREAS, since that time some circumstances have arisen that necessitate changes to the appropriations established in the adopted budget; and,

WHEREAS, these changes are listed in detail in terms of background, purpose, and funding source in the attached agenda item cover sheet;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. Increased revenues in the Grant Fund (015) in the amount of \$11,992.50 for Farmer's Market nutrition incentives and increased appropriations in the Grant Fund (015) in the amount of \$11,992.50 for Farmer's Market nutrition incentives.

PASSED THIS _____ DAY OF _____, 2025, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

ATTEST:

City Clerk

APPROVED - FORM AND LEGALITY:

City Counselor

Presiding Officer of the City Council
of the City of Independence, Missouri

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, sufficient to meet the obligation hereby incurred.

Source is: As Indicated Above

REVIEWED BY:

City Manager

Director of Finance and Administration
City of Independence, Missouri

Double Up Food Bucks Firm Agreement 2025

This Firm Agreement (“Agreement”) is made as of February 1, 2025 by and between Mid-America Regional Council (hereafter MARC) at 600 Broadway, Suite 200, Kansas City, MO 64105, Cultivate Kansas City (hereafter “Cultivate KC”) at 4049 Pennsylvania, Suite 206, Kansas City, Missouri 64111 and

Firm Name (including other names the firm does business as or under): Independence Farmers Market (hereafter referred to as “Firm”).

Street Address: 211 W Truman Rd, Independence, MO 64050

Mailing Address: 201 N Dodgion Ave, Independence, MO 64050

Firm FNS Number: 0937311

Firm Hours and Days of Operation:

- Summer Season: Saturday, May 3, 2025 - Saturday, October 25, 2025
 - May - October Saturdays 8am-1pm, June through August Wednesdays 8am-1pm
- Winter Season: Saturday, January 4, February 1, March 1, and April 5, 2025, 9am-1pm

WHEREAS, MARC is the recipient of funding from the United States Department of Agriculture’s Gus Schumacher Nutrition Incentive Program, the state of Missouri and multiple private funders to implement a nutrition incentive program called Double Up Food Bucks and is responsible for reporting back to these funding sources on program and financial activities; and

WHEREAS, MARC seeks to partner with Cultivate KC, as a subrecipient of the funding, for the purpose of coordinating the Double Up Food Bucks program with farmers markets and providing program and financial activity data for the locations which Cultivate KC is working with; and

WHEREAS, MARC and Cultivate KC, as partners, acknowledge the rules of the GusNIP grant program and failure to abide by those rules may result in rescission, in whole or in part, of grant funds. MARC and Cultivate KC acknowledge they are responsible for overseeing firms participating in this grant project to ensure that SNAP rules are followed; and they will be held responsible for instances of noncompliance that occur at any participating firms.

WHEREAS, Cultivate KC and Firm desire to enter into this Agreement to work together to:

- a) Enable non-cash transactions for customers using the Supplemental Nutrition Assistance Program (SNAP);
- b) Distribute nutrition incentives (Double Up Food Buck tokens) when SNAP tokens are purchased, matching the SNAP token purchase dollar for dollar up to \$25 per day. The Double Up Food Buck tokens are only to be used by customers to purchase locally grown fruits and vegetables, improving their access and ability to affordability of healthy, locally grown food;
- c) Promote the Double Up Food Bucks program;
- d) Participate in evaluation efforts related to the Double Up Food Bucks program. These efforts will seek to understand the impact the Double Up Food Bucks program has on consumers, market vendors, and markets; and

- e) When feasible, support delivery of nutrition education activities.

Appendix A contains definitions of terms within this Agreement. Appendix B contains a description of all Invoicing and Payment related documents.

Section One: NOW, THEREFORE, in consideration of these purposes, the parties agree as follows:

1. Name of the Program: The name of the program shall be Double Up Food Bucks – Heartland (a.k.a. Double Up Food Bucks)
2. Term of the Participation Agreement. The Term of the Participation Agreement shall be effective February 1, 2025 through December 31, 2025.
3. Cultivate KC and Firm shall have the following individual responsibilities:

In order to participate in Double Up Food Bucks during the term of the agreement as stated in item 2 above, Firm must be authorized by the USDA’s Food and Nutrition Service (FNS). MARC will submit the Firm’s information to obtain that authorization. In addition, Firm agrees to:

Submit Paperwork

1. Provide current information
2. In order for any payments to be made to the Firm by Cultivate KC, the Firm must return a signed copy to Cultivate KC of this agreement and a W-9 form or a copy of a tax-exempt letter from the IRS for tax exempt organizations from the Fiduciary Organization.

Locally Grown Produce Availability

1. Recruit and encourage vendors selling fruits and vegetables grown within 500 miles of Firm.
2. Ensure that only fruits and vegetables grown within **500** miles of Firm are purchased using Double Up Food Bucks tokens.

EBT Capabilities to Accept SNAP

1. Maintain United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) certification for Market.
2. Abide by all USDA FNS regulations on the Supplemental Nutrition Assistance Program which are located in Title 7; Subtitle B; Chapter II; Subchapter C – Food Stamp and Food Distribution Program of the Electronic Code of Federal Regulations (<https://www.fns.usda.gov/snap/retailer/training>) and in the Agricultural Act of 2014 provisions (<https://www.fns.usda.gov/snap/important-reminder-%E2%80%93-retailer-notice-agricultural-act-2014-provisions>).
3. Maintain a relationship with an electronic EBT service provider to enable electronic transactions on Firm’s EBT machine.
4. Receive updated training from USDA or EBT service provider on the use of the EBT machine, as needed.

Double Up Food Bucks Training

1. Participate in trainings for the Double Up Food Bucks program and EBT/debit usage procedures and ensure that Firm employees are trained on the Double Up Food Bucks

policies and procedures to ensure compliance with federal and state laws and effective implementation of the Double Up Food Bucks program.

2. Provide training about Double Up Food Bucks and any other applicable food assistance programs to all farmers/vendors at the Market, including those vendors participating in the program (i.e., those selling fresh fruits and vegetables) and those who do not sell eligible items. Ensure the training describes a defined process and schedule for Double Up Food Bucks incentive redemption and reimbursement with participating vendors.

Communications/Promotional Activities

1. Provide a list of locations, addresses, days and hours of operation and months of operation to Cultivate KC by February 1, 2025.
2. Provide printed and verbal information for customers and farmers that explains SNAP purchase rules and eligibility under other assistance programs that may be included under the Double Up Food Bucks program.
3. Collaborate with Cultivate KC program staff to develop specific marketing, outreach, and educational plans to reach SNAP participants.
4. Obtain prior approval from Cultivate KC and MARC staff before releasing any media coverage about the Double Up Food Bucks program. Use only approved Double Up Food Bucks logos and marketing materials when promoting the Double Up Food Bucks Program.

Administer Incentive Disbursement to SNAP Customers

1. Use 2025 Double Up Food Bucks tokens to administer the Double Up Food Bucks nutrition incentives to customers using federal food assistance benefits (Supplemental Nutrition Assistance Program or SNAP) via an EBT card. Where non-use of the token system is agreed upon by both parties, Firm agrees to provide proper documentation of SNAP and Double Up Food Bucks matching incentive funds distributed to customers.
2. All other Double Up Food Bucks tokens from previous years should not be honored but should be taken out of distribution.
3. Provide proper security for tokens and EBT machine at all times.
5. SNAP customers at the market will receive Double Up Food Buck tokens equal to the amount of SNAP dollars spent, up to \$25 per market day.
6. The Firm will maintain records of daily token distribution using a standardized Customer Record sheet which must record each EBT transaction and incentive distribution.
7. The Firm must provide a third party EBT verification in the form of a copy of the daily batch receipts from the market's point of sale device for each market day (in lieu of the daily batch report, a monthly statement from the EBT merchant processor would also suffice).
8. Offer Double Up Food Bucks nutrition incentive recipients the same courtesies as other customers and comply with the non-discrimination provisions of USDA regulations.

Monitor Incentive Redemption and Administer Incentive Reimbursements to Vendors

1. Provide a list of participating vendors/farmers, including names, addresses and zip codes to Double Up Food Bucks by May 31, 2025.
2. Prior to a vendor accepting Double Up Food Buck tokens and reimbursement for those tokens, the Firm must have a signed Double Up Food Bucks Vendor Agreement on file for

each vendor for each year of this agreement. The Firm must provide a copy of this agreement to Cultivate KC or MARC upon request.

3. Collect incentive tokens redeemed for eligible produce by participating vendors (preferably each market day). Maintain and submit to Cultivate KC a Vendor Reimbursement Record (which serves as a Market Invoice). Records must indicate the name of the vendor who redeemed the tokens, the date of redemption, the dollar value of tokens submitted and the Market name.
4. Reimburse participating vendors for the cash value of the incentive redeemed at the Market for eligible product. Reimbursement needs to be made within one month of redemption.
5. If there is any question about payments being made to vendors, the Firm must be prepared to provide Cultivate KC with detailed documentation showing that the reimbursement was made.
6. If the Firm redeems incentives submitted by non-participating vendors or for ineligible transactions, written documentation needs to be submitted to Cultivate KC.
7. If the Firm makes cash reimbursement payments to vendors for incentive redemption, the Firm must provide Cultivate KC a copy of a vendor signed and dated receipt showing that the payment was made.
8. The last day for vendors to accept Double Up Food Bucks tokens for eligible products is December 31, 2025 and the last day for the Firm to reimburse vendors is January 10, 2026.
9. Tokens at end of Season: The Firm should have the correct number of Incentive tokens at the end of the Program season based on reporting provided. The calculation used to determine the number of Incentive tokens which the Firm should have on hand at the end of the season is: the number of tokens on-hand at the start of the season, minus the number of tokens distributed to customers, plus the number of tokens redeemed by vendors. In the instance that the Firm does not have the correct number of Incentive tokens at the end of the season, the records of the Firm may be under review. Cultivate KC may, at its discretion, waive any financial penalty if there is a small margin of error (a variance equal to or less than 5%) with the reconciliation of Incentive tokens.
 - a. In the event of a token shortage, the Grantee Organization may be penalized at a cost equal to the replacement value of the token shortage.
 - b. In the event of a token overage, the Grantee Organization will be penalized at a cost equal to the cash value of the token overage.

Record-Keeping and Reporting

Monthly Reports Online

Firms will submit weekly totals of the following in monthly (calendar month) reports:

1. Cash value of SNAP tokens distributed to customers and SNAP tokens redeemed by vendors.
2. Cash value of DUFEB Incentive tokens distributed to customers and redeemed by vendors.
3. Number of SNAP transactions.
4. Number of new customers (indicated by the customers who respond “yes” to the question “Is this your first time using your SNAP EBT card at any market?”)

Documentation to Verify Monthly Reports

1. Firms will submit correctly completed invoices by email to eli@cultivatekc.org. Cultivate KC requests that Firm submits invoices either weekly or monthly with the data documented broken down by market day and requires that invoices be submitted by the 10th of the

following month for the prior month's transactions. Cultivate KC *will not* reimburse Firm for incentive invoices submitted after the 10th of the following month.

2. Complete a separate report for each Firm site. For each market date, attach the following supporting documentation (see Appendix B):
 - a. Customer Record Sheet
 - b. Clerks Total Report, attached to the Customer Record Sheet (EBT Batch Summary from point of sale device for each market day OR, a monthly report from the EBT merchant processor)
 - c. Vendor Reimbursement Record (serves as formal Market Invoice) plus documentation that payment was made and how it was made (check, cash, etc)
 - d. In-Kind Personnel Record
3. Submit final invoice and supporting documentation *within two weeks of market close date for markets closing earlier than December 31, 2025*. Any invoices received after January 15, 2026 will not be reimbursed.
4. If the amounts of distributed and/or reimbursed Double Up Food Bucks Nutrition Incentives is coming close to the total amount of incentives budgeted for your market, contact the coordinator at Cultivate KC to determine if additional funds could be added to your incentive budget. If additional funds are not available, stop disbursing and reimbursing if/when the Firm reaches the budgeted amount for incentives of \$10,675.00. If this occurs prior to the end of the period of the Agreement, Firm will work with Cultivate KC and MARC on a customer communication plan.
5. Agree to pay a \$40 Stop Payment and/or Check Re-issue fee for any Reimbursement checks not deposited with 90 days of receipt or otherwise requiring a re-issue.

Evaluation

1. Cooperate with and assist Double Up Food Bucks staff and its representatives with program evaluation activities which may include but are not limited to site specific information (i.e., location(s); months, days and hours of operation; other nutrition incentive programs offered; nutrition education offered), SNAP transaction data collection and reporting, written or electronic survey completion, interviews (with conducted by an evaluator team with customers, market managers and vendors), photography, videography, and/or other documentation.

USDA Rules and Regulations

The Firm will follow all relevant GusNIP and SNAP rules including, but not limited to, the following:

1. The Firm will only accept incentives for GusNIP qualifying fruits or vegetables;
2. The Firm will never accept incentives for ineligible products (i.e., non-food, alcohol, tobacco, or hot food products);
3. The Firm will never exchange incentives for cash (i.e., trafficking);
4. The Firm will never provide cash or SNAP EBT change for incentives;
5. The Firm will never provide cash or SNAP EBT refunds for incentives;
6. The Firm will never accept incentives from individuals known not to be legally entitled to possess incentives;
7. The Firm will never accept incentives to pay credit accounts; and,

8. The Firm will never knowingly provide false information of a substantive nature regarding their participation in the grant project.

The Firm acknowledges that failure to abide by GusNIP and SNAP rules, at any firm location, may result in SNAP disqualification, civil money penalties, and/or criminal penalties.

Cultivate KC agrees to:

1. Provide Firm a stipend to assist with administrative cost of the program such as labor, marketing, and EBT related fees equal to \$250 + 10% of Firm Nutrition Incentive Matching Funds Limit. A stipend of \$1,317.50 will be paid in two payments, with 65% of stipend, or \$856.38, to be paid upon receipt of this signed Agreement. The remaining 35%, or \$461.13, will be paid by September 1, 2025 contingent on successful administration and reporting of program activity by the market. If this Agreement is terminated prior to completion of the current marketing season, the second payment will not be rendered.
2. Provide Firm with assistance regarding the Double Up Food Bucks program.
3. Provide program-related marketing materials appropriate for Firm.
4. Collaborate with Firm to develop specific marketing, outreach, and educational plans to reach SNAP and other non-cash state or federal food assistance benefits program cardholders.
5. Reimburse Firm \$1 for every redeemed \$1 Double Up Food Bucks token that Firm pays out to vendors. The total payments to Firm by Cultivate KC will not exceed the budgeted amount for incentives equaling \$10,675.00 for the term of this Agreement.
6. Render payment for properly submitted invoices and supporting reports within 10 working days of the monthly submission deadline.
7. If applicable, provide best practice guidance and materials to support effective accounting practices for EBT and Double Up Food Bucks token-based transactions.

Funding for Nutrition Incentives and Program Support are all subject to reaching 2025 funding goals.

Cultivate KC reserves the right to change the budgeted amount for incentives for markets at any time and will give Firm two weeks' notice to ensure proper communication with customers.

Section Two: Failure to Fulfill Designated Responsibilities. Cultivate KC and Firm agree to use their best efforts to fulfill their respective responsibilities as described in this Agreement. If, in the reasonable and good faith determination of one of the parties hereto, the other party is not adequately fulfilling such responsibilities, such complaining party must give written notice to the other party describing in detail what responsibility is not being fulfilled, and allow the other party to correct or remedy the situation in a manner developed by a consensus of the parties. If, after such notice and reasonable period of time, not to exceed 21 days, to correct or remedy the situation, the other party has still failed to fulfill adequately their responsibilities under this Agreement, the complaining party shall have the right to terminate this Agreement.

Cultivate KC may deny payment to Firm for improperly reported food assistance transactions.

Cultivate KC may terminate this contract immediately for the following conduct:

1. Charging food assistance customers more for eligible foods than the current price charged to other customers;
2. Failure to comply with the non-discrimination provisions of USDA regulations;
3. Failure by any market staff or management, paid or volunteer, to comply with all SNAP rules and regulations;
4. Egregious misuse of tokens; or
5. Failure to enforce Double Up Food Bucks requirement that tokens be used only for purchases of items grown within 500 miles of Market.

Section Three: Termination of Participation Agreement. This Agreement shall commence upon the execution date of this Agreement and shall continue until the first of the following events occurs: (1) any party hereto becomes insolvent; (2) a decision by Cultivate KC or Firm to terminate this Agreement pursuant to above; (3) a decision by Cultivate KC or Firm to no longer fulfill its own obligations under the terms of this Agreement and provide the other party with 30 days' written notice of termination; or if MARC terminates the program. In the event of termination of the Agreement, notice must be provided to all vendors involved by Firm management.

Upon termination of this Participation Agreement, Firm will return all Double Up Food Bucks program collateral (tokens, signage, flyers, etc.) to Cultivate KC.

Upon termination of this Participation Agreement, any references to the Double Up Food Bucks program will include a statement that the terminating agency is no longer a member of this collaborative Agreement.

Section Four: Amendments or Modification. This Agreement may only be amended or modified by an instrument in writing stating the manner of which it is to be amended or modified and signed by each of the parties thereof.

Section Five: Cooperation. Each of the parties shall use its best efforts to cooperate and exchange information regarding the Double Up Food Bucks program and the development of this program, and shall comply with all reasonable requests of the other party with respect to information concerning the program.

Section Six: Indemnity. Each party ("Indemnifying Party") to this Agreement hereby agrees to indemnify, defend and hold harmless the other Indemnified Party, including the respective officers, directors, and employees of the Indemnified Party from and against any and all claims, demands, losses, liabilities, actions, liens, lawsuits and other proceedings, judgments, and awards, and from costs and expenses, including without limitation reasonable attorney's fees, brought against the Indemnified Party arising directly or indirectly, in whole or in part, out of the performance of services under this agreement by the Indemnifying Party. The provisions of the Section shall survive termination of this Agreement and any transfer or conveyance of the program.

All parties hereby agree that, when necessary or appropriate in the good faith business judgment of Cultivate KC and Firm, any contractor or subcontractor performing service on the Double Up Food Bucks program shall deliver to the parties of this Agreement an agreement which shall indemnify, defend and hold Cultivate KC and MARC free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities (including reasonable attorney's fees) of any property or properties, arising out of, caused by or in connection with the performance of their respective obligations.

Section Seven: Insurance. At all times hereto Firm shall keep in good standing comprehensive general liability insurance coverage in an amount not less than \$1,000,000. Firm shall add Cultivate KC and MARC as an additional insured under such policy and provide Cultivate KC with a certificate of insurance of same.

Section Eight: Incorporation. This Agreement supersedes, merges with, and, upon its execution, makes null and void any and all previous agreements, whether written or oral, between Cultivate KC and Firm with respect to the topics provided under this Agreement and constitutes the full agreement between the parties.

Acknowledged and Agreed by:

_____ Firm, Authorized Signature	_____ Date
_____ Firm, Authorized Name, Title	_____ Date
_____ Brien Darby, Executive Director, Cultivate KC	_____ Date
_____ David Warm/Kristi Bohling-DaMetz, Mid-America Regional Council	_____ Date

Appendix A – Definition of Terms

Term	Definition
<i>The Double Up Food Bucks Program</i>	A local program that offers Nutrition Incentive matching funds on food assistance program dollars spent at participating farmers and other retail outlets.
<i>Community-based organization</i>	Community-based organizations are most often nonprofit organizations - particularly service agencies - that are located in, and provide services to, neighborhoods and communities.
<i>Nutrition Incentive</i>	Double Up Food Bucks provides nutrition incentive matching funds on SNAP and SFMNP dollars spent at participating markets.
<i>Customer Nutrition Incentive Match Limit</i>	The Customer Nutrition Incentive Match Limit is the maximum amount of nutrition incentive dollars that can be provided to each SNAP customer/SFMNP voucher user per market day. This limit is assigned each season and may vary by market.
<i>Electronic Benefits Transfer (EBT)</i>	EBT is an electronic system in the U.S. that allows state governments to provide financial and material benefits via a plastic debit card. Food benefits are distributed through the SNAP Program.
<i>Food Assistance Programs</i>	Food Assistance Programs provide financial benefits to low- to no-income individuals and families to help with the purchase of food.
<i>Budgeted Amount for Incentives</i>	This is the maximum amount of matching dollars available to Firm from Cultivate KC during the Agreement term. When Firm reaches this amount of EBT and/or SFMNP redemptions, Firm must stop the Double Up program for the season.
<i>Firm</i>	Firm refers to the Firm listed in this agreement.
<i>Supplemental Nutritional Assistance Program (SNAP)</i>	The SNAP program provides financial assistance for purchasing food to low- and no- income people and families living in the U.S. It is a federal aid program administered by the Food and Nutrition Service under the USDA. Benefits are distributed at the state level and historically, have been known as the Food Stamp Program.
<i>Tokens</i>	Tokens are a form of currency used at markets that enable customers to make purchases without cash. Each market has a unique SNAP token that has the market name on one side and the type and value of the token on the reverse; therefore, SNAP tokens are only valid at the market where they were issued. Double Up Food Bucks match tokens are identical across markets and can be spent at any participating Firm location. Firms that participate in the Double Up Food Bucks program must use separate tokens for SNAP, Double Up Food Bucks match, and debit transactions.
<i>United States Department of Agriculture (USDA)</i>	The US Agency that administers the Supplemental Nutritional Assistance Program and the Seniors Farmers Market Nutritional Program.

Appendix B Contents

- 1) Firm & Contact Information Form – E-mail attachment
- 2) Customer Record Sheet – E-mail attachment
- 3) Vendor Reimbursement Record – E-mail attachment
- 4) Additional documentation showing that reimbursement payments were made to vendors and how those payments were made
 - a. Completed payment record column on Vendor Record Sheet showing date, check number and total dollar value of check. The Vendor Record Sheet must indicate the portion allocated to each market currency if there are multiple currencies accepted at the site(s) (i.e., SNAP, SFMNP, DUFB, other incentives)
 - b. If payments to vendors were made by check or electronic methods, a report from the market's managing organization's accounting software verifying payments made will be needed.
- 5) Market Weekly Report digital form – Web URL (Note: entry of this information into the portal is *mandatory*.)
- 7) Log-in information for Smartsheet – E-mail attachment

Agreement Summary

Firm Organization:	Independence Farmers Market
Agreement Start Date:	February 1, 2025
Agreement End Date:	December 31, 2025
Stipend Amount:	\$1,317.50
Budgeted Amount for Incentives:	\$10,675.00
Total Contract Amount (a. Stipend + b. Incentives)	\$11,992.50
Tokens Issued for 2025:	3,500

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-020 **1R** An ordinance amending articles of Chapter 11 of the Code of the City of Independence, Missouri, pertaining to food establishment and retail sanitation and adopting the sections of the Food and Drug Administration Model Food Code, 2022 Edition, as the food establishment and retail sanitation code.

Recommendations:**Background:**

This ordinance brings the City Code pertaining to food establishments in line with the most recent FDA Model Food Code. The City's code pertaining to food establishments was last updated in the fall of 2017. At that time, the most recent version of the FDA Model Food Code was from 2013. The primary changes are ending the prohibition of facial piercings among food service workers and allowing regulation of vending machines.

Emergency Justification:**Fiscal Impact:****Council Action:**

Department / Contact	Health /
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REVIEWERS

Christina Heinen
Melissa Cabrera
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Chapter 11 Updated Food Code 2025

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLES OF CHAPTER 11 OF THE CODE OF THE CITY OF INDEPENDENCE, MISSOURI, PERTAINING TO FOOD ESTABLISHMENT AND RETAIL SANITATION AND ADOPTING THE SECTIONS OF THE FOOD AND DRUG ADMINISTRATION MODEL FOOD CODE, 2022 EDITION, AS THE FOOD ESTABLISHMENT AND RETAIL SANITATION CODE.

WHEREAS, the City of Independence desires to adopt the Food and Drug Administration Model Food Code, 2022 Edition; and,

WHEREAS, it has been determined that revisions are necessary to eliminate duplications and to clarify and organize sections of the code related to food establishments and retail sanitation;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. That Article 9, "Food Establishment and Retail Sanitation," is hereby deleted in its entirety and a new Article 9, "Food Establishment and Retail Sanitation," is hereby added to read as follows:

"Article 9. FOOD ESTABLISHMENT AND RETAIL SANITATION.

SEC. 11.09.001. ADOPTION OF THE UNITED STATES FOOD AND DRUG ADMINISTRATION/PUBLIC HEALTH SERVICE CURRENT FOOD CODE EDITION.
The 2022 Edition of the Model Food Code, as published by the United States Public Health Service, Food and Drug Administration is hereby adopted as the Food Establishment and Retail Sanitation Code of the City of Independence, Missouri, for the control of foodborne illness and food safety as herein provided, except such portions as are hereinafter deleted, modified or amended by this article.

SEC. 11.09.002 MODIFICATIONS TO 2022 Edition of the Model Food and Drug Administration Food Code.

A. The portions of the 2022 Edition of the Model Food and Drug Administration Food Code addressed in this subsection are not adopted by incorporation into this chapter. Rather, they are deleted or modified to read as follows:

1. Paragraph 6-301.11 Hand washing cleanser, Availability of the 2022 Food and Drug Administration Food Code is modified to read as follows:

- a. **Each hand washing sink or group of two adjacent hand washing sinks shall be provided with a supply of hand cleaning liquid soap.**

3. Paragraph 6-301.12 (A-D) of the 2022 Edition of the Model Food and Drug Administration Food Code is modified to read as follows:

- a. **Each hand washing sink or group of adjacent hand washing sinks shall be provided with individual, disposable towels.**

4. Paragraph 8-401.10 (A-C) of the 2022 Edition of the Model Food And Drug Administration food code is deleted in its entirety.

SEC. 11.09.003. DEFINITIONS.

The definitions in the section are in addition to the definitions in the 2022 Edition of the Model Food and Drug Administration Food Code. In this chapter, unless the context requires otherwise:

BAKE SALE means the act of selling or offering for sale baked goods that do not require time/temperature control for safety. Items must be labeled that food item was not prepared in a kitchen inspected by the health department.

BAKED GOOD means a food (such as donuts, cakes, breads, cookies, etc.) made from a dough or batter that is typically baked in an oven.

BAKERY means an establishment whose primary operation is the manufacture and sale of baked goods.

BULK FOOD means processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn from said containers.

CATERING means the act of transporting ready to eat food from a permitted Food Establishment to another location or building for service on a per event basis for hire, and does not include a Temporary Food Service event.

CHURCH KITCHEN means a faith-based organization that stores, prepares, packages, serves, sells, vends, or otherwise provides food for human consumption and must meet regulation and standards of a Food Establishment.

COMMISSARY means a kitchen for a Catering establishment, or Mobile Food Service base of operations, or any place in which food, containers or supplies are kept, handled, prepared, packaged, or stored.

FOLLOW-UP INSPECTION means an inspection following the routine inspection.

FOOD AND DRINK ESTABLISHMENT means an operation that stores, prepares, packages, serves, sells, vends, or otherwise provides food and/or beverages for human consumption.

FOOD HANDLER PERMIT means a document issued or accepted by the City of Independence Health Department acknowledging Food Handler Training.

FOOD MANUFACTURING/WAREHOUSE means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the end consumer. This term does not include a Food Establishment, Retail Food Establishment, or Commissary operation.

FOOD PANTRY means a public or private Food Establishment that distributes time/temperature control (TCS) foods to low-income households to relieve situations of emergency or distress.

FOOD SERVICE MANAGER means the person or persons in charge of the operation of a Food Establishment and who has the authority to act on behalf of the holder of the Food

Establishment permit.

FOOD SERVICE WORKER means any person working in a Food Establishment that has contact with any food, beverage, utensil, dish, food contact surface, or ice.

FOOD TRANSPORTATION means delivery of food from a Food Service Establishment to another place while under the control of the Food Service Manager

FROZEN DESSERT ESTABLISHMENT means an establishment that manufactures on-site milk-based and other similar products designated as a frozen dessert by the Health Authority.

HEALTH AUTHORITY means the Director of Health of the City of Independence, Missouri or their designated representative.

LIMITED FOOD ESTABLISHMENT means an establishment that provides only prepackaged foods that do not require time/temperature control for safety.

MEAT PROCESSING means an operation that prepares, cuts and/or grinds the flesh of animals to be used as food for human consumption.

MISBRANDED means the presence of any written, printed, or graphic matter, upon or accompanying food or containers of food, which is false or misleading, or which violates any applicable federal, state or local labeling requirements.

MOBILE FOOD UNIT means a Food Establishment designed to be readily movable that returns to a Commissary daily for clean-up and service.

NON-PROFIT CONCESSION STAND means a snack kiosk and/or snack bar where patrons can purchase snacks or food and is operated by a non-profit organization, typically for fundraising purposes. Food served must require no or minimal preparation and no time/temperature control (TCS).

LATE FEE means a fee administered due to the late payment of a permit that requires additional notices, in person notification and/or additional processing.

PLAN REVIEW means a review of plans for a new or remodeled Food Establishment.

RE-INSPECTION FEE means a fee charged to an establishment for each additional re-inspection after the initial follow-up inspection

REINSTATEMENT FEE means a fee administered prior to reinstatement of a revoked permit for a Food Establishment.

REPLACEMENT PERMIT FEE means a fee administered for printing and processing a replacement health permit.

RETAIL FOOD ESTABLISHMENT means any store, location or place of business used for the sale at retail to the public of groceries for human consumption. The term includes any such place regardless of whether consumption is on or off of the premises and regardless of whether there is a charge for the food. Groceries include, but are not limited to prepackaged food, boxed goods, and canned goods.

SEASONAL FOOD SALES means the act of selling or offering for sale food items on a seasonal basis for no more than six (6) consecutive months.

SEPARATE FACILITY/FOOD/DRINK means additional facilities operating within the scope of a permitted establishment.

TEMPORARY FOOD SERVICE ESTABLISHMENT means a Food Establishment that operates at a fixed location for a period of time of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

SEC. 11.09.00 4. FOOD PROTECTION.

A. Food prepared in a home shall not be used or offered for sale. This does not include a charitable Bake Sale or food prepared under RSMo. 71.990 – Home-Based Businesses.

B. Only ice which has been manufactured from potable water and handled in a sanitary manner shall be used or offered for sale. Ice offered for sale shall be packaged and properly labeled pursuant to state law.

C. Food items that are spoiled, damaged, or have been returned to the Food Service Establishment or Retail Establishment shall be segregated and held in designated areas pending proper disposition or disposed of under the supervision of the Health Authority.

D. Fish bait, which shall include both live and dead fish bait, shall be stored separately from food or food products.

SEC. 11.09.005. FROZEN DESSERT SAMPLE COLLECTION.

The Health Authority is authorized to collect frozen dessert samples from Frozen Dessert Retail Establishments for analysis.

SEC. 11.09.006. FOOD PREPARATION SINK

Food Establishments shall have a separate sink located within the food preparation area designated for food preparation activities. The sink shall have an integral drain board or an adjacent work table which should be utilized for food preparation purposes.

SEC. 11.09.007. FOOD DISPLAY.

A. Foods intended for sale in a frozen state will be displayed at an air temperature of 0°F (-18°C) or below, except for defrost cycles and brief periods of loading or unloading.

1. Frozen foods such as poultry, seafood, or organ meats that arrive in the Retail Establishment in a frozen state are to remain frozen and should not be thawed and refrozen before retail sale.

2. Meat that has been allowed to properly thaw should be provided with a sign or label which states "freshly thawed - not to be refrozen."

3. Frozen foods should be displayed below or behind product food lines according to cabinet manufacturers' specifications.

B. When food sample demonstrations and food promotions are authorized in a Retail Establishment, the person in charge shall ensure that such activities comply with the applicable sanitation provisions of this Chapter.

SEC. 11.09.008. FOOD TRANSPORTATION.

A. During transportation, food and food utensils shall be kept in covered containers or completely wrapped or packaged so as to be protected from contamination. Foods in original individual packages do not need to be overwrapped or covered if the original package has not been torn or broken. During transportation, including transportation to another location for service or Catering operations, food shall meet the requirements of this Article relating to food protection and food storage.

SEC. 11.09.009. INSECT AND RODENT CONTROL.

A. Food Service Managers shall maintain a file regarding insect and rodent control measures including the frequency of treatment and any findings of a licensed pest control operator.

SEC. 11.09.010. MOBILE FOOD UNITS.

A. Mobile Food Units or pushcarts shall comply with the requirements of this Article, except as otherwise provided in this section. The Health Authority may impose additional requirements to protect against health hazards related to the conduct of the Food Establishment as a mobile operation, may prohibit the sale of some or all time/temperature control for safety food, and when no health hazard will result, the Health Authority may waive or modify requirements of this Article.

B. Types of Mobile Food Unit permits.

1. Restricted Mobile Food Units only serve food that is already prepared, except as provided in this section.

a. Restricted units shall:

- i. not be required to have a water or waste system, but if so equipped must comply with requirements of this Article; and
- ii. have overhead protection.

b. Frankfurters may be prepared and served if the unit is equipped with:

- i. adequate hand washing facilities; and
- ii. a three-compartment sink for ware washing or multiple sets of utensils, which will be washed at the Commissary.

2. Unrestricted Mobile Food Units offer food that is packaged or prepared on the vehicle including the slicing or peeling of fruits and vegetables.

a. Unrestricted units shall:

- i. be enclosed;
- ii. have adequate overhead protection;
- iii. have adequate hand washing facilities;
- iv. be equipped with a three-compartment sink for ware washing;
- v. have an approved water and waste system;
- vi. have written proof of an approved potable water source and approved waste disposal site; and
- vii. always have one person on duty with a current Food Service Manager permit.

3. Inspection frequency and permit fees are based on public health priority.

C. All Mobile Food Units or pushcarts shall provide only single-service articles for use by the consumer.

D. A Mobile Food Unit requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food

preparation, utensil cleaning and sanitizing, and hand washing, in accordance with the requirements of this Article. The water inlet shall be located so that it will not be contaminated by waste discharge, road dust, oil, or grease, and it shall be kept capped unless being filled. The water inlet shall be provided with a transition connection of a size or type that will prevent its use for any other service. All water distribution pipes or tubing shall be constructed and installed in accordance with the requirements of this Article.

E. If liquid waste results from operation of a Mobile Food Unit, the waste shall be stored in a permanently installed retention tank that is of at least fifteen (15) percent larger capacity than the water supply tank. Liquid waste shall not be discharged from the retention tank when the Mobile Food Unit is in motion. All connections on the vehicle for servicing mobile food unit waste disposal facilities shall be of a different size or type than those used for supplying potable water to the mobile food unit. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system.

F. Mobile Food Units shall operate from a permitted Commissary or other permitted fixed Food Establishment and shall report at least daily to such location for all supplies.

G. The Commissary or other fixed Food Establishment used as a base of operation for Mobile Food Units shall be constructed and operated in compliance with the requirements of this Article. The most recent inspection report of the above establishment shall be kept with the Mobile Food Unit during operation and be provided to the Health Authority upon request.

H. A Mobile Food Unit servicing area shall be provided and shall include at least overhead protection for cleaning and servicing all food contact surfaces.

I. The surface of the servicing area shall be constructed of a smooth nonabsorbent material, such as concrete or machine-laid asphalt and shall be maintained in good repair, kept clean, and be graded to drain.

J. Potable water servicing equipment shall be installed according to law and shall be stored and handled in a way that protects the water and equipment from contamination. Potable water must be obtained from an approved source.

K. The Mobile Food Unit liquid waste retention tank, where used, shall be thoroughly flushed and drained during the servicing operation. All liquid waste shall be discharged to a sanitary sewerage disposal system in accordance with this Article.

L. When not in use, the Mobile Food Unit shall be stored at the Commissary or other approved location with no food contact surfaces exposed to the elements. Mobile Food Units are not to be stored at residential properties.

SEC. 11.09.012. LIMITED FOOD ESTABLISHMENTS.

A. A Limited Food Establishment does not require a health permit. However, upon receipt of a complaint, the Health Authority must be granted access to all areas of the establishment to conduct an investigation in accordance with this Chapter.

SEC. 11.09.013. TEMPORARY FOOD SERVICE ESTABLISHMENT.

A. A Temporary Food Service Establishment shall comply with the requirements of this Article, except as otherwise provided in this Section.

B. Failure to purchase a temporary event health permit five (5) business days prior to the event will result in the assessment of a late fee as outlined in the Schedule of Fees to cover additional administrative costs for expedited processing, such as staff time and possible overtime costs.

C. Only those time/temperature control for safety foods requiring no or limited preparation, such as hamburgers and frankfurters that only require seasoning and cooking, shall be prepared or served. The preparation or service of other time/temperature control for safety foods, including pastries filled with cream or synthetic cream, custards, and similar products, and salads or sandwiches containing meat, poultry, eggs or fish is prohibited. This prohibition does not apply to any time/temperature control for safety food that has been prepared and packaged under conditions meeting the requirements of this Article, is obtained in individual servings, is stored at a temperature of 41°F or below or at a temperature of 135°F or above in facilities meeting the requirements of this Article, and is served directly in the unopened container in which it was packaged.

D. Ice that is consumed or that contacts food shall be made under conditions meeting the requirements of this Article. The ice shall be obtained only in chipped, crushed, or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

E. Equipment shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment.

F. Food-contact surfaces of equipment shall be protected from contamination by consumers and other contaminating agents. Effective shields for such equipment shall be provided, as necessary, to prevent contamination.

G. All Temporary Food Service Establishments without effective facilities for cleaning and sanitizing tableware shall provide only single-service articles for use by the consumer.

H. Enough potable water shall be available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for hand washing. A heating facility capable of producing enough hot water for these purposes shall be provided on the premises.

I. All sewage, including liquid waste, shall be disposed of according to City Code.

J. A convenient hand washing facility shall be available for employee hand washing. This facility shall consist of, at least, warm running water, soap, and individual paper towels.

K. A Temporary Food Service Establishment shall include at least overhead protection for food preparation, cleaning and servicing of all food contact surfaces.

L. A fan capable of preventing flying insects from landing shall be provided.

SECTION 2. That Article 10, "Permitting and Compliance Procedures," is hereby deleted in its entirety and amended to read as follows:

"Article 10. PERMITTING AND COMPLIANCE PROCEDURES.

SEC.11.10.001 FOOD ESTABLISHMENT PRIORITIES.

A. Additional inspections of the Food Establishment shall be performed as often as necessary for the enforcement of this Article. Food establishments shall be categorized in accordance with the Missouri Department of Health Bureau of Community Environmental Health Food Establishment Public Health Priority Assessment Worksheet.

1. HIGH PRIORITY FOOD ESTABLISHMENT means an establishment that scores as a High Priority Establishment on the food service permit application form created by the Health Authority indicating the establishment will be inspected at least three (3) times during the calendar year.

2. MEDIUM PRIORITY FOOD ESTABLISHMENT means an establishment that scores as a Medium Priority Establishment on the food service permit application form created by the Health Authority indicating the establishment will be inspected at least two (2) times during the calendar year.

3. LOW PRIORITY FOOD ESTABLISHMENT means an establishment that scores as a Low Priority Establishment on the food service permit application form created by the Health Authority indicating the establishment will be inspected at least one (1) time during the calendar year.

SEC. 11.10.002. FOOD HANDLER PERMIT.

A. Every Food Service Worker and every employer of such person who prepares, handles, or dispenses food for human consumption, or who comes into contact with food or food preparation utensils, shall within fifteen (15) calendar days of employment as a food handler or from the date of commencing the business of a Food Establishment, under the direction of the Health Authority, obtain a Food Handler Permit. Permits shall be issued upon completion of a food handler training course conducted by the Health Department of the City of Independence, or by completion of an alternate food handler training course which is approved by the Health Authority of the City of Independence and payment of the permit fee. Permits shall be renewed every three (3) years. However, such permit fee shall not be charged to those persons who are working without compensation at religious, charitable or nonprofit organization's events. A copy of such permit shall be deposited with the management of the establishment during the tenure of that person's employment.

B. The Food Handler Permit shall be carried at all times by the holder thereof while engaging in the work of a food handler, and shall be displayed upon demand of the Health Authority. Failure to exhibit a valid Food Handler Permit to the Health Authority shall be presumptive evidence that said person is not a duly licensed food handler. Establishments are responsible for maintaining and updating their list of employees Food Handler Permits every three months. Management staffing completing Food Safety Certification program will not be required to obtain a Food Handlers Permit.

C. Employees and employers of any Retail Food Establishment which handles only packaged foods are exempt from this requirement. Volunteers preparing food at Non-Profit Concession Stands are exempt from obtaining a Food Handler Permit.

D. Upon witnessing a violation of this Chapter, the Health Authority may immediately suspend and repossess a Food Handler Permit. Any worker or manager whose Food Handler Permit is suspended may request a hearing under provisions of this Article.

E. It shall be unlawful for any employer to allow a food handler to work in a Food Establishment in violation of this section.

SEC. 11.10.003. FOOD SERVICE MANAGERS

A. Whenever food is being prepared, handled or dispensed for human consumption, there shall be present on the premises of the Food Establishment a Food Service Manager. A three (3) year Food Service Manager permit shall be issued upon successful completion of a manager food safety training course and a written examination conducted by the Health Department of the City of Independence, or by completion of any other food manager training course which is approved by the Health Department of the City of Independence and payment of the permit fee. A copy of such permit shall be kept on file at the location of the Food Establishment during the tenure of the Food Service Manager's employment. The Food Service Manager must be able to demonstrate knowledge of food borne disease prevention, application of hazardous analysis critical control points (HACCP) principles and requirements of the food code.

B. The following are exempt from obtaining a Food Service Manager's permit:

- 1. Registered Dietician (RD).**
- 2. Certified Dietary Manager (CDM).**
- 3. Unpaid manager of a Non-Profit Concession Stand**
- 4. Unpaid manager of a Church Kitchen**

C. The Food Service Manager permit shall be carried at all times by the Food Service Manager during the hours while engaging in the duties of Food Service Manager. This permit shall be displayed upon request of the Health Authority. Failure to exhibit a valid Food Service Manager permit to the Health Authority shall be presumptive evidence that said person is not a duly permitted Food Service Manager.

D. Upon witnessing a violation of this Chapter, the Health Authority may immediately repossess the permit of the offending Food Service Manager. Any Food Service Manager whose permit is repossessed or otherwise suspended may request a hearing under the provisions of this Article.

E. It shall be unlawful for the owner or operator of a Food Establishment to allow the preparation, handling or dispensing of food for human consumption on the premises of a Food Establishment without the presence on the premises of a Food Service Manager, or to allow a Food Service Manager to work in violation of this Article.

SEC. 11.10.004. POWERS OF THE HEALTH AUTHORITY:

- A. The Health Authority may suspend any permit to operate a food establishment if:**
- 1. The holder of the permit does not comply with the requirements of this Article, or**
 - 2. If the operation of the establishment does not comply with the requirements of this Article, or**
 - 3. If the operation of the Food Establishment otherwise constitutes a substantial hazard to public health.**
- B. Suspension is effective upon service of the notice required by paragraph A of section 11.10.005 . The Health Authority may end the suspension at any time if reasons for suspension no longer exist.**

B. The HEALTH AUTHORITY shall:

- 1. Take such action as is necessary to maintain health and sanitation supervision within the City of Independence;**
- 2. Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within the City of Independence;**

3. Take such measures as he deems necessary in order to promote and protect the public health

4. The Health Authority may seek to enjoin violations of this Article.

C. When a Food Establishment permit is suspended, food service operations shall immediately cease. Whenever a Food Establishment permit is suspended, the holder of the permit shall be afforded an opportunity for a hearing within ten (10) days of receipt of a written request for hearing.

D. The Health Authority may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of any of the requirements of this Article or for interference with the Health Authority in the performance of duty.

E. Representatives of the Health Authority, after proper identification, shall be permitted to enter any Food Establishment at any reasonable time for the purpose of making inspections to determine compliance with this Article. The representatives shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, and to examine food handlers' permits.

F. When the Health Authority acts, regarding temporary food service events, waivers or modifications shall supersede the other provisions of this Article on the terms specifically stated. The Health Authority may, in writing, waive or modify requirements of this Article, in the interests of health, safety and convenience.

SEC. 11.10.005. COMPLIANCE PROCEDURES

A. Whenever a Food Establishment permit is suspended, the holder of the permit or the Food Service Manager shall be notified in writing that the permit is, upon service of the notice, immediately suspended and that an opportunity for hearing will be provided if a written request for hearing is filed with the Health Authority by the holder of the permit within ten (10) days. If no written request for hearing is filed with ten (10) days, the suspension is sustained.

B. Prior to revocation, the Health Authority shall notify, in writing, the holder of the permit or the Food Service Manager, of the specific reason(s) for which the permit is to be revoked and that the permit shall be revoked at the end of the ten (10) days following service of such notice unless a written request for hearing is filed with the Health Authority by the holder of the permit within such ten (10) day period. If no request for hearing is filed within the ten (10) day period, the revocation of the permit becomes final.

C. A notice provided for in this Article is properly served when it is delivered to the holder of the permit or the Food Service Manager, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the permit. A copy of the notice shall be filed in the records of the Health Authority.

D. The hearings provided for in this Article shall be conducted by the Health Authority at a time and place designated by him/her. Any oral testimony given at a hearing shall be reported verbatim, and the presiding officer shall make provision for sufficient copies of the transcript. The Health Authority shall make a final finding based upon the complete hearing record and shall sustain, modify or rescind any notice or order considered in the hearing. A written report of the hearing decision shall be furnished to the holder of the permit by the Health Authority.

E. Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit.

SEC. 11.10.006. ENFORCEMENT PROVISIONS.

A. It shall be unlawful for any person to operate a Food Establishment within the City who does not possess a permit approved by the Health Authority. It shall be unlawful for any person to operate a Food Service Establishment with a permit that has been suspended or revoked. Only a person who complies with the requirements of this Article shall be entitled to such a permit. Permits shall not be transferable from person to person or place to place.

B. It shall be unlawful for any Food Service Worker or Food Service Manager to fail to comply within a reasonable amount of time to a lawful order of the Health Authority or to remove or deface a placard or notice posted under the provisions of this Code.

C. Whenever an inspection of a Food Establishment is made, the findings shall be recorded on the inspection report. The inspection report form shall summarize the requirements of this Article. Inspectional remarks shall be written to reference, by section number, the section violated and shall state the correction to be made. A copy of the completed inspection report form shall be furnished to the Food Service Manager of the establishment at the conclusion of the inspection and a copy shall be posted in a public area for persons to view.

D. *Penalty.* Any person (or responsible officer of that person) who violates a provision of this Article and any person (or responsible officer of that person) who is the holder of a permit or who otherwise operates a food establishment that does not comply with the requirements of this Article, shall upon conviction, be subject to imprisonment for not more than six (6) months or to a fine not more than Five Hundred Dollars (\$500.00) or both.

E. Should any section, paragraph, sentence, clause, or phrase of this Article be declared unconstitutional or invalid for any reason, the remainder of said Article shall not be affected thereby.

F. Food from Food Establishments outside the jurisdiction of the Health Authority of the City of Independence, Missouri, may be sold within the City of Independence, Missouri, if such Food Establishments conform to the provisions of this Article or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the Health Authority may accept reports from responsible authorities in other jurisdictions where such Food Establishments are located.

SEC. 11.10.007. HEALTH PERMIT FEES.

Permit fees shall be assessed in accordance with the approved Schedule of Fees.

SEC. 11.10.008. AUTHORITY TO ISSUE CITATIONS.

A. The Director of Health, or any authorized representative, is authorized to issue and serve complaints, general ordinance summons and citations on persons charged with violations of this Article.

SEC. 11.10.009. CORRECTION TIMELINE AND ADMINISTRATION OF REINSPECTION FEES.

A. The completed inspection report form shall specify a time period of seventy-two (72) hours for the correction of Priority Item violations found, and correction of the violations shall be accomplished within the seventy-two (72) hour time period in accordance with the following provisions:

- 1. Operations shall not be resumed until authorized by the Health Authority.**
- 2. Priority Item violations should be corrected at the time they are identified, if possible. Otherwise, a follow-up inspection shall be conducted to confirm compliance. If violations have not been corrected at the time of the follow-up inspection, a re-inspection fee will be charged for each additional inspection until all Priority Item violations have been corrected.**
- 3. All Core Item Violations shall be corrected, as soon as possible, but in any event, by the time of the next routine inspection.**
- 4. When an establishment is considered below minimum standards , the establishment shall initiate corrective action on all identified Priority Item violations within twenty-four (24) hours or be subject to closure. One or more reinspections will be conducted by the inspector to assure correction.**
- 5. The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of food service operations. An opportunity for hearing on the inspection findings or the time limitations or both will be provided if a written request is filed with the Health authority within ten (10) days following cessation of operations. If a request for hearing is received, a hearing shall be held within twenty (20) days of receipt of the request.**
- 6. Food establishments shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.**
- 7. In the case of Temporary Food Service Establishments, all violations shall be corrected immediately. If violations are not corrected immediately, the establishment shall immediately cease food service operations until authorized by the Health Authority.**

SECTION 3. That the effective date of this ordinance shall be July 1, 2025, and all previously adopted food service and retail food establishment sanitation codes shall remain in effect until that date.

SECTION 4. That correction of any scrivener errors identified within Articles 9 and 10 of Chapter 11 are hereby authorized by this ordinance.

PASSED THIS _____ DAY OF _____, 2025, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager

NOTE: Words underscored and bolded are being added by this ordinance.

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-021 **1R** An ordinance approving a rezoning from District C-2 (General Commercial) to District I-1 (Industrial) for the property at 420 S M-291 Highway. **1R**

Recommendations:

Commissioner O'Neill made a motion to recommend approval of the rezoning for 420 S. Highway M-291. A second was made by Commissioner Ashbaugh. The Independence Planning Commission voted as follows:

Commissioner Nesbitt – Yes

Commissioner Ferguson – Yes

Commissioner Ashbaugh – Yes

Commissioner O'Neill – Yes

Commissioner Torres – Yes

Commissioner Young – Yes

Commissioner Wiley – Yes

The motion passed, and such application is forwarded to the City Council for its consideration. Staff recommends approval of this application.

Background:

A request to rezone the property from C-2 (General Commercial) to I-1 (Industrial).

Zoning History:

Current Zoning: C-2 (General Commercial)

Proposed Zoning: I-1 (Industrial)

Current Use: undeveloped tract

Proposed Uses: driving course

Zoning History: Prior to 2004: C-2 and M-1, Prior to 1980: C-3 and M-1

At the time Independence adopted its Zoning District Map (Ordinance No. 1132) in 1965, the property was designated A (Agricultural).

Property History:

After review of the 420 S. Highway M-291 site in October 2023 for an earlier iteration of this request, the following conditions were found:

1. Sanitary Sewers are currently not available on this site. The nearest sewer infrastructure is three to five hundred feet away and relatively shallow in relation to this site. Any possible access would require access through several offsite properties. The city code provides guidance for use of septic systems along with the Department of Natural Resources, making a septic or lagoon system unlikely if not impossible for any typical industrial use.

2. While water is possible on the site, the closest water supply is over five hundred feet away. Connection to water would require offsite access through several private properties.
3. Access to the site off M-291 is a right-in, right-out, access only. Any access changes to the site will require MoDOT approval. The site is unlikely to ever have full access to M-291 making any typical industrial or commercial use unlikely. The site is also unlikely to ever have more than one access point.
4. Power service, while possible, will have challenges accessing the site along this portion of M-291 Highway.
5. The site is currently surrounded to the north, south, and west by existing industrial zoned uses. A second lot adjacent to the south property line is currently zoned R-6; however, that lot is non-conforming as it has both R-6 and Industrial I-1 zoning on a single lot. The residential portion of this lot is unlikely to support residential uses in its current form with its limited access off the unfinished Mechanic Avenue Right-of-Way.

The Code for Industrial uses, I-1 industrial and I-2 industrial, are not defined as Planned Unit Development (PUD) districts. While the Business Park designation is a PUD district, it is unlikely the mixed-use office, light assembly, and manufacturing uses would be possible for this site. While staff has recommended at times the use of a PUD district for uses not allowed in the C-2 base zoning district, those uses have remained with the C-2 and C-3 commercial zonings. Attempts to use a PUD for industrial use in a commercial zoning would not be recommended and would not be in the spirit of the zoning code for use separations.

The I-1 industrial zoning is described as a district primarily intended to accommodate low, moderate-impact service industrial uses. Given the challenges and limitations of utilities on the site and the current surrounding industrial zoned uses, staff does not believe the applicant's request to rezone this property from C-2 Commercial to I-1 industrial would be detrimental to nearby properties.

The Planning Commission, on October 24, 2023, recommended approval of an earlier version of this case, Case #23-100-23. But after being forwarded to the City Council's December 4, 2023, second reading, council members rejected the rezoning request by a vote of 2 to 4. Members sighted numerous reasons for their denial, including: the need for more buffering, a loss of trees, the visual incompatibility with a prominent corridor, the noise and a change to a new zoning category opening the site to possibly other industrial uses in the future.

The applicant believes that the limited-intrusive nature of the proposal and the limitations of what the undermined property could be used for were not fully understood by council members at the time, and he would like to have this request reconsidered.

Proposal:

The applicant seeks to rezone the property from C-2 to I-1 in order to align the zoning with that of the properties adjacent to the north. The property has been undeveloped and vacant for many years and is not suitable for residential use given its location along the M-291 corridor, the use of abutting and nearby properties as well as the location of the utilities, which would

require extension into the property. The prospective buyer intends to establish a CDL truck driving course on the property. The Comprehensive Plan envisions Residential Established Neighborhoods.

Standard Requirements of Approval:

1. The driving lot shall be paved in accordance with City Code requirements.
2. Stormwater detention shall be provided in the City's adopted Design and Construction Manual.
3. A Final Site Plan shall be submitted for review and approval along with construction permits, engineering plans and stormwater calculations provided to Community Development.
4. Submission of a tree preservation plan shall be provided to Community Development.
5. Planned access from Highway M-291 will have to be cleared by the Missouri Department of Transportation (MoDOT) as well as the City's traffic engineer.

Property Background:

The 4.55-acre, wooded tract, located at 420 S. Highway M-291 is not developed. It has 320-feet of frontage along Highway M-291. Until the most recent Comprehensive Plan, this corridor had been envisioned for commercial development and still has associated commercial and industrial zoning. The applicant's property has been commercially and industrially zoned since 1965.

Physical Characteristics of the Property:

The heavily wooded tract abuts one right-of-way, Highway M-291. There is an existing entrance/curb cut provided along the highway. The presence of a Jersey barrier will allow for only right-in and right-out traffic. The topography is a little rough, but generally flat. Sanitary sewers are not available, and water is a few hundred feet away. The property is currently not platted.

Characteristics of the Area:

The area north of the tract is largely an open field and undeveloped. The property to the south is undeveloped and densely wooded. The property directly to the west to the tract is a legal nonconforming savage yard. To the east lies Highway M-291. Further to the northeast, is a single-family neighborhood.

Consistency with *Independence for All*, Strategic Plan:

One of the objectives of the *Independence for All* strategic plan include...to support development of industrial and office parks. Rezoning this property as industrial may move the City of Independence closer to achieving this objective.

Comprehensive Plan Guiding Land Use Principles for the Current Designation:

One of the guiding principles outlined in the Comprehensive Plan is to "foster redevelopment opportunities within the City to revitalize unused or underused property." The policies derived from this principle encourage "redevelopment or adaptive reuse of vacant or underutilized buildings and sites." Rezoning this property to I-1 (Industrial) and allowing an industrial use

may foster use of this vacant and underutilized property with limited access to utilities.

Sub-Area Plans:

This property is not located within any sub-area plan.

Zoning:

Section 14-302-02-C of the Unified Development Ordinance defines I-1 districts as being “intended to accommodate low to moderate impact service industrial use activities”.

Historic and Archeological Sites:

There are no apparent historic or archaeological issues with this property.

Public Utilities:

Electric services are available along the north property line, water is available from a few hundred feet away and sewer service is unavailable at this time.

Final Plan Review and Municipal Services Permit:

Before constructing pavement for an envisioned commercial truck driving course, a Final Site Plan Review must be submitted to Planning and Zoning and then permits, engineering plans and calculations must be provided to Development Services. Planned access from Highway M-291 will have to be cleared by the Missouri Department of Transportation (MoDOT) as well as the City’s traffic engineer.

Access:

Access to the tract would be from an existing drive that is only right-in and right-out given the Jersey barrier. MoDOT and Municipal Services might require a study and a modification of the entrance.

Paved Surface:

The proposed driving school course, according to the applicant, will simply be a paved surface with paint and cones. The remainder of the property will be green space, including a detention basin for storm water runoff.

Vehicle Storage:

Given the tract for the proposed driving school course is adjacent to an R-6 zoned district and near another, rather than being at least 500-feet away, vehicles cannot be stored on this lot. Any proposed equipment structure should be on the Final Site Plan Review and meet Nonresidential Design Requirements along with any required Building Permits.

Fencing to Enclose Property:

Without a principal structure to define the exterior and interior yards, fencing to enclose the property cannot be provided.

Landscaping and Buffer/Screen:

Street trees and Parking Lot Perimeter plantings will have to be provided per Code. A 15-foot-wide residential buffer with an opaque fence and required plantings per Code must be

provided as a screen abutting the R-6 zoning along the south property line.

Stormwater:

When a Final Site Plan Review is submitted to Planning and Zoning and a permit is applied for with Development Services, storm water detention calculations for the proposed impervious driving surface will be necessary. This property is not located in Stream Buffer Zone or federally designated floodplain.

CIP Investments:

There are no CIP Investments planned for this area at this time.

Recommendations and decisions on rezoning applications must be based on consideration of all the following criteria:

1. Conformance of the requested zoning with the Comprehensive Plan.

The Comprehensive Plan envisions Residential Established Neighborhood. However, the area to the south of this property is designated as Industrial.

2. Conformance of the requested zoning with any adopted neighborhood or sub-area plans in which the property is located or abuts.

The property is not within a sub-area plan area.

3. The compatibility of the proposed zoning with the zoning and use of nearby property, including any overlay zoning.

Properties along this portion of the Highway M-291 corridor are zoned R-6 (Single-Family Residential), C-1 (Neighborhood Commercial), C-2 (General Commercial) and I-1 (Industrial). Surrounding uses include; legal nonconforming salvage, tow/auto storage lots, undeveloped woodlands and fields, and single-family residences.

4. The compatibility of the proposed zoning and allowed uses with the character of the neighborhood.

The proposed zoning, I-1 and associated industrial uses, would be compatible with some of the surrounding uses (particularly west of the highway). There is a single-family subdivision northeast of this site across Highway M-291.

5. The suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations.

The current zoning, C-2 (General Commercial), is not well suited for this site. The Jersey barrier, eliminating left-in and left-outs, makes access problematic. Most importantly, the property lacks water, sewer and easy electrical connections. Further, properties in the area are undermined and make building structures problematic as well.

6. The length of time the subject property has remained vacant as zoned.

The property is mostly wooded and has never been developed.

7. The extent to which approving the rezoning will detrimentally affect nearby properties.

Allowing this proposed zoning should not be detrimental to nearby rezoning properties.

8. The gain, if any, to public health, safety, and welfare due to denial of the application, as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.

If the rezoning were denied, the applicant may have a zoning that is not usable given the lack of utilities and site instability. If approved, the proposed use (and future industrial uses) would have minimal impact on the area.

Draft Planning Commission minutes are attached.

Emergency Justification:

Fiscal Impact:

Council Action:

Department / Contact	Community Development /
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REVIEWERS

Tom Scannell
Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. CD.Draft Ordinance 25-100-09
2. New Rezoning Staff Report 25-100-09
3. Narrative
4. Expanded Narrative

5. Application
6. Notification Letter 2025
7. Notification Addresses 2025
8. Notification Area Map 2025
9. Notarized Affidavit 2025
10. New Site Plan
11. Aerial Photograph I
12. Aerial Photograph II
13. CDL Book
14. Certificate to Operate
15. Comp Plan Map
16. Zoning Map
17. Planning Commission Meeting Minutes 03-11-25

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A REZONING FROM DISTRICT C-2 (GENERAL COMMERCIAL) TO DISTRICT I-1 (INDUSTRIAL) FOR THE PROPERTY AT 420 S M-291 HIGHWAY.

WHEREAS, a request by the property owner to rezone the property located at 420 S. M-291 Highway from District C-2 (General Commercial) to District I-1 (Industrial) was referred to the Planning Commission as required by the Unified Development Ordinance; and,

WHEREAS, the Unified Development Ordinance provides for the approval of a rezoning following public hearings by the Planning Commission and City Council; and,

WHEREAS, after due public notice in the manner prescribed by law, the Planning Commission held a public hearing for the consideration of the request on March 11, 2025, and rendered a report to the City Council; and,

WHEREAS, after due public notice in the manner prescribed by law, the City Council held a public hearing and rendered a decision recommending that the rezoning be approved by a vote of 7-0; and,

WHEREAS, in accordance with the Unified Development Ordinance, it was determined that the rezoning was consistent with the review criteria in Section 14-701-02; and,

WHEREAS, no legal protests were signed, acknowledged, and presented for the application.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. That the following legally described property is hereby rezoned from District C-2 (General Commercial) to District I-1 (Industrial) and shall be subject to the regulations of said district:

SEC 31 TWP 50 RNG 31 PT OF SW 1/4 SW 1/4 DAF : BEG SW COR SW 1/4 SW 1/4; TH N 02 DEG 18 MIN 08 SEC E 651.57' TO CL E MECHANIC AVE TH S 88 DEG 33 MIN 46 SEC E ALG CL E MECHANIC AVE 363' TH S 88 DEG 33 MIN 47 SEC E 161.67' TO POB TH N 02 DEG 22 MIN 11 SEC E 330.18'; TH S 88 DEG 00 MIN 07 SEC E 601.42' TH S 03 DEG 38 MIN 51 SEC E 323.97'; TH N 88 DEG 43 MIN 38 SEC W 634.24' TO POB.

SECTION 2. Nonseverability. All provisions of this ordinance are so essentially, and inseparably connected with, and so dependent upon, each other that no such provision would be enacted without all others. If a court of competent jurisdiction enters a final judgment on the merits that is not subject to appeal and that declares any provision or part of this ordinance void, unconstitutional, or unenforceable, then this ordinance, in its collective entirety, is invalid and

shall have no legal effect as of the date of such judgment.

SECTION 3. Scrivener’s Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this ordinance, as determined by the City Clerk and City Counselor, may be corrected with the endorsement of the City Manager without the need to come before City Council.

SECTION 4. That failure to comply with all the provisions contained in this ordinance shall constitute violations of both this ordinance and Chapter 14, the Unified Development Ordinance, of the Code of the City of Independence, Missouri.

PASSED THIS _____ DAY OF _____, 2025, BY THE CITY COUNCIL
OF THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager

MEETING DATE: March 11, 2025

STAFF: Brian L. Harker, Senior Planner

PROJECT NAME: Day Driving School, LLC

CASE NUMBER/REQUEST: **Case 25-100-09 – Rezoning – 420 S. Highway M-291** – A request to rezone the property from C-2 (General Commercial) to I-1 (Industrial).

APPLICANT: Day Driving School, LLC

OWNER: Marsha Pipes

PROPERTY LOCATION: 420 S. Highway M-291

SURROUNDING ZONINGS/LAND USES:

North: I-1 (Industrial) and C-2 (General Commercial)...undeveloped tract and Quonset hut
South: C-2 (General Commercial)...undeveloped, wooded lot
East: Route HJhighway M-291
West: I-1 (Industrial)...savage yard

PUBLIC NOTICE:

- Letters to property owners – February 19, 2025
- Public Notice published in the Independence Examiner – February 22, 2025
- Signs posted on property – February 21, 2025

FURTHER ACTION:

Following action by the Planning Commission, this rezoning request is scheduled for first reading by the City Council on April 7, 2025 and the public hearing/second reading on April 21, 2025.

RECOMMENDATION

After review of the 420 S. Highway M-291 site in October of 2023 for an earlier iteration of this request, the following conditions had been found:

1. Sanitary Sewers are currently not available on this site. The nearest sewer infrastructure is three to five hundred feet away and relatively shallow in relation to this site. Any possible access would require access through several offsite properties. The City code provides guidance for use of septic system along with the Department of Natural Resource making a septic or lagoon system unlikely if not impossible for any typically industrial use.
2. While water is possible on the site, the closest water supply is over five hundred feet away. Connection to water would require offsite access through several private properties.

3. Access to the site off M-291 is a right-in, right-out, access only. Any access changes to the site will require MoDOT approval. The site is unlikely to ever have a full access onto M-291 making any typical industrial or commercial use unlikely. The site is also unlikely to ever have more than one access point.
4. Power service, while possible will have challenges accessing the site along this portion of M-291 Highway.
5. The site is currently surrounded to the north, south, and west with existing industrial zoned uses. A second lot adjacent to the south property line is currently zoned R-6; however, that lot is non-conforming as it has both R-6 and Industrial I-1 zoning on a single lot. The residential portion of this lot is unlikely to support residential uses in its current form with its limited access off the unfinished Mechanic Avenue Right-of-Way.

The Code for Industrial uses, I-1 industrial and I-2 industrial, are not defined as Planned Unit Development (PUD) districts. While the Business Park designation is a PUD district, it is unlikely the mixed-use office, light assembly, and manufacturing uses would be possible for this site. While staff has recommended at times the use of a PUD district for uses not allowed in the C-2 base zoning district, those uses have remained with the C-2 and C-3 commercial zonings. Attempts to use a PUD for an industrial use in a commercial zoning would not be recommend and would not be in the spirit of the zoning code for use separations.

The I-1 industrial zoning is described as a district primarily intended to accommodate low, moderate impact service industrial uses. Given the challenges and limitations of utilities on the site, the current surrounding industrial zoned uses, staff does not believe the applicants request to rezoning this property from C-2 Commercial to I-1 industrial would be detrimental to nearby properties.

Staff recommends **APPROVAL** of this zoning request.

PROJECT DESCRIPTION & BACKGROUND INFORMATION

PROJECT DESCRIPTION: A request by Day Driving School, LLC to rezone the property at 420 S. Highway M-291 from C-2 (General Commercial).

Current Zoning: C-2 (General Commercial) **Proposed Zoning:** I-1 (Industrial)

Current Use: undeveloped tract **Proposed Uses:** driving course

Zoning History: Prior to 2004: C-2 and M-1 Prior to 1980: C-3 and M-1

At the time Independence adopted its Zoning District Map (Ordinance No. 1132) in 1965, the property was designated A (Agricultural).

Property History:

The Planning Commission, on October 24, 2023, recommended approval of an earlier iteration of this case, Case #23-100-23. But after being forwarded to the City Council's December 4, 2023 second reading, council members rejected the rezoning request by a vote of 2 to 4. Members sighted numerous reasons for their denial including; a need for more buffering, a loss of trees, the visual incompatibility with a prominent corridor, the noise and a change to a new zoning category opening the site to possibly other industrial uses in the future.

The applicant believes that the limited-intrusive nature of the proposal and the limitations of what the undermined property could be used for were not fully understood by council members at the time and he would like to have this request reconsidered.

Proposal:

The applicant seeks to rezone the property from C-2 to I-1 in order to align the zoning with that of the properties adjacent to the north. The property has been undeveloped and vacant for many years and is not suitable for residential use given its location along the M-291 corridor, the use of abutting and nearby properties as well as the location of the utilities, which would require extension into the property. The prospective buyer intends to establish a CDL truck driving course on the property. The Comprehensive Plan envisions Residential Established Neighborhoods.

Standard Requirements of Approval:

1. The driving lot shall be paved in accordance with City Code requirements.
2. Stormwater detention shall be provided in the City's adopted Design and Construction Manual.
3. A Final Plan Review must be submitted along with construction permits, engineering plans and stormwater calculations shall be provided to Community Development.

Property Background:

The 4.55-acre, wooded tract, located at 420 S. Highway M-291 is not developed. It has 320-feet of frontage along Highway M-291. Until the most recent Comprehensive Plan, this corridor had been envisioned for commercial development and still has associated commercial and industrial zoning. The applicant's property has been commercially and industrially zoned since 1965.

Physical Characteristics of Property:

The heavily wooded tract abuts one right-of-way, Highway M-291. There is an existing entrance/curb cut provided along the highway. The presence of a Jersey barrier will allow for only right-in and right-out traffic. The topography is a little rough, but generally flat. Sanitary sewers are not available, and water is a few hundred feet distant away. The property is currently not platted.

Characteristics of the Area:

The area north of the tract is largely an open field and undeveloped. The property to the south is undeveloped and densely wooded. The property directly to the west to the tract is a legal nonconforming savage yard. To the east lies Highway M-291. Further to the northeast, is a single-family neighborhood.

ANALYSIS

Consistency with *Independence for All*, Strategic Plan:

One of the objectives of the *Independence for All* strategic plan include...to support development of industrial and office parks. Rezoning this property to industrial may move the City of Independence closer to achieving this objective.

Comprehensive Plan Tools and Policies for the Current Designation:

One of the guiding principles outlined in the Comprehensive Plan is to "Foster redevelopment opportunities within the City to revitalize unused or under used property." The policies derived

from this principle encourage “redevelopment or adaptive reuse of vacant or underutilized buildings and sites.” Rezoning this property to I-1 (Industrial) and allowing an industrial use may foster use of this vacant and underutilized property with limited access to utilities.

Sub-Area Plans:

This property is not located within any sub-area plan.

Zoning:

Section 14-302-02-C of the Unified Development Ordinance defines I-1 districts as being “intended to accommodate low to moderate impact service industrial uses activities”.

Historic and Archeological Sites:

There are no apparent historic or archeological issues with this property.

Public Utilities:

Electric services are available along the north property line, water is an available from a few hundred feet away and sewer service is unavailable at this time.

Final Plan Review and Municipal Services Permit:

Before constructing pavement for an envisioned commercial truck driving course, a Final Plan Review must be submitted to Planning and Zoning and then permits, engineering plans and calculations must be provided to Development Services. Planned access from Highway M-291 will have to be cleared by the Missouri Department of Transportation (MoDOT) as well as the City’s traffic engineer.

Access:

Access to the tract would be from an existing drive that is only right-in and right-out given the Jersey barrier. MoDOT and Municipal Services might require a study and a modification of the entrance.

Paved Surface:

The proposed driving school course, according to the applicant, will simply be a paved surface with paint and cones. The remainder of the property will be green space, including a detention basin for storm water runoff.

Vehicle Storage:

Given the tract for the proposed driving school course is adjacent to an R-6 zoned district and near another, rather than being at least 500-feet away, vehicles cannot be stored on this lot. Any proposed equipment structure should be on the Final Plan Review and meet Nonresidential Design Requirements along with any required Building Permits.

Fencing to Enclose Property:

Without a principal structure to define the exterior and interior yards, fencing to enclose the property cannot be provided.

Landscaping and Buffer/Screen:

Street trees and Parking Lot Perimeter plantings will have to be provided per Code. A 15-foot-wide residential buffer with an opaque fence and required plantings per Code must be provided as a screen abutting the R-6 zoning along the south property line.

Stormwater:

When a Final Plan Review is submitted to Planning and Zoning and a permit is applied for with Development Services, storm water detention calculations for the proposed impervious driving surface will be necessary. This property is not located in Stream Buffer Zone or federally designated floodplain.

CIP Investments:

There are no CIP Investments planned for this area at this time.

REVIEW CRITERIA

Recommendations and decisions on rezoning applications must be based on consideration of all the following criteria:

1. Conformance of the requested zoning with the Comprehensive Plan.

The Comprehensive Plan envisions Residential Established Neighborhood. However, the area to the south of this property is designated as Industrial.

2. Conformance of the requested zoning with any adopted neighborhood or sub-area plans in which the property is located or abuts.

The property is not within a sub-area plan area.

3. The compatibility of the proposed zoning with the zoning and use of nearby property, including any overlay zoning.

Properties along this portion of the Highway M-291 corridor are zoned R-6 (Single-Family Residential), C-1 (Neighborhood Commercial), C-2 (General Commercial) and I-1 (Industrial). Surrounding uses include; legal nonconforming salvage, tow/auto storage lots, undeveloped woodlands and fields, and single-family residences.

4. The compatibility of the proposed zoning and allowed uses with the character of the neighborhood.

The proposed zoning, I-1 and associated industrial uses, would be compatible with some of surrounding uses (particularly west of the highway). There is a single-family subdivision northeast of this site across Highway M-291.

5. The suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations.

The current zoning, C-2 (General Commercial), is not well suited for this site. The Jersey barrier, eliminating left-in and left-outs, makes access problematic. Most importantly, the property lacks water, sewer and easy electrical connections. Further, properties in the area are undermined and makes building structures problematic as well.

6. The length of time the subject property has remained vacant as zoned.

The property is mostly wooded and has never been developed.

7. The extent to which approving the rezoning will detrimentally affect nearby properties.

Allowing this proposed zoning should not be detrimental to nearby rezoning properties.

8. The gain, if any, to the public health, safety, and welfare due to denial of the application, as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application.

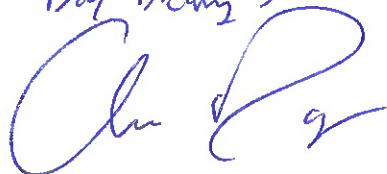
If the rezoning were denied, the applicant may have a zoning that is not usable given the lack of utilities and site instability. If approved, the proposed use (and future industrial uses) would have minimal impact on the area.

EXHIBITS

1. Narratives
2. Expanded Narrative
3. Application
4. Notification letter
5. Address List
6. Notification Area Map
7. Affidavit
8. Site Plan
9. Aerial Photo 1
10. Aerial Photo 2
11. CDL Book
12. Certificate to Operate
13. Comprehensive Plan map
14. Zoning map

Applicant seeks the rezoning of the property located at 420 S. 291 Highway to Industrial 1 Zoning from its current C-2 zoning. The rezoning is requested in order to align the current zoning with the historic use of the property and with the zoning in the surrounding area.

The property has been undeveloped and vacant for a number of years. The property is not suitable for residential use in any manner due to the property type, the use of the abutting properties, and due to the topography of the land. The landowner has a prospective buyer who desires to use the property as a CDL truck driving course. The rezoning to an Industrial 1 zoning is consistent with the Comprehensive Plan, the Future Land Use Map, and approved City development standards and policies.

Day Dream school


1-23-25



Day Driving School
16700 E Gudgell Road
Independence, MO 64055
www.cdl-pros.com
www.learn2drivekc.com



January 24, 2025

To: City of Independence Planning and Zoning Department

CDL Pros and Learn 2 Drive KC are both owned and managed by Day Driving School, located at 16700 E. Gudgell Rd. Independence, MO 64055. Our current location was fully remodeled, featuring parking curbs, entrances and proper lighting in accordance with city guidelines, all designed to enhance safety and create a more inviting environment, benefiting both local businesses and the surrounding area.

We specialize in driver education and training, focusing on behind-the-wheel instruction for students who already have their Missouri learner's permit. Our school is certified and approved by the Missouri Department of Higher Education and an approved FMCSA Training Provider.

CDL Pro's training program combines classroom instruction with behind-the-wheel driving practice. In the classroom, students learn about safety protocols, vehicle inspections, driving techniques, and essential aspects of operating a commercial vehicle.

The driving practice portion is vital, giving students practical experience behind-the-wheel. Students will focus on pre-trip inspections, backing maneuvers, navigating tight spaces, and driving on various roads and in different traffic conditions. A thorough CDL training program equips students with confidence, skills, and knowledge needed to safely operate commercial vehicles and successfully pass the CDL exam to earn their commercial driver's license.

Learn 2 Drive KC helps teen and adult drivers learn all the skills they will be tested on at the Driver's Testing and Examination Center, including parking and parallel parking. Practice is conducted in a safe, controlled environment where we can set up cones without interruptions. Additionally, we use various traffic cone drills, with a strong emphasis on safety, to help prepare students for driving in real traffic on main roads.

The driving lot as shown on the site plan will provide a safe space for CDL Pros and Learn 2 Drive KC students to properly train on driving maneuvers. The rest of the property allows plenty of room for growth, and we realize plans must be submitted and approved at that time.

The property's rezoning at 420 S. 291 Highway to Industrial .1 Zoning from its current C-2 zoning, according to Independence city development standards and policies, provides a safe and ideal space for local students to develop the skills needed to become qualified, confident drivers - helping them progress in both their careers and personal lives.

We thank you for reviewing and considering our plans to revitalize the property.

Aaron Day



Planning and Zoning Application Form

Community Development
111 E. Maple Avenue
Independence, MO 64050
(816) 325-7421
cdplanning@indepmo.org

Application Type (check all that apply)

Land Use	Land Subdivision	Site Development	Use Permit	Other
☐ Rezoning ☐ PUD Rezoning	☐ Preliminary Plat ☐ Final Plat ☐ Minor Subdivision	☐ Final Site Plan ☐ Preliminary Dev Plan ☐ Final Dev Plan (PUD)	☐ Special Use ☐ Homebased Business ☐ Short-Term Rental	☐ Admin. Adjustment ☐ Variance ☐ Street Name Change ☐ Special Sign Permit

Project Information and Location

Project Name: Day Driving School LLC

Project Address/Location: 420 S 291 HWY
N/A 4.3 1 NO

Sq. Ft. of Building: CD Acreage: I-1 Number of Lots/Tracts: Vacant Steam Buffer (Yes or No): Driving Course

Existing Zoning: CD Proposed Zoning: I-1 Existing Land Use: Vacant Proposed Land Use: Driving Course

Basic Application Requirements (See the Planning & Zoning Application Guide for additional requirements)

☒ Completed & Signed Application Form ☒ Application Fee ☒ Cover Letter Describing Details of Project	☐ One 24" x 36" set of plans for Land Sub. & Site Dev. ☐ One PDF copy of a plat map or site plan ☐ Legal Description of the property in question
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Contact Information

Applicant <u>Day Driving school LLC</u> Name Company <u>16700 E Gage Rd.</u> Address <u>816-918-5620</u> Phone Email		Owner <u>Marsha Pipes</u> Name Company <u>35 T ST. LAKE OTAWA, MO 64086</u> Address <u>816-918-6265</u> <u>marsha4661@gmail.com</u> Phone Email	
Architect/Engineer/Surveyor/Other: <u>Boundary & Co. Surveying, Inc.</u> Name Company <u>821 NE Columbus St. Suite 100</u> Address <u>816-554-9798</u> <u>Justin @ Boundary</u> Phone Email <u>Survey.net</u>		Architect/Engineer/Surveyor/Other: Name Company Address Phone Email	

The applicant hereby agrees that the information provided above is accurate.

Applicant's Signature: [Signature] Date: 1/17/25
 Owner's Signature: [Signature] Date: 1/17/25

May 2022

Property Owner Notification Letter

City of Independence, Missouri

Date: 2/19/25

Case No. 25-100-09

Dear Property Owner:

This letter is to notify you that an application has been submitted for consideration by the Planning Commission and City Council. A full public hearing will be held by the Planning Commission and the City Council will consider new information on the dates and times below.

Proposed Case Type (Check One):

☒ Rezoning

☐ Rezoning/PUD

☐ Special Use Permit

☐ Preliminary Development Plan

Proposed project description: Rezoning
From Commercial to Industrial 1

Applicant: Aaron Day

Location of Property: 420 S 291 Hwy

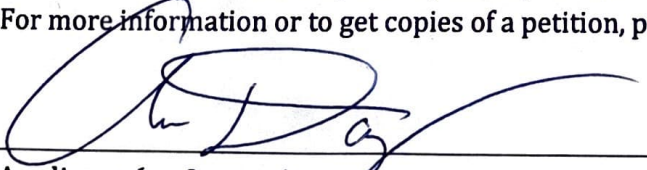
Planning Commission Meeting Date: March 11, 2025, at 6:00 p.m.

City Council Meeting Date: April 21, 2025, at 6:00 p.m.

Location of public hearings: City Council Chambers, City Hall
111 E Maple Ave, Independence, Missouri, 64050

All interested persons are invited to attend and will have an opportunity to be heard at the full public hearing (Planning Commission).

REZONINGS ONLY: You may file a protest petition with the Community Development Department. For more information or to get copies of a petition, please contact Planning staff at 816-325-7421.


Applicant (or Owner/Agent)

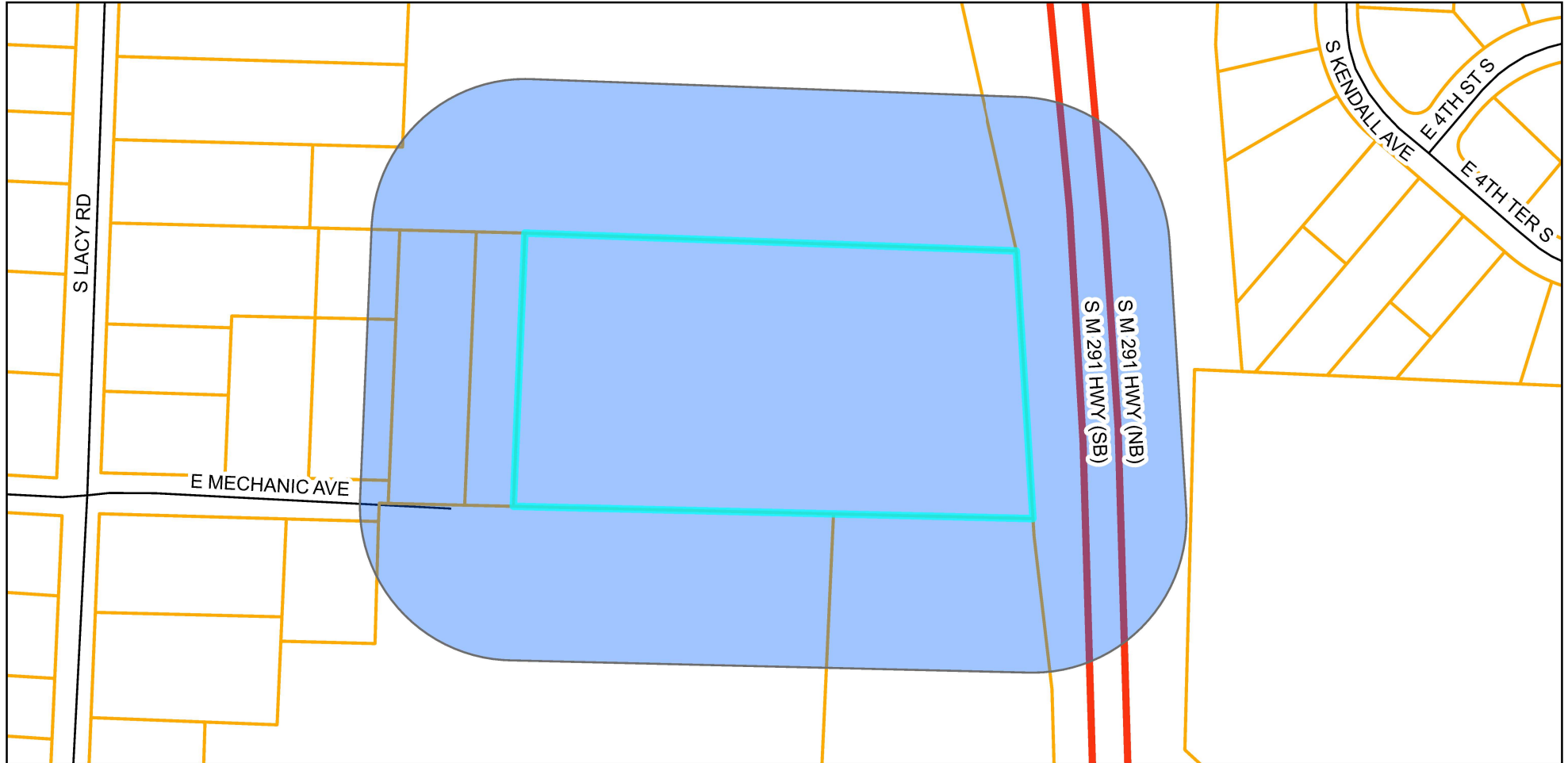
For more information, contact the Community Development Department at 816-325-7421.

Property Address	Property Owner	Owner Address	City	State	ZIP Code
16510 E MECHANIC AVE	LANGER RUDY	11014 E TRUMAN RD	INDEPENDENCE	MO	64054
16511 E MECHANIC AVE	CLYMORE INVESTMENTS LLC	530 S 291 HWY	INDEPENDENCE	MO	64056
16512 E MECHANIC AVE	MUDD DAVID A & SHELLEY L	380 SALT LICK CIR	NAPOLEON	MO	64074
16518 E MECHANIC AVE	KC CAR BUYERS LLC	16514 E MECHANIC AVE	INDEPENDENCE	MO	64050
300 S M 291 HWY	HUTCHISON JOSEPH D-TRUSTEE	401 S LACY RD	INDEPENDENCE	MO	64050
401 S LACY RD	HUTCHISON JOSEPH D & NORMA J-TRUSTEES	401 S LACY RD	INDEPENDENCE	MO	64050
600 S M 291 HWY	TURNER TRANSFER LLC	812 NE A HWY	LATHROP	MO	64465

Notification Area

Case No. 25-100-09

10725 E Truman Rd

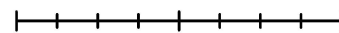


Legend

- Notification Area
- Parcels

Streets

- Highway
- Local

0 100 200 400 Feet


Prepared For: Planning Commission
 Community Development Department
 Meeting Date: March 11, 2025



Property Owner Notification Affidavit

STATE OF MISSOURI

COUNTY OF JACKSON

Case No. 25-100-09

I, Aaron Day, of lawful age being first duly sworn upon oath, state:

That I am the (agent, owner, attorney) for the property for which the application was filed and did, not later than fifteen (15) days prior to the date of the public hearing scheduled before the Planning Commission, mail notices to all persons owning property within 185 feet of the subject property. **The list of property owners to whom notice has been mailed is attached.**

These notices were mailed on the 19 day of February, 2025.

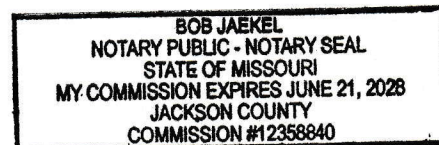
Aaron Day

Signature of Agent, Owner or Attorney

Subscribed and sworn to before me this 19 day of February, 2025.

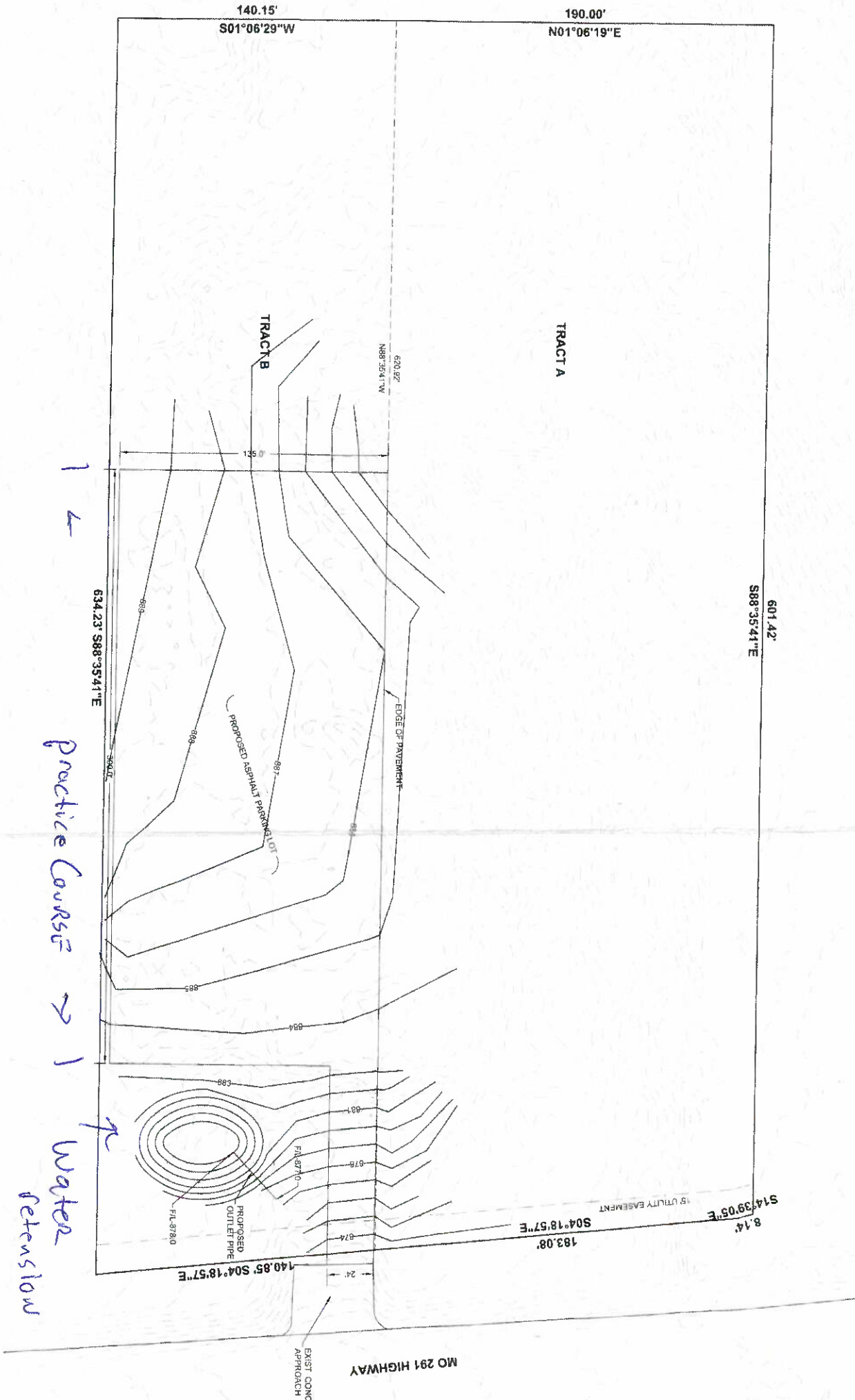
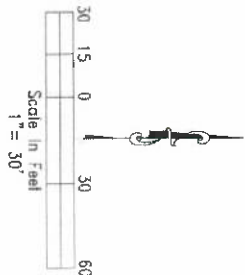
Bob Jaekel
Notary Public

June 21, 2028
Commission Expiration Date



Property Address	Property Owner	Owner Address	City	State	ZIP Code
16510 E MECHANIC AVE	LANGER RUDY	11014 E TRUMAN RD	INDEPENDENCE	MO	64054
16511 E MECHANIC AVE	CLYMORE INVESTMENTS LLC	530 S 291 HWY	INDEPENDENCE	MO	64056
16512 E MECHANIC AVE	MUDD DAVID A & SHELLEY L	380 SALT LICK CIR	NAPOLEON	MO	64074
16518 E MECHANIC AVE	KC CAR BUYERS LLC	16514 E MECHANIC AVE	INDEPENDENCE	MO	64050
300 S M 291 HWY	HUTCHISON JOSEPH D-TRUSTEE	401 S LACY RD	INDEPENDENCE	MO	64050
401 S LACY RD	HUTCHISON JOSEPH D & NORMA J-TRUSTEES	401 S LACY RD	INDEPENDENCE	MO	64050
600 S M 291 HWY	TURNER TRANSFER LLC	812 NE A HWY	LATHROP	MO	64465

SITE PLAN
A PART OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 50, RANGE 31,
INDEPENDENCE, JACKSON COUNTY, MISSOURI



- NOTES:
1. THE SUBJECT PROPERTY CONTAINS 4.69 ACRES MORE OR LESS.
 2. ACCESS TO PROPERTY VIA PUBLIC HIGHWAY NO. 291 HIGHWAY.
 3. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A PROPER TITLE REPORT. EASEMENTS AND OTHER CONDITIONS MAY EXIST AND COULD BE DISCLOSED BY A PROPER TITLE REPORT, WHICH WAS NOT SUPPLIED BY THE CLIENT.
 4. CONTOURS ARE SHOWN ONE FOOT INTERVALS.

FLOOD STATEMENT:

THE SUBJECT PROPERTY LIES IN AN AREA LABELED ZONE 'X' (AREAS DETERMINED TO BE OUTSIDE OF THE 500-YEAR FLOOD PLAIN) AS DETERMINED BY THE FEMA FLOOD INSURANCE RATE MAP NUMBER 2995C0282G, WITH AN EFFECTIVE DATE OF JANUARY 20, 2017.

DESCRIPTION:

THIS SURVEY SHOWS ON THE SURVEY OF PART OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 50 NORTH, RANGE 31, IN INDEPENDENCE, JACKSON COUNTY, MISSOURI, RECORDED APRIL 3, 1991 AS DOCUMENT NUMBER 1-1022654 IN SURVEY BOOK T-14 AT PAGE 75. SAID TRACT A BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 50, RANGE 31, IN INDEPENDENCE, JACKSON COUNTY, MISSOURI, SAID POINT BEING IN LACY ROAD, THENCE ALONG THE WEST LINE OF SAID 1/4 SECTION NORTH 0 DEGREES 18 MINUTES WEST 660.34 FEET (DEED= 659.40 FEET), THENCE DUE EAST 323.64 FEET (DEED= 523.50 FEET) TO THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 1-130, PAGE 286, THENCE ALONG THE WEST LINE OF SAID TRACT AND PARALLEL TO THE WEST LINE OF SAID 1/4 SECTION NORTH 0 DEGREES 18 MINUTES WEST 140.18 FEET TO THE TRUE POINT OF BEGINNING OF THIS TRACT, THENCE CONTINUING ALONG THE WEST LINE OF SAID TRACT AND PARALLEL TO THE WEST LINE OF SAID 1/4 SECTION NORTH 0 DEGREES 18 MINUTES WEST 190 FEET TO THE NORTHWEST CORNER OF SAID TRACT OF LAND, THENCE ALONG THE NORTH LINE OF SAID TRACT DUE EAST 501.42 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF MISSOURI STATE HIGHWAY NO. 291, THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAY SOUTH 16 DEGREES 03 MINUTES 24 SECONDS EAST 8.44 FEET TO A POINT 50 FEET OPPOSITE CENTER LINE STATION 154+78.80, THENCE CONTINUING ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAY SOUTH 5 DEGREES 43 MINUTES 16 SECONDS EAST 183.08 FEET, THENCE LEAVING SAID HIGHWAY RIGHT-OF-WAY LINE PARALLEL TO THE SOUTH LINE OF SAID TRACT DUE WEST 820.92 FEET TO THE TRUE POINT OF BEGINNING.

AND

TRACT B, AS SHOWN ON THE SURVEY OF PART OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 50 NORTH, RANGE 31, IN INDEPENDENCE, JACKSON COUNTY, MISSOURI, RECORDED APRIL 3, 1991 AS DOCUMENT NUMBER 1-1022654 IN SURVEY BOOK T-14 AT PAGE 75, SAID TRACT B BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 50 NORTH, RANGE 31, IN INDEPENDENCE, JACKSON COUNTY, MISSOURI, SAID POINT BEING IN LACY ROAD, THENCE ALONG THE WEST LINE OF SAID QUARTER SECTION NORTH 0 DEGREES 18 MINUTES WEST 660.34 FEET (DEED= 659.40 FEET), THENCE DUE EAST 523.64 FEET (DEED= 523.50 FEET) TO THE TRUE POINT OF BEGINNING OF THIS TRACT, SAID POINT BEING THE SOUTHWEST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 1-130 AT PAGE 286, THENCE ALONG THE WEST LINE OF SAID TRACT AND PARALLEL TO THE WEST LINE OF SAID QUARTER SECTION NORTH 0 DEGREES 18 MINUTES WEST 140.18 FEET, THENCE PARALLEL TO THE SOUTH LINE OF SAID TRACT DUE EAST 620.92 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF MISSOURI STATE HIGHWAY NUMBER 291, THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF SAID HIGHWAY SOUTH 5 DEGREES 43 MINUTES 16 SECONDS EAST 140.69 FEET TO A POINT ON THE SOUTH LINE OF SAID TRACT, THENCE LEAVING SAID HIGHWAY RIGHT-OF-WAY LINE AND ALONG THE SOUTH LINE OF SAID TRACT DUE WEST 634.23 FEET TO THE TRUE POINT OF BEGINNING.

BUILDING AND SITE DATA
ADDRESS- 420 S.W. 291 HIGHWAY, INDEPENDENCE, MO
ZONING- C-2
FLOOD PLAIN- NO
TOTAL AREA- 4.69 ACRES
PROPOSED NON PERMEABLE COVER- 0.99 AC.



SUBJECT PROPERTY
LOCATION MAP
SCALE=1"=2000'
SECTION 31
TOWNSHIP 50 RANGE 31

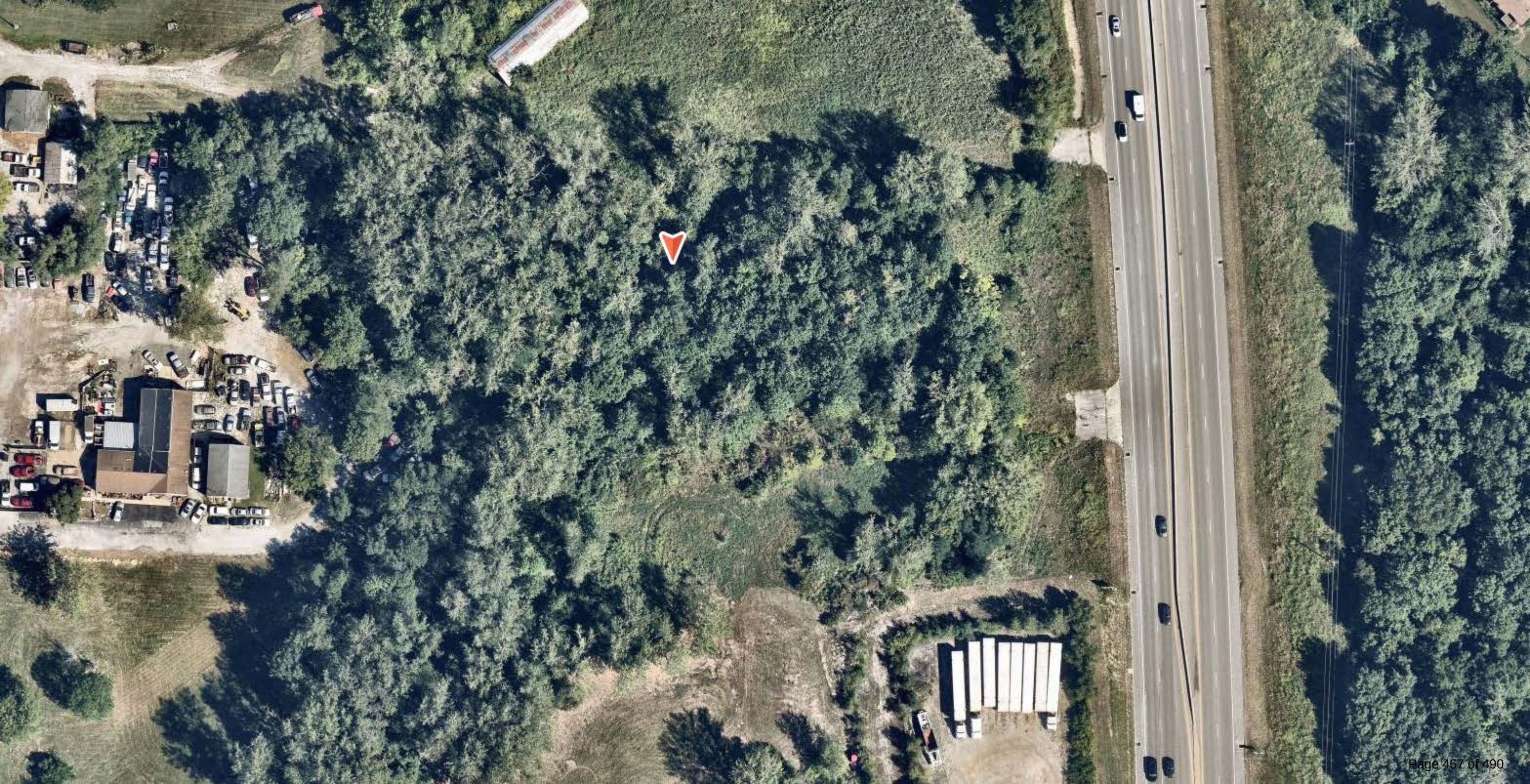
BEFORE YOU
DIG - DRILL - BLAST



Call
1-800-344-7483 (MISSOURI)
1-800-344-7233 (KANSAS)

UTILITY NOTE:
THE INFORMATION SHOWN ON THIS DRAWING CONCERNING TYPE AND LOCATION OF UNDERGROUND UTILITIES IS BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR IS RESPONSIBLE FOR CONTRACTING ALL UTILITY COMPANIES FOR FIELD LOCATION OF ALL UNDERGROUND UTILITY LINES PRIOR TO ANY EXCAVATION AND FOR MAKING HIS OWN VERIFICATION AS TO THE TYPE AND LOCATION OF UNDERGROUND UTILITIES AS MAY BE NECESSARY TO AVOID DAMAGE THERE TO.

SITE PLAN			
A PART OF THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 50, RANGE 31, INDEPENDENCE, JACKSON COUNTY, MISSOURI			
DATE: OCTOBER 9, 2023		BOUNDARY & CONSTRUCTION SURVEYING, INC.	
CLIENT:		821 NE COLUMBUS STREET SUITE 100, LEES SUMMIT, MO 64083 PH # 816/654-9788 FAX # 816/654-0257	
GARY PIPES 35TH ST LEES SUMMIT, MO 64086		PROJECT NO. 23-326	SHEET 1 OF 1
420 S.W. 291 HWY, INDEPENDENCE, JACKSON COUNTY, MO			





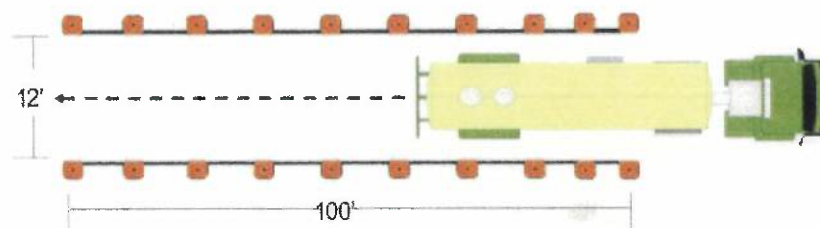




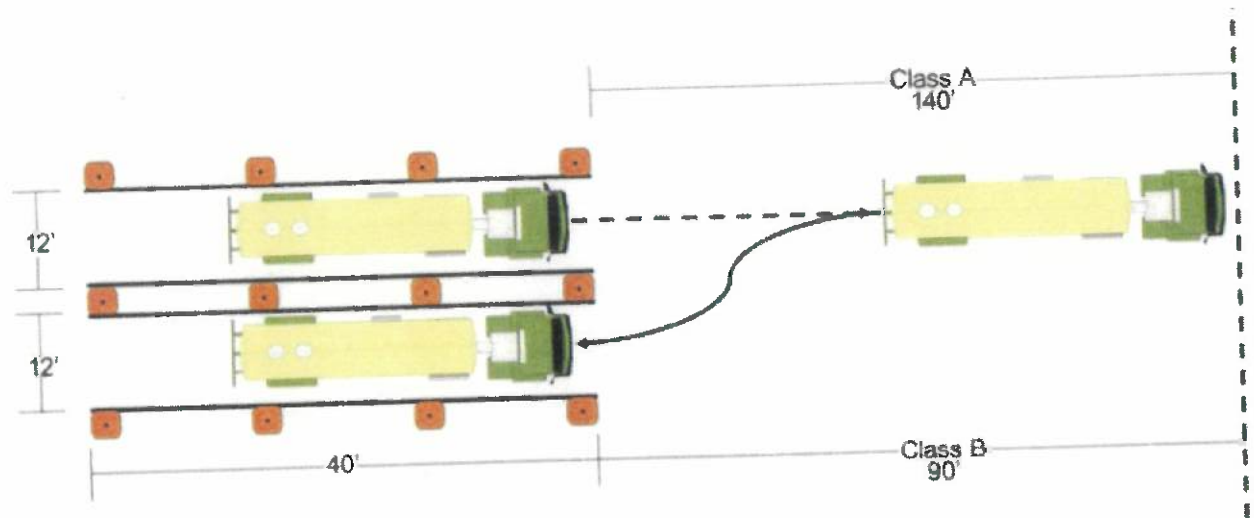
CDL Straight Line Backing – Cone Dimensions

Official guidance from the CDL manual:

You may be asked to back your vehicle in a straight line between two rows of cones without touching or crossing over the exercise boundaries.



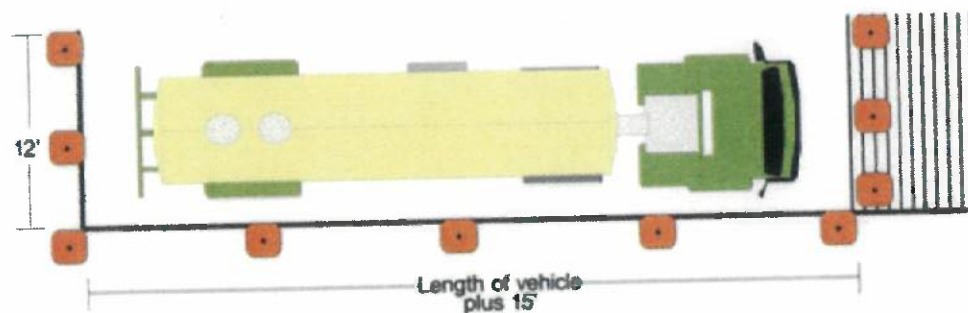
So the dimensions of this course are 100 feet long by 12 feet wide.



Depending on the Class of CDL license you are testing for:

The length of the forward boundary for a Class A license is 140 feet from the rear set of cones. For a Class B license it is 90 feet.

Parallel Park (Conventional) - You may be asked to park in a parallel parking space that is on your right. You are to drive past the entrance to the parallel parking space with your vehicle parallel to the parking area; and back into the space without crossing front, side or rear boundaries marked by cones. You are required to get your entire vehicle completely into the space.

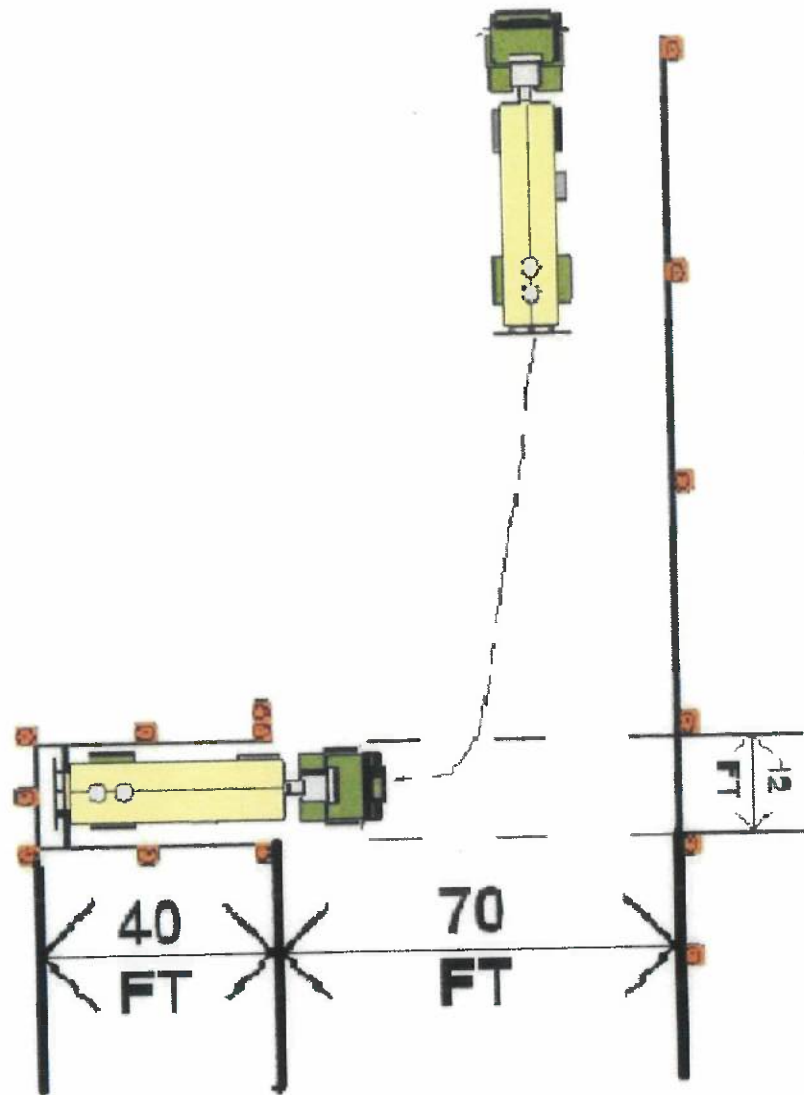


As you can see the dimensions of the box required to put the vehicle into are 12 foot wide by a length that is 15 feet longer than the vehicle (Applies to Class A and Class B).

CDL Alley Dock

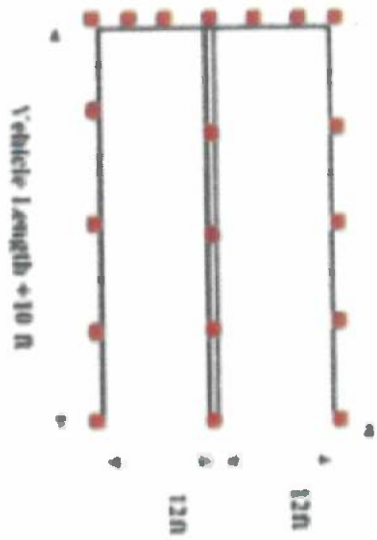
Guidance from the CDL manual:

You may be asked to sight-side back your vehicle into an alley. You will drive past the alley and position your vehicle parallel to the outer boundary. From that position, back into the alley bringing the rear of your vehicle within three feet of the rear of the alley without touching boundary lines or cones. Your vehicle must be straight within the alley/lane when completed.

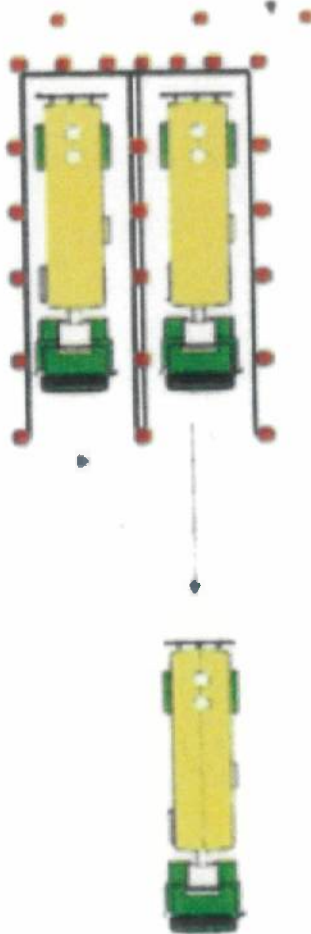


The 'Dock' space where you will end up is measured as 12 foot wide by 40 foot long. There is an additional spacing of 70 feet forward of this boundary to the outer boundary.

Offset Back Left/Right



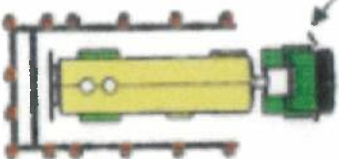
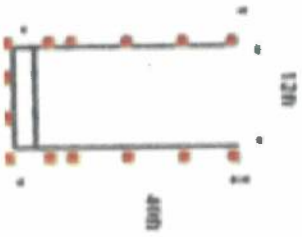
Length of Vehicle $\times 2$



Alley Dock



Scrap Box
30



State of Missouri

Coordinating Board for Higher Education

Certificate to Operate

This is to Attest That
Located At:

CDL Pros 1, LLC
16700 Cindrell Rd.
Independence, MO 64055

is duly Certified to Operate Pursuant to Section 173.600 through 173.618, RSMo.

Issued On :
Expiration Date:

May 12, 2023
June 30, 2024

Laura Vadenbaught
For the Coordinating Board for Higher Education

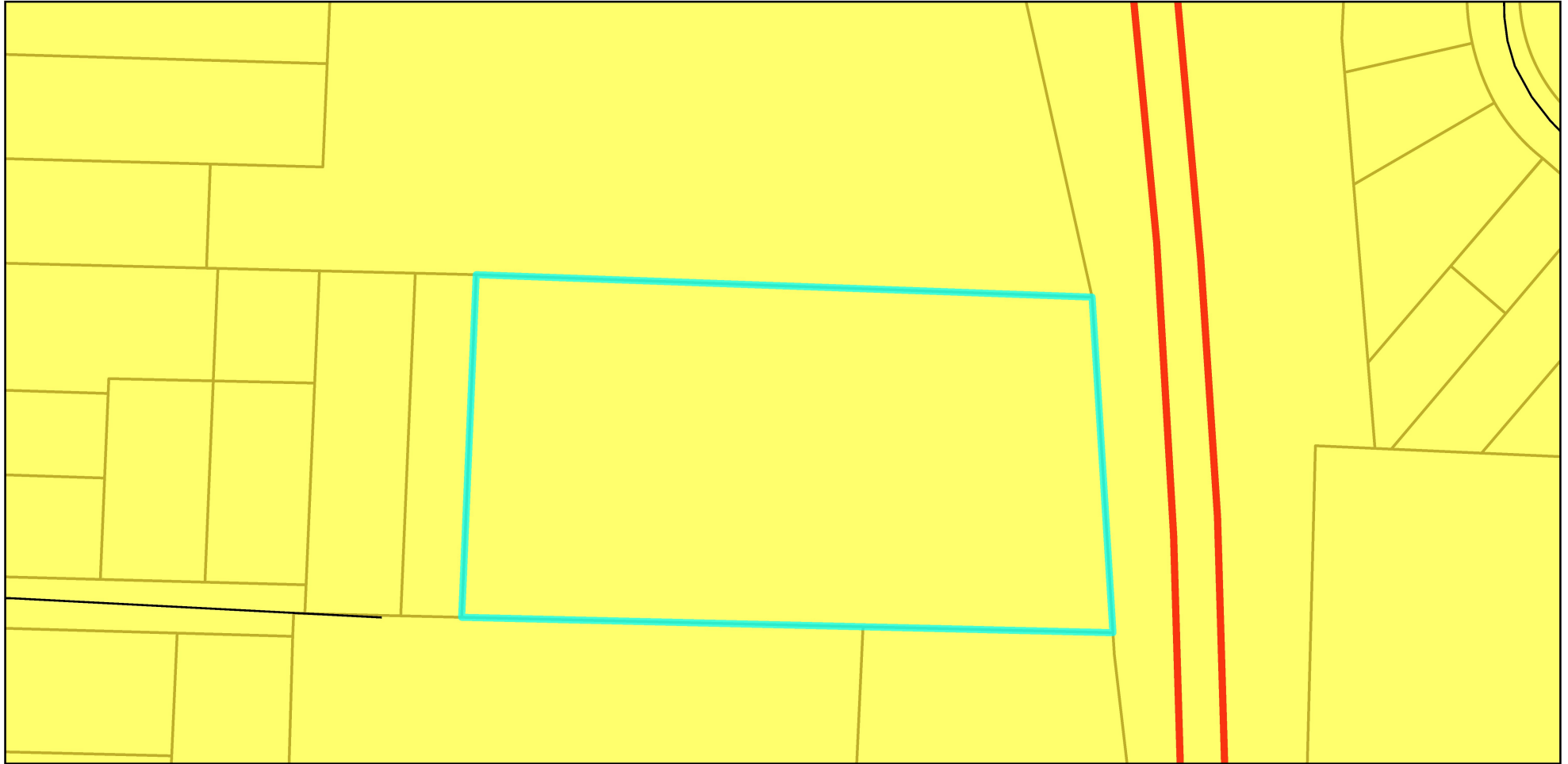
DHE 78229-00

Identification Number

Comprehensive Plan Map

420 S M 291 Hwy

Case No. 25-100-09



Legend

Streets

-  Highway
-  Local

Proposed Land Use (Comp Plan)

-  Residential Neighborhoods

0 125 250 500 Feet



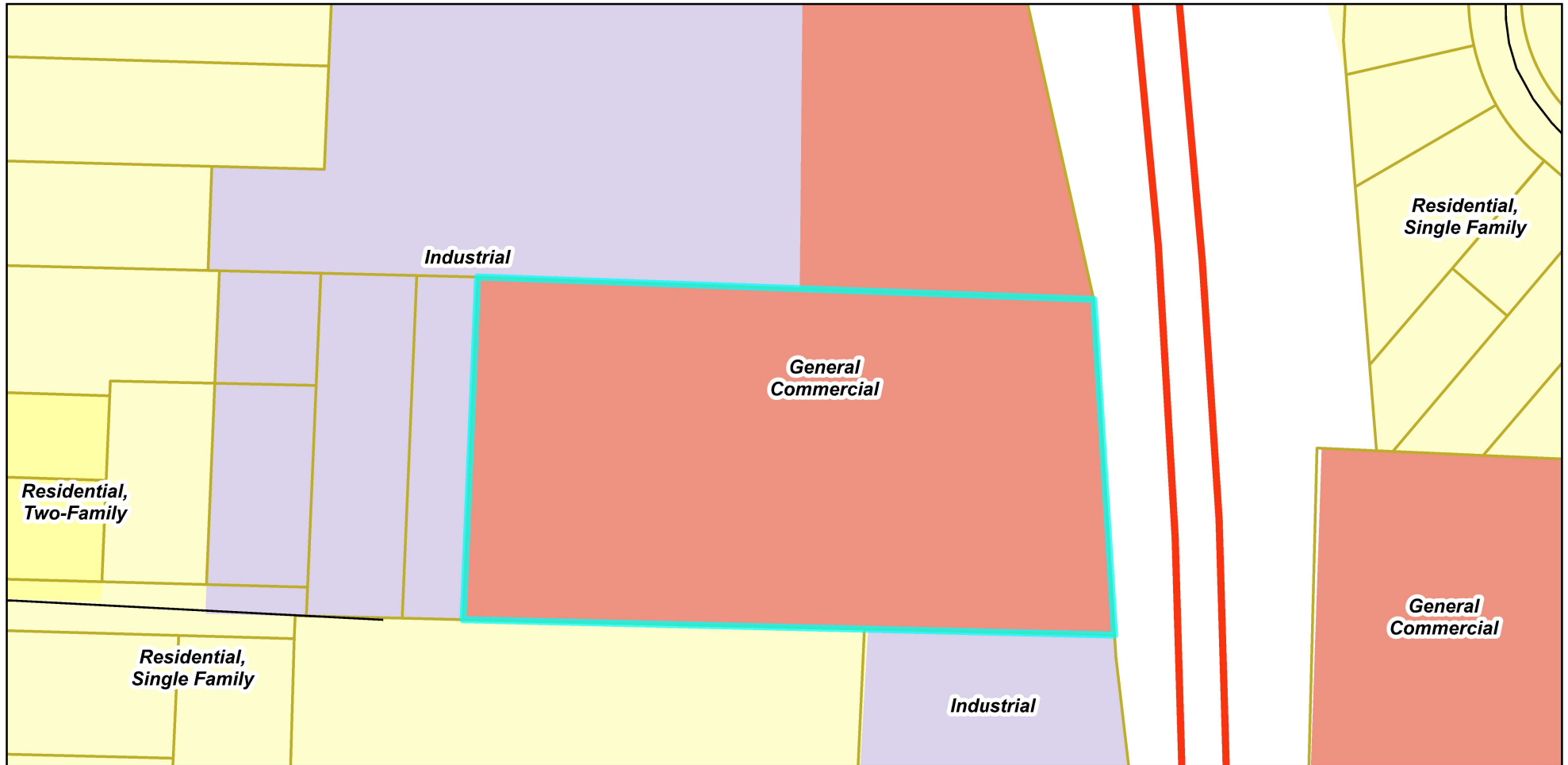
Prepared For: Planning Commission
Community Development Department
Meeting Date: March 11, 2025



Zoning Map

420 S M 291 Hwy

Case No. 25-100-09



Legend

Streets

- Highway
- Local

Zoning

- Commercial

- Industrial
- Two Family Residential
- Single Family Residential



0 125 250 500 Feet

Prepared For: Planning Commission
Community Development Department
Meeting Date: March 11, 2025



Planning Commission Minutes

March 11, 2025 6:00 PM

City Hall, 111 E. Maple Avenue (Ground Floor), Council Chambers

CALL TO ORDER

A meeting of the Planning Commission was held at 6:00 PM on 3/11/2025, in the 111 E Maple Avenue, Independence, MO 64050. The meeting was called to order.

ROLL CALL

Upon roll call, the following members were present - Laurie Dean Wiley, Eric Ashbaugh, Edward Nesbitt, Dan O'Neill, Virginia Ferguson, Jose Torres, Michael Young. Absent - .

CONSENT AGENDA

The Consent Agenda consists of routine items of business to be acted upon by the Planning Commission with little or no public discussion. The staff or committee recommendation for each item is included in the Planning Commission packet. Any item may be removed by a commissioner or staff member to become part of the regular agenda.

1. Planning Commission Minutes – February 11, 2025

Motion

Commissioner Edward Nesbitt made a motion to approve the Consent Agenda. Commissioner Dan O'Neill seconded the motion. The motion was approved Yes 7, No 0, Abstained 0.

PUBLIC HEARINGS

1. **Case 25-100-09 – Rezoning – 420 S. M-291 Highway** – A request to rezone the property from C-2 (General Commercial) to I-1 (Industrial).

Staff Presentation

Brian Harker presented the case. Mr. Harker presented the Commission with a vicinity map, noting the area and surrounding zoning. He presented the Commission with an aerial map

indicating the project area and explained the surrounding land uses.

Applicant Comments

Aaron Day, 9512 S. Main Entrance Drive, Lake Lotawana, stated their current hours are 8:00 a.m. to 6:00 p.m. and said their trucks are single-axle day cabs and don't create a lot of noise.

In response to Chairwoman Wiley's question, Mr. Day stated he spoke to his City Councilmember and explained that the noise would not be an issue and that the residential lot is a non-conforming lot. Mr. Day showed the Commissioners where the driving school would take place. He said there will be a loss of some trees, but there will still be numerous trees as a buffer from other lots.

In response to Commissioner O'Neill's question, Mr. Day said he will not have fuel stored on the lot. He noted they will use Phillips 66 to fill up trucks as needed.

Mr. Harker noted the site plan will be reviewed and processed per City Code when and if this application is passed. He said the tree concerns will be addressed as part of the site plan process.

Chairwoman Wiley noted this lot is unable to get water and sewer, so this use may be appropriate.

Public Comments

No public comments.

Commissioner Comments

Commissioner Ashbaugh stated he would like to add a condition that a tree preservation plan be required.

Motion

Commissioner Dan O'Neill made a motion to approve the case, with the added condition.

Commissioner Eric Ashbaugh seconded the motion. The motion was approved Yes 7, No 0, Abstained 0.

OTHER BUSINESS

1. **Case 25-400-01 – Short-Term Rental – 910 W. Waldo Ave** – A request to operate a Short-Term Rental.

Staff Presentation

Gabe Glaser presented the case. Mr. Glaser presented the Commission with a vicinity map, noting the area and surrounding zoning. He presented the Commission with an aerial map indicating the project area and explained the surrounding land uses. Mr. Glaser reviewed the conditions of approval.

IN response to Commissioner Nesbitt's question, Mr. Glaser noted the maximum occupancy is 8.

Applicant Comments

Bryan Barton, 114 Park Ave, Kansas City, stated he and James Wendleton own the property. He said they have a lot of experience running short-term rentals, and they have a 5-star rating on Airbnb. Mr. Barton said short-term rentals allow them to better keep the property maintained than if they were to use the property for a long-term rental.

In response to Commissioner Nesbitt's question, Mr. Barton said he lives less than 20-minutes away and are okay with the conditions of approval.

In response to Commissioner Ferguson's question, Mr. Barton said there are three spots available behind the house and one car could park in front of the home.

Public Comments

No public comments.

Motion

Commissioner Edward Nesbitt made a motion to approve the case. Commissioner Michael Young seconded the motion. The motion was approved Yes 7, No 0, Abstained 0.

2. **Case 25-400-02 – Short-Term Rental – 2120 N. McBride Ave** – A request to operate a Short-Term Rental.

Staff Presentation

Gabe Glaser presented the case. Mr. Glaser presented the Commission with a vicinity map, noting the area and surrounding zoning. He presented the Commission with an aerial map indicating the project area and explained the surrounding land uses. Mr. Glaser reviewed the conditions of approval. He noted the applicant lives in the other half of the duplex and the bedroom in the basement is not a conforming bedroom and be used or advertised as such. Mr. Glaser stated the original application listed the Short-Term Rental address as 2118, but that's where the applicant lives. He noted the Short-Term Rental would actually be for 2120 N. McBride Avenue.

Applicant Comments

Lewis Galloway, 2118 N. McBride Ave, stated this would be his first time running a Short-Term Rental. Mr. Galloway said he's excited about the possibility of having a Short-Term Rental versus a Long-Term Rental so he can keep up with property maintenance on the residence.

Public Comments

No public comments.

Motion

Commissioner Edward Nesbitt made a motion to approve the case. Commissioner Virginia Ferguson seconded the motion. The motion was approved Yes 7, No 0, Abstained 0.

3. Capital Improvements Program

Rick Arroyo gave an overview of the Capital Improvements Program (CIP) 2025-2031. He noted the CIP is a fluid document and may change due to changes in project scope or funding availability. Mr. Arroyo provided an overview of the 193 projects that will total over \$924 million dollars.

Deputy Police Chief Jason Petersen outlined the Police Department projects, including the scope of the new Justice Center. In response to Commissioner Nesbitt's question, Deputy Chief Petersen stated the amount estimated last year was considerably smaller due to a different scope of the project and a significant increase in construction costs. He noted technology needs have changed and the new Justice Center now includes the Municipal Court. Deputy Chief Petersen reviewed the radio tower project and stated the infrastructure has to be replaced sooner rather than later.

Parks, Recreation & Tourism (PRT) Director Morris Heide shared the highlights of the PRT projects, including the Truman Memorial Building, Vaile Mansion & Bingham Wagoner Repairs and the Independence Athletic Complex upgrades. In response to Commissioner Nesbitt's question, Mr. Heide stated the Truman Memorial Building will turn 100 years old next year and is a historic building. He said there is hope to have a Trails Museum in the future.

Finance Director Melissa Caberra noted construction costs are growing about 1.5% per quarter. Ms. Caberra reviewed the proposed bonds going to City Council that would finance renovating the current Independence Utilities Center and construction of three new fire stations. In response to Commissioner Nesbitt's question, Ms. Caberra stated the City is hoping to issue the bonds to finance construction now instead of later, when costs continue to rise. In response to Commissioner Ashbaugh's question, Ms. Caberra stated the City's sales taxes are not growing at the same pace of expenditures.

Christina Heinen, Health & Animal Services Director, stated if the bond passes on April 8th, the City will purchase the Animal Shelter from Jackson County. In response to Chairwoman Wiley's question, Ms. Heinen stated the County has been working on the maintenance concerns. She noted the City has great relationships with staff in other local jurisdictions. In response to Commissioner Nesbitt's question, Ms. Heinen stated the City owns the land, the County owns the building and in exchange for use of the County's building, the City provides animal services to the unincorporated parts of Jackson County and at Jackson County Parks. In response to Commissioner O'Neill's question, Ms. Heinen said Jackson County would like the City to have money in hand before negotiating a contract for the building.

Information Technology Director Jason Newkirk, outlined their three projects. He noted two are security-related projects and the third is the replacement of the data center. In response to Chairwoman Wiley's question, Mr. Newkirk said these project extensions are essential to the City providing secure operations moving forward.

Joe Hegendeffe, Power & Light Director, reviewed their projects, including substations, transmission lines and transformers, which are all general maintenance. Mr. Hegendeffe noted

the County Meadows Feeders will provide reliability to the entire region along US 40 Highway, west of M-291 Highway. In response to Chairwoman Wiley's question, Mr. Hegendeffeffer stated several of these projects will help with future data centers.

Municipal Services Deputy Director Matt McLaughlin highlighted several department projects and noted several are grant-funded. Mr. McLaughlin outlined the future plans to move the central garage, wastewater, stormwater and water all into one facility. In response to Commissioner Nesbitt's question, Mr. McLaughlin explained there are five funds that fund some of these projects and each of those funds have to be budgeted separately. Commissioner Nesbitt expressed concern about projects that he doesn't feel are needed yet and doesn't agree with how many citizens some of these projects say they'll benefit.

Chairwoman Wiley requested Mr. Arroyo explained the rating system. Mr. Arroyo explained that while all projects are important and identify needs throughout the city, there is a scoring criterion for each project but it should not be looked at as one project being better than another rather a criteria that provides information on what projects may be mandates, how it may impact regions of the City, and how projects are funded all play into the score.

Commissioner Nesbitt stated he didn't understand why 65% of the funding source graph was showing Unfunded. Ms. Caberra explained that until voters decide on the GO Bonds, those projects are unfunded.

Motion

Commissioner Edward Nesbitt made a motion to make a recommendation to the City Manager to approve the Capital Improvements Program as presented. Commissioner Dan O'Neill seconded the motion. The motion was approved Yes 5, No 2, Abstained 0.

ROUNDTABLE - NEXT MEETING MARCH 25, 2025

ADJOURNMENT

The meeting was adjourned at 8:15 p.m.

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-022 **1R** An ordinance amending the Independence City Code Chapter 3 Animals and Fowl **1R**

Recommendations:**Background:**

This item is sponsored by Councilmembers Wiley and Fears. This ordinance would create a section regarding reckless owners, which would prohibit ownership of an animal for a period of time after a certain number of animal code violations. This will also lower the age from six months to three months for an animal to be counted towards the total number of allowed animals at a residence. The ordinance would also prohibit commercial breeding and require hobby breeders to obtain a permit.

Emergency Justification:**Fiscal Impact:****Council Action:**

**Department /
Contact**

Council and Board /

REVIEWERS

Jeremy Cover
Zachary Walker
Susanne Holland

ATTACHMENTS:

1. Ordinance - reckless owner penalties and breeding restrictions LEK 3.26.25 (002)

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE INDEPENDENCE CITY CODE CHAPTER 3 ANIMALS AND FOWL

WHEREAS, City Charter Section 2.10 authorizes the City Council to enact municipal legislation relating to any and all subjects or matters within the powers of the City;

WHEREAS, The City Council desires to amend Chapter 3, Animals and Fowl, to provide penalties for reckless owners of animals and to further regulate the keeping of animals within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. The Code of Ordinances of the City of Independence Section 3.02.025 shall hereby be added to read as follows:

Sec. 3.02.025. - Reckless owner.

- A. It shall be unlawful for any person to be a reckless owner of an animal. For the purposes of this section, a reckless owner is any person who:**
- 1. Has been convicted of or has pleaded guilty to nine (9) violations of this chapter within a twenty-four (24) month period; or**
 - 2. Has been convicted of or has pleaded guilty to three (3) violations of 3.02.009(A) within a twenty-four (24) month period.**
- B. It shall be unlawful for any person to violate any restriction imposed by this section or by order of a judge after conviction or pleading guilty to violation of this section.**
- C. Upon the filing of charges for violation of this section, and upon the filing of an affidavit of the animal control officer or the city prosecutor, the judge shall order that any specific animals or all animals owned, possessed, or controlled by the person be seized and impounded during the pendency of charges and any appeal period.**
- D. Upon any person's conviction or guilty plea for violation of this section, the judge shall order that the person surrender any and all animals owned, possessed, or controlled by the person to the City animal control section of the department of health. The judge shall impose a fine of \$500.00 and shall order that the person be prohibited from owning, possessing, or controlling any animals for a period of at least 24 months.**

SECTION 2. The Code of Ordinances of the City of Independence Section 3.03.001 shall hereby be amended as follows:

Sec. 3.03.001. – Prohibition against harboring excess animals.

It shall be unlawful for any person in charge of a residence to keep or to allow to be kept more than four dogs or cats or any combination thereof, over the age of six ~~three~~ months. Grooming shops, kennels, performing animal exhibitions, pet shops, veterinary hospitals and animal shelters licensed by the City License Officer shall be exempt from this section.

SECTION 3. The Code of Ordinances of the City of Independence Section 3.01.001 shall hereby be amended to include the following:

Sec. 3.01.001. – Definitions.

COMMERCIAL ANIMAL ESTABLISHMENT means any pet shop, grooming shop, auction, riding school or stable, zoological park, circus, performing animal exhibition, educational animal facility or kennel, commercial breeding kennel, or any facility where animals are kept for the purpose of sale or entertainment or that provide animal related services except for veterinary hospitals.

COMMERCIAL BREEDING KENNEL: a person, other than a hobby or show breeder, engaged in the business of breeding dogs or cats for sale or for exchange in return for a consideration, and who harbors more than three intact females for the primary purpose of breeding dogs or cats for sale.

HOBBY OR SHOW BREEDER: a noncommercial breeder who breeds dogs or cats with the primary purpose of exhibiting or showing dogs or cats or improving the breed or selling or giving away the dogs or cats, and having no more than four intact females. Such breeder shall be classified as a hobby or show breeder if such person only sells or gives away such dogs or cats to other breeders or to individuals.

SECTION 4. The Code of Ordinances of the City of Independence Section 3.02.014 shall be amended to read as follows:

Sec. 3.02.014. – Commercial breeding kennels.

It shall be unlawful for any person or entity within the City to maintain or operate a commercial breeding kennel.

SECTION 5. The Code of Ordinances of the City of Independence Section 3.02.021 shall be amended to read as follows:

Sec. 3.02.021 – Hobby or show breeders.

- A. **Any person who is a hobby or show breeder shall obtain a license issued by the City License Officer and a hobby or show breeder permit issued by the Director. The permit cost is established by the City Council in the Schedule of Fees.**
- B. **Hobby or show breeders shall comply with the following:**
 1. **Not allow the whelping of more than one litter per each dog or cat in a 12-month period in order to protect the wellbeing of the animal;**
 2. **In the event a permit holder must destroy a litter of dogs or cats due to poor health or disease, as verified by a licensed veterinarian, the Director may authorize the whelping of one additional litter within the same permit year. The permit holder**

- shall show proof of verification by a licensed veterinarian upon request by the Director;
3. Cause all dogs and cats, prior to their sale or transfer of ownership, to be immunized against common disease and microchipped. In the case of dogs, said immunizations shall be against distemper, parvo, adenovirus type-2, coronavirus and parainfluenza; in the case of cats, said immunizations shall be against panleukopenia, rhinotracheitis and calicivirus. Upon the sale or transfer of ownership of a dog or cat, a signed statement from the seller/transferor attesting to his knowledge of the animal's health shall be tendered to the buyer/transferee, and said statement shall include the animal's immunization history;
 4. Sale or transfer of ownership of or release of any dog or cat shall be prohibited until such time that the animal has become accustomed to taking solid food, and has done so without nursing for a period of at least five days, and is at least eight (8) weeks of age; and
 5. Furnish the City animal control section of the department of health with a complete transfer of ownership notice, which shall be provided by the City animal control section, for each dog or cat sold or transferred within five days after the same.
- C. The City animal control section of the department of health shall furnish the permit holder with printed information regarding City animal control services and regulations. If the buyer/transferee resides in the corporate limits of the City, such information shall be provided by the permit holder to the buyer/transferee of any dog or cat from a hobby or show breeder.
- D. Persons subject to this section shall not publish or advertise the sale or giving away of any dog or cat unless said publication or advertisement is accompanied by their permit number.
- E. Each permit issued hereunder shall be valid for one year from the date of issuance.
- F. If the hobby or show breeder fails to comply with the requirement of Chapter 3, the Director may suspend or revoke such permit.

SECTION 6. This Ordinance shall be in full force and effect 90 days from and after passage.

SECTION 7. Correction of any scrivener's' errors identified within these articles are hereby authorized by this ordinance.

SECTION 8. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

PASSED THIS _____ DAY OF _____, 20____, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council

of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED AS TO FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager